

IN THE COURT OF THE MUNSIFF, KODUNGALLUR.**Present:-****Sri.Nissam.A.,(KL00748) Munsiff.****Tuesday, the 9th day of June, 2026/19th Jyeshtam, 1948 SE****I.A.17/2025 IN O.S.465/2023****Petitioner:**

Mohanan, Aged 69, S/o. Padiyath Adima,
Sreenarayanapuram Village, Ala Desom,
Kodungallur Taluk.

By Adv.N.R.Santhosh

Respondents

1. Husnul Bhanu, Aged 55,
W/o. Kattakath Cherooliparambil Abdul Rasheed,
Sreenarayanapuram Village, Ala Desom,
Kodungallur Taluk.
2. Yumina, Aged 34, D/o.Kattakath Cherooliparambil Abdul
Rasheed, Sreenarayanapuram Village, Ala Desom,
Kodungallur Taluk.
3. Thahseena, Aged 32, D/o.Kattakath Cherooliparambil
Abdul Rasheed, Sreenarayanapuram Village, Ala Desom,
Kodungallur Taluk.
4. Ayisha, Aged 27, D/o.Kattakath Cherooliparambil Abdul
Rasheed, Sreenarayanapuram Village, Ala Desom,
Kodungallur Taluk.
5. Muhammed Soufu Anam, Aged 30
S/o. Kattakath Cherooliparambil Safarulla
Sreenarayanapuram Village, Ala Desom,
Kodungallur Taluk.

By Adv.Suresh Muraleedharan

This petition coming on this day for hearing before me,
the court on the same day passed the following:-

ORDER

This is a petition for an interim mandatory injunction filed by the plaintiff in this case.

2. **The averments in the petition are briefly as follows:** The main suit is filed for a permanent prohibitory injunction and a declaration of easementary rights over the plaint 'C' scheduled property. The plaint 'C' schedule property is a pathway measuring 6 meters in width and 110 meters in length, originating from the Kodungallur-Guruvayoor National Highway. The plaintiff claims that his family and predecessors-in-interest have been using this pathway openly, publicly, peacefully, and without any interruption for the past 100 years, thereby acquiring a prescriptive right of easement. The plaint 'A' schedule property and the defendant's property originally belonged to a common predecessor, and the plaintiff's father was a *kudikidappukaran* under the defendant's predecessor. It is alleged that the defendant's predecessor provided this pathway, described in the plaint 'C' schedule, to access the plaint 'A' schedule property. The plaintiff claims that the defendants threatened to close the 'C' schedule pathway on 30.03.2023 and that he was unable to prevent their illegal activities. Following a police complaint, the defendants temporarily

agreed to allow smooth access through the 'C' schedule path. The advocate commissioner appointed in I.A.6/2023 reported that the 'C' schedule pathway is the only access to the plaintiff 'A' schedule property. However, on 06.09.2023, the defendants constructed a boundary wall on both sides of the 'C' schedule pathway and blocked it completely with an iron gate, lock, and key. Consequently, the plaintiff has lost his ingress and egress to the plaintiff 'A' schedule property. The plaintiff contends that he can only travel from his 'A' schedule property to the National Highway on the western side if this obstruction is removed by an interim mandatory injunction. Therefore, he prays for a direction to the defendants to open the gate and restore his access through the plaintiff 'C' schedule.

3. **The respondent filed a detailed counter-statement opposing the petition, the brief details of which are as follows:** The respondent contends that the plaintiff is not entitled to any of the reliefs claimed in the suit or in this interlocutory application. It is stated that the plaintiff 'C' schedule pathway starts from the eastern side of the National Highway and leads exclusively to the defendants' property for their personal access. The pathway measures 4.8 meters wide at the beginning and extends

westward for 25 meters at the same width. This 4.8-meter pathway is fully included in the defendants' title deed; hence, the plaintiff's description of it as a 6-meter-wide pathway is incorrect. The defendants deny that the plaintiff ever acquired any prescriptive right of easement over the 'C' schedule path. Instead, they state that the plaintiff has an alternative 6-foot-wide pathway running from his north-eastern boundary to the National Highway on the eastern side, which reaches the north-eastern corner of the plaintiff 'A' schedule property. The plaintiff has also constructed a concrete ramp to link his 'A' schedule property to that pathway. Furthermore, the defendants' property and the adjacent land were partially acquired by the National Highway Authority of India (NHAI). A small portion of the independent pathway used by the plaintiff and his neighbours was also included in this acquisition. The plaintiff (Mohanan), along with Vasudevan and Muhammed Sageer, filed a joint application on 04.10.2021 before the Deputy Collector, Land Acquisition, NHAI. The acquisition proceedings were initiated under file number LAC No. 02/2021/Ala, and 0.0027 hectares of land from the eastern side of the pathway used by the plaintiff and others were acquired. The defendants further allege that the plaintiff, his son, and their

friends frequently trespass into the property late at night, using filthy language and threatening the defendants. The defendants admit they had installed a gate on the eastern side of their pathway near the National Highway, but it was removed in December 2022 when the property was acquired by the highway authority. They also claim the plaintiff attempted to break open the lock of their current gate and argue that the plaintiff has no *prima facie* case for an interim injunction. Therefore, they pray for the dismissal of the petition with costs.

4. The petitioner/plaintiff was examined as PW1. Documents Exts. A1 to A4 were marked on the side of the plaintiff. The respondent did not adduce any oral evidence, but documents Exts. B1 to B16 and Exts. X1(a) to X1(d) were marked on his side. The commission reports and plans were marked as court exhibits Exts. C1, C1(a), C2, C2(a), C3, and C3(a).

5. Heard both sides.

6. The points to be considered are:-

1. Whether the petition can be allowed?
2. Order as to costs.

7. Points 1 & 2:-At the outset, it is to be noted that the petitioner/plaintiff had previously filed an application seeking the exact same relief on the same set of facts, as IA 9/23, which this court dismissed vide its order dated 14.12.2023. Nothing is produced before this court to show that said order was appealed against. If it is so, that order attained finality. The plaintiff has again approached this court by the present petition for the identical relief, without averring or establishing any change in circumstances. However, my learned predecessor in office chose to decide this application on its merits, and the evidence of the petitioner was taken on oath, and he was meticulously cross-examined.

8. The primary allegation in the petition is that the plaintiff has been utilizing the 'C' schedule pathway under a prescriptive right of easement for the past 100 years. However, in the commission reports marked as Exts. C1, C1(a), C2, C2(a), C3, and C3(a), the 'C' schedule pathway is shown to connect with the southern boundary of the plaintiff 'A' schedule property at a point where a section of the plaintiff's boundary wall has been demolished. In the first commission report, the existence of the 'C' schedule path is mentioned, but it is not clearly or completely

drawn in the Ext. C1(a) plan. The second commission report (Ext. C2) was filed by the advocate commissioner on 25.07.2023. The accompanying plan, Ext. C2(a), shows the layout and location of the properties belonging to the plaintiff, the defendant, and the adjacent neighbours. In this Ext. C2(a) sketch, the alignment and layout of the plaint 'C' schedule property as described in the plaint are not properly marked. The commissioner reported that the 'C' schedule path appears to start from the southern side of the plaint 'A' schedule property where a portion of the southern boundary wall was demolished. The National Highway passes along the entire eastern side of the plaintiff's, the defendant's, and the adjacent properties. The sketch shows that a concrete slab has been placed from the north-eastern corner of the plaint 'A' schedule property to connect with another pathway that leads to the eastern side of the National Highway. The residential houses of Vasudevan and Muhammed Sageer are also shown on the northern side of that pathway. The commissioner noted that the boundary wall on the southern side of the plaintiff's property appears to be approximately 15 years old, and a 5.5-foot section of this wall has been demolished. It is through this broken gap that the plaintiff can enter the 'B' schedule property belonging to

the defendant. The 'C' schedule pathway is stated to begin at this very gap, and the physical descriptions suggest that this boundary wall was demolished very recently.

9. The commissioner has reported that an alternative pathway, measuring 6 feet in width and 350 feet in length, originates from the properties of Vasudevan and Muhammed Sageer and leads to the National Highway on the eastern side. It is also reported that the entrance leading from the plaintiff 'A' schedule property to this northern pathway has been closed down by the plaintiff himself using arecanut stumps and wickets. The commissioner explicitly stated that if this temporary fencing of arecanut stumps and wickets is removed, the plaintiff can easily access the northern pathway. In connection with this fenced portion of the plaintiff's property, there is an existing sloped concrete ramp leading eastward into the northern pathway.

10. The commissioner further reported that a pathway starts from the eastern side of the National Highway on the defendants' property and runs near the residence of defendants 1 to 4. The defendants use this way for their vehicular conveyance. The commissioner also observed the remnants of old gate pillars

constructed on this path, along with an old, demolished gate kept within the defendants' property.

11. In the Ext. C3 commission report, the commissioner noted that the defendants have constructed an iron gate at the entrance of the plaint 'C' schedule where the plaintiff claims a right of way, though the gate was kept open at the time of inspection. To evaluate the contentions, the plaintiff produced Exts. A1 to A4, while the defendants produced Exts. B1 to B16 and the Ext. X1 series documents. The defendants contend that the plaintiff has consistently been using the pathway on the northern side of his property for the past 50 years, along with Muhammed Sageer and Vasudevan. To prove this, the defendants summoned the official land acquisition files from the Deputy Collector (LAC No. 02/2021/Ala) concerning Survey No. 38/1C. This official file was marked as the Ext. X1 series. The documents in this file reveal that the plaintiff (Mohanana), Vasudevan, and Muhammed Sageer surrendered a portion of their pathway in Survey No. 38/1C to the National Highway Authority. A perusal of the Ext. X1 file shows that Mohanana, Vasudevan, and Muhammed Sageer submitted a signed letter to the NHAI explicitly stating that the said property has been used

as a pathway by them for the past 50 years. The plaintiff also applied for and received financial compensation for the acquisition of this property in Survey No. 38/1C, submitting his brother's sale deed and his own tax receipts to the authority to claim the amount. The compensation order was subsequently passed by the National Highway Authority in favour of the plaintiff. Therefore, the official records produced as Ext. X1 conclusively show that the plaintiff has been utilising the pathway on the northern side of the plaintiff 'A' schedule property. The commissioner's physical verification aligns with this, noting the presence of a sloped ramp connecting the plaintiff 'A' schedule property to this northern path, which is also used by the plaintiff's brother Vasudevan and neighbour Muhammed Sageer. The plaintiff has only recently blocked his entrance to this path. Furthermore, the southern boundary wall of the 'A' schedule property, which has an average age of 15 years, was found to have been broken down recently. This clearly demonstrates that for the past 15 years, the plaintiff has not used the land described as the plaintiff 'C' schedule pathway.

12. From the reports of the advocate commissioner, it appears that the plaintiff 'C' schedule is a pathway exclusively

used by defendants 1 to 4 to access their respective properties. Further, when the plaintiff was cross-examined, he admitted the existence of a gate on plain 'C' schedule pathway, which is appurtenant to the NH. He again admitted that the gate was demolished when the portion was acquired by the NHAI. As per the case of the defendant, they had installed a gate on the eastern side of their pathway near the National Highway, but it was removed in December 2022 when the property was acquired by the highway authority. The oral testimony of the plaintiff very well corroborates the defendant's case. If it is so, even if the case of the plaintiff is taken as true, the right of way enjoyed by him can only be taken as a permissive right. Hence, the contention of the plaintiff to the effect that his family and predecessors-in-interest have been using this pathway openly, publicly, peacefully, and without any interruption for the past 100 years, thereby acquiring a prescriptive right of easement, can not be accepted at this point in time. Consequently, it is not *prima facie* established that the plaintiff has been using the plain 'C' schedule pathway continuously for the statutory period of 20 years to claim a prescriptive right of easement. The plaintiff is therefore not entitled to the equitable relief of an interim

mandatory injunction. The petition is liable to be dismissed.

In the result, the petition stands dismissed. Parties shall bear their respective costs.

Dictated to the Confdl.Asst., transcribed by her, corrected by me and pronounced in open court on this the 9th day of June,2026.

Sd/-
NISSAM.A,
MUNSIFF.

Appendix

Petitioner's Witness

PW1- Mohanan

Petitioner's exhibits

A1- Order (No.C2/ALA/02/2021) from SPI Deputy Collector and competent authority (LA)

A2series- Photographs (A2(a,) (b), (c), (d))

A3-Dt.09.10.2023 Letter from State Public Information Officer

A4series Photographs

Respondent's witness-NIL

Respondent's exhibits

B1-Dt.23.09.2023 Notary attested affidavit of Abdul Kadar

B2-Dt.23.09.2023 Notary attested affidavit of Hamsa.

B3-Dt.02.12.2004	-Certified copy of Sale Deed NO.4457/2004 of Mathilakam SRO.
B4-Dt.15.04.2008	Certified copy of Sale Deed No.1703/2008
B5-27.09.2023 to 29.09.2023	Pen drive, CCTV footage
B6-Dt.23.05.2023	Certified copy of FIR No.467/23.
B7-Dt.23.05.2023	Certified copy of FIS No.467/23
B8-Dt.23.05.2023	Certified copy of Scene Mahazar
B9-16.08.2023	Certified copy of charge sheet No.2334/23)
B10-Dt.09.09.2023	Certified copy of FIR in Crime NO.867/23
B11-Dt.09.09.2023	Certified copy of FIS in Crime No.867/23
B12-Dt.10.09.2023	Certified copy of Scene Mahazar in Cr.867/23
B13-Dt.15.09.2023	Certified copy of Seizure Mahazar in Cr.867/23
B14-Dt.20.10.2023	Certified copy of charge Sheet in Cr.867/23 (ST.3325/23)
B15-Dt.12.12.2023	Copy of application from Public Information Department.
B16-	Original notice (No.C2-ALA-02/2021) from Spl. Thahasildar

Court exhibits

C1-	Commission Report
C1(a)	Rough Plan

C2- Commission Report

C2(a) Rough Plan

C3- Commission Report

C3(a) Rough Plan

Other exhibits

X1sereis Official File

Id/-
MUNSIFF
(By order)

//True copy//

Junior Superintendent

copied by:KS
compared by: