

IN THE COURT OF SUB JUDGE, CHERTHALA
Present:- Ms. Lakshmy.S., Sub Judge
Monday 3rd day of March 2025/ 12th Phalguna 1946

I.A 6/25 in AS. 13/2021
(Filed on 30.01.2025)

Petitioners/Plaintiffs :-

1. Sivadasan Nair, S/o. Radhakrishna Panicker, Pappalil, Vayalar East Village, VayalarMuri, Cherthala Taluk.
2. Krishnankutty Kurup, Vadakke Pappalil, Vayalar East Village, VayalarMuri, Cherthala Taluk (Died)
3. Prasannakumari .A.P, W/o. Krishnankutty Kurup, Of-do-do-
4. praveen.K.M, S/o. Late. Krishnankutty Kurup, Vadakke Pappalil, Vayalar East Village, VayalarMuri, Cherthala Taluk.
5. Praseetha. P.,S/o. Late. Krishnankutty Kurup, Vadakke Pappalil, Vayalar East Village, VayalarMuri, Cherthala Taluk

3 to 5 Represented by Power of attorney holder
Sivadasan Nair, S/o. Radhakrishna Panicker, Pappalil,
Vayalar East Village, VayalarMuri, Cherthala Taluk.

By Adv. Jacob Joseph

Cr. Petitioners / Appellants:-

1. Gopalakrishnan, S/o. Velayudhan, Purathamkulangara Veetil, Vayalar East Village, Cherthala Taluk.
2. Pradeep kumar, S/o. Gopalakrishnan, Of-do-do--

By Adv. N. Ratheesh

This petition having been finally heard on 24.02.2025 and the Court on 03.03.2025 passed the following:-

ORDER

This petition is filed by the respondents to permit them to prune the branches of trees leaning to the decree schedule way and to do necessary repair to clear the ditches on the road.

2. The contentions of the petitioners, in brief, are as follows:

The petitioners have filed E.P.82/2021 to remove the pillar and gate installed on the decree schedule road, to cut the trees leaning towards the road, to divert the water flowing down to the road from the roof of the appellants' house and to repair the road. The decree schedule road was constructed on the basis of agreements between the appellants and respondents after paying money to the appellants. Accordingly, the petitioners filed I.A.3/2021 to complete the necessary maintenance work under the supervision of Commissioner. Since, the appellants raised objections, the Court appointed a Commission to ascertain whether repair work is necessary on the road. Accordingly, the Commissioner inspected the property and filed a report that branches of trees and bushes are leaning towards the decree schedule property and water from the tank on roof of the appellant's house has created ditches on the decree schedule road. Hence this petition.

3. The respondents filed objections to the petition, as follows:

The petitioners have no authority or right to institute such a petition and it is not maintainable in law. The appellants have undertaken that they would not create any obstructions on the road and thus the execution proceedings were stayed. No trees on the property of the appellants obstructs the use of the decree schedule road. The commissioner did not report that the trees are leaning against the decree schedule road. It is not correct that water from the tank on roof top of the appellant's house falls to the decree schedule road. The petition is liable to be dismissed.

4. Heard and perused the records.
5. The following points arise for consideration.
 - (i) Whether the petitioners can be allowed to remove the obstructions on the decree schedule road and to repair its ditches?
 - (ii) Is the petition allowable?
 - (iii) Order as to costs?
6. **Point Nos. 1 and 2:**

These points are considered together for convenience. The appeal is preferred against the judgment and decree of the Munsiff's Court, Cherthala in O.S.307/2015 whereby the trial court granted a decree of perpetual injunction and restrained the defendants from making any obstruction on the plaint schedule road. There was a further direction to remove the poles and gate

erected on the northern side of plaintiff's property. The petitioners have approached the Court contending that the branches of the trees on the appellants' property are creating obstruction to the road and that the flow of water through the road has created ditches on the road.

7. The petitioners have already filed I.A.3/23 to depute a Commission for local inspection and the Commissioner has reported that branches of trees are creating obstruction. She has further reported that the ditches on the road due to fall of water from overhead tank on the house of appellants require maintenance. The respondents have raised objection that petition filed under O.26 R.9 CPC is not maintainable. But it is well settled that misquoting of a provision is not material and the merits of the case has to be considered by the Courts.

8. Another contention of the respondents is that the prayer sought for is beyond the scope of the decree. The decree was to prevent obstructions to the road and hence preservation of the subject matter is highly required till final adjudication. The respondents have further contended that the report is not clear as to where the trees are standing. However, the respondents have no dispute that the plaintiff's road requires no maintenance work. The respondents have obtained an order staying the execution proceedings by undertaking that they would not create any obstructions on the road. So, there is no merit in the objections raised by the respondents and the petition is only to be allowed to

preserve and protect the decree schedule road under the supervision of the Court. A Commission can be deputed to supervise the work so that no prejudice would be caused to the respondents also. The points are found in favour of the petitioners.

9. **Point No.3:-** The petition is to preserve the status of the disputed property and hence there need not be an order of costs.

In the result, I.A. is allowed and the petitioners are permitted to carry out maintenance work on the decree schedule road and to prune the branches of the trees leaning to the road causing obstructions, under the supervision of Advocate Commission. Commission shall ensure that the work is done to preserve the road with least burden to the appellants. There is no order as to costs.

Dictated to the Confidential Assistant, typed by her directly to the Computer, corrected and pronounced by me in open court on this the 03rd day of March, 2025.

Sd/-
LAKSHMY.S
SUB JUDGE

Appendix:- NIL

Id/-
SUB JUDGE