

**IN THE COURT OF THE SUB JUDGE, CHERTHALA**

**Present:- Ms.Lakshmy.S., Sub Judge**

**Saturday 7<sup>th</sup> day of December 2024 / 16<sup>th</sup> Agrahayanam 1946**

**IA 01/2024 in AS. 54/2024**

(Filed on 01.07.2024)

( OS 146/2019 of Additional Munsiff's Court, Cherthala).

**Petitioner/ Appellant:-**

P.K.Anilkumar, aged 52, S/o Padmanabhan,  
Kalathil House, Perunthuruthu Muri,  
Mannancherry Village.

**By Adv. Jacob Tomlin Varghese**

**Counter Petitioner/Respondent**

Raveendran, aged 68, S/o Kandan,  
Kalathil Veedu, Perunthuruthu Muri,  
Thannermukkom South Village.  
(Palintiff in O.S 146 of 2019.)

**By Adv.S.S Sathjith.**

This petition having been finally heard on 03.12.2024 and the court on 07.12.2024 passed the following:-

**ORDER**

This petition is filed by the appellant under S.94, 107, 151 and O.XLI R.5 CPC o stay the execution, operation and implementation of the decree and judgment in OS 146 of 2019, till the disposal of the appeal.

2. The contentions of the petitioner are as follows:

The suit was for permanent prohibitory injunction. Along with the suit, a petition for temporary injunction was moved by the plaintiff as IA.1124 of 2019. After hearing the parties and perusing the documents, the trial court dismissed the petition and the Civil Miscellaneous Appeal filed by the plaintiff was also dismissed on merits. Unfortunately, after trial, the suit was decreed on wrong appreciation of evidence and law. There is every chance to get reversal of the judgement. But the respondent is taking hasty steps to implement the judgment to harass the petitioner. Therefore, it is essential and necessary to stay the implementation and operation of the judgement or else, the petitioner would be put to irreparable injury and unexpected loss. Hence the petition

3. The respondent filed objections as follows: The petition is not maintainable either in law or on facts. The trial court has passed a decree of permanent prohibitory injunction, restraining the defendant from creating a pathway through the plaint schedule property forcefully. There is no need to execute the decree unless and until the petitioner violates the decree. The allegation that the petitioner cannot enter into his property is not correct. The way through which the petitioner was given easement by necessity is still in existence and plaint schedule property does not include the said way. There is no irreparable loss or injury to the petitioner. If the decree is stayed, the petitioner would trespass into the property and would create a way through the same. Hence the petition needs to be dismissed.

4. Heard and perused the records.

5. The following points arise for consideration :

1. Is the petitioner entitled to get an order staying the operation and implementation of judgment and decree dt.08.04.2024 in OS 146/2019?

2. Order as to costs?

6. **Point No.1:**

The petitioner is the defendant in OS 146/2017 which is a suit for perpetual injunction. The suit was decreed and the defendant was restrained from forcibly creating new pathway through the plaint schedule property. The petitioner has challenged the said decree and judgment of the trial court on the ground that the right of easement by grant available to the defendant was not properly appreciated.

7. The contentions would show that the defendant has put forward right of easement over a 3m width pathway through plaint schedule property on the strength of an agreement between the parties. The trial court found that defendant could not establish existence of a pathway and his right over the same. The said finding of the trial court is under challenge.

8. The appellant has taken out a Commission in this appeal to prove the alteration of status in the plaint schedule property after the impugned judgement and decree. The Commissioner in her report has mentioned that the a pathway having three metre width on the eastern side of plaint schedule property was seen obstructed with a fence made of garden net and the entry to the appellants property is blocked. As the respondent has swiftly acted upon to change the status of the disputed property soon after the decree, the petitioner is justified in seeking an order to stay the operation of impugned decree and judgment. The point is found in favour of the petitioner.

9. **Point No.3** : In view of findings on point no.1, the IA is to be allowed, without costs.

**In the result, IA is allowed, without costs and the operation of decree and judgment dt.08.04.2024 in OS 146/2019 is stayed, till the disposal of the suit.**

Dictated to the Confidential Assistant, typed by her directly to laptop, corrected and pronounced by me in open court on this the 07<sup>th</sup> day of December, 2024.

**Sd/-  
LAKSHMY.S  
SUB JUDGE**

**Appendix:-** Nil

**Id/-  
SUB JUDGE**

**Typed by: Vidhya  
Compd by: Sasi**