

**IN THE COURT OF THE MUNSIF, PERUMBAVOOR**

**Present:- Smt. Alshari.A, Munsiff**

Thursday, the 23<sup>rd</sup> day of November, 2023 / 2<sup>nd</sup> Agrahayana, 1945.

**I.A.No. 2/2023**

**in**

**O.S.No. 282/2023**

**Petitioners/Plaintiffs:-**

1. Lesly Varghese, aged 42 years, Govt. employee, S/o. T.U Varghese, Thekkeveettan, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556
2. Mathai, aged 65 years, S/o. Paulose, Thannikkottil House, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556.
3. Abinson, aged 30 years, Business, S/o. Johny, Menothumalil House, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556
4. Aneeth, aged 33 years, S/o. Gopi, Business, Naduviledathu House, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556.
5. Aneesh, aged 46 years, Govt. employee, S/o. Ramakrishnan, Kanjirakkatt House, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556
6. Peter, aged 61 years, agriculture, S/o. Ulahannan, Thazhathekkudy House, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556.

By Advs. E.Jjobal & Surya Mohan.P.

**Respondents/Defendants:-**

1. Sathyan, aged 58 years, business, S/o. Madhavan, Manjakkal House, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556.
2. Prasanth, aged 35 years, business, S/o. Sathyan, Manjakkal House, Perumani Bhagom, Vengola P.O., Vengola Kara, Arackappady Village, Kunnathunadu Taluk, Pin : 683556.

By Adv. K.A.Mohammed Salih

This petition having been finally heard before me on 13.10.2023 and the court on 23.11.2023 passed the following:-

**ORDER**

1. Petition averments in brief:- The plaint schedule way which commence from the Arakkappady-Mangalathunada road, through the western side of the property of the plaintiffs and defendants, and through the eastern side of the 5<sup>th</sup> plaintiff, it reaches at the 4<sup>th</sup> plaintiff's property. The way is having a length of 200 meters and a width of 3.7 meters and it is a public way. Earlier the said way was having 10 feet in width. Thereafter, in the year of 2015, it was widened to 3.7 meters by the petitioners and respondents. The way is being used by 9 families, including the plaintiffs. The defendants' property is lying on the southern end of the way. The defendants are parking vehicles and JCB on the entrance of the way and causing obstruction to the vehicular transportation, through the plaint schedule way. While so, on 08.09.23, a pipe was drawn through the way in connection with 'Jalajeevan scheme'. The defendants had obstructed the drawing of pipe through the way against which a complaint was preferred before the police. But, the

police suggested to approach the civil court. The respondents had threatened, to park the vehicles, by encroaching into the plaint schedule way. Respondents have no manner of right to obstruct the drawing of pipe line through the way. Hence, the petition.

2. The respondents had filed counter statement by denying the petition averments. The respondents are residing on the southern side of the property, which stands in the possession of the 1<sup>st</sup> defendant, as inherited by him, from his grandfather. 5 cents of property was purchased by the 1<sup>st</sup> defendant and his wife, from one Rajan Balakrishnan, on the southern side of the property, belonged to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant is having vehicles, who is running transporting business. 1<sup>st</sup> defendant had given permission to the 2<sup>nd</sup> defendant to take vehicles through the western boundary. Plaintiffs had demanded to surrendered the said portion, as way. The said portion is absolutely in the possession of 1<sup>st</sup> defendant. There is no way in that place. When the plaintiffs tried to form a way and when tried to draw pipe lines, a complaint was preferred, before the police station by the 1<sup>st</sup> defendant. The plaintiffs demanded 3 meters width way and when was not given, they threatened to encroach into the property, pertaining to the same a suit was filed bearing No. 280/23. The septic tank of the 1<sup>st</sup> defendant is situating in the plaint schedule property. If there is any way recited in the documents produced by the plaintiffs, it was so recorded falsely. There is no way in existence, as described in the plaint schedule. The property which belonged to the predecessor-in-interest of the plaintiffs by virtue of document bearing No. 2858/89, does not refers to any way. The way which is referred to in the document bearing No. 3220/1115 and 3039/1997 is not the petition schedule way. A way which was allotted to take vehicles to the property of the 2<sup>nd</sup> defendant temporarily, is now demanded by the plaintiffs and it is illegal. The septic tank situates in the plaint

schedule property, having more than 20 years of oldness. The way was being used for more than 40 years, as stated is misleading and false. Rajan Balakrishnan had obtained money by reciting rights which was not vested with them. There is no prima facie case in favour of the plaintiffs. The balance of convenience and the question of irreparable injury is in favour of the respondents. Hence, the petition is to be dismissed.

3. From the above rival contentions, the following points are settled for consideration:-
  1. Have the petitioners made out a prima facie case?
  2. Is the balance of convenience in favour of the petitioners?
  3. Will the petitioners be put to irreparable loss and injuries in the event of not granting the temporary injunction order?
  4. Order as to costs?
4. Heard both sides. From the side of the petitioner Ext. A1 to A4 documents were marked and from the side of the respondents Ext. B1 to B3 documents were marked. Ext. C1, C1(a) and C2, C2(a) documents were also marked.
5. **Point Nos. 1 to 3:-** The commissioner had inspected the property on 19.09.23 and submitted a report whereby, it is reported that the commissioner had noted the way in existence and the width of the way is also noted. As per Ext. C1, C1(a), it is reported that, electric lines, telephone cables etc., were drawn through the posts, that is noted in the boundary of the way noted. It is reported that, the plaint schedule way is not lying demarcated from the property of the defendants. At the same time, there was a kayyala noted on the beginning of the disputed way on its western side. Also, vehicles

are noted to be parked, on the side of the way facing to the public road. It is also reported that, the parking of vehicles caused inconvenience to the vehicular transportation through the way noted. Pipe lines were seen dumped and also, it is noted that the soil in that place was seen to be loosened, due to the drawing of pipe lines. On certain portion, the way is seen demarcated with boundaries and as per the commission report, it can be seen that, the way is being used several families prime facie.

6. According to the respondent, the way was formed as he permitted the 2<sup>nd</sup> respondent to take vehicles through his property. But, as per Ext. C1, C1(a) commission report, beyond the property of the defendant also, the way is seen to be continuously proceeded towards south. On the other hand, the case of the defendant and the rights of the parties, can only be adjudicated, on measuring the property at a later stage and on adjudication of the suit, by elaborated trial. So, at this juncture, from Ext. C1, C1(a), it can be seen that, due to the parking of heavy vehicles, the access through the way, is obstructed from Ext. C1(a) prima facie and it can be seen that there is a way in existence, even if, the case of the respondent, the way was formed as he permitted to take vehicles through his property to the 2<sup>nd</sup> defendant's property.
7. We have already referred to the way is seen to be continuing as per Ext. C1, C1(a). The commissioner who had again inspected the property, and filed commission report on 14.11.23 in which the safety tank is noted and also the house of the defendants. The said commission report dated 14.11.23, is marked as Ext. C2, C2(a) for the purpose of this petition. In Ext. C2, C2(a), it is reported that, there is no other way to have transportation to the plaintiffs property, other than the disputed way. From Ext. C1, C1(a) and Ext. C2, C2(a), it can be seen that, there is a way in existence, though it

is demarcated from the defendants property. Whether the plaintiff schedule way is public way or not is a matter of evidence. On the other hand, as the existence of the way is noted, it can be seen that, there is a prima facie strong case in favour of the petitioner.

8. As per Ext. C2, C2(a), it can be seen that, there is a safety tank placed in the plaintiff schedule way or on the eastern side of the plaintiff schedule way, which is noted to be having about more than 20 years of oldness. At the same time, the way is not demarcated with boundaries through out. On the other hand, there are boundaries on certain portions as per Ext. C1, C1(a) and C2, C2(a). So, it is not possible to see the way to be a public way or not, without evidence. So, unless and until, the way is established to be a public way, the drawing of pipe lines, through the same cannot be permitted. If so, permitted and the suit is decided in favour of the defendant, then the respondent would suffer irreparable injury. If the pipe lines are drawn through their property, which would cause much inconvenience in removing those pipe lines, placed beneath the soil, if it is found that portion of property belonged to the defendant, at a later stage. So, as far as the temporary injunction sought for regarding the drawing of pipe lines are concerned, the balance of convenience and irreparable injuries is in favour of the respondents. On the other hand, as far as the right of vehicular transportation through the disputed way is concerned, the irreparable injury and balance of convenience is in favour of the petitioners. So, in that matter of view, I am of the opinion that the petitioners are entitled for the relief of temporary injunction in part.
9. **Point No. 4**:- Considering the nature and circumstances of the case, the parties are directed to bear their respective costs.

10. In the result, the petition is allowed in part as follows:-

The respondents or their men are restrained from obstructing the vehicular transportation through the plaint schedule way by parking the vehicles like JCB, tipper, lorry etc., by encroaching into the plaint schedule way as identified by the commissioner as per Ext. C1, C1(a).

Dictated to the confdl. asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 23<sup>rd</sup> day of November, 2023.

Sd/  
ALSHARI.A,  
MUNSIFF.

### **APPENDIX**

#### **Petitioners Exhibits:-**

- |     |           |  |
|-----|-----------|--|
| A1. | 24.8.2011 | Copy of Sale Deed No.4487/2011 of SRO, Perumbavoor.          |
| A2. | 22.2.2018 | Copy of Sale Deed No.713//2018 of SRO, Perumbavoor.          |
| A3. | 2.1.2013  | Copy of settlement Deed No.48/2013 of SRO, Perumbavoor.      |
| A4. | 24.8.2011 | Certified copy of Sale Deed No. 4490/11 of SRO, Perumbavoor. |

#### **Respondents Exhibits:-**

- |     |           |  |
|-----|-----------|--|
| B1. | 16.9.1989 | Copy of Sale Deed No. 2858/1989 of SRO, Perumbavoor.   |
| B2. | 17.1.1997 | Copy of Release Deed No.3039/1997 of SRO, Perumbavoor. |

B3. 15.8.1114 ME Copy of partition deed of SRO, Perumbavoor.

**Court Exhibits:-**

C1 & 19.9.2023 Commission report and Rough sketch submitted  
C1(a) by Advocate Commissioner Sri. T.K.Joy.

C2 & 14.11.2023 Commission report and Rough sketch submitted  
C2(a) by Advocate Commissioner Sri. T.K.Joy.

**Witness Exhibit:- Nil**

**Witness both sides:- Nil**

Id/-  
Munsiff  
(By Order)

// True Copy //

Sd/-  
Junior Superintendent.

jpp/-  
Compd.by : mev.

Copy of Order in I.A.No.2/2023 in

O.S.No.282/2023

Dated : 23.11.2023