

IN THE COURT OF THE MUNSIFF OF PARAPPANANGADI
Present:- Smt. Aswani Nalin, Munsiff

Tuesday, the 27th day of May, 2025
the 6th day of Jyaishta, 1947

INTERLOCUTORY APPLICATION NO. 02 OF 2025
IN ORIGINAL SUIT NO: 100 of 2025

Between:-

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| 1. Shamsudheen Chirakkal, 44 years, S/o Moosa
Neduva amsom desom, Tirurangadi Taluk. | } | <u>Petitioners</u>
Plaintiffs |
| 2. Jaseera Chirakkal, 28 years, W/o Ansheer
P.O.Mankavu- 673007, Kozhikkode District. | | |
| 3. Fathima Chirakkal, 28 years, W/o Basheer
Attathangadi, P.O.Neduva- 676303. | | |
| 4. Mariyambeevee Chirakkal, 42 years, W/o Anwar Sadath
Kolathay House, Moozhikkal, P.O.Mamburam | | |

And:-

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|--|---|----------------------------------|
| 1. Suharabi.K.C, 54 years, W/o Pallikandi Hamzakoya | } | <u>Respondents</u>
Defendants |
| 2. Manzoor Pallikandi, 34 years, S/o Pallikandi Hamzakoya | | |
| 3. Sainaba.K.C, 52 years, W/o Basheer | | |
| 4. Ramla.K.C, 50 years, W/o Basheer
(Neduva amsom desom, Tirurangadi Taluk) | | |

This petition coming on the 26th day of May , 2025 for final hearing before me in the presence of Sri.K.P.Chandran, Advocates for the petitioners and of Sri.U.V.Surendaran and Sri. Arun.U.V, Advocates for the respondents and having stood over to this day for consideration and the Court passed the following:-

ORDER

This is the petition filed under Order 39 read with 151 of CPC.

2. The petition averments in brief are as follows:-

Petition B schedule way is the way which is being used by the petitioners to access their plaint A schedule property. The petition is filed for a mandatory injunction against obstruction of the said way. The petitioners have obtained petition A schedule property as per document No.2257/1992 Parappangadi SRO,

out of which a portion was transferred in favour of second plaintiff/petitioner by their father as per document No.1109/2020. Petition B schedule way is the way which is of 9 feet width which starts from the north western boundary of the petitioners' property and further proceeds to the western side and reaches the municipal road on the further west. Apart from plaint B schedule way there is no other way to access the municipal road. From the year 1992 when their father purchased the property the petitioners/plaintiffs and their predecessor had been using the plaint B schedule way and they have right of easement by prescription until it was blocked by the respondents. Plaint B schedule property had been the only way to access the plaintiff's and defendant's property from time immemorial. But as per new Re-survey plaint B schedule property has been given separate subdivision and is included as puramboke and is shown as way of Parappanangadi Gramapanchayat in the revenue records. What ever be the right of the way the petitioners had been using the said way from the year 1992 until it was obstructed by the respondents. He had been using the way continuously, openly and uninterruptedly for more than 20 years. The respondents started obstructing the petitioners from using the plaint B schedule way. The respondents have obstructed plaint B schedule way, which is the only way to access the property of the petitioners which is shown as A schedule. A schedule has become landlocked and now the petitioners are accessing the property of 3rd parties which is on the western side to reach the road. If the petition B schedule way is blocked it would cause irreparable injury to the petitioners. Hence this petition.

3. The respondents entered appearance and filed counter statement contending that it is not true that petition B schedule is the only way to access petition A schedule property. There is an entrance on the eastern side wall of plaint A schedule property and the petitioner's access the main road through this entrance by entering into 3rd parties property and then proceeding north and reaches the main road. It is not true that the petitioners have right over plaint B schedule way by easement by prescription. It is not true that the document by which the property

has been transferred in favour of the second petitioner, the way has been provided through petition B schedule and the petitioners' predecessor did not have any such right to transfer petition B schedule way. The property was transferred in the year 2020 in favour of second petitioner. Even during that time or prior to that there was no recital in any document showing that plaint B schedule way is the way to access plaint A schedule property and it is not possible to access plaint B schedule way directly through plaint A schedule property. The western boundary of the documents of petitioners shows "തന്നിൽ ശേഷം" and it was through this portion, the petitioners accessed the western side municipal road. The Re-survey number and name of the properties of petitioners and respondents are different. The Re-survey authorities have by mistake and without giving notice to the first respondent have included the property of the respondents in Re-survey No.677/11 and shown as panchayath pathway in the Parappanangdi village records which has no legal effect. It is a property which the respondents had purchased. The respondents have never relinquished or released any portion of their property for public pathway and the respondents have even initiated legal proceedings against the panchayath authorities. Respondents purchased the property in the year 2009 as per document No.3129/2009. In the same year he had installed an iron gate and had closed it with lock and key. Since then it was in the exclusive possession of the respondents. The petitioners had come to know that the item No.2 of first respondent's property has been included in the assessment register as panchayath pathway. Therefore they raised a claim of easement by prescription over the said way. The petitioners have no right over the said way. They have never accessed plaint A schedule property through plaint B schedule way. Therefore there is no question of any obstruction from the part of the respondents. No proper schedule of plaint B schedule has been provided along with plaint. The petitioners have not also taken out a commissioner. The petitioners have not come before the court with clean hands. They are not entitled to any mandatory injunction as claimed for. Hence the petition is to be dismissed with costs.

4. Based on the aforesaid rival contentions, the following points came up for consideration:-

1. Whether the petitioners have got a prima facie case in their favour ?
2. In whose favour balance of convenience lies?
3. In the event of declining the relief that is cause any irreparable injury to the petitioners?
4. Whether the relief of temporary injunction as sought for is gradable or allowable?
5. Relief and costs?

5. From the side of the petitioners Exhibits A1 to A3 documents were marked and from the respondent's side Exhibit B1 to B8 documents were marked.

6. Heard both sides.

7. **Point Nos.1 to 4 :-** This is a petition filed under Order 39 Rule 1 of CPC. The prime fact that is to be considered by the court is whether the petitioners could make out a prima facie case in his favour. *In Muthukoya V. Muthukoya, (1988(1)KLT 654) His Lordship Justice U L Bhat clearly elucidates this concept: "There must be some material on record in support of the claim of legal right put forward by the person who seeks interlocutory relief of injunction; such material must, either by itself or in the light of material placed before the court by the opposite party, satisfy the court that it could, at that stage and under those circumstances act on it. This is precisely what can be comprehended by the expression 'prima facie case'."* The case of the petitioners is that plaint B schedule way is the only way to access plaint A schedule property, which belongs to the petitioners. The respondents have obstructed the way by putting up a gate at the entrance of plaint B schedule way, on the western side and has obstructed by putting a lock and key. The case of the petitioners is that if the plaint B schedule way is blocked, his plaint A schedule property would be landlocked. On the other hand the learned counsel for the respondents argued that plaint B schedule way exclusively belongs to the respondents by way of Exhibits B1 and B2. On perusal

of the documents from both the sides it can be seen that this is a matter connected with OS 34/2025. The commission report in the said matter has been marked from the side of the petitioners as Exhibit A3.

8. Here it is pertinent to note that on perusal of Exhibit A3 (a) sketch it can be seen that the advocate commissioner has identified item No.2 (a) property as 'ANMG'. It is also reported by the advocate commissioner that “അന്യായ പട്ടിക 2ാം നമ്പർ വസ്തുവിന്റെ പടിഞ്ഞാറേ അതിരിൽ സുമാർ 11 അടി നീളത്തിലും 5 അടി ഉയരത്തിലുമുള്ള ഒരു ഇരുമ്പു ഗേറ്റ് കാണുവാൻ സാധിച്ചു. ടി ഗേറ്റ് സ്കെച്ചിൽ എന്നായി മാർക്ക് ചെയ്തിരിക്കുന്നു. മേപ്പടി ഗേറ്റ് പരിശോധിക്കാൻ ചെന്നപ്പോൾ പൂട്ടിയിട്ട നിലയിലും പിന്നീട് അന്യായക്കാരീ താക്കോൽ ഉപയോഗിച്ച് തുറക്കുകയുമാണ് ചെയ്തത്.” As per the commission report, there is no direct access from the petitioners' property to the petition B schedule way. Further from the commission report it can be seen that on the western side and on the eastern side there are two opening in the petitioner's property, which the respondents claims to be the petitioner's respective way. Moreover had there been any direct access from their property to B schedule, they would have definitely taken out a commission to bring the same to the notice of this court. They have not even taken out a commission. Whether the petitioners have any right of easement by prescription over petition B schedule way, whether there is any direct access from the petitioner's property to petition B schedule way as claimed by the petitioners can only be decided after a detailed trial. On perusal of Exhibit A3(a), possession of petition B schedule way is seen to be with the respondents. Hence, it cannot be said that the petitioners could established a prima facie case in his favour. The petitioner admittedly is now using western side property as a way. Therefore, if injunction is granted, it might cause irreparable injury to the respondents. Balance of convenience is also not found in favour of the petitioners. Thus Point Nos.1 to 3 is found against the petitioners.

9. **Point No.5:-** Considering the facts and circumstances of this case, petitioners shall bear their respective costs.

In the result, IA is dismissed. No costs.

(Dictated to the Confidential Assistant, transcribed by her corrected and pronounced by me in open court to on this the 27th day of May, 2025.)

Munsiff

Appendix

Petitioner's witnesses: Nil

Petitioner's Exhibits:

- A1- 28.09.1992 Photo copy of Jenm Assignment deed No. 2257/1992
SRO, Parappanangadi
- A2- 04.09.2020 Photo copy of Jenm Assignment deed No. 1109/2020
SRO, Parappanangadi
- A3- 01.02.2025 Certified copy of Commissioner's report in O.S 34 of 2025
- A3(a)-01.02.2025 Certified copy of Commissioner's plan in O.S 34 of 2025

Respondent's Witnesses Nil

Respondents' Exhibits:-

- B1- 19.11.1981 Certified copy of Jenm assignment deed No.3060/1981,
SRO, Parappanangadi
- B2-28.05.2009 copy of Jenm assignment deed No.1542/2009,
SRO, Parappanangadi
- B3- 28.05.2009 copy of Jenm assignment deed No.1544/2009,
SRO, Parappanangadi
- B4- 28.05.2009 copy of Jenm assignment deed No.1541/2009,
SRO, Parappanangadi
- B5- 29.10.2009 Copy of Jenm assignment deed No.3129/2009,
SRO, Parappanangadi
- B6- 22.01.2019 Copy of Jenm assignment deed No.182/2019,
SRO, Parappanangadi
- B7- 07.01.2025 Copy of reply from parappanagadi Municipality to 1st defendant
- B8- 18.02.2025 Application (Form No.8)given by 1st defendant for Resurvey
division- Tirurangadi Taluk

Court's Exhibits:- Nil

Munsiff