

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Sri. Anirudhan T K, Additional Munsiff

Thursday the 9th day of January, 2025/ 19th Pousha, 1946

I.A. No. 1/2024 in O.S. No. 20/2024

Petitioners/ Plaintiffs:--

- 1 C V Girishkumar, aged 55 years, S/o.Late.Velayudhan, Chonatt House, Sree Krishna Temple Road, Kumbalangi PO, Kochi-682007
- 2 Manu C Mohan, aged 40 years, S/o.Late.C V Mohanan, Chonatt House, Sree Krishna Temple Road, Kumbalangi PO, Kochi-682007
- 3 Omana Mohanan, aged about 70 years, W/o.Late.C V Mohanan, Chonatt House, Sree Krishna Temple Road, Kumbalangi PO, Kochi-682007

By Adv. Abraham P George, Johny Thomas,
Ratheesh M B, Elisa Jacob & Akash Philip

Respondents/Defendants :-

- 1 Jacob Paul, aged 44 years, S/o.George, Kannanketil, Thoppumpady, Kochi-682005
- 2 Martina, aged 58 years, W/o.Late. K K Joseph, Kaliparambil Sree Krishna Temple Lane, Near St.Peters Church, Kumbalangi PO, Pin-682007
- 3 Nikhil Jose, aged 27 years, S/o.Late. K K Joseph, Kaliparambil Sree Krishna Temple Lane, Near St.Peters Church, Kumbalangi PO, Pin-682007

By Advs. Benedicta Vembly, Cinda S, Aswini S &
Ismath C N

This petition come up for hearing before me on 06.01.2025 and the court on 09.01.2025 passed the following:-

ORDER

The petition is for temporary injunction.

2. **The petition summary is as follows:-** Petitioner is the 2nd plaintiff in the above case. The petitioner states that the suit is for declaration, mandatory injunction and permanent prohibitory injunction. The 1st plaintiff and predecessor of 2nd and 3rd plaintiffs had purchased plaint A and B schedule properties from Kannankeril Joseph, S/o Kannankeril Kacko. On the death of Kacko, the family properties were partitioned among the legal heirs and the A schedule property in the partition deed was allotted to the eldest son Joseph and schedule B property was allotted to George, another son. The 1st defendant is the son of George, the allottee of the B schedule of the partition deed. The plaint A & B schedule properties are the parts of 7 cents of property allotted to the elder son Joseph. On the western side of the said property is the property obtained by George, which is included in the B schedule of partition deed. As per the recitals in the partition deed a pathway having a width of 10 links starting from the north-western corner of 7 cents leading towards west for a length of 8.02 meter, then towards north for a length of 14.63 meter up to the Panchayath road is provided to the

benefit of the item no. 2 of A schedule property (which is 7 cents shown herein as plaint A & B schedule properties) in the partition deed. The said pathway passes through schedule B in the partition deed allotted to George the predecessor of 1st defendant. This pathway having 10 links width starting from the north-western corner of the property of the plaintiffs for a length of 6.02 meter and then proceeding towards north up to the Panchayath road for a length of 14.63 meter is an express grant for the benefit of the 7 cents, item no.2 of A schedule as per the recitals in the partition deed and as assignees of the said property, the plaintiffs are also entitled to use the said pathway for their benefit and convenient enjoyment of plaint A and B schedule properties.

3. In 2018, 1st defendant had alienated some extent of land to one Mr.Dileep and at that time he had surrendered 5 links more land as pathway through out the entire length of the 2nd limb of the pathway. Thus, the width of the second limb of the pathway is increased to 15 links (3 meter). This portion of way is well separated by the boundary wall at the western side from the property of Dileep. By virtue of the recitals in their respective title deeds, the plaintiffs along with the defendants are entitled to use the pathway described as schedule C as of right. Though a suit as O S 51/1994 was filed before Munsiff Court Kochi for injunction to restrain the plaintiffs

and their predecessors from using the pathway as set apart in the partition deed, for their use alleging that they are having alternative way and it was dismissed. In the year 2019 1st defendant and predecessor of defendant nos.2 to 4 together filed O S 191/2019 alleging that the plaintiffs herein are obstructing the use of the C schedule pathway by them and it was decreed. Against which an appeal has been preferred and the same is pending. In the year 2019 the 1st defendant and predecessors of the defendant No. 2 to 4 together filed OS.191/2019 alleging that plaintiffs herein are obstructing the use of the C schedule pathway and it was decreed. The plaintiffs have preferred an appeal against the decree as AS.24/23 and it is pending. As per the pleadings in the plaint in OS.191/2019 the defendants have admitted that the available width of C schedule is 15 links and that the plaintiffs are entitled to use the portion of the property provided as pathway.

4. Originally the A and B schedule properties as per the partition deed ie, plaint A and B schedule properties and that property owned by the defendants were lying contiguously with same ground level. Therefore, to drain water, during monsoon season, will flow towards north and reach the common drainage passing through the public road. In the year 2019 the defendant Nos.2 to 4 have constructed a residential building in their property. At the time of that construction defendant Nos.2 to 4 with the

consent of the 1st defendant had increased the height of their plot by filling gravel in the property. They also increased height 2nd limb of C schedule pathway to their convenience. Then the 1st limb of the C schedule pathway became low lying land which resulting water logging in the monsoon season. The defendants had not provided any drainage facility for flowing the excess water to the public drainage, which constrained the plaintiff to draw pipe line starting from the 1st limb of the C schedule pathway connecting the common drainage to north through eastern boundary of the C schedule pathway to drain the logged water. After decreeing OS.191/2019 the defendants herein on 28.09.2023 concreted the 2nd limb of the C schedule pathway thereby further increased the height of the same and also destroyed the pipe line drawn by the plaintiffs. Thus, A and B schedule properties and 1st limb of C schedule became more low lying property resulting water logging. When this was questioned the defendants declared that it is their property and they are entitled to do anything of their choice in the pathway. They further declared that the plaintiffs and their men will not be permitted to take vehicles through the C schedule. The vehicles from the 2nd limb of C schedule pathway cannot be taken to the A and B schedule properties through the 1st limb of C schedule pathway due to the sharp cutting /slope at the western side of the 1st limb of the C schedule pathway.

Moreover, the defendants are also used to park vehicles in the 2nd limb of C schedule property in order to prevent taking of vehicles to the A and B schedule properties owned by the plaintiff. The above act of increasing the height of the C schedule way by the defendants is an illegal act which violates the right of easement available to the plaintiffs through the C schedule pathway. The plaintiffs are also vested with the right to flow excess drain water from their property to the public drainage at northern side and it is also violated by the defendants for which they are not entitled to obstruct the dominant tenement owners, the plaintiffs herein. Therefore this petition is filed.

5. The respondent/defendants filed objection stating that the 1st defendant's father George had acquired the property having an extent of 23.100 cents of land in Sy.No.1283/3 and an extent of 56 cents of paddy land in Sy.No.344/1 of Kumbalangi village as the B schedule in the partition deed No.4454/1981 of SRO, Kochi. The A schedule property in the partition deed was provided to Joseph, the brother of the defendant's father. At the time of partition a way was carved out having a width of 10 links from the north-eastern corner to northwards in the property of George, to enable Joseph to pass through the said vazhi to reach panchayath road. He had also access from other sides. After the death of George his property was

partitioned by the legal heirs. In that partition deed, B schedule has been provided to the 1st defendant having 10 cents of land as well as paddy land.

6. Out of the property obtained by Joseph he sold an extent of 4 cents of land in favour of 1st plaintiff. Again the said Joseph sold further extent of 3 cents to one Mohanan, father of Manu, the 2nd plaintiff. The plaintiffs are using the pathway provided in the properties of the 1st defendant's father George starting from the north-western corner of the said property sold to the plaintiffs which comes west wards and then turned to north wards and reach the panchayath road. After obtaining the property the 1st defendant sold an extent of 4 cents of land to one Dileep who is having direct access to the panchayath road on the northern side of his property. When he sold that property he had kept property having a width of 1 meter adjacent to the pathway already in existence for increasing the width of the pathway north to south to his remaining property. The 1st defendant also sold property to K.K.Joseph, the father of the 3rd defendant. Then the 1st defendant had provided a vazhi from the middle portion of the northern boundary to northwards having a width of 3 meter. The entire property provided for the way belonged to the 1st defendant. Except the use of the pathway neither the father of the 3rd defendant nor the plaintiffs have any right over the same.

7. After getting the property the father of the 3rd defendant constructed a gate in the middle of their boundary for direct access to the panchayath road. The plaintiffs cannot claim any right exclusively except to use the area for the ingress and egress without obstructing the use of other people. In fact the document in favour of the plaintiffs will not disclose that any right was conferred on them for using the way. However, since the properties were sold by the brother of the 1st defendant's father the vazhi provided for the requirements of his brother can be used by the plaintiffs also. The plaintiff may be using 3 meter vazhi lying north to south from the gate of K.K.Joseph, they cannot cause any obstruction to the 2nd and 3rd defendants and their family members in using the pathway as well as the additional area provided for using the same. But on 09.05.2019 the plaintiff No. 1 and 2 came to the property and openly declared that the pathway was intended only for their requirements and that they intended to construct a compound wall for separating the way. The plaintiffs have no manner of right to challenge the right of the 1st defendant in the pathway as the absolute owner of the property. The defendants never wanted to abridge to the said facility granted to the plaintiffs. But the plaintiffs are in obligation to use the said right to enjoy their property without causing any inconvenience to the owner or to the other persons using the property.

When the plaintiffs tried to encroach into the defendant's property the defendants filed OS.191/2019 which was decreed in favour of the defendants. The plaintiffs were the defendants in OS.191/2019. Therefore the petition may be dismissed with costs.

8. Heard both sides.

9. The following points arise for consideration :-

1. Whether the petitioner has made out a prima facie case?
2. Is the balance of convenience in petitioner's favour?
3. Whether the petitioner would suffer irreparable injury or hardships if injunction is not granted?
4. What shall be the proper order?

10. **The point nos. 1 to 4:** The plaintiffs case is that the respondents are causing inconvenience, and obstruction on the petition C schedule pathway against the use of it by the petitioners and it makes difficult for their ingress and egress to the public road from their properties. The defendants also cause obstructs on the C schedule pathway by parking vehicles and thus, it is difficult for the plaintiffs to take vehicles through the plaint C schedule property to plaint A and B schedule properties. Therefore, to drain water, during monsoon season, will flow towards north and reach the common drainage passing through the public road. In the year 2019 the

defendant Nos.2 to 4 have constructed a residential building in their property and at the time of that construction defendant Nos.2 to 4 with the consent of the 1st defendant had increased the height of their plot by filling gravel in the property. Thus, they had also increased the height 2nd limb of C schedule pathway to their convenience. Then the 1st limb of the C schedule pathway became low lying land which resulting water logging in the monsoon season. It is contended that the defendants had not provided any drainage facility for flowing the excess water to the public drainage, which constrained the plaintiff to draw pipe line starting from the 1st limb of the C schedule pathway connecting the common drainage to north through eastern boundary of the C schedule pathway to drain the logged water. After decreeing OS.191/2019 the defendants herein on 28.09.2023 concreted the 2nd limb of the C schedule pathway thereby further increased the height of the same and also destroyed the pipe line drawn by the plaintiffs. Thus, A and B schedule properties and 1st limb of C schedule became more low lying property resulting water logging. To remove this the plaintiffs have also sought a mandatory relief in the suit.

11. According to respondents there is no dispute regarding the ownership of plaintiffs A & B schedule property and also they have no objection in using the C schedule pathway for their ingress and egress. The

respondents/defendants never wanted to abridge to the said facility granted to the plaintiffs. But according to them the plaintiffs have no manner of right to challenge the right of the 1st defendant in the pathway as the absolute owner of the property. Further they contend that the plaintiffs are in obligation to use the said right to enjoy their property without causing any inconvenience to the owner or to the other persons using the property. Since the right regarding the properties and right of usage of pathway is admitted by respondents, now the only question is whether the respondents have created any obstruction to the plaintiffs by parking vehicles in C schedule way. According to the plaintiffs defendants are causing inconvenience and obstructions to the pathway by parking their vehicles in the 2nd limb of C schedule pathway and regarding this there is no specific denial by the defendant in their counter. Thus, prima facie it is to be considered that some obstruction is caused by way of parking vehicles on the way and this will cause hardships and injuries to the plaintiff and balance of convenience also in their favour. Hence the above points are found in favour of plaintiffs.

In the result, Petition is allowed as follows:-

a) A temporary injunction is granted in favour of petitioners restraining the respondents/defendants, their men and agents from causing any sort of inconvenience/obstruction to the petitioners, their

men and agents in the use and enjoyment of the plaint C schedule pathway for their ingress and egress up to the public road at the northern side and from taking vehicles through the C schedule property to A and B schedule properties in any manner, till the disposal of the suit.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 9th day of January, 2025)

Sd/-
Anirudhan T K
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

I.A. No.1/2024

O.S. No. 20/2024

Dated : 09.01.2025