

**IN THE COURT OF THE MUNSIFF CHENGANNUR
PRESENT: SMT.RAGI.S , MUNSIFF**

Tuesday 7th February 2023/ 18th Magha, 1944

Common Judgment in O.S.No.140/2015 & OS. No.327/2015

OS. 140/2015

(Filed on 21.03.2015)

Plaintiff : M. Saritha , aged 36 years,
D/o. Anandavally,
Anandabhavanam Veettil,
Cheriyannadu Padinjattum Muri,
Cheriyannadu Village,
Chengannur Village,
Chengannur Taluk.

(By Adv. V. Sadasivan Pillai)

Defendants : 1. Chandran Pillai, aged about 70 years,
Chandra Bhavanam Veettil,
Cheriyannadu Padinjattum Muri,
Cheriyannadu Village,
Chengannur Village,
Alappuzha District.

2. Madhavan Nair, aged about 65 years,
Karimballil Veettil,
Thonackkadu P.O, Thonackkadu Muri,
Cheriyannadu Village.

(By Adv. P.G Sasidharan Pillai)

OS. 327/2015

(Filed on 06.08.2015)

Plaintiffs:

1. Chandrasekharan Nair, aged 72 years,
S/o. Gopala Pillai,
Chandrabhavanam Veettil,
Cheriyannadu Padinjattum Muri,
Cheriyannadu Village, Chengannur Taluk.
2. Madhavankutty Nair, aged 67 years,
S/o. Gopala Pillai,
Karimpalil Veettil,
Thonackkadu Muri, Cheriyannadu Village.

(By Adv P.G Sasidharan Pillai)

Defendants

- : 1. M. Saritha, aged 36 years,
D/o. Anandavally Amma,
Anandabhavanam Veettil,

Cheriyannadu Padinjattum Muri,
Cheriyannadu Village, Chengannur Taluk.

2. P.K Sajikumar, aged 37 years,
H/o. M. Saritha,
Anandabhavanam Veettil,
Cheriyannadu Padinjattum Muri,
Cheriyannadu Village, Chengannur Taluk.

3. Anandavally Amma, aged 66 years,
W/o. Madhava Kurup,
Anandabhavanam Veettil,
Cheriyannadu Padinjattum Muri,
Cheriyannadu Village.

(By Adv. V.Sadasivan pillai)

This suit having been finally heard on 03.02.2023 and the court on 07.02.2023 delivered the following.

COMMON JUDGMENT

Joint trial was conducted in O.S.140/2015 and O.S. 327/2015 as per Order in IA. 1749/2015. O.S.140/2015 is taken as the leading case.

OS.140/2015 :-

Suit for declaration of prescriptive right of easement, mandatory injunction and permanent prohibitory injunction.

2. **Plaint averments in brief, are as follows:-**

Plaint schedule item No.1 property is absolutely belongs to plaintiff and her husband, Sri. Sajikumar by virtue of Sale deed No.1930/09. Plaint schedule item No.2 is the building situated in plaint schedule item No.1 property. Sri. Sajikumar is in abroad and the schedule item No.1 and 2 properties are in the absolute possession and enjoyment of the plaintiff. Plaintiff is residing therein with her family. Plaint schedule item No.3, which belongs to the first defendant is situated on the northern side of plaint schedule item No.1 and 2. The property of the second defendant situated on the northern side of plaint schedule item No.3 property is scheduled as plaint schedule item No.4. There is a way in existence which starts from plaint schedule item No.1 property and proceeds to the north at a length of 13.100 metre and then to the east of a length of 3.300 metres, then to the north of a length

of 22 metres, then leaning to the east to a length of 4 metre and having a width of 3 metre, which is being used by the plaintiff and his predecessors along with their family for the past more than 22 years openly, peaceably, uninterruptedly and as of right. The same is scheduled as item No. 5 which ends in the northern panchayath road. There is no other way for access to the plaintiff and the members of the family. Item No.3 and 4 are planted with rubber trees having age of 10 years. The northern public road is scheduled as item No.6.

3. About 4 months back, the second defendant has constructed a granite foundation and barbed wire fencing to separate item No.4 and 6. In order to erect fencing poles in the granite foundation, 4th defendant has permitted the plaintiff and the members of her family to pass through the middle of item No.4. But, the defendants are not permitting the plaintiff and the members of her family to use the said way at present. Plaintiff and members of her family got easement right of way by prescription and of necessity over plaintiff schedule item No.5. Unless the right of the

plaintiff and the members of her family is not declared, the plaintiff will be put into irreparable loss and injury. Defendants have no manner of right to cause obstruction to the user of the way. Plaintiff has two female children, who were studying in standard 4 and 1 respectively. The mother of plaintiff is a diabetic patient and the fingers in her leg are amputated. An obstruction is caused to the user of plaint schedule item No.5, it is necessary to remove the same through a mandatory injunction. On 7/10/2014, the mother of the plaintiff filed a complaint before the Sub Divisional Magistrate Court, Chengannur. But no effective Order was passed in favour of the plaintiff. Hence the suit is filed to declare the easement right of plaintiff over item No.5 pathway and directed the defendants to remove the barbed wire fencing in plaint schedule item No.4 property separating plaint schedule item No.6 and also permanently restraining the defendants from causing any obstructions to the use and enjoyment of plaint schedule item No.5 way.

4. Defendants filed written statement and the contentions therein, in brief, are as follows:-The suit is not maintainable either in law or on facts. Plaintiff schedule item No.5 is not in existence and the plaintiff or her predecessors never used such a way. The plaintiff failed to state the starting point of the way, the properties through which the same is passing and where it terminates in plaintiff schedule item No.6. It is incorrect to say that plaintiff schedule item No.5 is only a way for the use of the plaintiff and her family. The southern property owners of the plaintiff, who belong to her family filed a suit against the mother of the plaintiff and her siblings as OS. 162/1992. Contention raised therein that they were passing through the properties of the defendants herein and the defendants therein are attempting to cut open a new way through their property. The defendants therein contended that they have no way through the properties of the defendants herein and that they are using the way passing through the properties of the plaintiff therein. The contrary stand taken by the plaintiff is incorrect. The granite foundation and the barbed wire fencing

erected thereon, which separates plaintiff schedule item No.4 and 6 were constructed in the year 1990 and the averment that the same was constructed 4 months back is incorrect. It is also incorrect to say that the fencing poles were erected in the foundation with the permission of the plaintiff and the members of her family and that they were permitted to use the way through the middle of plaintiff schedule item No.4 and the same was withdrawn later. It is incorrect to say that the plaintiff and her family members have right of easement by prescription over plaintiff schedule item No.5.

5. The plaintiff has easement right of necessity through the way in existence on the eastern side of the southern property of plaintiff schedule item No.1. Plaintiff is also using a way towards west to reach the PWD road and the same has got a width of 1 metre. The same is made out from the title deed of the plaintiff itself. As the way has not in existence, it is unnecessary for the defendants to obstruct the same. The plaintiff and the members of her family are using the western and southern ways available to them. So

there is no necessary to issue a mandatory injunction, as sought for. The mother of the plaintiff approached RDO, Chengannur as EC. 2731/14 with a request that the second defendant has to be directed to sell a portion of his property to establish the way. As the way is not in existence, it is unnecessary to restrain the defendants. The suit is an outcome of the enmity of the plaintiff as the defendants failed to sold their property to establish the way. Plaintiff has no prima facie case and the suit instituted by suppressing material facts, hence prayed for dismissal of the suit with the cost of the defendants.

6. On the basis of rival contentions raised by the parties the following issues were framed for trial by my learned predecessor

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1. Whether there exists a way is described under Item No.5?
2. Whether the plaintiff has easement right by prescription over item No.5 way?
3. Is the plaintiff entitled to a declaration as sought for?

4. Is the plaintiff entitled to get a decree of mandatory injunction as sought for?
5. Whether the plaintiff is entitled to a decree of permanent prohibitory injunction as sought for?
6. Relief and costs?

OS. 327/2015:-

Suit for permanent prohibitory injunction

7. Plaint averments in brief, are as follows:-

Plaint schedule item No.1 property obtained by the first plaintiff by virtue of Partition deed No. 2088/68 of SRO Cheriyanadu. The second plaintiff is the younger brother of the first plaintiff. Plaint schedule item No.2 to 4 are obtained by the second plaintiff by virtue of Sale deed No. 2642/74 , Partition deed No. 2088/68 and Sale deed No. 3051/72 of SRO, Cheriyanadu respectively and the plaintiffs are in absolute possession and enjoyment of the respective properties. Plaint schedule item No.2 to 4 are situated on the northern side of item No.1 property. Plaint schedule item No.5 is

situated on the southern side of item No.1 property and it belongs to the defendants 1 and 2 by virtue of Sale deed No. 1930/09 of SRO, Cheriyanadu.

8. First defendant is the daughter of the third defendant and the second defendant is the husband of the first defendant. The defendants are residing in plaint schedule item No.5 property with family. Item No.4 is comprised in survey No. 245/6A and it forms part of Kuttiyil property. Plaint schedule item No.1 to 3,5 are the property situated on the southern side of Item No.5 are part of Pisharath property comprised in survey No. 245/7 which had a total extent of 2.05 acre. Cheriyanadu Subrahmanya Sree Swamy Temple – Padanilam PWD road is situated on the southern side of the said property and Kavilpadi - Cheriyanadu Subrahmanya Swamy Temple road is situated on the western side. The family house of Pisharath property is situated in Item No.5. There is a way having width of 3 feet towards south from the eastern portion of the Pisharath property leads to the public road. The same was being used by the defendants and their predecessors who are the members

of Pisharathu family. After several alienations item No.5 is obtained by the husband of third defendant and later, the same is obtained by third defendant.

9. Another way having a width of 3 feet is also being used by the defendants towards the western road through the property of Smt.Santhamma. While so, Smt. Thankamma, wife of Sri.Damodharakuru, who is the brother of Narayana Kurup and her son Sri. Krishnankutty Nair and his wife Smt.Bindhu Kumari has got right over the properties situated on the southern side of item No.5 caused obstruction to the way passing through the eastern extremity of the properties and filed a suit as OS.162/92 against third defendant and her children for using the way through the eastern portion of the properties of the plaintiff herein. But, the defendants therein claimed that they have been using the way passing through the eastern extremity of the southern properties. Commission report filed in that case also shows that there is a way in existence from Item No.5 towards west and there were signs of the damage caused to the way towards south. OS.162/92 is decreed

on 31/08/1995, restraining the defendants therein from creating a new way through the plaint schedule properties therein. After the decree in that case, third defendant sold item No.5 to defendants 1 and 2.

10. First defendant filed OS. 140/2015 in which Item No.5 herein is scheduled as Item No.1 and the building in it as Item No.2. plaint schedule item No.1 to 4 herein are scheduled as item No. 3 and 4 in OS.140/15. The way claimed by the plaintiff therein is scheduled as item No.5 in that case, over which easement by prescription and easement of necessity are claimed by stating that the same is being used by the plaintiff for the past 25 years. There is no way as scheduled in Item No.5 in existence. On 23/03/2015, a temporary injunction is passed restraining the defendants therein from causing damage to item No.5 property. Plaintiff therein and her predecessors never using item No.5 way.
11. Third defendant filed a petition before the RDO, Chengannur as EC. 2731/14 in which it is stated that she is ready to purchase a portion of the property from the plaintiffs herein and to give such direction

to the second plaintiff. Plaintiff schedule item No4 herein and the northern public road are separated with granite foundation which was constructed in the year 1990 over which barbed wire fencing is also erected by using granite poles. Defendants are using the way towards south through the eastern extremity of the southern property. Plaintiffs got knowledge that the defendants are attempting to cut open a new way through plaintiff schedule item No.1 to 4 to the northern public road. Defendants have no manner of right to do so. Hence the suit is filed for permanently restraining the defendants from trespassing into plaintiff schedule item No.1 to 4 and from cut open a new way and also from committing any waste therein.

12. Defendants filed written statement and the contentions therein, in brief, are as follows:-

The suit is not maintainable either in law or on facts. The family house of Pisharathu family is not situated in item No.5 property. No way is used from item No.5 towards south or west for the ingress and egress over a period of 25 years. Defendants have been

using the way claimed in OS. 140/15 during and after OS.162/92. After the decree in that case, the defendants have been using item No.5 way claimed in OS. 140/15. Defendants are unaware about the averment in the written statement in OS.162/92 and the statement regarding the report of the commissioner is also incorrect. OS.145/15 is filed with true averments and the existence of the way is clearly reported by the commissioner.

13. The plaintiffs herein violated the Order of injunction and close down the way, against which petition is filed. So, the plaintiff filed the suit with false averments. Third defendant has contenting in the petition filed before the RDO Chengannur that the way is being used through the property of the plaintiff for the pass 22 years. It is incorrect to say that barbed wire fencing was erected to separate item No.4 and the northern public road in the year 1990 as the same is erected recently. There is no way in existence towards south from plaint schedule item No.5 over which there is no injunction against the defendants. Second defendant is employed abroad and he is falsely impleaded in the case.

14. The suit is filed to annihilate the human rights of the defendants and children of defendants 1 and 2. Defendants have not done any illegal acts as alleged. Defendants 1 and 3 are put to untold hardships on account of the cruel acts of the plaintiffs. Plaintiffs filed the suit by violating the Order of the Court and with unclean hands by raising false averments. Hence prayed for the dismissal of the suit with the costs of the defendants.

15. On the basis of rival contentions raised by the parties the following issues were framed for trial by my learned predecessor :-

1. Have the plaintiffs got cause of action to institute the suit ?
2. Are the plaintiffs entitled to get a decree of permanent prohibitory injunction against the defendants?
3. What is the Order as to reliefs and costs?

16. The term 'the plaintiff' herein after referred are the plaintiffs in OS.140/2015. The term defendants herein after referred are the plaintiffs in OS.327/2015. The term plaintiff schedule

properties 1 to 5 are the plaint schedule properties in OS.140/2015.

17. During trial PW1 and PW2 were examined and Exts.A1 to A3 were marked from the side of the plaintiff. On the side of the defendants DW1 and DW2 were examined and Exts.B1 to B7, B8 series were marked. Commissioner Advocates were examined as CW1, CW2 and CW3 and Exts. C1 series to C4 series were marked as Court exhibits.
18. Heard the learned counsel for the plaintiffs and the learned counsel for the defendants.
19. **Issue No.1 to 3 in OS. 140/2015:-** According to the plaintiff, she has been using plaint schedule item No.5 way openly, peaceably, uninterruptedly, as of right and as an easement to have access to the northern item No.6 public road from plaint schedule item No.1 and 2 properties and thereby prescribed easement right over the same. According to her, the pathway has more than 22 years of age. The plaintiff is the present owner of item No.1 and 2 along with her husband and she has sought for the injunction to

restrain the defendants from causing obstructions to the use of the way and also for a mandatory injunction to remove the obstructions in plaint schedule item No.5 way. On the other hand, the defendants contended that the plaintiff and her family never used item No. 5 way and they have not prescribed any easement right over the same. Further contended that plaint schedule item No.3 and 4 were not a part of item No.1 and the defendants got alternative ways. They also contended that plaint item No.1 forms part of the property of the Pisharath family and the members of that family have been using a way towards south to the southern public way through the eastern extremity of the southern properties. They also contended that in the previous suit filed against the third defendant in OS.162/92 and her children, they claimed that they got right of way towards south. According to the defendants there is no pathway through plaint schedule item No.3 and 4 as described in the plaint.

20. In the plaint it is described that there is a way in existence which starts from item No.1 and proceeds to the north to a length of

13.100 metre and then to the east to a length of 3.300 metre, then to the north to a length of 22.00 metre, then leading to the east to a length of 4 metres and having a width of 3 metre which is being used by the plaintiff and her predecessors along with family for the past more than 22 years openly, peaceably, uninterruptedly and as of right.

21. It is settled position of law that the following conditions should exist before an easement can become absolute by prescription: 1). There must be a pre - existing easement which must have been enjoyed by the dominant owner, 2) the enjoyment must have been peaceable, 3) the enjoyment must have been as an easement;
- 4) the enjoyment must have been as of right,
- 5) the right must have been enjoyed openly; 6) the enjoyment must have been for a period of 20 years and 7) the enjoyment for 20 years must have been without interruption.
22. Ext.A1, Sale deed No.1930/09 of SRO, Chengannur executed in favour of the plaintiff and her husband. Ext.A2 is the land tax receipt dated 11/8/14 of Cheriyanadu Village. Ext.A1 and A2

shows that the plaintiff and her husband having absolute title and possession over plaint schedule item No. 1 and 2 properties. Plaintiff was examined as PW1 and deposed that plaint schedule item No.5 pathway has been used by her and the family for more than 20 years. At the time of cross examination she deposed that there was a case as OS.162/92 against her mother, the third defendant in OS.327/15. The learned counsel for the defendants put a suggestion to PW1 that as per Ext.B2, written statement in OS.162/92, it is admitted by the 3rd defendant in OS.327/15 that they are using a way through the eastern extremity of the southern properties. PW1 replied that as per the decree in OS. 162/92 the defendants herein were permanently restrained from using said southern pathway, therefore plaint schedule item No.5 herein has been using after the institution of OS.162/92. PW1 further deposed that excluding plaint schedule item No.5 pathway the defendants planted rubber trees in plaint schedule item No.3 and 4 properties.

23. PW2 is a local resident and he knows the plaint schedule properties and the parties in the suit PW2 deposed that plaintiff is the member of Pisharath family. On the southern side there exists Pisharathu property and a PWD road situated on the southern side of said Pisharathu property. PW2 further deposed that plaint schedule item No.5 pathway is not in existence. But further deposed that there exists a way starting from plaintiff's house towards north then leaning to the east.
24. After the institution of the suit a commissioner advocate was appointed for preparing a rough sketch and report with regard to plaint schedule properties. On 24/03/2015, the commissioner advocate has visited plaint schedule properties and filed report, mahazar and rough sketch, marked as Ext.C1 series. In Ext.C1 series, the commissioner advocate reported that plaint schedule item No.5 pathway in existence at the spot is having 50 metre length and 1½ metre width. Further reported that said pathway commences from plaint schedule item No.6 panchayath road, passes through the eastern side of plaint schedule item No.3 and 4

properties and ends north – eastern corner of plaint schedule item No.1. It is also reported that rubber trees are planted in plaint schedule item No.3 and 4 properties, but they are planted to the west by excluding the said 1½ feet width way. Commissioner further reported that there is no way except plaint schedule item No.5 to the ingress and egress of plaint schedule item No.1 and 2 properties. Ext.C1(b) rough sketch also showing plaint schedule item No.5 way, passes through the eastern side of plaint schedule item No.3 and 4 properties and leaning to the east. Defendants filed objection to Ext.C1 series by contending that in the plaint schedule description it is not stated where the plaint schedule item No.5 started and where it ends. Moreover, the width of the way also shown as 3 metres but the commissioner finds it as 1½ metre. Therefore, the defendants contented that the commissioner not ascertained the plaint schedule properties on the basis of the plaint description and the Ext.C1 series report was prepared only to help the plaintiff.

25. The commissioner advocate who prepared Ext.C1 series was examined as CW1. She deposed that Ext.C1 series was prepared on the presence of the plaintiff and the defendants. Further deposed that plaint schedule item No.5 pathway was seen by her on the spot and the pathway is in existence.
26. In OS. 327/2015, plaintiffs therein filed a commission application as IA. 1682/15. The commissioner filed report and mahazar, marked as Ext.C3 series. In Ext.C3 series, the commissioner identified the properties of the plaintiffs and the defendants therein. In Ext.C3 series the commissioner advocate reported that there is no pathway on the immediate southern property of plaint schedule item No.5 (plaint schedule item No.1 and 2 in OS.140/15). In page No.11 of Ext.C3 series it is reported that “അന്യായപട്ടിക അഞ്ചാം നമ്പർ വസ്തുവിന് തൊട്ടു തെക്ക് വശം സ്ഥിതി ചെയ്യുന്ന അന്യവസ്തുവിന്റെ കിഴക്കരിങ്ങത്തിലൂടെ വടക്കോട്ടു വന്ന് പട്ടിക അഞ്ചാം വസ്തുവിന്റെ തെക്കു കിഴക്കടുത്തായി എത്തിച്ചേരുന്ന ഒരു വഴി ഉള്ളതായി കാണുന്നില്ല”.

27. Here the plaintiff has not claiming any right of easement through the southern properties of plaint schedule item No.5 (plaint schedule item No.1 in OS. 140/15). One of the main contention raised by the defendants in their written statement is that the plaintiff and her family has been using a way on the eastern side of the southern property of plaint schedule item No.1 and 2. Moreover, in Ext.C3 series the commissioner reported that on the northern side of plaint schedule item No.2 property, there exists a yard and on the north – eastern side of the said yard there exist a gap having 3 feet width. This fact will support the case of the plaintiff that she is using a way through the northern properties of the defendants and the way ends on the north – eastern corner of plaint schedule item No.1 property.

28. The learned counsel for the defendants argued that the third defendant in OS.327/2015 filed Ext.B3 petition before the RDO, Chengannur with a request that the second defendant has to be directed to sell a portion of his property to establish the way. Ext. B3 showing that the plaintiff and her family has been using the

northern side pathway for the ingress and egress to plaintiff schedule item No.1 property and recently the property owners of plaintiff item No.3 and 4 obstructed the use of the said pathway. Therefore, in order to enter into plaintiff schedule item No.1 property from plaintiff schedule item No.6 road the third defendant in OS. 327/15 is ready to purchase the same. From Ext.B3 it can not be presume that the plaintiff is trying to cut open a new way through plaintiff schedule item No.3 and 4 properties. Moreover, in Ext.B3, the third defendant has not stated that she is having no easement right over plaintiff schedule item No.3 and 4 properties. It is true that, Ext.B3 is dated 7/10/14, for that reason only it can not be presume that the plaintiff and her family has been using plaintiff schedule item No.5 way from 7/10/14 onwards.

29. Ext B1 copy of plaintiff in OS.162/92 showing that there was a suit against third defendant in OS.327/15 and two of her children. Ext.B2, written statement filed by third defendant and her children in the said case, in which they claimed that they have been using a way towards south through the eastern side of the

southern properties of item No.1 herein. The learned counsel for the defendants argued that the third defendant in OS. 327/15 had no case in OS.162/92 that she and her children have been using a way towards north through the properties of the defendants herein. Further argued that the same is revealed from Ext.B2, copy of the written statement filed in OS.162/92, hence there is no lawful way for access to item No.1 through the properties of the defendants. At the time of cross examination PW1 specifically stated that after the institution of OS.162/92, she and her family has been using plaint schedule item No.5 pathway for the access of plaint schedule item No.1 and 2 properties. In Ext.C3 series, the commissioner reported that there is no way through the immediate south of plaint schedule item No.1.

30. The learned counsel for the defendants raised a contention that the third defendant in OS.327/15 is ready to purchase the property to be used as a way from the plaintiffs (defendants in OS. 140/15), therefore the claim of easement by prescription raised by the plaintiff is without much force or weight. Said

argument is not tenable because from Ext.B3, it is clear that the third defendant is a diabetic patient and the finger in her legs are amputated. Moreover, the plaintiff has got two children, who are studying in school. Hence for the ingress and egress of plaintiff schedule item No.1 property a pathway is necessary. Said circumstances forced them to purchase the property to be used as a pathway.

31. Another contention raised by the defendants is that description of plaintiff schedule item No.5 pathway is not correct. CW1 commissioner advocate categorically deposed that plaintiff schedule item No.5 is in existence and the pathway starts from plaintiff schedule item No.6 PWD road, passes through the eastern side of plaintiff schedule item No. 3 and 4 towards plaintiff schedule item No. 1 and 2 property. Hence the contention raised by the defendants is not tenable that the plaintiff schedule item No.5 pathway not identifiable. From the deposition of CW1 it would be evident that the plaintiff schedule item No.5 pathway is in existence and identifiable.

32. Order 7 Rule 3 of Code of Civil Procedure provides that where the subject matter of the suit is an immovable property, the plaint shall contain a description of the property sufficient to identify it, ie, in case such property can be identified by boundaries or numbers in a read of settlement or survey, the plant shall specify such boundaries or numbers. From the reading of the same it is thus clear that the plaintiff is required to describe the suit property with sufficient particulars necessary for identification of the same. Whether a particular immovable property has been sufficiently described in the plaint so as to easily identify the same would depend on the facts and circumstances of each case. In the instant case, plaint schedule item No.5 pathway is identified by the commissioner and shows the same in Ext.C1(b) rough sketch. Thus it is come out that a pathway which starts from plaint schedule item No.1 property and proceeds to the north through the eastern side of plaint schedule item No.3 and 4 properties towards plaint schedule item No.6, PWD road is in existence. The said pathway is having 1½ metre width.

33. Another contention raised by the defendants is that the plaintiff has easement right through the way in existence on the eastern side of the southern property of plaintiff schedule item No.1 and the plaintiff is also using a way towards west to reach the PWD road and the same has got a width of one metre. The same is made out from the title deed of the plaintiff itself. In Ext.C3 the commissioner advocate reported that there is no pathway on the immediate southern property of the plaintiff. Moreover, PW1 categorically deposed that after OS.162/92, the plaintiff and her family is restrained from using the southern way by a permanent prohibitory injunction. Further deposed that the western pathway mentioned in Ext.A1 deed is only for the use of the property owner of Santhalayam. Here the claim of the plaintiff is a right of easement by prescription, such a right is granted on the existing pathway and it does not depend upon any pathway described in any documents. From Ext.C1 series and C2 series, it is clear that plaintiff schedule item No.5 pathway having 1½ metre width is in existence. From the deposition of PW1 and PW2, it is also clear

that there exists a pathway on the northern side of plaintiff schedule item No.1 and 2 properties and the pathway has more than 20 years of age. The defendants have no case that they have given permission to use any portion of their properties as plaintiff schedule item No.5 pathway. It is contended by the plaintiff that recently the fourth defendant has permitted the plaintiff and the members of her family to pass through the middle of item No.4, but now they are not permitting to use the same. It can be considered as a pretext on the part of the defendants for the purpose of constructing a boundary wall in plaintiff schedule item No.4 property. The plaintiff and the family has been using plaintiff schedule item No.5 pathway as of right. In Ext. C1 series it is reported that there is no other pathway available to reach plaintiff schedule item No.1 and 2 properties. This fact would show that the plaintiff and her family has been using plaintiff schedule item No.5 pathway continuously and uninterruptedly for a period of more than 20 years. Thus all the ingredients of prescriptive right of easement are satisfied. The plaintiff is entitled to get a

declaration for prescriptive right of easement over plaint schedule item No.5 pathway having a width of 1½ metre as shown by the commissioner in Ext.C1 series. Issue Nos 1 to 3 are found in favour of the plaintiff.

34. **Issue No.4 in OS.140/2015:-** Plaintiff contended that before the institution of the suit, about 4 months back, the second defendant has constructed a granite foundation and barbed wire fencing to separate item Nos. 4 and 6. In order to erect fencing poles in the granite foundation, the fourth defendant permitted the plaintiff and her family to pass through the middle of item No.4. But the defendants are not permitting the plaintiff and her family to use the said way at present. As per Ext.C2 series, the commissioner has visited the plaint schedule properties again on 7/7/15 and reported that plaint schedule item No.5 pathway is obstructed by the defendants by installing fencing stones near to the wicket gate in north - south direction. Further reported that on the northern side of plaint schedule item No.4 property the second defendant installed a slab and constructed a pillar and a

concrete wall. Due to the said construction the plaintiff and the family couldn't enter into plaint schedule item No.6 PWD road through plaint schedule item No.5 pathway. In Ext.C2 series, the commissioner advocate reported that on the northern boundary wall of plaint schedule item No.4, there exists a gap on the north – eastern corner, through which one person can barely pass towards item No.6, PWD road.

35. In issue Nos.1 to 3 it is already found that item No.5 pathway, having 1½metre width passes through the eastern side of plaint schedule item No.3 and 4 properties is in existence and the plaintiff has prescriptive right of easement over the same. The cause of action alleged by the plaintiff is proved. Thus the plaintiff is entitled to reinstate the said pathway in its original position. This issue is found in favour of the plaintiff.

36. **Issue No.5 in OS.140/15 and Issue Nos. 1 and 2 in OS.327/2015:-** The contention of the plaintiff is that she is having a right of easement by prescription over plaint schedule item No.5 pathway. But the defendants are causing obstructions

to the use and enjoyment of said way, hence the defendants are to be permanently restrained. On the other hand the defendants contended that the plaintiff and his family are trying to cut open a new way through plaint schedule item No.3 and 4 (plaint schedule item Nos. 1 to 4 in OS. 327/15), hence the plaintiff and her family are to be restrained. As per the discussions in issue No's 1 to 3, it is already found that there exists a pathway through the eastern side of plaint schedule item No.3 and 4 properties and the plaintiff has easement right over the same. Therefore, the defendants (plaintiffs in OS. 327/15) is not entitled to get a decree as sought for. The cause of action of the plaintiff is proved, hence she is entitled to get a decree of permanent prohibitory injunction against the defendants as prayed for. These issues are found in favour of the plaintiffs.

37. Issue No.6 in OS.140/15 and Issue No. 3 in OS.327/2015:-

In the result, OS.327/2015 is dismissed, no costs.

OS.140/2015 is decreed as follows:-

1. It is declared that the plaintiff has right of easement by prescription over plaint schedule item No.5 pathway (having a width of 1½ metre).
2. Defendants 1 and 2 are directed to reinstate plaint schedule item No.5 pathway in its original position within one month, failing which the plaintiff is entitled to do the same through the process of Court and to realise the costs of the same from the defendants 1 and 2.
3. The defendants are permanently restrained from causing any obstructions to the use and enjoyment of plaint schedule item No.5 pathway by the plaintiff and her family and from committing any waste therein.
4. Both parties shall suffer their respective costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 7th day of February 2023.)

Sd/-
RAGI.S
MUNSIFF

APPENDIX**Witness for Plaintiff**

PW1 - 28.02.2022 - M. Saritha
PW2 - 06.07.2022 - Muralidharan Pillai

Exhibits for Plaintiff

A1 - 08.12.2009 - Sale Deed No: 1830/2009 of SRO, Chengannur.
A2 - 11.08.2014 - Land Tax Receipt of Cheriyanadu Village
A3 - 25.09.2015 - Power of Attorney executed by Sajikumar in favour of M.Saritha

Witness for Defendants

DW1 - 21.07.2022 - Madhavan Kutty Nair
DW2 - 05.08.2022 - Ajeesh Kumar.K

Exhibits for Defendants

B1 - 13.08.1992 - Certified copy of Plaint in OS. 162/1992
B2 - 18.12.1992 - Certified copy of written statement in OS. 162/1992
B3 - 07.10.2014 - Grief Petition

B4	-	08.12.2009	-	Photocopy of Sale Deed No: 1830/2009
B5	-	04.10.1972	-	Sale Deed No: 305/72 of SRO, Cheriyannadu
B6	-	08.08.1974	-	Sale Deed No :2042/74 of SRO, Cheriyannadu
B7	-	21.05.1968	-	Settlement Deed No: 2088/68 of SRO, Cheriyannadu
B8	-	15.10.2014	-	Land Tax Receipt of Village Office, Cheriyannadu
B8(a)-		19.09.2014	-	Land Tax Receipt of Village Office, Cheriyannadu.
B8(b)-		09.10.2014	-	Land Tax Receipt of Village Office, Cheriyannadu

Court Witness

CW1	-	01.07.2022-	Adv. Jessy George
CW2	-	05.08.2022-	Adv. Binu Zacharia
CW3	-	10.08.2022-	Adv. P.J Cherian

Court Exhibits

C1	-	24.03.2015	-	Commission Report
C1(a)-		24.03.2015	-	Mahazar
C1(b)-		02.06.2015	-	Rough Sketch

C2	-	07.07.2015	-	Commission Report
C2(a)	-	07.07.2015	-	Mahazar
C2(b)	-	14.07.2015	-	Rough Sketch
C3	-	15.08.2015	-	Commission Report
C3(a)	-	15.08.2015	-	Mahazar
C4	-	23.11.1993	-	Certified copy of Commission Report in OS. 162/1992
C4(a)	-	23.11.1993	-	Certified copy of Mahazar in OS. 162/1992
C4(b)	-	23.11.1993	-	Certified copy of Rough Sketch in OS. 162/1992

**Id/-
MUNSIFF**