

**IN THE COURT OF THE MUNSIF, KOCHI**

**Present :-**

**Sri. Anirudhan T K, Additional Munsiff**

Monday the 5<sup>th</sup> day of August, 2024/ 14<sup>th</sup> Sravanam, 1946

**IA No. 2/2024 in O.S. No. 78/2024**

**Plaintiff/Petitioner:-**

Devassy, aged 74 years, S/o.Pullan Iype, Pullan House, Nayarambalam, residing on the opposite side of Nobelia School, Kochi Taluk, Pin-682509

By Advs. Joseph Edakkatt, Smitha R & Alen Renju

**Defendant/ Respondent:-**

Sudhakaran, S/o.Kumaran, aged about 76 years, Panakaparambil House, Nayarambalam Village, Kochi Taluk, Pin-682509

By Adv. C P Peethambaran & Raseena Udayakumar

This petition come up for hearing on 31.07.2024 and the court on 05.08.2024 passed the following:-

**ORDER**

The petition is for temporary injunction.

2. **The petition summary is as follows:-** Petitioner is the plaintiff in the above case. The petitioner states that the suit is for permanent prohibitory injunction and mandatory injunction. The petitioner is the equitable owner of plaint A schedule pathway set apart by late Mampilly Chacko Vareed @ Varghese from his larger piece of land, in favour of

petitioner's father after receiving sale consideration, since the pathway was being used for a long time for the ingress and egress to plaint B schedule residential plot purchased in 1963. This pathway was in use and enjoyment by petitioner's father exclusively till his death and after his death, petitioner got the property as per a Will executed and probated by father in favour of petitioner and he continued to use it and enjoy it.

3. Petitioner also allowed the respondent and some of his relatives to use the pathway for drawing water connection as well as to use the pathway for their ingress and egress to their respective property. But, recently respondent started doing some objectionable activities in plaint A schedule pathway thus, causing disturbance to the peaceful enjoyment of plaint B schedule property to which his residential property shares common boundary. Some thorny plants and other flowering plants that crept into his property and which touched his compound wall and though petitioner repeatedly demanded to refrain from doing so, but has not been done. Permanent prohibitory injunction sought for is to restrain the respondent his men and agents from placing 'Chirath' after performing mysterious poojas, karmas over the northern compound wall of the plaintiff and also of chanting illegible prayers and throwing of flowers over plaint A schedule

pathway after such poojas and also not to cause any inconvenience to the peaceful use and enjoyment of the plaint A schedule property.

4. Though approached local authority, the Nyayarambalam Panchayat to mediate into the dispute and settle the same amicably then respondent after seeing the payment receipt executed by previous owner of the property who exclusively allowed petitioner's father to use and enjoy the property, admitted petitioner's right over the property. But, later he deviated from the compromise entered in presence of President and Vice President of the Panchayat. Now it is convinced by petitioner that respondent will not refrain from doing such objectionable activities unless the same is ordered to him by the Court hence, petitioner filed this petition, to restrain respondent from the above mentioned activities.

5. Respondent filed counter stating that the petition is not maintainable either in law or on facts. Plaint A schedule property was in existence for the last more than 150 years and it has been using by his grandfather, thereafter his father and brothers then their children including himself and also all the residents who are residing in the western side of plaint A schedule pathway. Description of A schedule is not correct, it is a public way and the receipt dated 22.02.1975 is a forged one. Mambilly Chacko Vareed never assigned

plaint A schedule property to the petitioner's father as claimed and he cannot assigned it so. As per revenue records plaint A schedule is a Government purambok land and a public pathway and this is suppressed by petitioner and he is fully aware about this.

6. During 1963 the father of the petitioner purchased 30.1/2 cents of land on the southern side of plaint A schedule property and there was no access to the said property except plaint A schedule property for the passage. They used A schedule property for their access with a portion of property of Mambilly Joseph Varghese with his consent. Respondent's tharawad property is situated on the western side of the A schedule property, wherein above mentioned predecessors of respondent and himself were lived. Apart from tharawad property respondent and his brother jointly purchased 6.06 Ares land from the said Mambilly Joseph Varghese. The entrance to the said property and property of petitioner's father was through portion of 'C' schedule property purchased by respondent and his brother jointly after passing through A schedule pathway. Respondent gave consent to petitioner to use a portion of C schedule to use as a pathway to enter into the property of his father.

7. On the eastern side of the property purchased jointly by respondent and his brother, Nayarambalam Panchayat purchased property and they constructed a panchayat office building. At that time they have put up a compound wall separating A schedule property with the property of Panchayat and A schedule pathway is having sufficient width to take four wheelers to and from. Most of the people including respondent in that locality are using plaintiff A schedule pathway. After petitioner's father purchased 8 cents of land in 1986 from Arackal Mathu, on the eastern side of the property purchased by him during 1963, then demolished the eastern boundary wall and constructed a new gate, having direct access to the national highway and thereafter they never used plaintiff A schedule pathway, as they no more required its use. Thus, after 1986 petitioner or his predecessor not used plaintiff A schedule and consent given to him to use a portion of C schedule was also withdrawn.

8. Therefore, the claim of equitable ownership over plaintiff A schedule is absolutely incorrect and use of A schedule by petitioner's father exclusively till his death and thereafter petitioner acquired the right is also false. Respondent has not done any objectionable activities as alleged. Thus, respondent denied all the averments and allegations against him and the acts

sought to be restrained is not an illegal act, but only a customary adherence.

Therefore, it is prayed to dismiss the petition with costs.

9. Heard both sides.

**10. The following points arise for consideration in I A 2/2023 :**

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?

11. **Point nos.1 to 4 :** . The petitioner contention is that he is the equitable owner of plaint A schedule pathway set apart by late Mampilly Chacko Vareed @ Varghese from his larger piece of land, in favour of petitioner's father. Late Mampilly Chacko Vareed @ Varghese had also received a sale consideration for the same and Varghese had issued a receipt for the amount. Photocopy of that receipt is marked as Ext.A1. It is stated that Rs.300/- (Rupees Three hundred only) was received as per Ext.A1, and petitioner claims ownership, over petition A schedule, as per this receipt. To this respondent's contention is that the same is not a registered one and it is fabricated and further contended that since, the property is having a value of

more than Rs.100/- it is to be registered therefore, no right or title is created by Ext.A1. Plaint B schedule is his property which he was obtained as per Will executed by his father and Probated order of the will issued by Hon'ble 1<sup>st</sup> Adl. District Court, Ernakulam, dated 03.02.1996 is marked as Ext.A2. Ext.A3 was the copy of title deed no.1241/1971 of property belonged jointly to respondent and his brother. Ext.A4 is the sale deed no.506/1972 executed by Mampally Chacko Varghese in favour of Nayarambalam Panchayat, Ext.A5 is the title deed of petitioner's property and Ext.A6 is the copy of partition deed executed between respondent and his brother.

12. Against the illegal activities of the respondent, petitioner approached President and Vice President of Nayarambalam Panchayat and in their mediation respondent as per Ext.A7 agreed that he won't made any poojas in the petition A schedule property. But, respondent denied this agreement saying that he was forced to sign on it and some terms were entered into it without his knowledge. Therefore, that agreement itself is not a valid one. Ext.A8 is a petition given by respondent stating that Ext.A7 agreement was not binding on him and it was entered without his knowledge to help petitioner. Moreover, as per Ext.B5 information received from state Public Information Officer, that the dispute redressal forum of

Nayarambalam Panchayat is not constituted under any order of the Government, therefore it is not a statutory body. Hence that agreement has no validity at all. According to respondent he is not doing any such poojas as alleged by petitioner and petitioner has no ownership over the petition A schedule property. Respondent pointed out that what type of poojas are performed by him has not been made clear in the petition. The suit and petition is filed only to establish petitioner's right over petition A schedule pathway for which he has no right at all.

13. Respondent, in support of his contentions, marked certain documents. ExtB1 is the original of BTR in which the petition A schedule, comprised in survey no.137/17 is a purambok land. Ext.B2 photocopy of a memorandum given by the local people to Panchayat regarding the dangerous condition of compound wall and their apprehension of falling the same into the petition A schedule public way and respondent shows as per this that the way is being used by the local people and it is not a private property of the petitioner. Respondent further pointed out that as per Ext.B3 application given by petitioner himself to Panchayat, he has categorically admitted that the pathway is a public way by stating in the petition that many people are using the way. As per documents received from village

officer, marked as Ext.B4 and Ext.B7 and also Ext.B6 received from Tahsildar Kochi, by respondent it has clearly stated that the petition A schedule which is comprised in survey no.137/17 is a Government purambok land. Ext.B5 is a document obtaining by petitioner from Nayarambalam Panchayath as per Right to Information Act. Ext.B8 is a document obtained by petitioner from Tahsildar, Kochi regarding statement of mutating petition A schedule property but as per Ext.B9 reply to it, Tahsildar has made it clear that as per Ext.A1 receipt no right is created in favour of petitioner, therefore, Ext.B8 application cannot be allowed.

14. Thus, from the above documents it crystal clear that the nature of petition A schedule pathway is a purambok land and which is being used by many other local people as is using by the petitioner. Hence petitioner, failed to establish a prima facie case in his favour and failed to show any right, other than usage, over the petition A schedule property. Apart from all the above, petitioner also failed to show what type of illegible utterances or illegal poojas the respondent is performing and how it causes nuisance to him. There is not even a clear cause of action is made out in the petition regarding the apprehension of the petitioner. Respondent, pointed out that as a part of age old customs he has also lit 'chirat' lights in and around his

house and property during Deepavali festival, it is this activity petitioner named as illegal or nuisance. Respondent also stated that he never done any pooja in petition A schedule property and there was no occasion to do such poojas. There are no such evidence was produced by petitioner that any such poojas were conducted in such a way which causes disturbance to his peaceful life or enjoyment of his property. Therefore, the petition lacks any bonafide and it can only be considered filed on flimsy ground. Hence, the points above are found against petitioner and I answer them so.

**In the result,**

**The petition stands dismissed with costs to respondent.**

*(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 5<sup>th</sup> day of August, 2024)*

Sd/-  
**Anirudhan T K**  
**Additional Munsiff**

**APPENDIX : -**

**Petitioner's Exhibits:-**

|    |            |  |
|----|------------|--|
| A1 | 22.02.1975 | Photocopy of receipt given by Mampally Chacko Varghese   |
| A2 | 03.02.1996 | Copy of Probate OP No.739/1993 Will issued by Hon'ble Ist Additional District Court, Ernakulam |
| A3 | 14.12.1971 | Copy of title deed No.1241/1971 of SRO Njarakkal   |

|    |            |   |
|----|------------|---|
| A4 | 25.05.1972 | Copy of Sale deed No.506/1972 of SRO Njarakkal  |
| A5 | 30.05.1986 | Copy of title deed No.1160/1986 of SRO Kochi  |
| A6 | 15.02.1988 | Copy of partition deed No.308/1988 of SRO Kochi   |
| A7 | 28.11.2023 | Photocopy of the compromise recorded by the Nayarambalam Grama Panchayath regarding the dispute between plaintiff and defendant |
| A8 | –          | Photocopy of the complaint filed by the defendant to the Secretary Nayarambalam Grama Panchayath to reconsider the compromise   |

**Respondent's Exhibits:-**

|    |            |  |
|----|------------|--|
| B1 | –          | The Original BTR issued by Village Officer, Nayarambalam   |
| B2 | 09.12.2004 | Photocopy of a memorandum given by the local people to Grama Panchayath Nayarambalam   |
| B3 | 25.10.2023 | Copy of application given by Devassy to Secretary, Grama Panchayath Nayarambalam   |
| B4 | 04.04.2024 | Certified copy of application under Right to Information Act submitted by P K Sudhakaran to the Nayarambalam Village Office and its reply issued by Village Office, Nayarambalam |
| B5 | 20.01.2024 | Document obtaining by petitioner from Nayarambalam Panchayath as per Right to Information Act  |
| B6 | –          | Document issued by the Village Officer under RTI Act   |
| B7 | 21.12.2022 | Report from Village Officer Nayarambalam   |
| B8 | –          | Document obtained by petitioner from Tahsildar Kochi regarding statement of mutating petition A schedule property  |
| B9 | 11.07.2023 | Reply to Tahsildar Kochi   |

**Court's Exhibits:-**

Nil

**Petitioner's Witness:-**

Nil

**Respondent's Witness:-** Nil

**Court's Witness:-** Nil

**Witness Exhibits** Nil

**Id/-  
Additional Munsiff**

**//True Copy//**

**Additional Munsiff**

SS  
compd by

**O R D E R**

**IA No. 2/2024**

**O.S. No. 78/2024**

**Dated : 05.08.2024**