

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Monday, the 27th day of January, 2025/ 7th Magham, 1946.

IA No. 01/2024 in O.S. No. 472/2019

(Filed on 22.10.2024)

Petitioner/Plaintiff:-

Geethadevi @ Geetha, aged 60,

W/o Sivanandakuruppu, Padinjare Thennadi,

Charamangalam Muri, Muhamma P O, Cherthala.

By Adv. T.D Rajendrakumar & Adv.E.D Zacharias

Cr. Petitioners/Defendants:-

1. Santhakumari, W/o Haridasan Nair,
Vidya Nivas, Muhamma P O, Cherthala.
2. Vidyadas, D/o Haridasan Nair,
Vidya Nivas, Muhamma P O, Cherthala.
3. Vipindas, S/o Haridasan Nair,
Vidya Nivas, Muhamma P O, Cherthala.
4. Binduja Das, D/o Haridasan Nair,
Vidya Nivas, Muhamma P O, Cherthala.
5. Thulasi, W/o Gopalakrishnan,
Anitha Mandiram, Varanad P O, Cherthala.

R5 by Adv. T Jayakrishnan

This petition having been heard on 27.01.2025 and the court on the same day passed the following :-

ORDER

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

2. The averments of the Petitioner in support of the application are that, the suit is filed for declaration of easement by prescription over item No.4 pathway and for a consequential injunction. The defendants have contended that item No.4 pathway is not in existence. So the item No.4 has to be located. For that the same has to be measured out with the assistance of the surveyor. Hence this petition is filed.

3. Eventhough several opportunities were given no objection was filed from the side of the respondents.

4. Heard both sides.

5. Perused the records. On going through the rival contentions from both sides and the relief sought by the plaintiff in the suit it can be seen that the suit is filed for declaration of prescriptive easement matured in favour of the plaintiff over item No.4 pathway. The first matter that is sought to be ascertained is to measure out the item No.1, 2 and 3 properties on the basis of its title deeds and resurvey. The petitioner also seeks to measure out the item No.4 pathway by the surveyor. Since the case is instituted for getting a relief of declaration of prescriptive easement and the extent of item No.1 to 3 properties are not disputed by the respondents this court does not find any reason to allow the request of the petitioner. There is no need for measuring out the properties on the basis of title deeds and resurvey in this case. As the item No.4 is a pathway which is alleged to be formed by the continuous usage of the petitioner and her

predecessors the same cannot be ascertained or located on the basis of title deeds and resurvey plan. Moreover from the commission report has already filed in this case the details regarding the item No.4 pathway is brought out before the court. Hence deputing a commissioner with the assistance of a surveyor is not at all necessary considering the rival contentions projected from both sides. With regard to the 4th prayer of the petitioner to ascertain whether there is any alternate pathway available to her the same is irrelevant in this case because relief sought is prescriptive easement and not easement by necessity. It is pertinent to note that the issue in question in this case is only as to whether the plaintiff has got a prescriptive easement right over item No.4 pathway. For finding out the same, the matters sought to be ascertained by the petitioner are not at all necessary. A commission for local investigation can only be allowed for elucidating the matter in dispute. Hence it is found that there is no need for allowing this application. So the I.A. is dismissed.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 27th day of January, 2025.

Sd/-
MAHESH M.
ADDITIONAL MUNSIFF

APPENDIX :- NIL

Sd/-
ADDITIONAL MUNSIFF