

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY.

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

Thursday, the 25<sup>th</sup> day of January, 2024/the 05<sup>th</sup> day of Magham, 1945.

**I.A.01/2023 in O.S.169/2023**

Between

Petitioners/Plaintiffs:-

1. C.V.Balamohan, aged 72 years,  
S/o.C.V.Vasu, Cherumannel veedu,  
Maruthoorkulangara south muri,  
Karunagappally village,  
Karunagappally taluk,  
Kollam District
2. Santha.N, aged 65 years,  
W/o.C.V.Balamohan,  
Cherumannel veedu,  
Maruthoorkulangara south muri,  
Karunagappally village,  
Karunagappally taluk,  
Kollam District
3. Sachin.R, aged 33 years,  
S/o.Rajeevan, Nambisseril veedu,  
Maruthoorkulangara south muri,  
Karunagappally village,  
Kollam District

By Adv.Sri.Sethukrishnan S

And

Respondent/  
1st Defendant:-

Pramod @ Kuttan, aged 46 years,  
S/o.Sivarajan, Ambadi kizhakkathil,  
Nambaruvikala muri,  
Karunagappally  
[Pramod Distributers KP/VII/968,  
Alumkadavu]

By Adv.Sri.K.Vipin

This petition filed under Order XXXIX Rule 1 of CPC for injunction.

This petition having been finally heard on 18.01.2024 and on 25.01.2024, the court passed the following.

### **ORDER**

This interlocutory application is filed under Order 39 Rule 1 Code of Civil Procedure, 1908, by the plaintiff/petitioner. The parties will be referred to as shown in the original suit.

2. The averments in the petition in brief are as follows:-- This petition is filed by the 1<sup>st</sup> plaintiff. 2<sup>nd</sup> plaintiff is the wife of 1<sup>st</sup> plaintiff and the 3<sup>rd</sup> plaintiff is a person from the locality. According to the plaintiffs, the suit is filed for restraining the defendants from narrowing the plaint B schedule pathway and from committing any waste therein. The plaintiffs No.1 and 2 are in possession of property comprised in resurvey 76/2010 in block no 10 of Karunagappally Village with an extend of 10.21 ares. Out of it, the western side of the property has been alienated to the 3<sup>rd</sup> defendant by virtue of a sale deed and the remaining plot with a house therein is in possession of plaintiff 1 and 2, scheduled as plaint A in the plaint. The 2<sup>nd</sup> defendant is the Tourism Project Officer of Kollam DTPC. He intended to construct a Green Channel Resort in the year 1996- 1997 in the Kayal. In order to construct a pathway to enter the building he purchased land from plaintiffs 1 and 2, one Babu from Valiya Padickal, Sishupalan of Thayyil Thara and Padanayil Prashanth. This property

lies on the eastern side of TS Canal. The irrigation department has constructed a wall to demarcate the way with TS Canal. The PWD had constructed a road in the middle of said pathway. The said road commence from Alumkadavu Jetty and ends in the plaint B schedule property. It has 160 meter length and 8.5 meter width. The functioning and management of 2<sup>nd</sup> defendant was entrusted to 1<sup>st</sup> defendant. On 25.03.2023, without license the 1<sup>st</sup> defendant started doing illegal construction work in the plaint B schedule pathway in order to narrow its width. He is doing construction work on the western side of B schedule pathway with an extend of 4 1/2 meter width by using cement and bricks. The illegal construction work is scheduled as plaint C . Moreover, on the southern side of B schedule, where the pathway ends, the 1<sup>st</sup> defendant put up pillars in *Kayal* and constructed a building over it. In order to enter the building he levelled the *Kayal* on the northern and eastern side. At present the B schedule pathway and the levelled portion is lying together. He also levelled around 20 cents of *Kayal* which is scheduled as plaint D.

3. The plaintiffs have constructed a gate in the plaint A schedule property to enter into B schedule pathway. There is boundary and gate to separate plaint A and D schedule properties. The shop room in the A schedule property faces west. The owners on the northern side of plaint A schedule property named Prashanthan has also constructed a gate facing B schedule pathway. Since 1998 onwards the plaintiffs, Prashanthan, Sisupalan and Babu are sharing the boundary of plaint B schedule property and they are

using the B schedule uninterruptedly and freely for more than 20 years. Thereby they have easement by prescriptive right over B schedule pathway. Defendant Nos. 2 to 4 have opened the pathway for public use since 1998. Due to the illegal construction work in the B schedule pathway the easement right of plaintiffs have been obstructed. Now the 2<sup>nd</sup> defendant is conducting engagement, marriage functions, and other programs in the resort. Moreover they rent rooms of resort to people. It is used for luxury boat service through *Kayal* for foreign tourist. The 1<sup>st</sup> defendant has no right to do the above. If people more than 500 is gathered there is possibility of danger to their life. The C schedule construction is in such a manner to cover the CC TV erected by the Karunagappally Municipality to protect canal. On 23.06.2023, 1<sup>st</sup> defendant was requested to stop the construction activities. Because of political and financial backing he did not do so and the construction work is in progress. The 1<sup>st</sup> defendant has no right to do the construction work without taking license from authorities concerned. Hence this petition is filed.

4. 1<sup>st</sup> defendant filed objection as follows:- According to him, the intention of the plaintiffs is to get financial gain by threatening the DTPC and the persons who rent its room from him. No action has been done by 1<sup>st</sup> defendant to call it as a public nuisance. The property is purchased by the DTPC on which plaintiffs have no right. The plaintiffs have no right to obstruct DTPC from doing any action to attract people to visit the above resort. The plaintiffs themselves admitted there is a road of 4 1/2 meter. He denied that the road has

an extend of 8 1/2 meter width. According to him, from 8 1/2 meter width of land the extend of road is only 4 1/2 meter . The remaining land on both sides are used for beautification. The DTPC has not permitted anyone including plaintiffs to use the pathway as public one. The B schedule way exclusively belongs to the DTPC. The plaintiffs have no right either on plaint C schedule or D schedule. The plaintiffs have not approached any authority concerned against the DTPC if they have any objection against the construction of work. Therefore plaint B schedule is falsely described.

5. The 1<sup>st</sup> defendant denied any right of easement claimed by the plaintiffs. There is a way on the eastern side of plaintiffs property for ingress and egress, and they have never enjoyed pathway belong to the resort. According to the 1<sup>st</sup> defendant, the construction work is in accordance with law and they have obtained permission from concerned Municipality, Revenue officials, etc. Therefore the prayer of danger in the resort is a cooked up story. Therefore the petition is to be dismissed.

6. On the basis of the above , the only point is to be raised for consideration is:-

Whether the plaintiff is entitled to get an interim injunction against the defendants as prayed for ?

7. From the side of plaintiff Ext.A1 marked. No oral or documentary evidence were adduced from the side of defendant. Ext.C1 marked

8. Heard.

9. The point :-- The case of the plaintiffs is that the 2<sup>nd</sup> defendant is the Green Channel Resort represented by the Secretary, DTPC, and is run by 1<sup>st</sup> defendant. According to plaintiffs, the 2<sup>nd</sup> defendant has purchased land from him and other localities to create a pathway to proceed towards the building/ resort to be constructed by the 2<sup>nd</sup> defendant, adjacent to plaint A schedule property. Later a road was constructed in the plot with 8.5 meter width and 160 meter length, called as B scheduled way. The western side of plaint B schedule is TS canal. The irrigation department has constructed protective wall on the western side. The plaintiffs and other localities are using and enjoying the B schedule freely and uninterruptedly for more than 20 years, hence has easement by prescriptive right over it. Matter being so, the 1<sup>st</sup> defendant who is currently managing the 2<sup>nd</sup> defendant has started constructed work in the plaint B schedule. The illegal construction is scheduled as C in the plaint. Thereby, the right of plaintiffs are restricted, hence approached this Court. On the other hand, the 1<sup>st</sup> defendant argued that the plaintiffs have no right whatsoever on the plaint B schedule pathway. According to him, the road has only 4.5 meter width. The remaining portion on both sides are used for beautification purpose. Ext. C1 reports the existence of plaint C schedule in the B schedule way. The commissioner has reported that he had seen construction activities in the B schedule way. The reports says 02 feet height of gravel has been unloaded to create a boundary. The C schedule starts from northern side of TS Canal and proceeds to southern side of D schedule property. It has total 150 meter length

and 4.5 meter width. The fact that the construction work has been done in the pathway has not been denied by the 1<sup>st</sup> defendant. But his case is that it is exclusively in possession of DTPC, where the plaintiffs have no right whatsoever. Pertinently, the commissioner has also noted a pathway passing through the eastern and western side of the plaintiff A schedule property. It says the B schedule lies on the western side of A schedule. A gate has been built in the A schedule to enter the B schedule pathway. Thus the Ext C1 report concretizes the fact that the plaintiffs are using the B schedule pathway. Therefore a blind eye cannot be given to the contention of the plaintiffs as to right of easement over B schedule. Moreover, the question of easement right can be decided after trial only.

10. Another contention raised by the plaintiffs is that the C schedule construction work is done without obtaining valid license or permission from the authorities concerned. The plaintiffs relies on Ext.A1 report issued by Municipality, Karunagappally to substantiate their contention. The report says that permission can not be granted for construction of the building and the same has been constructed against rules. Moreover, against the order of Green Tribunal waste have been dumped into TS Canal from the building. Therefore Ext.A1 suggest the resort cannot be constructed in the property of DTPC and if any building is constructed it is against the rules. That implies the 1<sup>st</sup> defendant has no right to construct the C schedule in the B schedule pathway for the purpose of resort. From the side of 1<sup>st</sup> defendant no documents has been

produced to prove that necessary license has been obtained by him to construct the building, though the learned counsel vehemently refuted the allegation of illegal construction. Based on the above observation, this court is of the view that all further construction work in the plaint B schedule has to be stopped till the adjudication of suit. Since the construction work has already been commenced in the B schedule there is no point in restraining the 1st defendant from doing any activities in the pathway, but he can be directed to maintain status quo. Therefore the 1<sup>st</sup> defendant is ordered to maintain status quo. IA closed.

*(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 25<sup>th</sup> day of January, 2024).*

Sd/-  
Dr.Amritha.T,  
Munsiff.

### Appendix

Exhibits marked on the side of the plaintiff:-

A1 - TP-2776/23 - Report issued by Municipality, Karunagappally

Court Exhibits:-

C1 - Mahazar report and rough sketch executed by  
Commissioner Advocate Pradeepkumar.P

Id/-  
Munsiff

//True Copy//

Munsiff

Copied by : Jyothilekshmy.R  
Compared by :