

IN THE COURT OF THE MUNSIFF, HARIPAD.
Present: Smt. Maneesha K Bhadran, Munsiff
Tuesday, 31st March, 2026/22nd Phalgunam, 1947
OS. No.48/2019

(Filed on 28.02.2019)

Plaintiff:-

Manoj, Aged 50 years,
 S/o Vasudevn Nair,
 Devadaruvil From Mahesh Bhavanam,
 Karuvatta South Muri, Kumarapuram Village,
 Represented by his Power of Attorney Holder
 Vasudevan Nair , F/o Manoj, aged 79 years,
 S/o Kuttappan Nair,

By Adv. T. A. Venugopal

Defendants:-

1. Kumarapuram Public Library,
 Reg. No.04KPY1227, Karuvatta South, Karuvatta,
2. Kumarapuram Public Library,
 Reg. No.04KPY1227, Karuvatta South, Karuvatta,
 Secretary , Gopalan, aged 75 Years
 S/o Parameswaran, Peringara Veettil,
 Karuvatta South Muri,Kumarapuram Village.
3. Kumarapuram Public Library,
 Reg. No.04KPY1227, Karuvatta South, Karuvatta
 President, Madhava Kurup, Plakkuzhiyil Veettil,
 Karuvatta South Muri, Kumarapuram Village.

D1& D2 By Adv. Vijayasree. V. V.

This suit having been finally heard on 31.03.2026 and the court on the same day delivered the following:

J U D G M E N T

Suit for declaration and injunction.

2. **Averments in the amended plaint in brief are as follows:-**

Plaintiff obtained plaint A schedule property as per Sale Deed No.554/2000 of Haripad SRO and is in absolute possession and enjoyment of the same. As plaintiff is employed abroad, the above suit is filed by his father as his power

of attorney. First defendant is Kumarapuram Public Library. Second and third defendants are its Secretary and President respectively. Plaintiff A schedule property was dry land at the time of its purchase and plaintiff constructed residential building therein. On the east, north and south of plaintiff A schedule property, there is boundary wall. Plaintiff recently constructed boundary wall with gate on the west. On the east of plaintiff A schedule property is the residential building of the predecessor in interest of plaintiff. At the time of execution of sale deed, the predecessor in interest of plaintiff had apportioned a pathway towards east of plaintiff A schedule property. However, the said pathway is not in existence and was never accessed by plaintiff and his predecessor in interest. On the west of plaintiff A schedule property is plaintiff B schedule property of defendants. Plaintiffs are accessing plaintiff C schedule pathway from the north western corner of plaintiff A schedule property towards west through plaintiff B schedule property to access the old Kollam-Alappuzha National Highway on the north. The residents on the north of plaintiff A schedule property are also accessing plaintiff C schedule pathway. Plaintiff C schedule pathway is the only pathway for ingress and egress to plaintiff A schedule property and plaintiff had perfected easement by prescription over the same by the continuous use openly, peaceably, as of right, as an easement from 11.11.1982 till 21.02.2000 by his the predecessor in interest and subsequently by plaintiff. Plaintiff has easement by prescription over plaintiff C schedule pathway passing through plaintiff B schedule property for the uninterrupted, continuous, open, peaceable enjoyment as of right and as an easement from 11.11.1982 till 11.11.2002. Defendants have no right to

obstruct plaintiff C schedule pathway and the ingress and egress of plaintiff through the same. When defendants attempted to obstruct plaintiff C schedule pathway, plaintiff filed OS 126/2012 and the same was withdrawn with liberty to file fresh suit as there was formal defect. On 25.02.2019, it is reliably learned that defendants are attempting to obstruct the ingress and egress of plaintiff through plaintiff C schedule pathway pursuant to the withdrawal of OS 126/2012. Hence the above suit for declaration of easement by prescription over plaintiff C schedule pathway for the enjoyment of plaintiff A schedule property and for permanent prohibitory injunction restraining defendants from obstructing plaintiff C schedule pathway and committing any waste therein.

3. First and second defendants filed written statement contending as follows: - The above suit is not maintainable as plaintiff had earlier filed OS 126/2012 for the same relief which was withdrawn. The above suit is barred by limitation. In the commission report in OS 126/2012, the existence of a pathway on the east of plaintiff A schedule property is reported, which is closed prior to the institution of the above suit. Plaintiff had removed the stump of the henna shrub existing in the alleged pathway. Taking advantage of the absence of defendants during the off hours of the library, plaintiff accessed and cleared plaintiff B schedule property and cut open a new pathway. It is denied that plaintiff A schedule property was dry land at the time of its purchase and plaintiff was accessing plaintiff C schedule pathway and has right of easement by prescription over the same. Plaintiff has closed the pathway on the east of plaintiff A schedule property at the time of inspection by the advocate commissioner and subsequently constructed

slab fencing therein. After closing the pathway on the east of plaintiff A schedule property, plaintiff filed the above suit to carve out a pathway through plaintiff B schedule property. It is clear from the title deed of A schedule property that there is no pathway on its west through plaintiff B schedule property. Immediately preceding the institution of the suit, the plaintiff has cleared the pathway to make it seem like a pathway and enclosed other portions of his property to facilitate access towards the old national highway. It is denied that residents on the north of plaintiff A schedule property are also accessing plaintiff C schedule pathway. It is untrue that predecessors in interest of plaintiff have accessed plaintiff C schedule pathway. It is denied that plaintiff has easement by prescription over plaintiff C schedule property and has accessed plaintiff B schedule property openly, peaceably, continuously, as of right and as an easement. The above suit is without any merits and is liable to be dismissed.

4. Third defendant failed to appear in response to summons and was set exparte.

5. The following issues are raised for consideration: -

1. Is the plaintiff in absolute ownership and possession of plaintiff A schedule property?
2. Does there exist C schedule pathway as alleged? If so, what is its lie, nature and extent?
3. Is the plaintiff entitled to declare prescriptive easement right over C schedule pathway?
4. Is the plaintiff entitled to permanent prohibitory injunction as prayed for?
5. Reliefs and costs?

6. Heard both sides. Perused records.

7. PW1 to PW4 were examined from the side of plaintiff and Exts.A1 to A7 and C1 series were marked. DW1 and DW2 were examined and Exts.B1 and B2 were marked from the side of defendants.

8. **Issue Nos.1 and 2:-** Plaint A schedule is the property of plaintiff. Plaint B schedule is that of the defendants. The contention of plaintiff is that he has right of easement by prescription over plaint C schedule pathway comprised in plaint B schedule property. It is further submitted that plaint C schedule pathway has been enjoyed unobstructed for ingress and egress to plaint A schedule from 11.11.1982 onwards by the predecessors of plaintiff and subsequent to 21.02.2000 by plaintiff. Defendants on the other hand sturdily contended that plaintiff has no prescriptive easement over plaint C schedule pathway and plaint B schedule is not burdened with any easement. It is further contended by defendants that plaintiff has right of way on the east of his property and he had suppressed and enclosed the same. The moot question to be considered is whether plaintiff has easement by prescription over plaint C schedule pathway.

9. Plaintiff was examined as PW1 and he adduced in tune with his case. PW2 is the neighbor of plaintiff. He supported the case of plaintiff. PW3 is the advocate commissioner who prepared Ext.C1 commission report. PW4 is the advocate commissioner who filed Ext. A7 commission report in OS 126/12. Ext.A1 is the Sale Deed No. 554/2000 of Haripad SRO, whereby plaintiff purchased property from one Radhakrishna Pillai and his father

Madhavan Pillai. Ext.A2 is partition deed No.3027/1982 of Haripad SRO, the prior title deed of Ext.A1. Exts.A3 and A4 are the tax receipts of plaint A schedule property. Ext.A5 is the certificate as to payment of tax of plaint A schedule property issued by Kumarapuram Village Office. Ext.A6 is the resurvey plan of field 530 of Kumarapuram village.

10. It is pertinent to note that defendants have not disputed the title of plaintiff over plaint A schedule property as per sale deed dated 21.02.2000. Their static contention is that plaintiff has no pathway on the west of plaint A schedule property through plaint B schedule property.

11. The evidence of PW1 would show that he and his predecessors are uninterruptedly using plaint C schedule pathway for ingress and egress to plaint A schedule property from the old Alappuzha-Kollam National Highway. Ext.C1 commission report would show the existence of a beaten track from the west of plaint A schedule property to old Alappuzha-Kollam National Highway. PW3 has deposed as to the identification of the same and the existence of a mango tree on the north east of the way in Ext.C1. It is further testified by her that the said way is the only way for accessing plaint A schedule property and no way is identified on the east. However, it is pertinent to note that the case of plaintiff is not an easement by necessity but it is of easement by prescription in continuation of the pathway enjoyed by his predecessors. The mere existence of the pathway without establishing right of easement by prescription will not come to the rescue of plaintiff as defendants have no case that such a beaten track was never used by plaintiff. The case of defendants is that plaintiff taking advantage of their

absence during the off hours of the library has cleared and cut open the pathway after closing his existing way on the east. Testimony of PW4 would show the existence of an opening in the south eastern boundary wall of plaintiff A schedule property enclosed with dried coconut leaves, existence of the stump of a henna shrub in the pathway and the pathway being recently ploughed. Now, the crucial question to be considered is whether the said beaten track is a pathway over which plaintiff has perfected easement right by prescription.

12. The recitals in Ext.A1 would clearly show that plaintiff is provided a right of way on the east of plaintiff A schedule property through the property of the first executant therein, Radhakrishna Pillai, on the south of plaintiff the A schedule property. Further, Ext. A1 does not show the existence of a pathway on the west of plaintiff A schedule property. The recitals in Ext.A1 would clearly show that the property of first defendant is on the west of plaintiff A schedule property. Further, if the executants of Ext.A1 were accessing a pathway as an easement, then why they failed to mention the same in Ext.A1 is not explained. Though PW1 has denied that the pathway on the south was enjoyed by his predecessors, it is pertinent to note that Ext.A1 would clearly state that right of way is granted through the pathway on the south enjoyed by the Radhakrishna Pillai.

13. Exts. A1 and A2 would show the nature of plaintiff A schedule property as *nilam* and not dry land as pleaded by plaintiff. PW1 in his evidence admitted that plaintiff A schedule property lying as *nilam* was reclaimed by him. Ext.B1 is the plaint in OS 126/2012 filed by plaintiff. The

recitals therein would show that plaint schedule property was lying as *nilam* at the time of its purchase and plaintiff had reclaimed the same. The evidence of PW2 would also show that a portion of the plaint A schedule property was reclaimed. If plaint A schedule property was lying as *nilam*, then whether predecessors of plaintiff enjoyed the plaint C schedule pathway is highly doubtful. The same would give credence to the case of recitals in Ext.A1 that there was no pathway on its west.

14. DW1 in his evidence has categorically denied the right of easement by prescription of plaintiff over plaint B schedule property. DW2 is the wife of the first executant in Ext.A1 and the daughter-in-law of the second executant therein. Her evidence would show that plaintiff was provided a pathway on the east of plaint A schedule property and her predecessors and executants of Exts.A1 were not accessing plaint C schedule pathway. Her evidence would categorically show that plaint A schedule property was reclaimed and residential building was constructed by plaintiff therein. It is further deposed by her that plaintiff had enclosed the pathway on the east of plaint A schedule property. The same strikes at the root of the contention of plaintiff that the plaint C schedule pathway was enjoyed from 1982 onwards by his predecessor in interest.

15. Learned counsel for plaintiff vehemently argued that the pathway stated in Ext.A1 is not clear and is ambiguous. However, I am unable to accept the same as the recitals in Ext.A1 would clearly show that right of way through the property of first executant is permitted and the western boundary is shown as the property of first defendant. I am further unable to accept the

contention of plaintiff that the pathway on the east was not clear, ambiguous and was not enjoyed by plaintiff and his predecessors. A right of easement by grant through the property of first executant is specifically provided in Ext.A1. The testimony of DW2 strikes at the root of the contention of PW1 that his predecessors were using the pathway openly, peaceably, continuously, as of right, as an easement. The testimony of PW2 cannot be relied on, as the evidence of DW2 is clear and credible as to the non-existence of pathway and I accept her evidence as true. The mere deposition of PW2 that the building materials were brought to the property of defendants will confer any right of easement by prescription as it has come out from the evidence of DW1 that plaintiff has taken the advantage of the absence of defendants as the library was not functioning 24x7 and they unloaded the materials. The mere use or enjoyment of the way will not confer any right of easement by prescription. I am unable to accept as true the evidence of PW1 that he has perfected easement by prescription over plaint C schedule pathway. Though learned counsel for defendants vehemently argued that suit is barred by limitation, I am unable to accept the same as the cause of action of the above suit interalia for permanent prohibitory injunction arose on 20.05.2012 and from 25.02.19 onwards and the same is a continuing breach and the suit is filed within time.

16. On an overall appreciation of the facts and evidence I am unable to hold that plaint C schedule beaten track has ripened as a pathway and plaintiff has perfected right of easement by prescription over the same. Accordingly, I have no hesitation to hold that plaint C schedule property does

not exist as a pathway over which plaintiff has right of easement by prescription. The above issues are answered against plaintiff.

17. **Issue Nos. 3 to 5:-** I have already found that the case of plaintiff that he has perfected prescriptive easement right over the plaint C schedule way cannot be accepted at all. Accordingly, plaintiff is not entitled to get the declaration sought in the suit. He is also not entitled to get injunction as prayed for either. He is liable to be pay costs of the suit to defendants. The above issues are answered against plaintiff.

In the result,

- 1) Suit is dismissed.
- 2) Plaintiff is directed to pay costs of the suit to defendants.

Dictated to the Confdl. Asst., typed by her, corrected and pronounced by me in the open court on this the 31st day of March, 2026.

Sd/-

Maneesha K Bhadran

Munsiff

APPENDIX:

Witness Examined for the Plaintiff

PW1	9.09.2024	Manoj. V
PW2	17.10.2024	Joy Pappy
PW3	24.10.2024	C. Deepa
PW4	13.11.2024	G. Shimuraj

Exhibits for the Plaintiff

A1	21.02.2000	Sale deed No. 554/2000 of Haripad SRO
A2	11.11.1982	Partition deed No. 3027/1982 of Haripad SRO.
A3	11.09.2018	Copy of Tax receipt issued by Kumarapuram Village.

A4	9.08.2024	Copy of Tax receipt issued by Kumarapuram Village.
A5	24.11.2018	Certificate as to payment of tax issued by Kumarapuram Village.
A6	01.06.2015	Resurvey Plan of field of 530 of Kumarapuram Village.
A7	24.05.2012	Commission report, Mahazar & Rough sketch prepared by Advocate Commissioner G. Shimuraj.

Witness Examined for the Defendant

DW1	15.01.2025	P. Gopalan
DW2	11.06.2025	Renukadevi. K.S

Exhibits for the Defendant

B1	23.05.2012	Certified Copy of plaint in OS. 126/2012 of Munsiff Court, Haripad.
B2	19.09.2012	Certified Copy of written statement in OS. 126/2012 of Munsiff Court, Haripad.

Court Exhibits

C1	1.03.2019	Mahazar prepared by Advocate Commissioner C. Deepa.
C1(a)	1.03.2019	Report prepared by Advocate Commissioner C. Deepa.
C1(b)	1.03.2019	Rough sketch prepared by Advocate Commissioner C. Deepa.

Id/ -
Munsiff

