

IN THE COURT OF THE ADDL. DISTRICT JUDGE-I, MAVELIKARA

Present:-Smt.V.G.Sreedevi, Addl. District Judge-I

Friday, the 10th day of April, 2026/20th, Chaithram 1948

CMA No.12/2026

(Filed on: 11.03.2026)

(IA 01/2025 in OS 03/2025 on the file of the Munsiff Court, Haripad.)

Appellant / Plaintiff

Suchetha, aged 67, D/o Nalini,
Nirmalyam (TC 13/160/H) Petta Muri,
Vanchiyoor Village,
Thiruvananthapuram,
from Vialil Veettil,
Muthukulam North Muri,
Muthukulam Village.

(By Adv.P.Viswanathan)

**Respondents /
Counter Petitioners**

1. Radhakrishnan, aged 64,
Vayalil veettil,
Muthukulam North Muri,
Muthukulam Village.
2. Liji, W/o Radhakrishnan,
Vayalil veettil,
Muthukulam North Muri,
Muthukulam Village.

(By Adv.G.Harikrishnan)

This appeal having been finally heard on 07.04.2026 and the court on the 10.04.2026 delivered the following:-

J U D G M E N T

This Civil Miscellaneous Appeal is preferred against the order in I.A.1/2025 in O.S.3/2025 passed by the learned Munsiff, Haripad. By the said order, the interim injunction prayed for was dismissed.

2. Aggrieved petitioner/plaintiff is the appellant.

3. Averments in the petition, in brief, are as follows:- The plaintiff A, B and C schedule properties belonged to the mother as well as the petitioner and respondents by various documents. The said property lies as a compact plot and the family house is situated on the extreme northern side of the plaintiff schedule properties which is known as 'Vayalil Veedu'. The petitioner and the respondents were born and brought up and were residing with parents in the said house. On the southern side of the entire property, in east-west direction, there is a Panchayath road ie., Ummarmukku - Chakkilikadavu road and that is the only road available for the family members from the plaintiff schedule property.

4. The family house is facing towards east. They are getting outside from the house towards east, then passing towards south and reaches the pathway. Facing the southern side of the Panchayath road, on the southern end, the father has constructed two shop-rooms on either side of the pathway. The roofs of the two shop-rooms have been constructed in such a manner that it covers the pathway also. At the entrance portion to the road from the

pathway, a gate was constructed by the father and on either side of the gate, there was boundary wall.

5. While so, mother died in the year 1967. About ten years thereafter, as per the decision and direction of the father Kunjupanickan Madhavan and as per the opinion of the children, a partition deed was executed which is 3381 of 1977 of SRO, Keerikkad.

6. Item Nos.1, 2 and 3 in the plaint A schedule was separated as second schedule in the partition deed and that was allotted to the petitioner who is the second party. On the immediate southern side of the said plot is the B schedule in the plaint and that was allotted to Rajendra Prasad, the 4th party in the deed and the first item C schedule was allotted to the eldest sister Indira. Immediately on the southern side of the C schedule is the plaint C schedule item No.2 which was purchased by Indira along with her father's brother Krishnan by document No.2043/62 and after the death of Krishnan, the said property absolutely vested with Indira. Indira sold item Nos.1 and 2 properties in the C schedule in favour of the 1st defendant by sale deed No.932/12. Radhakrishnan who is the third party in the partition deed has property on the western side of the plaint B and C schedule properties.

7. After getting down from the family house towards east, one has to travel 72 feet towards south. The said pathway is 32 feet

west of the eastern boundary of A schedule and that passes through the A schedule and reaches the B schedule. From B schedule, the pathway has a width of 10 feet and length of 102 feet and then enters C schedule. After that, it passes through the C schedule item Nos.1 and 2 properties with a width of 10 feet and length of 126 feet and reaches the road through the gate on the southern side.

8. The pathway that is passing through the B schedule is scheduled as D schedule and the pathway passing through the C schedule item Nos.1 and 2 is the plaintiff E schedule. The said pathway was being used by the predecessors of the petitioner as well as the respondents even prior to the partition. From the southern road to the A schedule, the only access is the D and E pathway towards the house in the A schedule. D & E schedule properties are highly necessary for the enjoyment of the plaintiff A schedule property. So, the pathway that is scheduled as E schedule, over which, the petitioner has quasi easement right as well as easement of necessity.

9. The owner of the B schedule Rajendra Prasad has no objection in using the D schedule which is passing through the B schedule. On the western side of the plaintiff schedule property is the basement as well as property of the first defendant and the eastern side is his paddy field. About one year prior to this day, under the

guise of allowing the water flow through the C schedule, a small *thodu* has been dug through the item No.1 of C schedule in east - west direction and at the portion for the pathway, planks of coconut tree were spread for allowing vehicular traffic. The portion where the *thodu* constructed is scheduled as F schedule. The petitioner was residing in Thiruvananthapuram and the owner of the B schedule is also residing far way. Taking advantage of the situation, such an illegal act was done.

10. After the lifetime of the parents, the petitioner as well as the respondents resided together in the family house and completed their education. The eldest sister Indira got married in the year 1980 and she is residing at her family house. The youngest daughter is the petitioner and she got married in the year 1986 and was residing at the work place of her husband at Thiruvananthapuram. Only during vacation, she used to visit the family house. The youngest brother Rajendra Prasad was unmarried and he was residing in the family house. Subsequently, he constructed a house in his share of property and thereafter, got married in the year 1996.

11. The respondents who purchased property from third party ie., the C schedule item Nos.1 and 2 made preparations for construction of a house. They have demolished the compound wall on either side of the shop-rooms and also the shop-rooms and

removed the gate. They have constructed a house facing east. After that, they have constructed a new wall at the place of old compound wall. The wall was constructed continuously connecting the wall that was in the property purchased by him. Thereafter, a two-door iron gate was installed. After that, the petitioner and family were using the D and E schedule as they were using earlier.

12. The property on the east of the plaint schedule properties is part of the properties in the partition deed. On the east of the plaint A schedule property, in order to have access to the paddy field, after leaving the pathway, wall was constructed and three steps were also constructed. The old gate that was removed from the entrance of E schedule was replaced in the portion where the steps were constructed to enter into the paddy field.

13. After three months of this date ie., 27.09.2024, when the petitioner and family reached the plaint schedule property as usual, it could be seen that the tiles that were spread on the courtyard of the property of the respondents 1 and 2 have been extended towards east and those were spread in the E schedule which is in item No.2 of C schedule. The respondents informed that they will not allow anyone else to use that portion and the petitioner became shocked when hearing the same.

14. On 24.10.2024 when the petitioner along with her husband reached the native place from Thiruvananthapuram and

about to enter into the E schedule, the respondents objected the same and they informed that the petitioner has no right to use the way. In fact, it is the only way to reach the house in the plaint A schedule. The respondents threatened that they will close the gate and will lock it. They have also used abusive words. This was repeated on 11.11.2024 and 18.12.2024. They have also constructed a car shed at the entrance portion of the E schedule.

15. Through B and C schedule properties, the D and E schedule pathway was available and that was the only access to the A schedule and because of the construction of the shed, a deviation has to be taken towards west and then to enter into the A schedule. The portion that is projecting into the pathway is scheduled as H schedule. That has to be removed, for which, the petition filed for mandatory injunction also. Hence, the petitioner filed for removing the obstruction finding the quasi easement as well as easement of necessity of the petitioner over the D and E schedule properties.

16. The application was objected by the respondents by filing objection, and it is contended as follows:- What all are stated in the petition are absolutely false. It is true that the Ummermukku - Chakkilikadavu road is on the southern side of the plaint schedule properties. The family house is on the northern most end of the property. But the pathway towards outside from the family house is passing towards south and reaches the road. There was no way to

reach the southern pathway from the family house through the schedule properties.

17. In between Vayalil purayidom and the Ummermukku-Chakkilikadavu road, there was property of strangers and those were separated with fencing and because of that, it was not possible to pass through the entire property from the family house to the southern road. The property that is shown as 'C2' belongs to Punnayil family and that is garden land as well as wet land. The averments in paragraph Nos.4 and 5 are admitted. The property that has no connection with the southern road was the share allotted to the 1st respondent. During those days, there was no access to the road through the family property.

18. The pathway described in the petition is absolutely correct. There was no pathway in existence. Had there been a way, that would have been mentioned in the partition deed of 1977. That was not mentioned there. There is no pathway in existence through C schedule then and now also. The D and E schedule pathways are imaginary. Had there been a pathway, that would be through the middle of the property. If that be so, some property would become useless. That is the reason why it can be seen that it was an imaginary one. The petitioner has not got any separate right over the pathway. She is claiming two separate right over the same pathway and that is not maintainable.

19. The owner of the B schedule is Rajendra Prasad and he is the brain behind the suit. Rajendra Prasad is not a party to the suit, and which is the way used by Rajendra Prasad is not clear. If he is using a pathway from the southern road, that can be made use of by the petitioner also.

20. There is a small *thodu* towards east from the property of the respondents. The small structure made for passing the *thodu* was only for the purpose of reaching the serpent grove on the northern side and for the worship of the same. There was no vehicular traffic in that area. These respondents have not committed any illegal acts. The way that was made over the *thodu* was only a temporary one. The petitioner has no right over the same.

21. It is true that the petitioner and the respondents were residing in the family house and all of them were using the paddy field to reach the southern road. There was no shop-room on the southern side at the time of execution of the partition deed and there was no occasion for removing such a structure, and gate was also not removed as alleged. That portion of the property does not belong to the father. So, he was not able to construct a structure there. Now, after the completion of the house of the respondents, for the protection, they have put up a gate. It is not a continuation of the pathway.

22. The property on the eastern side of the plaint schedule is not fully belonged to the parties to the partition deed. The steps that were constructed on the western side were not only meant for reaching the paddy field, but also to reach the road. The first respondent allowed the petitioner to use his property not as a right but due to the relation of them as brother and sister. The tiles were spread and car porch was constructed. Thereafter compound wall was constructed and gate was installed and the entire constructions were over by 2022. The petitioner is aware of these facts.

23. Quasi-easement and easement of necessity cannot be claimed through a single pathway. There is no immediate severance of property or common ownership of the property. The petitioner has another alternative pathway and therefore, the easement of necessity cannot be allowed. Easement cannot be a luxury. Where is the portion over which the petitioner is claiming quasi-easement is not clear. As there is no pathway in existence, she cannot claim quasi easement. The pathway that was reported by the Commissioner is not very clear and identifiable. It has only a width of one feet, that too, through C schedule towards north. So, the petitioner has no right over the said pathway.

24. Moreover, there was dispute regarding the management of the school owned by the petitioner and respondents ie., the Kurumbakara U.P. School. The management of the school was

appropriated by the petitioner by influencing others and thus, the right that ought to have been for the first respondent was snatched away by the petitioner, against which, the first respondent has approached the authorities. Because of the said enmity, this petition was filed, which is only to be dismissed.

25. After hearing both sides, and considering documentary evidence ie., Exts.A1 to A3 from the side of the petitioner; Exts.B1 to B5 from the side of respondents as well as court exhibits Exts.C1, C1(a), C1(b), C2, C2(a) and C2(b), the learned Munsiff dismissed the petition.

26. Aggrieved petitioner has filed this appeal, raising various grounds.

27. Heard both sides.

28. The points that arise for consideration are:

- 1. Is there a prima facie case in favour of the petitioner/plaintiff?***
- 2. Could the petitioner establish balance of convenience in her favour?***
- 3. In case injunction is not granted, will the petitioner be put to irreparable injury?***
- 4. Reliefs and costs.***

29. **Points 1 to 3:-** For brevity and convenience, all these points are considered together. The petitioner is the owner in possession of plaint A schedule item Nos. 1, 2 and 3 and she obtained the title by virtue of the partition deed No.3381/1977

executed among the family members. The plaint A schedule item 1, 2 and 3 located on the northernmost portion of the entire property covered by the partition deed and the family house is also situated in the said schedule. On the immediate southern side of the said property is the B schedule in the plaint which was allotted as C schedule item No. 1 to the fourth party Rajendra Prasad in the petition.

30. Immediately on the southern side of the B schedule is the C schedule item Nos. 1 and 2. C schedule item No. 1 was allotted to the elder daughter Indira by virtue of the partition deed whereas C schedule item No. 2 was purchased by her by virtue of Sale Deed No.2043/1962 along with her father's brother Krishnan. Krishnan died unmarried and issueless. The C schedule item Nos.1 and 2, which became her absolute property, has been sold by her by sale deed No.932/12, to the defendant.

31. The specific case of petitioner is that even before the execution of the partition deed, when parents as well as the children were residing together in the property, they have access to the public road which is on the southern side of the entire property, B, C, schedule properties. The southern pathway lies in east-west direction and the father had constructed two shop rooms facing the pathway and the roof of the shop rooms overlapped each other, thereby the pathway was also covered by the same. In continuation

of the shop rooms, compound wall was constructed on east and west at the time when father was alive.

32. Petitioner would say that the pathway that is starting from the house in the A schedule item No.1 to 3 which is facing towards east starting from the eastern side of the house and it proceeds towards south and reaches the northern boundary of B schedule. Then it proceeds towards south and reaches upto C schedule. Then it again further extends upto the southern boundary wall and the gate thereby they are entering into the public pathway. The pathway that is passing through the B schedule is shown as D schedule in the plaint and the pathway that is passing through the C schedule is the plaint E schedule. The pathway that starts from plaint A schedule has a length of 72 feet and width of 32 feet and thereafter it proceeds through the B schedule which has a width of 10 feet and a length of 126 feet. Then it further proceeds through C schedule as E schedule which has a length of 37 feet.

33. The first respondent had been allotted with the western property in the partition. After marriage, he constructed a house therein and is residing there with his family. Second respondent is the wife of the first respondent. After marriage, the petitioner was residing along with her husband at Thiruvananthapuram. The owner of the B schedule is also not available at the scheduled

property and he is also residing somewhere else. Taking advantage of the situation, the petitioner alleges that the first respondent has constructed a thodu through the northernmost portion of the C schedule under the guise of flowing extra water and thereafter he had put up some planks across the thodu and made it trafficable. When petitioner came to the native place, she had occasion to see this and when she demanded to fill up the thodu, first respondent promised to do that, but later he evaded.

34. The thodu which was constructed across the C schedule has been scheduled as F schedule whereas the tiles spread in the C schedule is G schedule. The portion of the car shed spreading towards the C schedule is the H schedule in the plaint.

35. Apart from that, it is the further case of petitioner that tiles were spread on the portions of the E schedule pathway and a car porch was also constructed which almost caused hindrance to the smooth entering of the E schedule from the southern pathway. When this was questioned, the first respondent as well as the second respondent misbehaved towards the petitioner and they adamantly stated that there was no pathway available and petitioner will not be permitted to use the said way as it is her absolute property. Petitioner would say that the said pathway was the only access to her property from the southern Panchayath

road and therefore she has easement of necessity as well as quasi easement right through the C schedule item Nos.1 and 2.

36. The respondent, on the other hand, vehemently contented that the pathway to enter the southern road from the family house was not through the entire property, but it was through the eastern paddy field because of that the father had constructed steps. One can enter into the eastern paddy field through the steps and can travel towards south and reach the southern pathway. In the objection, there is another case that the petitioner can even proceed towards west and then reaches another way that was somewhere on the western side of the property. It is vehemently contented by the respondents that the petitioner has no right in any manner to use the entire C schedule properties for using it as a pathway to reach the A schedule items.

37. The main reason put forward by the respondents is that the property that is C schedule in the plaint was not originally part of the family property, but it was once belonged to Punnayil family, which was subsequently purchased by Indira and Krishnan jointly. So there is no question of severance of tenements and therefore there is no question of easement of necessity with respect to that property. He is also disputing the quasi-easement right claimed by petitioner contending that the said right cannot be exercised by the

petitioner because there is no formed pathway available. Then only the quasi-easement right could be exercised as a right.

38. There is yet another case for the respondents that in case the C schedule property is allowed to be used for access to the A schedule from the southern road, it will be divided into two, so that it would be a luxury for the petitioner whereas it is also burdensome for the respondents. The petitioner is seeking a cartable road through the middle of the property and it is not allowable. That is the case of the respondents. The respondents further contended that there was some dispute regarding the management of a school owned by the petitioner and respondents and the petitioner managed to get the managership which was disputed and was questioned before the court by the respondents and that is the reason for the filing of the suit.

39. There is no dispute by the B schedule property owner who is another brother of the petitioner and he is not disputing the right of the petitioner to use it as a way. The dispute is only for the C schedule owner. His case is that the property was not part of the entire family property. But it belonged to a third party and that was subsequently sold by the said sister Indira to first defendant first respondent. So he became the absolute owner of the property which is a separate property apart from the family property. So

there is no severance of tenements and no right can be claimed for the use of the said property as a pathway.

40. It is true that in the partition deed, no separate pathway has been mentioned. There are so many shareholders and so many shares were divided and the only visible pathway to the entire property was the pathway on the southern side. The provision for the pathway ought to have been mentioned had there been no public pathway or access.

41. Indira got property by Ext.A3 document. Indira sold the C schedule property to her brother Radhakrishnan i.e. respondent No.1 by sale deed. Part of the said property was gifted to her by her father in the year 1977 and the remaining property was purchased by Krishnan and Indira by the document of 1962. In the year 1962, Indira might be 7 years only. She was a minor, and so the property was held by Krishnan along with the other properties. After his lifetime, Indira became the absolute owner and she sold the property to respondent No.1.

42. C2 schedule property, by way of gift deed from father Madhavan and along with that she had Item No.1 property in the partition deed. The gift deed was obtained in the year 1977. But it was prior to the partition deed. Likewise, Indira as well as Krishnan purchased the C1 schedule property in the year 1962 by virtue of

sale deed 2043.

43. From this, it is clear that the entire property covered by the partition deed and the properties obtained by Indira by gift deed as well as the properties in sale deed infavour of her and Krishnan were lying as a single compact plot because Indira was a minor in the year 1962. So all the properties were part of the contiguous property and the case set up by petitioner that the pathway starts from the eastern side of the family house passing through the entire B and C schedule properties and reaches the southern public road appears to be genuine.

44. Two commissions were taken out in this case. C1 and C2 are mahazars, C1(a) and C2(a) are commission reports and C1(b) and C2(b) are rough sketches. Both the reports show that there is no access to the southern road through the eastern paddy field . There are steps towards east from the plaint schedule items, and the eastern paddy field belonged to the first respondent. But the time when the commissioner has inspected the property, it was waterlogged and it was not possible to pass through the said paddy field. The commissioner categorically reported that there is no other way available than the scheduled properties mentioned in the petition.

45. It is also to be noted that the case of petitioner is that the

gate that was installed on the southern side of the entire property facing towards south was taken away by the first respondent and it was reinstalled on the steps that was already constructed by father for entering into the paddy field. The respondents would contend that the said gate was already there and that was the access to the outside of the property and to reach the southern road. But the commissioner reported that the said gate was not actually appropriately fitted in the said portion and the gate had more height than the compound wall. The case set up by respondents that the gate was already there appears to be not correct.

46. In the objection, it has come out that the parties have other disputes with respect to the administration of a school owned by the family. The petitioner managed to get the managership in the school and that was under challenge by the first respondent. That being the situation, it can only be presumed that in order to create trouble to the petitioner, the pathway might have been blocked.

47. As already discussed that before the partition, the entire properties were lying as a compact plot. It is true that a portion of the C schedule was once belonged to Punnayil family. But it came into the hands of Indira much prior to the execution of the partition deed. So the entire properties were once part of the common plot lying contiguous. The portion of the property held by father which

was gifted to Indira is also part of the common tenement and therefore petitioner is claiming easement of necessity as there was severance of tenements. With respect to the other plot which was purchased by Indira and Krishnan together, the petitioner is claiming quasi-easement.

48. The commission report would make it clear that there are signs of footsteps and the used portions noted in the plaint schedule as pathway. But the exact width of the pathway is not clearly visible. One pertinent aspect to be noted is that the petitioner is residing somewhere in Thiruvananthapuram and she used to visit the plaint schedule property only occasionally. So the one that is using the plaint A schedule is not on regular use, but only occasional, then it is evident that a clear pathway of the exact measurement may not be available at present.

49. Another aspect is that the owner of the B schedule is also not residing in the said property. He is also not frequently visiting the property. It is apparently clear that the said brother who is the owner of B schedule is also not in good terms with the first respondent. All these would clearly show that, as the use of the scheduled pathway is not frequent, the exact width might not be available at the spot.

50. In **2024 (4) KHC 61, Kunnummal Raghavan v. M.**

Narayana Menon, AIR 1970 Kerala 15, the Hon'ble High Court has held that ***if there is any alternative pathway available which is convenient or inconvenient, the easement of necessity comes to an end.*** The petitioner through the commission reports proved that there was no alternative pathway available for her to reach the plaint A schedule items 1 to 3. Even an easement by grant can also be presumed in this case because the parties were using the pathway for the time when the partition deed was executed. But the pathway was not mentioned in the partition deed. The Hon'ble Supreme Court in **2010 (1) KHC 232, Sree Swayam Prakash Ashramam and Anr v. G. Anandavally Amma and Ors., AIR 2010 SC 622** held: ***“No pleading regarding the right of easement by way of implied grant is necessary. Pleadings are not strictly necessary as findings of facts arrived at clearly substantiate the existence of right of easement by way of grant”.***

51. So on that score also, the petitioner has a right to use the pathway. There is partial obstruction to the pathway and that has been come out from the commission report, in the pleadings in the plaint as well as petition and the nature of contentions raised by the respondents. So I am of the view that the petitioner has got a right to use the C schedule. So prima facie case established. Without C

schedule, she cannot enter into her share of property. So there is a balance of convenience in her favour. If injunction is not granted, she will be put to irreparable injury and it would clearly show the prima facie case setup by the petitioner. Therefore, I am of the view that the findings entered by the trial Court cannot be upheld. As all the three ingredients are established, petitioner is entitled for the equitable remedy of interim prohibitory injunction as prayed for. Therefore, I find these points in favour of the petitioner.

52. **Point No.4:-**

In the result,

The petition is allowed. The respondents 1 and 2 are restrained by way of an interim injunction not to cause any obstruction in the plaint E schedule pathway.

The appeal is allowed, and the order of the trial Court is set aside.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this the 10th day of April, 2026).

**Sd/-
V.G.Sreedevi
Additional District Judge-I**

Appendix :Nil

**Id/-
Additional District Judge-I**