

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Sri. Nishad Ibrahim., Principal Munsiff

Tuesday the 19th day of August, 2025/ 28th Sravana, 1947

O.S. No. 246/2019

Plaintiffs:-

1. Jose Kooran, aged 62 years, S/o. Joseph Vattathara, Vattathara House, Njarakkal P.O., Pin – 682505, Njarakkal Muri, Njarakkal Village, Kochi Taluk.

Addl. P2. Anu Jose, aged 33 years, D/o. Jose Kooran, Vattathara House, Njarakkal P.O., Pin – 682505, Njarakkal Muri, Njarakkal Village, Kochi Taluk.

Addl. P2 is impleaded as per Order in IA 5/2024 in O.S 246/2019 dtd. 30.10.2024.

P1 by Advs. B.J. Yesudas & Antony Nilton

Addl. P2 by Adv. B.J. Yesudas

Defendants:-

1. Joe J. Vattathara, aged 60 years, S/o. Joseph Vattathara, Vattathara House, Nayarambalam P.O., Pin–682509, Nayarambalam Muri, Nayaramblam, Kochi Taluk.

Addl.D2. K.M. Flory, aged 60 years, W/o. Joe J. Vattathara, Vattathara House, Nayaramblam P.O., Pin – 682509, Nayarambalam Muri, Nayarambalam, Kochi Taluk.

Addl. D2 Impleaded as per Order in IA 1/2020.

By Advs. Lovewin Vinu, George Roy, & Sailakshmi Menon

This suit come up for hearing on 11.08.2025 and the court on 19.08.2025, delivered the following:-

J U D G M E N T

Suit for fixation of boundary and for perpetual injunction.

2. **The amended plaint summary:** a) The plaintiff acquired ownership and possession of the plaint A schedule property under the settlement deed No.1959/1995 of SRO, Njarakkal executed by his father, Joseph Vattathara, who reserved the right to take the income during his and his wife's lifetime. After Joseph's death, the plaintiff's mother, Annie Joseph Vattathara, executed the sale deed No.2576/2012 of SRO, Njarakkal relinquishing her reserved rights. Since then, the plaintiff exclusively owns, possesses, and enjoys the A schedule property with all appurtenances, easements, and amenities. The defendant has no right or interest therein.

b) As per a separate document, Joseph Vattathara transferred 10 cents in old survey No.549/2, on the west of A schedule, to the defendant, who built a residence there with a boundary wall separating it from the A schedule. This land is the plaint B schedule. On the west of the B schedule lies the tharavadu house of both parties, with adjoining property allotted to another brother and sister-in-law.

c) The plaint C schedule property is a common pathway created by late Joseph Vattathara for the use of the plaintiff, defendant, and tharavadu house. The deed No.1959/1995 records the plaintiff's right over this 16-

link-wide east–west pathway, which connects the tharavadu house to the Panchayat road. The plaintiff has since used it for ingress, egress, and vehicular traffic without obstruction. The defendant has no right to interfere with this usage.

d) The plaintiff obtained Panchayat sanction on 15.11.2018 to build a boundary wall on the eastern and northern sides of the A schedule. On 25.02.2019, when work began, the defendant obstructed it. The plaintiff approached the Tahsildar, and on 04.04.2019, the Taluk Surveyor fixed the boundaries, with both parties giving written consent. Despite this, the defendant again disrupted the construction. Mediation attempts failed due to the defendant's obstinacy. In the above circumstances, the plaintiff seeks a decree for fixation of boundary through commission based on revenue and title records, and a permanent injunction against the defendant's obstruction of boundary construction and use of the C schedule pathway. Meanwhile, under the gift deed No.255/2024 of SRO, Njarakkal, the plaintiff transferred 3.64 Ares (part of A schedule) to his daughter, Anu Jose, Additional Plaintiff No.2, who thus became a co-owner. From the defendant's written statement, it emerged that his wife, K.M. Flory, holds the title to the B schedule under the deed No.1902/1995 of SRO Njarakkal. The original defendant's obstruction was thus on her behalf, making her a necessary party.

3. **The defendant filed written statement with the following contentions:-**a) The suit is not maintainable in law or on facts. The defendant denies all inconsistent averments. The plaintiff's suit for boundary fixation and injunction is unfounded, as his intention is to encroach upon the C schedule pathway. The suit is also bad for non-joinder, since the B schedule belongs to the defendant's wife, K.M. Flory, under the deed No.1902/1995 of SRO Njarakkal. The defendant disputes the extent of A schedule as claimed. The father, Joseph @ Kochuouseph, divided the property among his children, and A schedule was given to plaintiff after allotments to others. While the tharavadu transfer is admitted, other averments are denied. The existence of the C schedule pathway is not disputed, but the defendant never obstructed the plaintiff's use. The plaintiff's intention is to encroach upon the C schedule. The Survey and village authorities have already measured and fixed the boundaries, but the plaintiff attempted to build a wall encroaching into the C schedule. Timely intervention by the defendant and his wife prevented this. There is no cause of action, and the suit deserves dismissal with compensatory costs.

4. **The following issues were framed for trial :**

- i. Whether the suit is bad for non-joinder of necessary parties ?
- ii. Whether the cause of action alleged is true and valid ?
- iii. Whether the plaintiff is entitled to a decree for fixation of

boundary of the plaint A schedule, and if so, through which line ?

- iv. Whether the plaintiff is entitled to permanent prohibitory injunction against obstructing construction of the boundary wall in A schedule and against causing obstruction in the usage of C schedule and from committing waste therein ?
- v. Reliefs and costs ?

5. On the side of the plaintiffs, the 1st plaintiff was examined as PW1 and Exts.A1 to A7 were marked. The defendant did not adduce any oral or documentary evidence. The report and the survey sketch filed by the learned Advocate Commissioner were marked as Exts.C1 and C1(a).

6. Heard both sides.

7. **Issue nos.(i) to (iv)** :- The plaintiff was examined as PW1. The additional plaintiff is his daughter. According to PW1, he acquired ownership and possession over the plaint A schedule property as per Ext.A1 settlement deed executed by his father which was executed by the father reserving the right to take income from the property during the lifetime of the father and mother. According to PW1, after the death of his father, his mother executed Ext.A2 sale deed bearing no.2576/2012 of SRO, Njarakkal relinquishing all her rights reserved as per Ext.A1. PW1 claimed that, since then, he is the

absolute owner of the plaint A schedule property. PW1 had further stated that the 1st defendant who had expired during the pendency of the suit was his brother who was the owner of the plaint B schedule property. According to PW1, the plaint C schedule property was the common pathway carved out by his late father for the common usage of the plaintiff and the defendants and the tharawad property on the west. He claimed that as per the recitals in Ext.A1, he was entitled to use the pathway for his ingress and egress into the plaint A schedule property including vehicular traffic.

8. According to PW1, when he tried to construct the boundary wall of the plaint A schedule property on 25.02.2018, the 1st defendant intervened and illegally obstructed the work without any valid reason. PW1 had further stated in his proof affidavit that the 2nd plaintiff had become the co-owner in possession of the major share in respect of the plaint A schedule property along with him as per the gift deed bearing no.255/2024 of SRO, Njarakkal executed by him.

9. It may be noted that as per the order in IA 1/2020, the wife of the 1st defendant was impleaded as the 2nd defendant since it was pleaded by the 1st defendant that she was the owner of the plaint B schedule property.

10. The plaintiff had taken out a commission to substantiate his claims. The survey commission report was marked as Ext.C1 and the survey

sketch was marked as Ext.C1 (a). As per Ext.C1, the learned commissioner reported that the property of the plaintiff was marked as B plot in Ext.C1 (a) and the plaint B schedule property was marked as plot A in Ext.C1(a). It may be noted that though the defendant had filed a written statement, she did not cross - examine PW1.

11. The evidence of PW1 together with the documents marked on his side would entitle him to get a decree as prayed for in the plaint in the absence of any contra evidence. Accordingly, these issues are found in favour of the plaintiff.

12. **Issue no.(v)** : In view of my findings in issue nos.(i) to (iv), the suit is liable to be decreed.

In the result, the suit is decreed as follows :

1. The boundaries of the plaint A schedule property are fixed as per Ext.C1(a).
2. The defendants, their men, and agents are restrained by way of perpetual injunction from causing any obstruction in effecting the construction of the boundary wall in the plaint A schedule property fixed as per Ext.C1 (a) and also from creating any obstruction in the peaceful enjoyment and usage of the plaint C

schedule property by the plaintiff and from committing any wastes therein.

3. Ext.C1 (a) shall form part of the decree.

4. No order as to costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 19th day of August, 2025.

Sd/-
Nishad Ibrahim
Principal Munsiff

APPENDIX:-

Plaintiff's Exhibits:-

A1	09.05.1995	Copy of deed No. 1959/1995, Sub Registrar Office, Njarakkal.
A2	01.11.2012	Copy of deed No. 2576/2012, Sub Registrar Office, Njarakkal.
A3	15.11.2018	Copy of permit.
	16.01.2019	Copy of the plaint.
A4	26.04.2019	Copy of Report issued under RTI Act.
A5	04.04.2019	Copy of consent.
A6	19.06.2019	Land Tax Receipt.
A7	17.02.2024	Original deed No. 255/2024 of Sub Registrar Office, Njarakkal.

Defendant's Exhibits:-

Nil

Court's Exhibits:-

C1	25.01.2024	Commission Report submitted by Advocate Seeja S.
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C1(a) -- Survey Sketch.

Witness Exhibits Nil

Plaintiff's Witness:-

PW1 06.08.2025 Jose Kooran

Defendant's Witness:- Nil

Court's Witness:- Nil

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsiff

**JUDGMENT IN
O.S. No.246/2019
Dated : 19.08.2025**