

IN THE COURT OF THE SUB JUDGE, CHERTHALA**Present: Ms. Lakshmy. S, Sub Judge****Saturday, the 31st January 2026/ 11th Magha 1947****CMA.13/2024**

(Filed on 15.04.2024)

(This CMA filed against the order dated 22.03.2024 in IA.1/2024 in O.S.No.55/2024 of the Principal Munsiff's Court, Cherthala)

- Appellant: Augustine @ Antappan, aged 63, S/o Late Vakko,
Kannanthara, Padinjaattinkara Vadakku Muri,
Kuthiyathode Village, Thirumalabhagom P.O: 688 540,
Chavadi, Cherthala Taluk (Died)
- Addl. Appellant 2. Lizi Margaret, aged 57, W/o. Augustine @ Antappan,
Kannanthara, Padinjaattinkara Vadakku Muri,
Kuthiyathodu Village, Thirumala Bhagom.P.O: 688 540,
Chavadi, Cherthala Taluk
- Addl. Appellant 3. Mary Anju, aged 27, D/o. Augustine @ Antappan,
Kannanthara, Padinjaattinkara Vadakku Muri,
Kuthiyathodu Village, Thirumala Bhagom.P.O: 688 540,
Chavadi, Cherthala Taluk
Rep. By Power of attorney holder Lizy Margaret,
W/o. Augustine @ Antappan, of - do -
- Addl. Appellant 4. Lijo George, aged 24, D/o. Augustine @ Antappan,
Kannanthara, Padinjaattinkara Vadakku Muri,
Kuthiyathodu Village, Thirumala Bhagom.P.O: 688 540,
Chavadi, Cherthala Taluk

(Addl. Appellants 2 to 4 were impleaded as the legal heirs of deceased Appellant as per order dated 14.07.2025 in IA.7/2025)

By Adv. M.M. Vinod & Adv. V.N. Madhusudanan

- Respondents:
1. Varghese @ George, aged 73, S/o Late Vakko, residing at Kannanthara ,Mandur Neura Goa, Near Azossim Church, Tiswadi Taluk, North Goa District, Goa State, from Kannanthara, Padinjaattinkara Vadakku Muri, Kuthiyathode Village, Thirumalabhagom P.O: 688 540, Chavadi, Cherthala Taluk
 2. Robin, aged about 38, S/o Thankachan, residing at Anjilikkal, Kuthiyathode Village, Thuravoor P.O, East of Thuravoor Railway Station, Thuravoor, Cherthala Taluk
 3. Josmi @ Mable, aged about 35, W/o Robin, residing at Anjilikkal, Kuthiyathode Village, Thuravoor P.O., East of Thuravoor Railway Station, Thuravoor, Cherthala Taluk

By Adv. M.M. Salichan

The memorandum of appeal is preferred against the order dated 22.03.2024 in IA.1/2024 in O.S.No.55/2024 of the Principal Munsiff's Court, Cherthala, which coming on for final hearing on 24.01.2026 and the court on 31.01.2026 delivered the following:

JUDGMENT

This is an appeal filed by the petitioner/plaintiff against the order in IA.01/2024 in OS.No.55/2024 dated 22.03.2024 of the Principal Munsiff's Court, Cherthala which dismissed the application for interim injunction.

2. The case of the petitioner/plaintiff: The plaintiff is the owner of plaint 'A' schedule property. 'B' schedule is the property owned by the defendants. Plaintiff and his family have been using the pathway starting from the southern gate in 'A' schedule which proceeds through 'B' schedule to reach the public pathway on the southern side since 1972. The pathway is scheduled as 'C' schedule. The defendants tried to construct foundation around 'B' schedule for construction of compound wall. The intention of the defendants is to prevent the user of 'C' schedule by the plaintiff. Hence the suit and IA for injunction.

3. Respondents raised the following contentions. The plaintiff has falsely claimed easement right over 'C' schedule pathway. He deliberately included incorrect boundaries to 'A' schedule. The southern boundary of plaint 'A' schedule is pathway, hence the said boundary was not purposefully stated in the plaint, and it is stated as 'B' schedule in the plaint. The public pathway on the southern side of plaint schedule property is a one metre width pathway. Plaint A and B schedule and another property having total extent of 2 cents were part of

the single holding. The eastern portion was divided into 2 plots on the North and South by executing separate sale deeds in favour of plaintiff and 1st defendant. Since the southern portion was on the side of the public way, the northern property was given one metre width portion touching the southern public pathway. Hence the properties are having an uneven shape. A schedule is the northern property and B schedule is the southern property. Plaintiff 'B' schedule was sold to the 3rd defendant by the 1st defendant on 22.05.2023. The plaintiff who has clear knowledge about such transaction filed this suit in order to prevent D3 from constructing a house in 'B' schedule. 'C' schedule is claimed through the middle of 'B' schedule. The defendant who is having direct access to the southern road is claiming C schedule falsely through 'B' schedule. The plaintiff who suppressed the material facts is not entitled to an order of injunction.

4. During the pendency of the appeal, the appellant died and his heirs were impleaded as Additional Appellants 2 to 4 as per order in I.A.7/25 dt.14.07.2025.

5. Heard both sides and perused trial court records.

6. The following points arise for consideration in this appeal:

- (i) Whether the Order dt.22.03.2024 in IA.No.01/2024 in O.S.55/2024 of the learned Principal Munsiff requires interference?
- (ii) Reliefs and costs.

7. **Point No.1:** The appellant instituted the suit contending that he is the owner in possession of plaint A schedule property and that access to the public pathway on the southern side has been enjoyed by him and his family for several decades through C schedule pathway running across the respondent's B schedule property. According to the appellant, the said pathway has been openly, peaceably and continuously used as of right since 1972 and constitutes an easement acquired by prescription. Alleging that the respondents attempted to construct a compound wall and thereby obstructed the user of the way, the suit was instituted seeking declaration and injunction along with an application for temporary injunction to prevent obstruction pending disposal of the suit.

8. The respondents resisted the application contending that the appellant has alternative access to the public pathway, that the description of property boundaries is incorrect and that the plaintiff has no easement right through B schedule. It was further contented that the alleged pathway is claimed only to

obstruct the development of B schedule property after it was transferred to the defendant no.3.

9. The learned Munsiff, on considering the materials placed, dismissed the application for temporary injunction, finding that the plaintiff failed to establish a prima facie case and that balance of convenience was in favour of the defendants. It was further found that the plaintiff suppressed material fact regarding existence of another way.

10. On re-appreciation of the materials available, this Court finds that the approach adopted by the learned Munsiff in declining interim relief is not sustainable. The appellant's case is one of easement by prescription, which necessarily involves examination of long, open and uninterrupted enjoyment as of right. Such issues require detailed appreciation of evidence at trial, and at the interlocutory stage, the enquiry is confined only to whether a serious and bona fide dispute exists, warranting preservation of the existing state of affairs. In the present case, the advocate commissioner appointed in the suit has specifically reported the existence of a discernible and hardened pathway running through B schedule property corresponding to the description of C schedule. The presence of such a pathway lends prima facie support to the appellant's contention regarding long user. The question whether such use amounts to enjoyment as of right and

whether easement by prescription has been legally perfected are matters to be conclusively determined only after recording evidence and cannot be adjudicated at an interim stage.

11. The reasoning of the trial Court is that the appellant has alternative access and therefore cannot claim interim protection. It overlooks the settled position that existence of another access does not at the interlocutory stage negate the need to prefer an existing user claimed as a prospective right, particularly when the commissioner has noted an existing pathway in it. If construction activities are permitted and the pathway is obstructed during pendency of the suit, restoration of original condition would become difficult and would result in serious prejudice to the appellant's claimed right.

12. The balance of convenience in the circumstances lies in maintaining the status quo, so that the alleged pathway is not obliterated before adjudication of the rights in the suit. Refusal of injunction at this stage is likely to cause irreparable injury to the appellants, whereas grant of protection would only preserve the property in its present condition without finally deciding the right of parties.

13. The aspect on suppression of material facts is also seen dealt with ignoring the nature of right claimed by the appellants through B and C schedule.

This is not a proper stage to decide the issue on prescriptive easement and the findings are too premature. It is therefore evident that the learned Munsiff has not correctly appreciated the limited scope of enquiry at the interlocutory stage and has prematurely weighed issues and hence, interference with the impugned order is thus warranted. The point is found in favour of the appellants.

14. **Point No.2:** In view of the finding on point No.1, appeal is to be allowed, with costs.

In the result; the CMA is allowed, with costs and the order dt.22.03.2024 in I.A.1/2024 in OS 55/24 is set aside and an interim injunction is granted restraining the respondents from altering the status of plaint C schedule way in any manner and from causing any obstruction to its user, till the disposal of the suit.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 31st day of January, 2026.

Sd/-
LAKSHMY.S,
SUB JUDGE

Appendix :Nil

Id/-
SUB JUDGE