

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY.

Present:- Smt.Dr.Amritha.T, Munsiff.

Saturday, the 16<sup>th</sup> day of March, 2024/the 26<sup>th</sup> day of Phalguna, 1945.

**I.A.02/2020 in O.S.66/2020**

Between

Petitioner/Plaintiff:-

Sulochana, aged 73 years,  
W/o.Ravindran,  
Beena Sadanam,  
Kotaykkupuram muri,  
Clappana.PO,  
Kulasekharapuram village,  
Karunagappally taluk

By Adv.Sri.Thazhava Unnikrishnan,  
Adv.Sri.Sajju Kiran and  
Adv.Smt.S.Sreelatha (Addl.vakkalath)

And

Counter petitioners/  
Defendants:-

1. Shiji, aged 40 years,  
S/o.Sadanandan,  
Vazhatharayil veedu,  
Kottakkupuram muri,  
Clappana.PO,  
Kulasekharapuram village,  
Karunagappally taluk
2. Sajeev, aged 51 years,  
S/o.Yesodharan,  
Puthenveetiltharayil,  
Kottakkupuram muri,  
Clappana.PO,  
Kulasekharapuram village,  
Karunagappally taluk
3. Beena, aged 55 years,  
W/o.Kamalan, Beena Bhavan,  
Kottakkupuram muri,  
Clappana.PO, Kulasekharapuram  
village, Karunagappally taluk
4. Radhamani, aged 60 years,  
W/o.Vikran, Chaprayil veedu,

Kottakkupuram muri,  
Clappana.PO, Kulasekharapuram  
village, Karunagappally taluk

5. Sumangala, aged 60 years,  
Chaprayil veedu,  
Kottakkupuram muri,  
Clappana.PO, Kulasekharapuram  
village, Karunagappally taluk
6. Ponnamma, aged 60 years,  
W/o.Sivanandan,  
Kavintetharayil,  
Kottakkupuram muri,  
Clappana.PO, Kulasekharapuram  
village, Karunagappally taluk
7. Omanakuttan, aged 40 years,  
S/o.Ambujakshan,  
Puthenveetiltharayil veedu,  
Kottakkupuram muri,  
Clappana.PO, Kulasekharapuram  
village, Karunagappally taluk
8. Arunsethu, aged 30 years,  
S/o.Sethu, Puthenveetiltharayil,  
Kottakkupuram muri, Clappana.PO,  
Kulasekharapuram village,  
Karunagappally taluk
9. Sindhu, aged 40 years,  
D/o.Soman,Chaprayil veedu,  
Kottakkupuram muri, Clappana.PO,  
Kulasekharapuram village,  
Karunagappally taluk
10. Saraswathy, aged 70 years,  
W/o.Kochukannan, Udhayabhavan,  
Kottakkupuram muri, Clappana.PO,  
Kulasekharapuram village,  
Karunagappally taluk

11. Secretary,  
Kulasekharapuram Grama panchayath

By Adv.Sri.S.Sreekumar for D1 to D11

This petition filed under Order 39 Rule 1 of the Civil Procedure Code for temporary injunction.

This petition having been finally heard on 11.03.2024 and on 16.03.2024 , the court passed the following.

### **ORDER**

This interlocutory application is filed by the petitioner/original plaintiff against respondents / original defendants under O.XXXIX Rule 11 CPC. Parties are referred to as the “plaintiff” and the “defendants”, as they appear in the suit

2. Averments in the petition are as follows:- The plaint A,B and C schedule properties are lying as a single plot. The C schedule pathway lies in between A and B schedule properties. The plaintiff is the absolute owner in possession over plaint A,B schedule properties as per sale deed No.3732/13. The way was provided temporarily to the use of 1<sup>st</sup> respondent for ingress and egress. He was not permitted to use the C schedule for vehicular access. Neither the 1<sup>st</sup> defendant nor any other persons have any right over C schedule pathway. The pathway passes nearby the kitchen of plaintiff’s property as well as in between his bathroom and toilet. The frequent use of pathway by strangers is causing much nuisance to the women and children in the house of plaintiff property. The plaintiff is willing to part with 90 cm width of way on the southern side of B schedule property for the ingress and egress of the 1<sup>st</sup> defendant in order to enclose the pathway. The 1<sup>st</sup> defendant resides on the western side of A,B and C schedule properties. The 1<sup>st</sup> defendant has an alternative

road on his western side of the property which will reach till his front yard. Now the 1<sup>st</sup> defendant parks his car in the car-porch. The defendants 2 to 10 reside on the western side of the property of the 1<sup>st</sup> defendant. They are using a road for their vehicular access. They have no right over C schedule pathway. The 11<sup>th</sup> defendant is Kulasekharapuram Grama Panchayath Secretary. The 11<sup>th</sup> defendant by invoking the provision under section 41 of Disaster Management Act issued a notice to the son of plaintiff to cut and remove a valuable coconut tree standing in the middle of 'A' schedule property. 11<sup>th</sup> defendant has no right what so ever to issue such a notice. The plaintiff has permitted the 1<sup>st</sup> defendant to use the pathway considering the blood relationship only. If the coconut tree is cut and removed it would cause irreparable injury to the plaintiff. The plaintiff has done nothing in the pathway likely to infringe the right of 1<sup>st</sup> defendant. The defendants have no right to create a new pathway through A,B and C schedule property and also has no right to alter its lie and nature in any manner. The defendants 1 to 10 threatened the plaintiff by constructing a new pathway in the C schedule by cut and removing the coconut tree and that they would destroy the drainage for that purpose. The petitioner got reliable information on 08.02.2020 from one Sivarajan that the defendants are conspiring to commit the above trespass. Hence this petition is filed.

3. Defendant no.11 filed objection as follows:-. The plaintiff has filed the suit without giving notice to 11<sup>th</sup> defendant, hence the suit is not maintainable against Panchayat. A notice was issued to the plaintiff under section 41 of Disaster Management Act, therefore the plaintiff cannot seek a temporary injunction against

D11. A petition was filed submitted before D11 by the defendants Nos. 1 to 10 against the plaintiff on 16.10.2019. D11 has issued notice after inspecting the property. On inspection D11 has been satisfied that the property is in possession and ownership of the son of plaintiff. A coconut tree is standing in the pathway in a dangerous manner that would threaten the life of D1 to D10 who are using the pathway. Besides, a waste pipe has been erected by the plaintiff to pump waste water from the kitchen. Though notice was issued to the son of plaintiff they were not ready to solve the issue. Therefore a direction was given to the son of plaintiff under section 41 of Disaster Management Act to cut and remove the coconut tree. Since he was not ready to obey the direction, the panchayat committee held on 15.02.2020 has decided to file an FIR against him. Accordingly, on 18.04.2020 a letter has been sent to Karunagappally Police Station SHO to file an FIR against him. Therefore the petition is to be dismissed.

4. This court has considered the objection of D1 to D10 and an order was passed on 04.03.2020, against which an appeal has been preferred to Hon'ble Sub Court, Karunagappally. By order dated 14.11.2023, the Hon'ble Sub Court restrained defendant No. 2 to 10 temporarily from using C schedule by foot or vehicles and from committing any waste therein. As regards 11<sup>th</sup> defendant the matter was remanded to give opportunity to D11 and dispose IA 02/2020.

5. Upon the rival contentions, the following points are raised for consideration.

(i) *Is the plaintiff entitled to an order of temporary injunction against D11 as prayed for?*

(ii) *Order as to relief and costs?*

6. No oral or documentary evidence were adduced from either side.

7. Heard.

8. Point No. (i):-- Both the petitioner and D11 has categorically stated that notice was issued to the son of plaintiff, the original owner of the plaint schedule properties by invoking the power under section 41 of Disaster Management Act. Apparently, there is a specific bar to entertain a suit against any act done by the authority concerned in pursuance of any power conferred under the Disaster Management Act. Sec.71 of the Act states as follows:-

*No Court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by, or in relation to its functions, by this Act.*

9. Section 41 of the Act deals with functions of the local authorities. Sub Clause (a) to (d) of Clause (1) to S. 41 of the Act speaks about the functions of Local Authority in case of Disaster and clause (2) of the section states that the local authorities may take such other measures as may be necessary for the Disaster Management. What is Disaster Management is defined in Clause (e) of Sec.2 of the Act. *It means a continuous and integrated process of planning, organizing, co-ordinating and implementing measures which are necessary or expedient for- (i)*

*prevention of danger or threat of any disaster; (ii) mitigation or reduction of risk of any disaster or its severity or consequences; (iii) capacity-building; (iv) preparedness to deal with any disaster; (v) prompt response to any threatening disaster situation or disaster; (vi) assessing the severity or magnitude of effects of any disaster; (vii) evacuation, rescue and relief; (viii) rehabilitation and reconstruction;*

10. The term Disaster Management is defined in clause (d) of the Sec.2 of the Act: *“disaster means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;*

11. Sec.239 of the Kerala Panchayath Raj Act,1994 empowers Village Panchayat to give notice to the owner of tree to cut or remove dangerous trees or prune hedges which is likely to fall and endanger any person. When there is specific provision in Kerala Panchayat Raj Act to deal with such a dangerous situation why D11 resort to section 41 of Disaster Management Act is not imaginable. The object of Disaster Management is to plan, organize, co-ordinate and implement measures in situation of disaster only. The term disaster is already defined above. It is evident from the petition and from objection filed by D11 that only 10 persons are using the pathway other than plaintiff. A coconut tree in the opinion of D11 is standing in the pathway likely to threaten life of D1 to D10. Afraiding that the coconut tree will fell

down at any time, a notice was issued by D11 not under section 239 of Kerala Panchayath Raj Act but under Disaster Management Act. During argument, the learned counsel for D11 quoted section 71 of Disaster Management Act to submit this court has no jurisdiction to entertain the suit against D11. The intention of D11 by issuing a notice under section 41 become vivid that they wanted to restrain the plaintiff from approaching this court to get a remedy. The purpose and object of the Disaster Management Act seems to be wrongly interrupted by D11. It is not an Act which can be invoked with the whims and fancies of D11 to harass public. Anyway, the records and submissions available before this court indicate the notice issued by D11 is one under the Disaster Management Act. Hence this court is bound by the provisions of Disaster Management Act. The only remedy available to the plaintiff is to approach either Hon'ble Supreme Court or High Court to get a relief against D11. Hence point No. 1 is found against the plaintiff.

12. Point no.(ii):-

In the result, IA dismissed against D11.

*(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 16<sup>th</sup> day of March, 2024).*

Sd/-  
Dr.Amritha.T,  
Munsiff.

Appendix:- Nil

Id/-  
Munsiff

//True Copy//

Munsiff

Copied by : Jyothilekshmy.R  
Compared by :