

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Wednesday, the 5th day of February, 2025 /16th Magham, 1946.

IA No.04/2024 in O.S. No. 244/2019

(Filed on 19.07.2024)

Petitioners/ Plaintiffs:-

1. Sukumaran, aged 78,
S/o Raman, Reshma Nivas, from Palackatharayil,
Perunermangalam Muri, Mararikkulam North Village.
2. Reshma, aged 45,
D/o Sukumaran, Reshma Nivas, from Palackatharayil,
Perunermangalam Muri, Mararikkulam North Village.

By Adv. V.N.Subhangan

Respondents/ Defendants:-

1. Kerala State Electricity Board, represented by Secretary,
Vydhuthi Bhavan, Pattom P.O, Thiruvananthapuram.
2. Kerala State Electricity Board Assistant Executive Engineer,
Electrical Sub Division, KSEB Office, S.N.Puram.
3. Assistant Engineer, Electrical Sub Division,
KSEB Office, S.L.Puam.

R2 by Adv.K.J.Sunny

This petition having been finally heard on 05.02.2025 and the court on the same day passed the following :-

ORDER

This is a petition filed by the petitioner/plaintiff under Order XXVI Rule 9 of Code of Civil Procedure for deputing a commissioner for local investigation.

2. Petition averments in brief -

The petitioner herein is the second plaintiff in the above case. The

first plaintiff is the petitioner's father. The petitioner and the petitioner's father have jointly filed the petition to establish the right of way and to obtain a permanent injunction. The respondents have filed written statement and are disputing the claims. To ensure a fair and just decision on the disputes in the above-mentioned case, it is imperative to appoint an advocate commissioner. A report and plan must be prepared by the commissioner with the help of a retired surveyor, Taluk surveyor, or an authorized surveyor. Hence this petition.

3. Respondent filed objection contending as follows –

The petition is neither legally nor factually maintainable. The above-numbered suit has been filed to establish the right of Easement by Prescription and other related claims. A temporary injunction has been granted against the respondents in the above-numbered case, and it still stands. The petition and objections have been filed years ago in the above-numbered case. Since 2019, the petitioner has been unnecessarily prolonging the matters in the above-numbered case, as evident from court proceedings. Reports and plans prepared by the commissioner appointed from both the petitioner's and respondent's side have already been presented before the court in the above-numbered case. From the report and plan the Plaint Schedule Properties are identified properly. There is no dispute or objection from the petitioners that the properties cannot be clearly identified. Therefore, the matters to be ascertained as requested in the petition have already been identified and presented before the court. There is no need for a commission measurement for the disputes filed to establish Easement rights (2011 KHC (2) 113). This present petition has been made to deliberately prolong the matters in the above-numbered case. Hence the petition is liable to be dismissed.

4. Heard both sides.

5. Upon going through the averments in the petition and on perusing the case records it can be seen that the suit is filed for declaration of prescriptive easement over item No.3 pathway and for prohibitory and mandatory injunctions. The main objection that is made from the side of the respondent is that in a suit for declaration of prescriptive easement there is no need for measuring out the properties with a survey commission. But it is pertinent to note that the petitioners/ plaintiff have filed a prosecution petition contending that the respondents have violated the status quo order of the court and have made alterations in the Plaint Schedule Properties. The definite case of the petitioners are that the respondents have encroached over the item No.3 pathway and have made some constructions therein. So according to the petitioners for ascertaining the said matters correctly a measurement commission is necessary. The question whether a measurement commission is necessary or not in a suit for declaration of prescriptive easement has been recently discussed by the Hon'ble High Court of Kerala in **Thankappan (Died) v Rajan (Died) Legal heirs impleaded 2025 KHC Online 122** wherein it was held that “ *The length and width of the portion of the servient heritage through which easement is claimed as well as the starting point and termination of the way shall be specifically shown in the survey plan. If such details are not available before the court the court shall not grant the right of easement of way. Survey plan shall be the rule and rough plan shall be an exception in the case os easement*”. So by the relying on the above said decision it is clear that a survey plan is necessary in a suit for prescriptive easement. Moreover the changes alleged to be made by the respondents in violation of the status quo order of this court should also be ascertained and the description of the same has to come before this court. Hence this court finds that the present application is necessary for elucidating the matter in dispute.

6. In the result, this petition is allowed. Advocate R Renjith is appointed as the Commissioner and Sri. V M Chellappan is appointed as the surveyor. Batta of Advocate commissioner is fixed at Rs.3500/- and Surveyors batta at Rs.2500/-. On receiving warrant of commission, the Adv. Commissioner shall visit the subject matter properties as early as possible. The commissioner shall ascertain the matters sought in the application. Further the Commissioner is directed to give notice to the parties before making inspection and if it is not possible for the Commissioner to give notice, he must state that fact in the report. Commissioner shall also mention in the report the way the attempt was made to give notice to the parties before inspection.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 5th day of February, 2025.)

Sd/-
MAHESH M.
ADDITIONAL MUNSIFF

APPENDIX :- NIL

Sd/-
ADDITIONAL MUNSIFF