

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Sri.Shanavas.A, Munsiff

Friday the 9th day of April 2021/9th Chaithram 1943

IA. 1/2021 in ORIGINAL SUIT. 67/2021
(Filed on 25/02/2021)

Petitioner/Plaintiff: Biju, aged 44 years, S/o.Krishnan,
Thayyil veedu, Karazhma muri,
Vallikunnam P.O, Mavelikara Taluk.

(By Adv.Sri.K.Sunnykutty)

**Respondents/
Defendants:**

1. Vattakkadu Youth League,
Vayanasala, Karazhma muri,
Vallikunnam P.O,
Mavelikara Taluk.
Rep.by its President,
G.Sasidharan Pillai,
2. G.Sasidharan Pillai, aged 65 years,
S/o.Gopalakrishna Pillai,
Pavoorethu kizhakkathil,
Karazhma mru, Vallikunnam P.O,
Mavelikara Taluk.

3. S.S.Abhilashkumar, aged 40 years,
S/o.Sivanandan, Valutharayil,
Karazhma mrui, Vallikunnam P.O,
Mavelikara Taluk.

(By Adv.Sri.N.S.Sreekumar)

This petition is filed U/o. XXXIX Rule 1 of Civil Procedure Code 1908. This petition having been finally heard on 09.04.2021 and the court on the same day passed the following.

ORDER

This is an order in a petition filed under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908.

2. The gist of averments in the petition are as follows:-
Petitioner is the owner-in-possession of plaint A schedule property ad-measuring 4.30 ares comprised in re-survey No. 293/17 of Vallikunnam Village by virtue of gift deed No. 1727/2015 of Bharanickavu Sub Registrar's Office. The petitioner has been possessing and enjoying plaint A schedule property and paying basic tax. He has been residing in the house situated in plaint A schedule property with his family. 1st respondent Vayanasala is the owner of plaint B schedule property.

Respondent Nos. 2 and 3 are the president and secretary of 1st respondent 'Vattakkadu Youth League Vayanasala'. The predecessors of the petitioner were using plaint C schedule property. The petitioner has been using the plaint c schedule pathway which is having 3 metres width and 16 metres length on the northern portion of plaint B schedule property for the ingress and egress of plaint A schedule property from the eastern panchayat road. Plaint C schedule property has been using by the petitioner without interruption continuously, peacefully as of right as an easement. The petitioner using plaint C schedule pathway for vehicular traffic to plaint A schedule property. The electric line to plaint A schedule property drew through plaint C schedule pathway. Plaint B schedule property belongs to the 1st defendant Vayanasala. The same was established in the year 1946. Even prior to the establishment of the Vayanasala, the predecessor of petitioner had been using plaint C schedule pathway. There is a building in the southern part of plaint B schedule property, which is facing north towards plaint C schedule property. It was constructed in the year 2014-2015 by using MP Fund. On 22.02.2021, preparations were started by the respondents to extend the building towards plaint C schedule pathway. The petitioner was

informed that MLA fund was allotted for extension of the library building. If the respondents would succeeded in constructing any structure on plaint C schedule pathway, the ingress and egress of petitioner from plaint A schedule property will be completely a standstill. The respondents have no right to interfere or obstruct the peaceful usage of the petitioner and his family through plaint C schedule pathway. Thus, the petitioner has come up with the petition restraining the respondents and men from causing interference or obstruction in plaint C schedule pathway.

3. The respondents appeared and filed objection contending *inter alia* as follows:- The petition is not maintainable either in law or on facts. It is true that the petitioner got plaint A schedule property by virtue of settlement deed No. 1727/15 of Bharanickavu Sub Registrar's Office. The respondents are the owners of plaint B schedule property, which was gifted in the year 1946 and property has been mutated as per thandaper No. 2425. Plaint B schedule property ad-measuring 1.40 ares and a building therein. Plaint B schedule property is in exclusive possession and enjoyment of 1st respondent. During 2014-15 financial year, by using fund for local area development of Sri. K.N.Balagopal.

M.P, a building has been constructed for Vayanasala. Thereafter, with the aid of local area development fund of Sri. R. Rajesh M.L.A, Mavelikara, another building being constructed and the same was started on 17.02.2021. There is no property scheduled as plaint C schedule. It is false to say that there is no alternate pathway to the petitioner and his family. In fact, the petitioner purchased 1.42 ares of property for the ingress and egress to plaint A schedule property as per sale deed No. 464/17 of Bharanickavu Sub Registrar's Office. The proposed construction will not affect the ingress and egress of the petitioner. By suppressing the material facts, the petitioner approached this court with unclean hands. By misrepresenting the court, the petitioner managed to get an ad-interim injunction against the respondents not to obstruct plaint C schedule pathway. The proposed construction has to be done with the aid of government grant. The proposed construction would be done as per the government norms and as per the direction of the government. Since the construction already started and some ditches were made for erecting pillars, the functioning of the library is remain closed and the present building is in danger condition as the ditches around the present building making the

building in an uncomfortable position. The petitioner is employed in Mumbai, with his family. He seldom visits plaint A schedule property. There is a time limit to complete the entire construction of the respondent Vayanasala. On all these reasons, the respondents sought to dismiss the petition and also sought to vacate ad-interim injunction granted by this court.

4. The following points were formulated for consideration:-

1. Whether the petitioner has made out a prima facie case ?
2. In whose favour, balance of convenience lies?
3. Whether the petitioner would suffer irreparable injury and loss, if order of injunction is refused?
4. Whether the petitioner is entitled to an injunction as prayed for ?
5. Reliefs and costs?

5. Exts. A1 and A2 were marked on the side of the petitioner for reference. Exts. B1 to B4 were marked on the side of the respondents. Exts. C1 and C1 (a) were marked as court exhibits. Heard both the sides.

6. **Point Nos. 1 to 4:-** For the sake of convenience and brevity, these points are considered together. The petitioner sought for restraining the respondents from obstructing his free ingress and egress to plaint A schedule property through plaint C schedule pathway. Whereas, the respondents would contend that the petitioner has alternate pathway and they are not going to obstruct plaint C schedule pathway. Further, they would contend that the building has to be built by using government aid. So, the injunction granted by this court has to be vacated. In order to prove the right over plaint A schedule property, petitioner marked Exts. A1 and A2 documents. Ext. A1 is the gift deed No. 1727/15 of Bharanickavu Sub Registrar's Office. Ext. A2 is the basic tax receipt of plaint A schedule property. There is no quarrel that the petitioner and his family have been using plaint C schedule pathway for the ingress and egress to plaint A schedule property. The respondents produced and marked Ext. B1 document of the petitioner. Ext. B1 is the sale deed bearing No. 464/17 of Bharanickavu Sub Registrar's Office with regard to the property ad-measuring 1.42 ares, which lies on the east of Vayanasala and panchayat road and also on the western side of plaint A schedule property. It is argued by the learned counsel for the

respondents that the execution of Ext. B1 document was suppressed by the petitioner from this court and he managed to obtain ad-interim injunction against the respondents.

7. The commissioner deputed by this court inspected and identified plaint A, B and C schedule properties. His report was marked as Ext. C1 and the rough sketch was marked as Ext. C1 (a). In Ext. C1 report, the commissioner has categorically reported that plaint C schedule pathway is the only way available for the petitioner and his family to access plaint A schedule property. Put it in otherwise, there is no alternate pathway as stated by the respondents could be identified by the commissioner. He precisely would report that plaint C schedule pathway is the only pathway for the ingress and egress to plaint A schedule property from the eastern public road. On verification of the boundary description of the property purchased by the petitioner as per Ext. B1 document, it is seen that though on the eastern side, public road is situated, there is nothing on record to prove that from the eastern public road, there is another access through the property stated in Ext. B1 to reach plaint A schedule property. It is the duty of the respondents to prove that there is an alternate pathway to reach plaint A schedule

property other than plaint C schedule property.

8. Admittedly, the suit filed for declaration of prescriptive easement right over plaint C schedule property by the plaintiff. The respondents have no authority to obstruct plaint C schedule pathway. Though it is contended by the respondents that the petitioner is in Mumbai and they are not using plaint C schedule pathway, it cannot be taken into account as nobody including the respondents have the right to obstruct the precarious right of the petitioner over plaint C schedule pathway during latter's absence. It is to be noted that though government fund through people's representatives were used for the respondents library and reading room, no one can interfere with the right of an individual and his right to use a particular pathway. Neither by the government agency nor by the respondents have right to invade the right of an individual in a clandestine manner with the mask of government fund are being using for the development of library and reading room of the respondents. Whereas, the petitioner could prove by available materials that he has been using plaint C schedule pathway for the ingress and egress to plaint A schedule property and the attempt on the side of the respondents to encroach and erect pillars over plaint C

schedule property has admitted by them. Thus, the petitioner has made out a prima facie case. Balance of convenience is also in favour of the petitioner. Absolutely, the petitioner would put to irreparable injuries in the event of refusing injunction. Therefore, point Nos. 1 to 4 are found in favour of the petitioner.

9. **Point No. 5**:- In view of my discussions and findings on point Nos. 1 to 4, the petition is liable to be allowed.

In the result, the petition stands allowed. The ad-interim injunction granted by this court on 25.02.2021 made absolute. The respondents and men are prohibited from causing any interference or obstruction to the peaceful enjoyment of plaint C schedule pathway for the ingress and egress to plaint A schedule property of the petitioner till the disposal of the suit. There is no order as to costs.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 09th day of April, 2021.)

Sd/-
SHANAVAS.A
MUNSIF

APPENDIX

Exhibits for the Petitioner/Plaintiff:

- A1 25.09.2015 : Gift deed No.1727/I/25 of SRO,
Bharanickavu.
- A2 22.02.2021 : Tax receipt of Vallikunnam Village
Office.

Exhibits for the Respondents/Defendants:

- B1 24.03.2017 : Certified copy of sale deed
No.464/I/2017of SRO, Bharanickavu.
- B2 02.05.2020 : Tax receipt of Vallikunnam Village.
- B3 01.11.2014 : Certificate of Encumbrance on property
issued by Sub Registrar office,
Bharanickavu.
- B4 22.12.2014 : Possession Certificate issued by
Taluk office, Mavelikara.

Witness for the Petitioner/Plaintiff: Nil

Witness for the Respondents/Defendants: Nil

Court Exhibits:

- C1 30.03.2021 : Commission Report prepared by
Adv.Balasubrahmanyam.
- C1(a)30.03.2021 : Rough Sketch prepared by
Adv.Balasubrahmayan

Sd/-
MUNSIFF

// True copy //

Typed by: Shafeek
Compd by:

MUNSIFF

Order in IA.1/2021
in OS No.67/2021,
Dtd.09/04/2021.