

IN THE COURT OF THE MUNSIFF, HARIPAD.
Present: Smt. Maneesha K Bhadran, Munsiff
Tuesday , 28th October, 2025/6.th Karthika,1947

IA. No 07.2025 in OS. No.301/2019
Filed on 17.10.2025

Petitioners/ Defendants

1. Maheen Aboobakar Ravuthar,
Aged40 years, S/o Nainan Ravuthar,
Moodoli Vadakkathil, Chingoli Muri,
Chingoli Village, Karthikappally Taluk.
2. Asuma Beevi, aged 65 years,
W/o Nainan Ravuthar,
Moodoli Vadakkathil, Chingoli Muri,
Chingoli Village, Karthikappally Taluk.

By Adv.T.S.Thaha

Respondents/Plaintiffs

1. Nadesan, aged 52 years,
S/o Sukumaran, Moodoli Vadakkathil,
Chingoli Muri, Chingoli Village,
Karthikappally taluk.
2. Suni aged 36 years,
W/o Nadesan,
Moodoli Vadakkathil,
Chingoli Muri, Chingoli Village,
Karthikappally taluk

By Adv. P.Prakash

This petition having been finally heard on 18.10.2025 and the court on 29.10.2025 passed the following:-

ORDER

Petition filed by defendants for appointment of advocate commissioner with the assistance of Surveyor to measure and identify plaint schedule properties and the property purchased by first defendant.

2. **Petition averments in brief are as follows:-** Suit is injunction both mandatory and prohibitory. On the north of plaint A schedule property is a pathway having a width of 3 metre in north-south direction. Defendants are having right of easement by prescription over the said pathway. First defendant has purchased 15 sq.metres of property as per sale deed No.815/2015 of Cheppad SRO., at the beginning of the pathway for smooth vehicular access to the panchayath road. Had first defendant not purchased the said property, plaintiff would be unable to access the pathway. Plaintiff has denied that the 3 metre wide pathway is passing through the property purchased by first defendant. Hence the above petition to measure plaint schedule properties and identify the 15 sq.metre property purchased by first defendant as per sale deed No.815/2015.

3. Copy of the petition is served on the learned counsel for respondents. Respondents stiffly opposed the petition. It is contended that the above petition is without any bonafides and is

filed to protract the matter.

4. The following point arise for consideration.
Whether the petition is liable to be allowed?

5. Heard both sides. Perused Records.

6. **The point:-** Suit is for mandatory injunction directing defendants to restore the fencing on the northern boundary of plaint A schedule property and for prohibitory injunction restraining them from further demolishing the fencing on the north of plaint A schedule property and vehicular access through the same. The static contention of plaintiff is that defendants have demolished the fencing on the northern boundary of plaint A schedule property and have made it capable of vehicular access. Defendants on the other hand denied any untoward act and contend that they are having the right of easement by prescription over 3 metre wide pathway on the north of plaint A schedule property.

7. Defendants seeks to identify the property purchased by first defendant for the pathway and the details of the pathway and its enjoyment. The static case of defendants is that they are having easement by prescription over a 3 metre wide pathway on the north of plaint A schedule property.

8. **Hon'ble High court of Kerala in Madhavan Vs. Narayanankutti and Others 2019 (4) KHC 854 : 2019 (4) KLT**

208, has held that *“Easement by prescription which is evolved by exercise of continuous user on a definite portion of the land over a long period of time, the easement and the nature of its use are bound to be evident by well defined visible physical marks available on the land, supporting the claim of existence of way and its user. In the case of easement by necessity also, the essential ingredients including the existence of way, its user and absence of any other way can also be established by visible physical materials. This can easily be established by a local inspection furnishing the precise details of the way available, its approximate age of user and evidence supported by rough sketch showing the lie, location, width, length, evidence of its continuous user, age and details of both terminals. This will sufficiently enable the court to give an enforceable decree”*.

9. PW1 and PW2 were examined and Exts.A1 to A3 and C1 series were marked from the side of plaintiffs. DW1 was examined and Exts.B1 to B6 were marked from the side of defendants. Now the case is posted for further evidence of defendants. In the case in hand appointment of advocate commissioner with the assistance of a surveyor will not establish the right of easement by prescription claimed by petitioners. Defendants have to establish their right by physical and visible factors of long use available on land. On perusal

of petition averments and pleadings in the case, I am convinced that the appointment of an Advocate Commissioner with the assistance of surveyor is not necessary for deciding the issues involved in the suit. Accordingly, I find no merit in the above petition.

In the result, petition is dismissed. Considering the facts and circumstance of the case, parties are directed to bear their respective costs.

Dictated to the Confidential Assistant and typed by her, corrected and pronounced by me in the open court on this the 28th day of October, 2025.

Sd/-
Maneesha k Bhadran
Munsiff

APPENDIX. NIL

Id/-
Munsiff