

IN THE COURT OF THE MUNSIFF PALA

Present. Smt. GIGIMOLE P. K, Munsiff, Pala

Wednesday, 31st day of July 2024

9th day of Sravana 1946

I.A. No. 1/2024

In

OS. No. 39/2024

Petitioner/s
Plaintiff/s:-

Renjini Vijayakumar, aged 59 years,
W/o Vijayakumar, Karamayil House,
Cherppunkal P. O, Pullappally Kara,
Kidangoor Village, Meenachil Taluk.

By Advs. K. V. Vijayakumar, Remya R
& Ratheesh K. Mohan

Respondent/s
Defendant/s:

1. Anil S, aged 49 years, S/o Somasekaharan,
Kallechira House, Cherppunkal P. O.,
Pullappally Kara, Kidangoor Village,
Meenachil Taluk.
2. Biju K. S, aged 44 years, S/o K. P. Sukumaran,
Kanjirakkattu, Cherppunkal P. O.,
Pullappally Kara, Kidangoor Village,
Meenachil Taluk.
3. Aneesh A. R, aged 38 years, S/o Rajan,
Andanthuruthiyil, Cherppunkal P. O.,
Pullappalli Kara, Kidangoor Village,
Meenachil Taluk.
4. Luka Das, aged 66 years, S/o Uthuppu Luka,
Alunkal House, Cherppunkal P. O.,
Pullappalli Kara, Kidangoor Village,
Meenachil Taluk.
5. Mathukutty, aged 59 years, S/o Mathai,
Koickal House, Cherppunkal P. O.,
Pullappalli Kara, Kidangoor Village,
Meenachil Taluk.

6. Joy Zacharias, aged 69 years, S/o Zacharias, Madaliyankal House, Padinjattinkara P. O., Mariyidam Kara, Kidangoor Village, Meenachil Taluk.
7. Ambilikutty K. P, aged 34 years, D/o Parameswaran Nair, Kallechirayil House, Cherpunkal P. O., Pullappalli Kara, Kidangoor Village, Meenachil Taluk.
8. Alice Thomas, aged 67 years, W/o Thomas, Ramachanattu House, Cherpunkal P. O., Pullappalli Kara, Kidangoor Village, Meenachil Taluk.
9. Rajesh K. N, aged 47 years, S/o Narayanapanickar, Cheradiyil House, Cherpunkal P. O., Pullappalli Kara, Kidangoor Village, Meenachil Taluk.
10. S. Usha, aged 40 years, W/o Jayaraj, Kallechira House, Cherpunkal P. O., Pullappalli Kara, Kidangoor Village, Meenachil Taluk. Pin - 686584
11. Philipose Sebastian, aged 60 years, S/o Sebastian, Koickal House, Cherpunkal P. O., Pullappalli Kara, Kidangoor Village, Meenachil Taluk. Pin - 686584
12. Mini Jerom, aged about 45 years, Kidangoor Grama Panchayath 6th Ward Member, W/o Jerom, Thykkoottathil House, Cherpunkal P. O., Pullappalli Kara, Kidangoor Village, Meenachil Taluk.
13. Kidangoor Grama Panchayath, Rep. By Secretary Kidangoor Grama Panchayath. Kidangoor P. O., Kottayam Dist. Pin - 686572

D1,D2,D4 to D11 By Adv. Sony P. Mathew &
 Adv. Rajeev V. K
 D12& D13 By Adv. K. R. Sreenivasan &
 Adv. Thara S. Nair
 D3- Ex-parte

This petition having been finally heard on 30.07.2024 and the court on 31.07.2024 passed the following:-

ORDER

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

2. The averments in the petition are as follows. The petitioner is the owner in possession of plaint schedule property No.1. She obtained the property by virtue of the Sale Deed No.710/1999 Of SRO Kidangoor. The plaint schedule property No.1 lies within well defined boundaries on all sides. The plaint schedule property No.2 is a mud Road starting from Cherpungal-Palayam PWD Road. The said road has an extent of 80 m length and 10 feet width. The plaintiff is using the said road for ingress and egress to his residence. There are well defined boundaries on all sides of plaint schedule property No.2. The plaint schedule property No.3 is another mud road portion having an extent of 80 m and a width of 10 feet in continuation of plaint schedule property No.2. The residence on both sides of the said road are using the said portion to ingress and egress. The petitioner has no objection in such use of the said road portion by the defendant and the other inhabitants of the locality. But the petitioner is objecting to the change in the lie and nature of the plaint schedule property No.2. Things being so now the defendants are attempting to change the present condition of the

road by tarring the same without the consent or knowledge of the plaintiff. On 14/11/2023, some officials visited the plaint schedule property No.2. On enquiry it was informed that they are taking steps to widen the road and to tar the road. The plaintiff submitted that the plaint schedule property No.2 is his private property and no other person has any right to change the present nature of the plaint schedule property No.2. The said fact was intimated to the Panchayat on 15.11.2023. In the said circumstances, the respondents are to be restrained by a permanent prohibitory injunction from trespassing into the plaint schedule property No.2 concreting or tarring the said portion or by altering the lie and nature of the plaint schedule property No 2.

3. The respondents/defendants objected to the petition on the ground that the plaint schedule property No.2 is not a private road but a public road. The defendants and many other persons are using the said road. At the time of purchasing the plaint schedule property No. 2, the plaintiff was fully aware that the said land portion is a road used by the defendants and many other persons. The said road portion was periodically maintained by the public. The plaintiff has no right to obstruct the defendants from maintaining the said road by tarring or concreting the same. The panchayat has every right to maintain the said mud road into a tarred road. Hence the petition is to be dismissed.

4. Heard both sides.

5. No documents were marked from the side of the petitioner and respondent. Exts.C1 and C1(a) report of the Advocate Commissioner and rough sketch are marked for reference as court exhibits.

6. Points that arose for consideration are as follows:

1. Does the petitioner have a prima facie case?
2. Is the balance of convenience in favour of the petitioner ?
3. Will the petitioner be put to irreparable loss and injury if the injunction is not granted?
4. Is the petitioner entitled to get an order of temporary injunction as prayed for?
5. What is the costs?

7. **Point Nos. 1 to 5** :- In this case, the contention of the petitioner is that plaint schedule property is her private property and the defendants or any other person has no right over the said property. The attempt of the defendants to encroach plaint schedule property No.2, widen the same and to develop a tarred road is to be restrained. The petitioner has no objection in others including the defendants using the plaint schedule property No.2. In order to prove her right over the plaint schedule property, she produced copy of sale number 710/99 of SRO, Kidangoor. From Ext.C1 and C1(a) commission report and sketch

it is clear that the said land portion is a mud road. As per the said document, the plaint schedule property No.2 is owned by the plaintiff. The advocate commissioner who inspected the plaint schedule property also reported that the plaint schedule property No.2 is a road used by the plaintiff, the defendants and other persons residing on both sides of the said mud road. The contention of the respondent is that plaint schedule property No.2 was converted as a pathway long ago and the public, the defendants and the plaintiff are using the same as a pathway. The plaintiff purchased the said road portion knowing that it is a road used by the defendants and many other persons. Many people including the fourth defendant grand portion of their land for the purpose of creation of the road. A public road is created over the plaint schedule property No.2. Ever since the road is used by public as of right. They denied that the plaintiff is carrying out maintenance works to the plaint schedule property No.2. The plaintiff, the defendants and many other persons are using the plain schedule property as pathway and no one has a right to disturb the said use of the pathway by the defendants and the public. The defendants and the public have every right to maintain the road and to convert it into a cartable road. The plaintiff has no right to obstruct the defendants from using or maintaining the road. Admittedly, the 13th defendant Panchayat is taking steps to tar the plaint schedule property No.2. It is denied that

the Panchayat is taking steps to widen the road plaint schedule property No.2 is not a private property but it is a public road. Hence, the plaintiff has no right to get an order as prayed for.

8. In this case, it is clear that the plaint schedule property No.2 is a mud road portion and it is covered by the title deed of the plaintiff. The title of the plaintiff over the said portion is not disputed. The only dispute is with regard to the nature of the said pathway. The defendants denied the claim of the plaintiff that it is a private road. According to defendants it is a road used by public and the panchayat is now intending to maintain the said road by tarring the same. The plaintiff, defendants and many other people in the locality are using the same area as a pathway for a long time. The learned counsel for the plaintiff strongly argued that any attempt of the defendants to convert the present lie and nature of the plaint schedule property No.2 is to be restrained until the suit is disposed off. Since it is a private property, the Panchayat has no right to convert the same into a tarred road. If the injunction is not granted that may cause irreparable loss and injury to the plaintiff. If an order is passed, no prejudice will be caused to the defendants, hence, the balance of convenience is in favor of the plaintiff and the order may be passed considering the nature of the suit. From the material brought on record and from the submissions from both sides it is clear that the plaintiff has a prima facie case. Whether the

plaint schedule property No.2 is a public pathway or is a private road is a matter of evidence. At present all the parties are using the road without any obstruction and the plaintiff has no intention to obstruct the use of the road by the defendants. In such a circumstance this court is of the opinion that preserving the present lie and nature of plaint schedule property No.2 till the disposal of the suit is necessary. Considering the submissions this court is of the view that the present nature of the property is to be preserved and a status quo to be ordered.

In the result the petition is allowed in part as follows.

- 1) The petitioner/plaintiff and the respondents/defendants are directed to maintain the status quo until the disposal of the suit.
- 2) The parties shall bear their respective costs.

(Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open court on this the 31st day of July, 2024.)

Sd/-
GIGIMOLE P. K.
MUNSIFF

APPENDIX:

Exhibit marked for plaintiff:- Nil

Exhibits marked for Defendant: Nil

Court Exhibits:

C1	13.02.2024	Report prepared by Adv. Commissioner Aravind Sunil
C1(a)	13.02.2024	Sketch prepared by Adv. Commissioner Aravind Sunil

Third Party Exhibits : Nil

Witness Examined for Plaintiff: Nil

Witness Examined for Defendant/s : Nil

Id/-
MUNSIFF IN-CHARGE

//True Copy//

Typed By:Anu
Comp. By: Sherina

NIMMI K. K
MUNSIFF IN-CHARGE
For GIGIMOLE P. K
MUNSIFF

COPY OF ORDER
In
I.A 1/2024
In
O.S. No.39/2024
Dtd.31.07.2024