

**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 02/2024 in AS. 54/2024**

(Filed on 01.07.2024)

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

**Petitioner/ Appellant:-**

P.K.Anilkumar, aged 47, S/o Padmanabhan,  
Kalathil House, Perunthuruthu Muri,  
Mannancherry Village.

**By Adv. Jacob Tomlin Varghese**

**Counter Petitioner/Respondent**

Raveendran, S/o Kandan,  
Kalathil Veedu, Perunthuruthu Muri,  
Thannermukkom South Village.

**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, 151 and O.39 R.1 CPC for an interim mandatory injunction directing the respondent to remove the

obstruction caused to 3m width pathway on the eastern side of plaintiff schedule property.

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 immediately after the decree closed down the pathway on the eastern side of plaintiff schedule property which was used by the petitioner to reach his property. Hence the petition to restore status quo ante.

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 plaintiff schedule property forcefully. After the said decree and judgment, the respondent has every right to enjoy the property absolutely and the petitioner has no right to obstruct the same. The petitioner has no right to demand the respondent to remove the fence put up by him. 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 interim mandatory injunction on the strength of a strong prima facie case, balance of convenience and irreparable loss?
2. Order as to costs?

6. **Point No.1:**

The petition is for a direction to remove the obstruction caused to a way under dispute and to restore status quo ante. The petitioner is the defendant in OS 146/2017. The suit was for perpetual injunction which was decreed restraining the petitioner herein from forcibly creating a new pathway through the plaint schedule property. The said decree and judgment are under challenge on the ground that the right of easement by grant available to the defendant was not properly appreciated by the trial court.

7. The petitioner has put forward a claim of easement by grant over a 3m width pathway on the eastern side of plaint schedule property in north-south direction starting from the public road on the north and ending at the petitioner's property, on the strength of an agreement between the parties to the suit. The trial court after appreciating the contentions and evidence found that the agreement relied on by the petitioner has legal infirmities as it was an unregistered document. It was further found that the petitioner herein could not establish existence of a pathway and his right over the same. The said findings of the trial court are under challenge.

8. When the appeal was moved for admission, the appellant filed this petition along with a Commission Application alleging that the respondent has altered the status of the property and obstructed the pathway available to the petitioner immediately after the impugned judgment and decree. It is further contended that the petitioner is denied access to his property due to the obstruction caused to the pathway by the respondent. This court allowed the commission application and a commission report was filed regarding the current status of the property.

9. The law is well settled that an order of interim mandatory injunction could be granted only in exceptional circumstances. The petitioner

has to prove a strong prima facie case in his favour to get an order to restore status quo ante. The petitioner has relied upon the Commission Report to prove his allegations. The Commissioner in her report has specifically mentioned that there is a pathway having three metres width on the eastern side of plaintiff schedule property towards the property of the petitioner. She has further reported that it was seen obstructed with a fence made of garden net and the entry to the petitioner's property was seen blocked. This report is however against the finding of the trial court that the petitioner could not prove the existence of a way as claimed by him. Moreover, the Commissioner who has perused the Commission Report filed before the trial court has reported that the petitioner has no other way available to enter his property. This would certainly make out a strong prima facie case in favour of the petitioner.

10. The respondent has swiftly acted upon to change the status of the disputed property soon after the decree. The argument of the learned counsel for the respondent is that since the trial court has granted a decree in favour of the respondent, he has every right to protect the property. But it is reported that the petitioner is denied access to his property soon after the decree and so the obstruction has to be removed. The balance of convenience is in favour of the petitioner. There is no doubt that the petitioner would suffer irreparable hardships if the petition is not allowed. The point is found in favour of the petitioner.

11. **Point No.3** : In view of findings on point no.1, the IA is to be allowed, with costs.

**In the result, IA is allowed, with costs and an interim mandatory injunction is granted and the respondent is hereby directed to remove the obstruction identified by the Commissioner in Report dt.31.07.2024, caused to the pathway claimed by the petitioner, within two weeks and the**

**parties are directed to maintain status quo thereafter, till the disposal of the appeal.**

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**