

This petition having come up before me for final hearing on 23/3/2026 in the presence of counsel for both sides and stood over to this day for consideration the court delivered the following:

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Order in IA No.1/2023 in OS No. 70/2023 dated 13.03.2023 on the file of Munsiff Court, Irinjalakuda.

2. The brief facts are as follows:- According to the petitioners, the 1st plaintiff is the owner of the plaint schedule property by virtue of Deed No. 1385/1995 of SRO, Annamanada. He has been residing in the house constructed therein along with his family for the last several years. The 2nd and 3rd plaintiffs are residing nearby the plaint A schedule property along with their respective families. The plaint A schedule property is situated at a lower level than the properties of the 2nd and 3rd plaintiffs. During the rainy season, excess rainwater as well as natural water flows from the properties of plaintiffs 2 and 3 to the plaint A schedule property through a pipe. On the western side of the plaintiffs' property lies Plakkathara Bund Road, a Panchayath road

running in north–south direction. Further to the west of the said road are the properties of the defendants, which are described as plaint B and C schedule properties. There is no house or other building in the plaint B and C schedule properties, except some coconut and arecanut trees. The defendants are stated to be engaged in real estate business. The plaint A schedule property is situated at a considerably lower level than the plaint B and C schedule properties, and the plaint schedule properties lie in a slanting manner from east to west. The western side of the Plakkathara Bund Road is situated at a much lower level, and therefore, during the rainy season, natural water as well as excess rainwater naturally flows towards the west through the plaint B and C schedule properties. According to the plaintiffs, the defendants have no right to obstruct this natural flow of water, as the plaintiffs claim a natural easementary right for the flow of water, which has been enjoyed as of right continuously, openly, and without objection from anyone. It is further stated that the natural water as well as excess rainwater flows through a large pipe situated under the Plakkathara Bund Road and proceeds through the property of Padaparambath Leela through a pipe. Thereafter, it passes through the property of Binu and, through the northern side of his property, flows westward to the

property of the 2nd defendant, namely the C schedule property. From the northern boundary of the C schedule property, the water flows through the property of Sheeba and through her northern boundary towards the west to the B schedule property belonging to the 1st defendant. From the northern boundary of the B schedule property, the water again flows westward through the property of Babu and reaches a large pond, and thereafter through the Karikattuchal canal through which the water ultimately drains. According to the plaintiffs, there is no other way for the water to flow except through the said channel. It is also stated that when the Panchayath constructed the Bund road, it had installed pipes to facilitate the flow of water towards the west. The said Babu is residing away from the plaintiff B and C schedule properties and is engaged in large-scale real estate business. The plaintiffs further contend that the **first plaintiff** had purchased a larger extent of property situated on the western side of Plakkathara Bund Road. The defendants purchased properties from Babu, including plaintiff B and C schedule properties, for the purpose of real estate business. One Binu also purchased property for the same purpose. To the best of the plaintiffs' knowledge, plaintiff B and C schedule properties are classified as wetland. Hence, the defendants have no right to undertake any

construction work or make any alterations to the lie of the B and C schedule properties in a manner that would obstruct the natural flow of excess water. According to the plaintiffs, the defendants had illegally constructed a concrete foundation on the **western** side of the plaintiff C schedule property, thereby blocking the natural flow of water. In this regard, the plaintiffs submitted complaints before the Panchayat and the Village authorities, pointing out the obstruction caused to the natural drainage. Following the complaint, the defendants assured that the said construction would be demolished so as to ensure the free flow of water. However, the defendants failed to fulfill this assurance, allegedly due to their political influence. It is further alleged that, as a result of the obstruction to the free flow of water, the well situated in the plaintiff A schedule property became polluted. Therefore, according to the plaintiffs, the said foundation must be demolished in order to restore the natural flow of water. The plaintiffs also state that the defendants removed soil from the plaintiff B schedule property, thereby causing further obstruction to the natural flow of water, against which the plaintiffs submitted petitions before various authorities. If the defendants are permitted to continue such acts, it would cause irreparable injury to the plaintiffs. The plaintiffs further state that

during the floods in 2018, a major portion of the plaintiff's house was submerged in water and the compound wall of the plaintiff A schedule property was damaged due to water logging. As per the Basic Tax Register (BTR), plaintiff B and C schedule properties are classified as wetland, whereas only in the plaintiff A schedule property a residential house has been constructed. The plaintiffs assert that the wetland in plaintiff A schedule property was converted after obtaining the necessary permissions and following the due procedure. Since conversion of wetland requires permission from the competent authorities, and as the defendants attempted to carry out unlawful activities, the Village Officer issued a stop memo based on the petition filed by the plaintiffs. Despite the same, the defendants are allegedly attempting to level the land by filling it with soil, thereby obstructing the natural flow of water. The plaintiffs further allege that the defendants intend to construct large flats in the property for unlawful profit. If plaintiff B and C schedule properties are filled with soil and constructions are made therein, it would seriously diminish the utility and enjoyment of the plaintiff A schedule property. Hence, the plaintiffs have approached this Court seeking an order restraining the defendants from making any alterations to plaintiff B and C schedule properties, including filling the

same with soil, in a manner that would obstruct the free and natural flow of excess water from the plaint A schedule property.

3. According to the respondents, the petition is not maintainable either in law or on facts. It is contended that the petition has been filed by suppressing the true and material facts and is therefore liable to be dismissed. The respondents state that earlier the properties of both the appellants and the respondents were wetland. Subsequently, the first appellant unlawfully filled the plaint A schedule property with soil and constructed a compound wall and a residential house therein, where he is presently residing. It is further contended that the properties of the appellants and respondents are situated nearby and presently lie at the same level. On the eastern side of the property of the first appellant, and passing through the southern side of the property of his wife Beena, there exists a Panchayat canal having a width of about 1 meter and a depth of about 60 centimeters. Through this canal, rainwater from the properties of the appellants as well as neighbouring properties flows freely. In addition to this, the appellants have the facility to drain water through the Panchayat road situated on the western side of their property. It is further stated that on the

northern side of the respondents' property there exists a water channel which leads to the canal situated on the eastern side. The respondents' property is sloping towards the eastern side. The first respondent is a temporary employee in an Ayurveda company and resides in a small house along with his three siblings. The second respondent is a carpenter by profession. The respondents further submit that the first respondent had filed an application before the Revenue Divisional Officer (RDO) seeking conversion of the plaint B schedule land. Thereafter, the Village Officer, Agricultural Officer and Panchayat Secretary conducted an inspection of the property and submitted their reports. After conducting due enquiry, the RDO permitted conversion of the land. According to the respondents, there is no water channel or canal through the property of the respondents for draining water from the appellants' property. Earlier, the properties of the appellants, respondents and neighbouring landowners were situated at the same level. Later, the first appellant raised the level of his property by filling soil and constructed a house therein. It is also contended that the respondents, along with Sheeba and the father of Binu, had filed a petition before the Panchayat seeking removal of a pipe situated on the northern boundary of Binu's property. According to them, the

appellants have no right to drain water through the said pipe. The appellants already have facilities to drain water through the canal situated on the eastern side as well as through the Panchayat road on the western side. Therefore, they have no right to drain water through the said pipe. The respondents further deny the allegation that there is any obstruction to the flow of water through the pipe as alleged in the petition. It is pointed out that the Commissioner's report states that there exists a water channel; however, the report also notes that the channel does not have continuity and is obstructed at several points by soil filling. The water channel situated on the western side of plaint C schedule property is also intact. The respondents further state that there exists a provision for free flow of water from the petition B schedule property through the western boundary of Babu's property and from there to the Panchayat canal situated on the southern side. It is also contended that no compound wall has been constructed obstructing the flow of water from the petition schedule property to the property of the wife of the first appellant. The first respondent had obtained an order from the RDO, Irinjalakuda permitting conversion of his land, as he does not possess any other property to construct a house. After obtaining the said order, he applied for a building permit for

constructing a residential house. The respondents allege that the present petition has been filed only with the intention of preventing the first respondent from constructing a house. It is also pointed out that in the second Commission report it is stated that if a water channel is created from the north-western corner of the property of the first appellant along the northern boundary towards the east, the appellants can drain water to the canal situated on the eastern side of their property. The said canal is situated at a lower level than that of the plaint schedule properties. The respondents further contend that the appellants themselves constructed their house without obtaining permission for conversion of the land from the competent authorities. Even though there are sufficient facilities for draining water through the canal on the eastern side and through the Panchayat road on the western side, the present suit has been filed without any cause of action. The second Commission report also notes that there exists a water channel on the eastern side of the appellants' property and that there is no continuous water channel through the petition B and C schedule properties. Therefore, the respondents pray that the petition may be dismissed with costs.

4. Before the trial Court ,on the side of petitioner, Ext A1 to A10 were marked and on the side of respondent,ExtB1 to B3 were marked. The commission report and rough plans were marked as Ext C1, C1 (a) and C2 and C2(a). After analysing the evidence, the trial Court dismissed the application against which the plaintiff/appellant filed CMA on the following grounds:

According to the appellants, the trial court failed to properly consider the documents produced by them as well as the commission report. It is further contended that the trial court did not pass any order in I.A. No. 6/2023 filed by the petitioners seeking maintenance of status quo. The appellants also submit that the court below failed to consider Ext. B1, the order passed by the RDO, and erred in analysing the objection report filed against the commission report in I.A. Nos. 3/2023 and 4/2023. The appellants further contend that, despite receiving urgent notice in the interlocutory applications and despite the inspection conducted by the Advocate Commissioner, and with full knowledge that the matter was sub judice, the respondents proceeded with the construction, thereby complicating the dispute. According to the appellants, the trial court failed to take note of the said aspect. It is also their contention that the trial court failed to properly appreciate

that the ingredients of *prima facie* case, balance of convenience, and irreparable injury were in favour of the appellants rather than the respondents. Further, the appellants contend that the trial court did not properly consider the objections filed by the defendants and failed to appreciate that the defendants had approached the court with unclean hands. On these grounds, the appellants pray that the appeal be allowed by setting aside the order passed by the trial court in I.A. No. 1/2023.

5. Based upon the above pleadings the following points arose for consideration:-

1. Whether the appellant/plaintiff could prove a *prima facie* case in their favour?
2. Whether the appellant/plaintiff could prove that balance of convenience is in their favour?
3. Whether the appellant/plaintiff could prove that irreparable injury will be caused them if the petition is not allowed rather than allowing the same to the respondents/defendants?
4. Whether the finding of the trial court needs any interference?
If so, to what extent?

5. What is the finding?

6. For the sake of convenience the parties will be hereinafter referred as per their rank before the trial court.

7. **Point No. 1 to 3:-** As these points are connected, discussed together. In order to prove their case, the petitioners produced Ext.A1, the copy of the title deed of the 1st plaintiff, and Ext.A2, the tax receipt. To show that the plaintiff had preferred a complaint before the Panchayat regarding water logging in his property, he produced Ext.A3, the receipt issued by the Annamanada Grama Panchayat for the complaint filed by him. He also produced Ext.A4, the copy of the petition submitted before the Village Office, and Ext.A5, the copy of the petition submitted before the Police Station along with the receipt issued by the police. Further, the petitioner produced Ext.A6, the second petition filed before the Village Office, and Ext.A7, the second petition filed before the Panchayat along with its receipt. In order to substantiate their case, the petitioners took out a commission twice before the trial court. A commission was also taken before the appellate court and the Advocate Commissioner filed a report along with a rough plan, which were marked as Exts.C3

and C3(a). As per Ext.C1 report, the Advocate Commissioner reported that the 1st plaintiff is residing in the house situated in the plaint A schedule property along with his family and that the 2nd and 3rd plaintiffs are residing on the eastern side of the plaint A schedule property. The Commissioner also noted that the properties of the 2nd and 3rd plaintiffs are situated at a higher level than that of the plaint A schedule property. The Commissioner further noticed a pipe having a width of 15 cm on the north-western corner of the plaint A schedule property through which excess water from the properties of the 2nd and 3rd plaintiffs flows into the plaint A schedule property. Thereafter, through another pipe situated on the north-western corner of the plaint A schedule property under the Plakkathara Bund Road, the water reaches the property of Palamattam Binu. It is further stated in the report that earlier the plaint schedule properties were either paddy fields or marshy land. On the western side of the plaint A schedule property there lies the Plakkathara Bund Road and to its west the plaint B and C schedule properties are situated. The Commissioner also reported that the plaint B and C schedule properties are situated at a lower level than that of the plaint A schedule property. According to the Commissioner, the only possible way for excess water from the

plaint A schedule property to flow out is through the said pipe to the plaint B and C schedule properties, from where it flows further westward to reach the canal. The Commissioner has also noted that there is no other water channel for the flow of excess water from the plaint A schedule property. As per Ext.C1, the Advocate Commissioner further noted that the hole situated in the middle portion of the foundation in the plaint C schedule property had been recently closed. It was also reported that the new construction made along the east-west boundary of the plaint B schedule property would obstruct the free flow of water. The Commissioner further noted that the water in the well situated in the plaint A schedule property is also polluted. It was also reported that there is no building in the plaint B and C schedule properties. Along with the report, the Advocate Commissioner produced photographs of the properties showing the construction of the foundation which closed the natural flow of water.

8. Ext.C2 is the second commission report. As per Ext.C2, the Advocate Commissioner reported that on the eastern side of the plaint A schedule property and on the southern side of the properties of the 1st and 3rd plaintiffs there is a canal having a width of one metre and a depth of about 60 cm. There is also another water channel on the

eastern side of the property of the 3rd plaintiff having a width of 40 cm and a depth of about 50 cm. The said water channel is situated at a lower level than that of the plaint schedule property.

9. Ext.C3 is the third commission report filed by the Advocate Commissioner on 21.02.2023 in order to report the recent construction carried out by the respondents. In Ext.C3, the Advocate Commissioner reported that the respondents had constructed a granite foundation along the east-west and southern boundaries and that construction work was also in progress in the plaint B schedule property.

10. The specific case of the defendants is that they had obtained permission from the RDO for conversion of their land and Ext.B1 is the order issued by the RDO in that regard. According to the respondents, originally the properties of both the petitioners and the respondents were wet lands. The 1st petitioner had unlawfully filled the plaint A schedule property with soil and thereafter constructed a well and a residential house therein. It is further contended that, on an application submitted by the respondents before the RDO, and after due enquiry conducted through the Village Officer, Agricultural

Officer and Panchayath Secretary, permission was granted for conversion of the land. According to them, earlier the properties of the petitioners, respondents and the neighbouring land owners were all situated at the same level. Subsequently, the petitioner raised the level of his property and constructed a house therein. When the respondents obtained the order from the RDO permitting conversion, the present suit was filed without any genuine cause of action.

11. The respondents also contend that there exists another water channel on the eastern side of the property of the 1st respondent, passing through the southern side of the property belonging to his wife, Beena. The said channel has a width of about one metre and a depth of about 60 cm. It is a Panchayath canal through which rainwater from the properties of the petitioners as well as neighbouring properties flows freely. According to them, this fact is evident from the second commission report. It is therefore alleged that the petitioners approached the court by suppressing these material facts and have filed the suit and the petition with unclean hands. Hence, they are not entitled to the injunction sought for. According to the respondents, the sole purpose of filing the petition is to obstruct the construction of the

house of the 1st respondent, who is only a temporary employee in an Ayurveda company.

12. The petitioner claims a right of easement under Section 7(b) of the Indian Easements Act, 1882 and the illustration thereto. The right to the free flow of water may arise either as a natural right inherent in the ownership of land or as an easementary right. The owner of higher land has a natural right to allow water that naturally accumulates or flows on his land to pass to the adjacent lower property. Correspondingly, the owner of the lower tenement is bound to receive water which naturally flows from the higher land.

13. In *Gibbons v. Lenfestey (1919 KHC 72)*, the Privy Council held that where two contiguous fields, one situated at a higher level than the other, belong to different proprietors, nature itself creates a servitude upon the inferior tenement, obliging it to receive the water that falls from the superior. It was further observed that if water which would otherwise flow from the higher land gradually and without causing injury to the lower tenement is collected into one body by the owner of the superior land in the natural use of his property for drainage or improvement, the owner of the inferior land is bound to

receive such water even without the creation of any positive servitude. A similar principle was reiterated by the Madras High Court in ***Shaik Hussain Sahib v. Pachapulusu Subbaya, (AIR 1926 Mad 449)*** where, referring to the above Privy Council decision, it was held that the owner of the lower tenement cannot object to such flow so long as the flow, whether above or below the ground, occurs due to gravitation, unless the quantity of water has been unduly or unreasonably increased by operations amounting to *aemulatio vicini*.

14. It is worthwhile to note that, as per Ext.C2 report, the Advocate Commissioner reported that the properties of the 2nd and 3rd plaintiffs are situated at a higher level than that of the plaintiff A schedule property. A pipe having a width of 15 cm has been laid to drain water from their properties to the plaintiff A schedule property. On the north-western corner of the plaintiff A schedule property, another pipe having a width of 40 cm is laid to drain water through a pipe passing under Plakkathara Bund Road, which then leads to the property of Leela and, through an underground channel, to the property of Palamattam Binu. The Advocate Commissioner further observed that a drained water canal passing through the middle portion of plaintiff C schedule property proceeds westward through the property of

Sheeba, reaches the property of the 1st defendant (B schedule property), and ultimately drains into a pond. However, the said canal is presently blocked with overgrown grass and is filled with soil and stones.

15. The commission report also states that on the eastern side of plaint A schedule property, on the southern side of the property of the 3rd plaintiff, and on the southern side of the property of Beena (wife of the 1st plaintiff), there exists a canal having a width of one meter and a depth of 60 cm. This canal is situated at a lower level than the plaint schedule properties and the neighboring properties. The Advocate Commissioner reported that if the plaintiff constructs a channel from the pit situated at the north-western corner of his property through the western boundary, the excess water can be drained into the said canal. Hence, the easiest method for draining water is through this canal. Further, the commission report shows that Plakkathara Bund Road lies between the properties of the plaintiffs and the defendants, and that the pipe for drainage is laid beneath the road, which shows that the properties are not adjacent and divided by a road. Moreover, the Advocate Commissioner reported that the said water channel does not have continuity at several place. Further, artificial

means such as pipes are used to drain water. .It is worthwhile to note that right under S.7 (b) is not an absolute right. Moreover, Admittedly, the property of the plaintiff was originally a wetland which was later converted, and a residential house was constructed therein. Therefore, the plaintiff cannot contend that other persons are not entitled to construct houses by converting their land through filling with soil.

16. At this juncture, it can be held that the plaintiff has been able to establish a *prima facie* case to the extent that excess water from the property of the plaintiff flows through the B and C schedule properties. However, the balance of convenience is found to be against the petitioner, as the possibility of excess water flowing through the pathway pointed out by the Advocate Commissioner in the second report appears to be the easiest. If an injunction is granted, it would cause greater hardship and irreparable injury to the respondents, rather than to the petitioner if the relief is refused. Therefore, the petitioner is not entitled to the injunction as prayed for, and accordingly, the points are answered against the petitioner.

17. **Point No.4:-** In view of my finding on point No 1 to 3, the finding of the trial court does not warrant any interference and only to be confirmed and hence, I do so.

18. **Point No. 5:-** In the result, CMA is dismissed. Parties shall bear their respective costs.

(Dictated to the confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open court on this the 26th day of March, 2026)

Sd/-
Rema R K
Principal Sub Judge

APPENDIX : NIL

Id/-
Principal Sub Judge.

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Sheristadar