

**IN THE COURT OF ADDL. DISTRICT JUDGE -1  
KOTTAYAM**

Present:- Smt. Lilly K, Addl. District Judge-I

Tuesday 31<sup>st</sup> day of March, 2026  
10<sup>th</sup> Chaithra, 1948

**CMA Nos. 56/2025 & 57/2025**

**CMA 56/2025**

***Appellants /Cr.***

***Petitioners/Defendants:***

**1. Anandhan** , aged 65 years,  
S/o. Late Raghavan residing at  
Kurichiyil House,  
Kannukettisseri Muri  
T V Puram Village,  
Vaikom Taluk, T V Puram P O  
Pin- 686606.

**2. Kunjumani**, aged 66 years,  
S/o. Late Kuttaneran, residing at  
Kurichiyil House, Kannukettisseri  
Muri, T V Puram Village, Vaikom Taluk  
T V Puram P O Pin- 686606.

**3. Arun**, aged 33 years, S/o. Raju  
residing at Kurichiyil House  
Kannukettisseri Muri T V Puram  
Village, Vaikom Taluk,  
T V Puram P O, Pin- 686606.

**4. Ranesh**, aged 27 years,  
S/o. Maniyan, residing at  
Kurichiyil House  
Kannukettisseri Muri  
T V Puram Village, Vaikom Taluk  
T V Puram P O, Pin- 686606.

**5.Sudheesh @ Vavachi**

aged 30 years, S/o. Late Sasi  
residing at Kurichiyil House  
Kannukettisseri Muri  
T V Puram Village, Vaikom Taluk  
T V Puram P O ,Pin- 686606.

**6.Nithin**, aged 32 years,

S/o. Aniyappan, residing at  
Thevarmukkam House  
Kannukettisseri Muri  
T V Puram Village,  
Vaikom Taluk T V Puram P O  
Pin- 686606.

**7.Binoy**, aged 40 years,

S/o. Late Baby, residing at  
Kurichiyilthara House  
Kannukettisseri Muri  
T V Puram Village, Vaikom Taluk  
T V Puram P O, Pin- 686606.

**8.Amal**, aged 33 years, S/o. Ajayan

residing at Mankavilchira House  
Kannukettisseri Muri  
T V Puram Village, Vaikom Taluk  
T V Puram P O,Pin- 686606.

**9. Abhilash**, aged 33 years,

S/o. Anirudhan residing at  
Kurichiyil House  
Kannukettisseri Muri  
T V Puram Village, Vaikom Taluk  
T V Puram P O, Pin- 686606.

**(By Adv. Sajan A Varghese )**

***Respondent/Petitioner/  
Plaintiff-***

**Gireesh**, aged 49 years,  
S/o. Late Thankappan, residing at  
Kurichiyil House,  
Kannukettisseri Muri,  
T V Puram PO, Pin- 686606.  
**(By Adv. Muraleedharan P K)**

**CMA 57/2025**

***Appellants  
/Petitioners/Defendants:***

**1. Anandhan** , aged 65 years,  
S/o. Late Raghavan residing at  
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**(By Adv. Sajan A Varghese )**

***Respondent/Cr.Petitioner/  
Plaintiff-***

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Kurichiyil House,  
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**(By Adv. Muraleedharan P K)**

**Civil Miscellaneous Appeal filed under Section 104 read with XLII Rule 1(r) of the Code of Civil Procedure 1908 challenging the orders in IA No.1/2025 and IA No.5/2025 in O.S. No.22/2025 dated 27.08.2025 of Munsiff's Court, Vaikom.**

**Between****I.A 1/2025****Petitioner/Plaintiff :**

**Gireesh**, aged 49 years,  
S/o. Late Thankappan, residing at  
Kurichiyil House,  
Kannukettisseri Muri,  
T V Puram PO, Pin- 686606.  
**(By Adv. Muraleedharan P K)**

**And:-****Cr.Petitioners/Defendants:-**

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T V Puram Village, Vaikom Taluk,  
T V Puram P O, Pin- 686606.

**4.Ranesh**, aged 27 years,  
S/o. Maniyan, residing at  
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**8.Amal**, aged 33 years, S/o.

Ajayan residing at Mankavilchira  
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T V Puram Village, Vaikom Taluk  
T V Puram P O,Pin- 686606.

**9. Abhilash**, aged 33 years,

S/o. Anirudhan residng at  
Kurichiyil House  
Kannukettisseri Muri  
T V Puram Village, Vaikom Taluk  
T V Puram P O, Pin- 686606.

**(By Adv. Subhash Chandran)**

**I.A 5/2025****Petitioners/Defendants:**

**1.Anandhan** , aged 65 years,  
S/o. Late Raghavan residing at  
Kurichiyil House,  
Kannukettisseri Muri  
T V Puram Village,  
Vaikom Taluk, T V Puram P O  
Pin- 686606.

**2. Kunjumani**, aged 66 years,  
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T V Puram P O Pin- 686606.

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T V Puram PO, Pin- 686606.

**(By Adv. Muraleedharan P K)**

This Civil Miscellaneous Appeal having been finally heard on 07.03.2026 and the court on 31.03.2026 delivered the following:-

### **COMMON JUDGMENT**

Civil Miscellaneous Appeals filed by defendants under Order XLIII Rule 1 of CPC against order dated 27.08.2025 in IA No.1/2025 and IA 5/2025 in OS No.22/2025 of Munsiff's Court, Vaikom.

2. Respondent/plaintiff filed the suit for fixation of boundary, separating Item No.1 and 3 property, by limiting the width of Item No.3 pathway to 3 feet, in east-west direction on the southern side of Item No.1 property, for permanent prohibitory injunction and mandatory injunction. Plaintiff schedule Item No.1 property and building therein belonged to the plaintiff. It was alleged that the property had well-defined boundaries and Item No.2 pathway having width of 10 feet was the access to Item No.1 property from the Theeradesa road. Plaintiff schedule Item No.3 pathway, having width of 3 feet forming the southern portion of Item No.1 property was used by defendant No.7 and others as access to their properties. Plaintiff alleged that defendants requested to surrender southern portion of Item No.1 property, for widening the pathway to a width of 10 feet. Plaintiff demanded ₹2.50 lakhs for the land. Defendants thereafter requested for construction of pathway having width of 14 feet through the southern portion of Item No.1 property and there arose dispute. Defendants forcibly attempted to construct pathway by widening Item No.3 without the consent of

plaintiff and hence the suit was filed. Plaintiff alleged that defendants had alternate pathway to their property (scheduled as Item No.4) and defendants dumped soil in Item No.3 pathway to widen the way. Plaintiff sought permanent prohibitory injunction and mandatory injunction to remove the soil dumped in Item No.3. IA No.1/2025 was filed by plaintiff seeking temporary injunction restraining defendants from committing trespass to Item No.1 property and from widening Item No.3, beyond 3 feet.

**3.** Defendants filed objection, contending that the construction of road was started during October 2020 and it was completed in February 2021. It was surrendered to the Panchayat by signing surrender form. There was pathway through the middle portion of the plaintiff's property. It was decided that a pathway will be constructed through the southern side and a pond in the property will be reclaimed. After constructing the pathway, boundary was put up voluntarily by the plaintiff, separating the pathway. Bell mouth was also formed on the south - eastern side. An electric post was also shifted by the

committee at their expense during construction of pathway. Pond in the property of plaintiff was reclaimed at the expense of the committee as agreed to and it was decided that amount will be allotted from MLA Fund. There was no demand for pathway having width of 14 feet or to agree to pay ₹2.50 lakhs. When eighth defendant brought soil for construction of pathway, leading to his property, plaintiff demanded amount and tried to cause obstructions to the construction of road. As the useless pond was reclaimed by the committee, there was no agreement to pay cash to the plaintiff. The plaintiff filed suit in order to cause obstruction to the user of the road and defendants sought to dismiss the application.

**4.** IA No.5/2025 was filed by defendant No.1, seeking to vacate the order of injunction alleging that after constructing the road, it was surrendered to the Panchayat and was included in the Asset Register of the Panchayat. Thrinayamkudam-Vallapurackal road having width of 3 metre and length of 257 metres passes through the plaintiff's property and the suit was filed suppressing the

same. The user of the pathway was obstructed by the plaintiff under the guise of temporary order of injunction and defendant sought to vacate the injunction order.

5. Plaintiff filed counter affidavit to IA No.5/2025 by taking the same contentions in IA No.1/2025 and sought to dismiss the application. It was contended that the commissioner's report dated 18.02.2025 would reveal the real facts. There was no road through the plaintiff's property and the width of the pathway in existence was only 3 feet. Defendants violated the order of injunction and trespassed to Item No.1 property, to convert it as a public way. Plaintiff sought to dismiss IA No.5/2025.

6. The applications were heard and a common order was passed. IA No.5/2025 was dismissed and the order in IA No.1/2025 was made absolute.

7. Aggrieved by the orders, defendants filed the appeals. It was contended that plaintiff had signed surrender form given to the Panchayat and the road was included in the Asset Register of the Panchayat with the name 'Thrinayamkudam-Vallapurackal road' having width of

3 metres and length of 257 metres in Ward No.11 of T V Puram Panchayat, as revealed from Exhibit A1. It was contended that fund was allotted by the Panchayat as revealed from the documents produced by the defendants. Plaintiff suppressed material facts and the road vested in the Panchayat. Plaintiff objected when the eighth defendant started constructing a pathway starting from the Panchayat road to his house. As the road vested with the Panchayat, there was no requirement to prove the mode of acquisition by the Panchayat. Defendants sought to set aside the order in IA No.1/2025 and IA 5/2025 by allowing the appeals.

- 8.** Heard both sides and perused the records.
- 9.** The following points arise for consideration:
  - (1) Whether the plaintiff established possession to Item No.1 property?
  - (2) Whether Item No.3 pathway was part of Item No.1 property?
  - (3) Whether defendants tried to construct pathway through Item No.1 by widening Item No.3 pathway, as alleged?

- (4) Whether there is any ground to interfere with the impugned orders passed by the learned Munsiff?
- (5) Relief and costs.

**10. Point Nos.1 to 4:-** According to the learned counsel for defendants/ appellants, plaintiff had suppressed material facts. Plaintiff had participated in all the meetings of the road construction committee. The road was constructed using the funds of the Panchayat and it was vested in the Panchayat and included in the Asset Register as revealed from the documents produced. The dispute arose when defendant No.8 constructed a road to his house from Item No.2 property. There was no ground to restrain the defendants from using Item No.3 pathway which was a public pathway vested in the Panchayat and maintained by the Panchayat. Learned counsel sought to set aside the impugned orders by allowing the appeals.

**11.** According to learned counsel for plaintiff, no documents could be produced by the defendants to prove surrender of any portion of Item No.1 property for

construction of road by widening Item No.3 and to make it a pathway having width of 10 feet through the southern portion of Item No.1 property. According to the learned counsel, the original width of the pathway on the southern side was only 3 feet and there was agreement between the parties to pay ₹2.50 lakhs to the plaintiff for providing his land for construction of the road. The defendants did not pay any amount to the plaintiff. Panchayat cannot take over the property of a private citizen without complying the legal formalities especially when plaintiff did not sign any surrender form. According to the learned counsel, in case the injunction order is vacated, the defendants will construct pathway through Item No.1 property. Learned counsel sought to dismiss the appeals.

**12.** As per the commissioner's report, defendants No.3 to 7 had alternate pathway starting from Item No.4 pathway in east-west direction, which reaches the Theeradesa road. Item No.2 pathway was on the southern side of Item No.1 in north-south direction, which reaches Item No.1 property. According to the plaintiffs, Item No.3 was the portion of

Item No.1, passing through the southern side in east-west direction, which was used by defendants as access to their property. As per the commissioner's report, Item No.3 was found newly filled with soil to a width of 3 metres to make it a pathway and it had a length of 22 metres. There was no compound wall separating Item No.1 and 3. The existence of Item No.4 pathway having width of 3 feet which reaches the house of defendants No.1 to 5 was also reported by the commissioner. The commissioner's report revealed that Item No.3 pathway was newly constructed.

**13.** Plaintiff produced copy of complaints given during January 25, March 25 and May 25 to the police alleging that defendants attempted to construct pathway widening Item No.3 and in spite of the order of injunction, they made attempts to widen the same in violation of the injunction order. Plaintiff gave application to the Information Officer of the Panchayat, to furnish details as to whether the road was constructed using Panchayat fund and to furnish details regarding the surrender of properties by the owners. But Panchayat gave a reply that the information sought requires clarification.

**14.** Defendants produced documents to show that the defendant No.1 received ₹10,000/- for repairing Thrinayamkudam-Vallapurackal road to avoid inundation of water. Panchayat decided to allot ₹10,000/- on the application given by defendant. Documents produced by defendants reveal that the plaintiff participated in the meetings convened for construction of road, from 01.01.2021 onwards. Dispute was raised by the plaintiff only in the year 2024. Defendants also produced a copy of letter dated 01.10.2022 allegedly signed by plaintiff that he was ready to construct pathway having width of 3.10 metres to 4.30 metres towards the western side. Defendants also produced photocopies of some documents to show that agreements were entered into between the beneficiaries for providing land, for constructing the pathway. Copy of Asset Registrar showing the road having a length of 257 metres and width of 3 metres, was also abused. Copy of minutes and accounts of the committee from 01.10.2020 onwards were also produced which revealed that the plaintiff participated in the meetings and the dispute was raised by the plaintiff only on 28.10.2024,

when he demanded ₹2,00,000/-. Plaintiff did not participate in the meetings conducted after 28.03.2025.

**15.** A road vested in the Panchayat under Section 169 of the Panchayat Raj Act is a public road. A road maintained by utilising the funds of Panchayat is also a public road, as per the provisions of the Panchayat Raj Act. The question whether plaintiff had surrendered portion of Item No.1 property as per the provisions of the Panchayat Raj Act and Rules for construction of a road, is a matter to be decided by taking evidence, as found by the learned Munsiff. Panchayat cannot make use of any private property for construction of road without recourse to the provisions of Kerala Panchayat Raj (Acquisition and Disposal of Property) Rules 2005. The question whether southern portion of Item No.1 property was surrendered by the plaintiff for construction of a road or that any portion of No.1 property vested with the Panchayat under Section 169 of the Panchayat Raj Act is a question that has to be decided by producing documents during trial. Panchayat was not made a party to the suit. But the defendants can obtain

certified copies of records from the Panchayat to prove that there was voluntary surrender of any portion of Item No.1 property for construction of a road as per the Rules, by producing documents such as surrender form signed by the plaintiff and other records to show that Item No.3 was a road maintained by the Panchayat utilizing its funds. The question whether a private road can be treated as a public road vested with the Panchayat under Section 169 of the Panchayat Raj Act on the basis of its user by the public in the absence of statutory vesting, acquisition or voluntary surrender was settled in **Balakrishnan N. V. and others v. Secretary Peringome Vayakkara Grama Panchayat and others**, (2026 KER 19636). The defendants' placed reliance on **Mariam Beevi v. Secretary, Athirampuzha Grama Panchayat and others** [2015(3) KHC 199] to argue that it was a public road.

**16.** The contentions of the defendants is that there was agreement between the parties including the plaintiff to surrender portions of properties for constructing the road voluntarily. No records were produced to show that the

provisions and procedures under Section 178 of Panchayat Raj Act were followed before including the road in the Asset Register. No records were also produced by the defendants to show that any portion of Item No.1 property was included in the road described in the Asset Register. The records produced by defendants do not reveal any bilateral agreement between the Panchayat and the plaintiff in respect of any portion of Item No.1 property.

**17.** The commissioner's report revealed that Item No.3 pathway was found newly formed by dumping soil in the area. When defendants claim that it is a public pathway vested in the Panchayat under Section 169 of the Panchayat Raj Act, or that there was voluntary surrender of southern portion of Item No.1 property, for creation of a road, included in the Asset Register of the Panchayat, documents would be available to show that the Panchayat had spent any fund for construction of road or for maintenance of the road. The fact that one of the defendants received ₹10,000/- from the Panchayat for renovation of a road included in the Asset Register is not a ground to come to the conclusion

that there was voluntary surrender of land by the plaintiff and that the same vested in the Panchayat as per Rules.

**18.** Considering the facts and circumstances and in view of the report of the commissioner, the learned Munsiff came to the conclusion that there was no grounds to lift the order of injunction granted in favour of the plaintiff and the application to vacate the order of injunction was rejected.

**19.** Considering the facts and circumstances and in view of the age of Item No.3 way reported in Exhibit C1 commissioner's report, I find no grounds to interfere with the findings of the learned Munsiff and there is no ground to vacate the stay order granted in IA No.1/2025. Point Nos.1 to 4 are found accordingly against the appellants.

**20. Point No. 5:** In view of the findings in Point Nos.1 to 4, the appellants are not entitled to the relief. The appeals are found to be without any merit and are liable to be dismissed, and I do so.

**In the result,** both the appeals are dismissed. Considering the facts and circumstances, no order as to cost.

*Dictated to and typed by the Dictation Software, corrected and pronounced by me in open Court, on this the 31<sup>st</sup> day of March, 2026.*

*Sd/-*  
**Lilly K.**  
**Addl. District Judge-I**  
**Kottayam**

**APPENDIX- NIL**

*Id/-*  
Addl. District Judge-I

**//True Copy//**

Copied by:  
Compared by:

*Sd/-*  
**Lilly K.**  
**Addl. District Judge-I,**  
**Kottayam.**