

IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind.S.J, Munsiff.

Thursday the 13th day of February 2025/ 24th day of Magha 1946 SE.**IA 05/2023 in OS 36/2021**

Between

1. Abraham Rajan Mathews, S/o Abraham Mathews, aged 66, residing at Rajan Cottage, Anjilithanam Mur, Kunnamthanam Village, Mallappally Taluk, Pathanamthitta now at 805-283, Davie street, Vancouver, BC, V6B 5T6, Canada rep by his power of attorney holder Suseela T.D, aged 60, W/o Raveendranath, Ilyasseril House, Thrikkodithanam P.O, Changanasseri Taluk.
2. Suseela T.D, aged 60, W/o Raveendranath, Ilyasseril House, Thrikkodithanam P.O, Changanasseri Taluk.

Petitioners/
Defendants

(By Adv. T.Saji & Adv. P.Roy)

And

Achamma Mathews, aged 64, # 1103 Lakeshore Road, Burlington, Ontario, Canada rep by her Power of Attorney Holder Celine Joseph, W/o K.J.Joseph residing at 5B. Plum Flower Nursery School Road, Chalikkavattom, Vyttila, Kochi-19.

Counter petitioner
Plaintiff

(By Adv. Roy George)

This petition is filed under section 10 and 151 of the Code of Civil Procedure.

This petition having been finally heard on 13.02.2025 and on the same day the court passed the following:-

ORDER

Petition filed under S.10 CPC.

2. It is contended that there was a case pending before the Hon'ble Family Court between the plaintiff and the 1st defendant herein with respect to the property and that an appeal is pending before the Hon'ble High Court and thus the present suit

is to be stayed under S.10 CPC.

3. The present suit is filed for declaration of easement by grant over the plaint scheduled item No. 2 pathway. It is well settled that the prohibition contained in S.10 CPC is to prevent the courts of concurrent jurisdiction from simultaneously trying 2 parallel suit and to avoid inconsistent findings. (***See. State of Meghalaya v. Union of India (2023 KHC 6554)***). Therefore, both courts should have concurrent jurisdiction to try the matter. Family Court Jurisdiction and Civil Court Jurisdiction cannot be said to be concurrent. Both are exclusive jurisdiction and civil court has no jurisdiction to try the matter which are triable by the Family Court. Therefore, the petition under S. 10 CPC is not maintainable. Hence IA dismissed.

Pronounced by me in open court, this the 13th day of February 2025

Sd/-

ARAVIND S.J.
MUNSIFF

APPENDIX

NIL

Id/-
MUNSIFF