

IN THE COURT OF II ADDITIONAL DISTRICT JUDGE OF THRISSUR

Present:-

Smt. JAYA PRABHU, ADDITIONAL DISTRICT JUDGE -II.

Saturday, the 28th day of March, 2026/ 7th Chaithram 1948

AS 18/2022

OS 1881/2017 of Munsiff Court Thrissur

Appellant: Rosy Paul, Aged 71 Years, W/o Chiryath veettil Paul,
Residing at Krishna Lane, Poonkunnam, Thrissur Village
Thrissur Taluk.

By Adv. N.J Netto

Respondent: Jose , Aged 69 Years, S/o Chirayath Veettil Anthony,
Residing at Krishna Lane Poonknnam , Thrissur Village
Thrissur Taluk

By. Adv. George Kollannur

Petition has been come up before me for hearing on this day the court passed the following :-

JUDGMENT

This is an appeal preferred Under Order 41 Rule 1 of CPC.

2. The appellant is the defeated plaintiff in OS.1881/2017 on the file of Principal Munsiff Court, Thrissur which was dismissed as per judgment and decree dated 21.12.2021. For convenience the parties are herein after referred as per their status before the trial court.

3. The plaint averments in brief is as follows: Plaintiff's husband, the defendant and the defendant's brother by name Paul jointly purchased certain property by sale deed 3509/1980 of Thrissur SRO. Thereafter the said properties were partitioned among them as per partition deed No.1842/1987 of Thrissur SRO and properties were allotted to the plaintiff's husband and the defendant. As per the partition deed A schedule was allotted to the defendant and B schedule was allotted to the plaintiff's husband. The plaintiff's husband passed away on 22.07.2014 and the plaintiff and others became lawful owners of the property. The property allotted to the deceased Paul is shown as plaint A schedule property. The plaintiff is residing in the house situated in the plaint A schedule property. The plaint A schedule property is situated in well defined boundaries and the only way to the plaint A schedule property is the plaint B schedule way. The Plaint B schedule way starts from the Corporation road and reaches plaint A schedule property. It has a width of 3.2 metres and length of 19 metres. On the west of plaint A schedule property lies property of the defendant. The two properties are separated by well defined boundaries and there is a compound wall situated on the western side of the plaint A schedule property. The plaintiff and her predecessors were used plaint B schedule property for more than 30 years without any obstruction, continuously, openly and as of right for their access to plaint A schedule property. Thus the plaintiff has right of easement of necessity and easement by prescription over the said way. Taking advantage of the absence of plaintiff's children in the property, the defendant raised several contentions and obstructing the use of the plaint B schedule way by

the plaintiff. The defendant had put waste on to the B schedule way towards this end. Thus the plaintiff sought for a permanent prohibitory injunction restraining the defendant from obstructing the use of the plaintiff B schedule way by the plaintiff and reducing its width and trespassing into the same and committing waste into the same.

4. The defendant entered appearance and filed written statement and contended that the suit is filed suppressing material facts. The plaintiff has filed a suit OS.394/2014 with respect of the same subject matter and it is suppressed in the plaint. Defendant has admitted the purchase of property by virtue of document No.3509/1980 and subsequent partition of the property by virtue of document No.1842/1987. It is also admitted that the western plot allotted to the defendant and eastern plot to the plaintiff's husband. At that time the access to plaintiff's husband's property was fixed as the northern way having a width of 3 feet and it is specifically shown in the document itself. It is true that there is a wall to the east of property of the defendant. However, the defendant has property to the east of the compound wall. To access this property situated on the eastern side and for access of vehicles the defendant had set up a way on the northern side from Krishna Lane road having a width of 3 metres and length of 17½ metres. The said way reaches the eastern portion of defendant's property lying beyond the wall. At the end of the way the defendant has set up a gate which is in the control of the defendant. On the northern boundary fence also the defendant has put up a gate for accessing the said way. The plaintiff and her husband had come to the property in the year 2002. At that time they sought for permission from the

defendant to use the aforementioned above 3 feet width way along with the way put up with the defendant jointly for accessing their property. Considering the relationship between the parties permission was granted and the said permission will not confer any right over the plaintiff B schedule way to the plaintiff. After filing of O.S.394/2014 the said permission given by the defendant was revoked. The plaintiff has no easement right over the plaintiff B schedule way. There is no cause of action against the defendant. Thus the suit is liable to be dismissed.

5. On the basis of the above pleadings, the trial court framed the following issues for trial:

- 1) Whether the plaintiff has any easement right to use the plaintiff B schedule property way to the plaintiff A schedule property?
- 2) Whether the plaintiff is entitled to get a perpetual injunction as prayed for?
- 3) Reliefs and costs?

6. To prove the case of the plaintiff, PW1 to PW3 were examined and Ext.A1 to A5 were marked. On the side of the defendant, DW1 to DW4 were marked and Exts.B1 to B7 were marked and Ext.C1 also marked.

7. After hearing both sides, trial court found that the plaintiff has no manner of right over the B schedule way and on the basis of the same the suit was dismissed with costs. Aggrieved by the judgment and decree the defendant filed this appeal.

8. The appellant contended that, the trial court has not properly

appreciated the evidence on record. The trial court ought to have found that, the plaintiff has been using the B schedule way continuously, uninterruptedly and without any objection for the ingress and egress to A schedule property. The existence of plaintiff schedule way was admitted by the defendant. But the court has wrongly appreciated lie and nature of B schedule. The trial court ought to have found that the B schedule is the property of the defendants the B schedule is identifiable as per Ext.A1 and A2 and Ext.C1 commission report. But the trial court erred in finding that the B schedule is not identifiable. As per the commission report and the evidence of PW2 it can be seen that the defendant is using B schedule as a pathway but the trial court failed to appreciate the same. As per Ext.A1 on the northern side of property of the defendant situates a way but it was not considered by the trial court. The trial court wrongly found that, the defendant is having property on the northern side of the northern boundary wall. Thus the judgement of trial court is liable to be set aside.

9. The learned counsel for the appellant argued that though the plaintiff is claiming easement of necessity and prescription over B schedule way. There is no other way for the access of plaintiff other than the B schedule. The existence of B schedule admitted by defendant. So the plaintiff is entitled to get an injunction with respect to the obstruction to the user of the same.

10. The learned counsel for the respondent argued that, without establishing right over B schedule the plaintiff is not entitled to get any manner of decree with respect to B schedule. The pleadings of the plaintiff

regarding the claim over B schedule way as easement by prescription and easement of necessity itself is not sustainable. Moreover the plaintiff has approached this court with unclean hands suppressing material facts. In the previous suit between the parties it was specifically shown in the sketch prepared by the surveyor that the B schedule is a part and parcel of the property of the defendant. Thus the plaintiff has no manner of B schedule way. The permissive user of B schedule by the plaintiff was used when the defendant withdrawn the said permission on filing of the previous suit. Thus the trial court has rightly found that the plaintiff has no manner of easement right over B schedule way and the plaintiff is not entitled to get permanent prohibitory injunction as sought for. Hence the appeal is liable to be dismissed with costs for the defendant.

11. The trial court records were called for and the same was received.
12. Heard both sides.
13. The points that arise for consideration in this appeal are as follows:
 - 1) Whether the plaintiff is having easement of necessity or easement by prescription over B schedule way?
 - 2) Whether the plaintiff is entitled to get a permanent prohibitory injunction with respect to B schedule way?
 - 3) Whether the judgment and decree of the trial court is liable interfered?
 - 4) Reliefs and costs?

14. Point Nos.1 to 3. I have gone through the records of the trial court and re-appreciated the evidence on record. The plaintiff has sought for a permanent prohibitory injunction with respect to B schedule way. To prove the title of the plaintiff, the plaintiff has produced Ext.A1 document. The plaintiff A schedule is the property of plaintiff and plaintiff B schedule is the pathway wherein the plaintiff is claiming easement of necessity and easement by prescription. To prove the existence of B schedule way plaintiff has taken out a commission Ext.C1 is the commission report as per the same B schedule is having 3.2 metres width of 19 metres length and it starts from Corporation road and a lane named as Krishna lane and it is the access to the A schedule property. The contention of defendant that plaintiff B schedule is the part and parcel of property of defendant and it was set up by the defendant for his access to his property and considering the relationship between the parties the plaintiff was permitted to use the same. But the plaintiff has filed OS.394/2014 before the I Additional Munsiff Court, Thrissur. Hence the permission granted to the plaintiff was withdrawn by the defendant. To substantiate the same the defendant has produced Ext.B2 plaintiff in OS.394/2014, Ext.B3 is the written statement in the said suit. It was further contended that the plaintiff has filed OS.1527/2019 in respect of the same matter and Exts.B5 and B6 are the plaintiff and written statement in the same and Ext.B7 is the interim injunction order passed in the said suit. At the instance of the defendant a commission was taken out in OS.394/2014 and Ext.B4, the sketch prepared by the surveyor after measurement involved in the said suit and as per the same it can be seen that the pathway alleged to be

claimed by the plaintiff herein is a part and parcel of the property of the defendant.

15. The pleadings in the plaint shows that the plaintiff is claiming easement of necessity and easement by prescription over the plaint B schedule way. The said claim of the plaintiff over B schedule is a mutually destructive one and the easement of necessity and easement by prescription will not go together. In para No.2 of the plaint, the plaintiff has pleaded that from the last 30 years the plaintiff is using B schedule way without any objection.

16. Section 15 of the Easement Act deals with the acquisition of easement by prescription and as per Section 15 there is 7 ingredients to claim the right of easement by prescription.

17. In decision reported in **Badariya Madrassa Committee v. Antony Robert** (2006 (2) KLT 636), it was held that, apart from stating that the way has been used by prescription there is no specific pleading involving all the seven ingredients of Section 15 of the Act ie (1) There must be pre-existing easement which must have been enjoyed by the dominant owner; (2) the enjoyment must have been peaceable; (3) the enjoyment must have been as an easement; (4) The enjoyment must have been as of right; (5) the right must have been enjoyed openly; (6) the enjoyment must have been for a period of twenty years and (7) the enjoyment for 20 years must have been without interruption.

18. On perusal of the pleadings in the plaint it can be seen that there is no specific pleadings with respect to the right of easement by prescription

claimed by the plaintiff. The evidence adduced by the plaintiff also shown that there is no evidence in this regard. Thus in the absence of definite pleading and proof regarding the easement by prescription the plaintiff failed to establish her right over B schedule way by way of easement by prescription.

19. Section 13 of the Easement Act deals with easement of necessity is arising when a property transfer, bequest or partition leaves on the part of the property completely inaccessible or unusable without using the another part. It applies to land locked the situation were not alternative access exist. There should be specific pleading regarding the jointness of tenements and the severance of the same.

20. The claim of the plaintiff that he is having easement of necessity over the B schedule way. According to plaintiff apart from plaint B schedule there is no other way for the plaintiff for her ingress and egress to B schedule property. From Ext.A1 title deed of the plaintiff it can be seen that the prior to effecting partition of the property there is a pathway for the ingress and egress to the property and that is on the northern side of the entire property. That shows that there is alternate pathway in-existence. In case of existence of alternate pathway however inconvenient is same, the plaintiff is not entitled to get easement of necessity. There is no pleadings with regard to the jointness of tenants, severeness of tenants, who is the servient owner etc. Moreover in the plaint the plaintiff is claiming ownership over B schedule way. If the plaintiff is the owner of the plaint B schedule way, she cannot claim easement of necessity by prescription on her own property. Moreover

Ext.B4 sketch shows that B schedule is a part and parcel of property of defendant. Thus the materials on record to show that the plaintiff has failed to prove the claim of easement of necessity over B schedule way.

21. The evidence on record the plaintiff has filed OS. OS.394/2014 and OS.1527/2019 before the Munsiff Court with respect to the same matter and there is no whisper in the plaint regarding the finding of the above said suit by the plaintiff. The defendant produced Ext.B2 to B7 documents to substantiate the same. That shows that the plaintiff has suppressed material facts from the court. The plaintiff has approached this court with a prayer of permanent prohibitory injunction restraining the defendant and his men and agents from causing any obstruction to the plaintiff's ingress and egress through B schedule way and reducing its width or trespassing into the same and committing any acts of wastes upon the same. The relief of injunction sought for is a relief of equity. Thus one who seeks must come before the court with clean hands. Suppression of material facts regarding the filing of previous suit with respect to the subject matter herein is shows that the plaintiff has approached this court with unclean hands. Thus the plaintiff is not entitled to get a decree for permanent prohibitory injunction.

22. In view of the above discussion, it can be seen held that the trial court has properly appreciated the evidence on record and come to a conclusion that the plaintiff has failed to prove his claim of easement of necessity and easement by prescription over B schedule way and without establishing any manner of right over B schedule way. The plaintiff is entitled to get a permanent prohibitory injunction. Thus the trial court has

rightly dismissed the suit and there is nothing to interfere with the judgment of the trial court and it is only liable to be confirmed. Hence the point is found accordingly

23. Point No.4: In view of my findings on point Nos.1 to 3, I find that there is nothing to interfere with the judgment passed by the trial court and it is liable to be confirmed.

In the result, the appeal is dismissed with costs to respondent.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 28th day of March, 2026).

Sd/-

**JAYA PRABHU
ADDITIONAL DISTRICT JUDGE II
THRISSUR**

Appendix – Nil

Sd/-

**JAYA PRABHU
ADDITIONAL DISTRICT JUDGE II
THRISSUR**

/ True Copy /

By Order

Copied by: NEM

Compared by : SMS

Sheristadar

Order in

AS 18 /2022

Dated: 28.03.2026