

IN THE COURT OF THE MUNSIFF, PALA

Present Sri. Hasheem S, Munsiff, Pala

Tuesday 31st day of March, 2026
10th day of Chaithra, 1948

O.S Nos. 132/2021, 119/2021

&

Counter Claim In O.S No.132/2021

O.S No. 132/2021

Plaintiff/s:-

1. Ramachandran Nair, aged 75 years,
S/o Krishnan Nair,
residing at Binu Mandiram House,
Monipally Kara, Monipally Village,
Meenachil Taluk, Pin. 686636
 2. Annakutty John, aged 66 years,
W/o John Chacko,
residing at Elavunkal House,
Monipally Kara, Monipally Village,
Meenachil Taluk, Pin. 686636
- By Adv. K. G. Vijayachandran & Adv. Baby Joseph

Defendant/s-

Jayalakshmi, aged 56 years,
W/o Radhakrishnan, residing at
Panathu House, Karunechikara Kara,
Monipally Village, Meenachil Taluk,
Pin. 686636

By Adv. Sajith C. George

Counter Claim In O.S No. 132/2021

Counter Claim

Plaintiff/

Defendant/s:-

Jayalakshmi S,
W/o Radhakrishnan, Panathu House,
Karunechi Kara, Monipally Village,

By Adv. Sajith C George

Counter Claim

Defendant/

Plaintiff/s:-

1. Ramachandran Nair,
S/o Krishnan Nair,
Binu Mandiram, Kakkanamkattil,
Karunechi, Uzhavoor
2. Annakutty John, aged 66 years,
W/o John, Elavunkal House,
Karunechi Kara, Uzhavoor Village.

By Adv. K. G. Vijayachandran & Adv. Baby Joseph

O.S No. 119/2021

Plaintiff/s:-

Jayalakshmi S, aged 56 years,
W/o Radhakrishnan,
residing at Panathu House,
Karunechi Kara,
Monipally Village, Poius Mount P. O.,
Meenachil Taluk, Pin. 686636

By Adv. Sajith C George

Defendant/s-

1. Haridas, aged 55 years, S/o Krishnan,
Karakattu House,
Karunechi Kara, Uzhavoor Village,
Pious Mount P. O., Meenachil Taluk,
Kottayam Dist.
 2. Ramachandran Nair, aged 75 years,
S/o Krishnan Nair, Kakkanamkattil House,
Karunechi Kara, Uzhavoor Village
Meenachil Taluk, Kottayam
 3. Ravi, aged 55 Years, S/o Lekshmi,
Kumbalavelil House, Karunechi Kara,
Uzhavoor Village, Pious Mount P. O.,
Meenachil Taluk, Kottayam
- By Adv. K. G. Vijayachandran & Adv. Baby Joseph

These Suits and Counter Claim have been finally heard on 30.03.2026 and the court on 31.03.2026 delivered the following :-

COMMON JUDGMENT

OS No.119/2021 and OS No.132/2021 are for the permanent prohibitory injunction, and the counterclaim to OS No.132/2021 is for declaration and a consequential prohibitory injunction.

OS No.119/2021**2. The averments in the plaint in brief are as follows:-**

The plaintiff obtained the plaint schedule 'A' property through a

registered Will Deed No.87/1999 of SRO Kuravilangadu, executed by her father, Sreedharan Nair, on 28.09.1999. The property is having an extent of 40 Ares 10 Square metres, comprised in resurvey No.161/10 in block No.4 (Old survey No.424/1) of Monippally Village. The properties of the defendant Nos.1 and 3 lie on the northern side of the plaint 'A' schedule property, and the property of the 2nd defendant lies on the southern side of the plaint 'A' schedule property. Further east of the plaint 'A' schedule property lies Vilangappara - Elavunkal property adjacent to Chettukulam - Pious Mount Panchayath road. The plaintiff and her ancestors were having a residential building on the plaint 'A' schedule property, and they have been using the pathway starting from the panchayath road passing through the southern boundary of Vilangappara - Elavunkal property for ingress and egress to their respective properties. In order to improve the conveyance to the plaint 'A' schedule property, the plaintiff's father got a grant from one Joseph, S/o.Chacko, Thottathil house in the year 1991. The grant was obtained to use the property having an extent of 2.43 Ares, comprised in resurvey No.160/1-2, in block No.4 (old survey No. 426/10/1) of Uzhavoor Village, scheduled as plaint 'B'

schedule property. The grant obtained to use the plaint 'B' schedule property starting from Chettukulam - Pious mount panchayath road as its eastern boundary having length of about 600 feet was later acknowledged on 07.01.2011, and the right was transferred to plaintiff by virtue of sale deed No.654/2014 of Kuravilangadu SRO and mutation was effected in favour of the plaintiff as per Thandapper No.3552. Thereafter, in 1996, a motorable road including a culvert across Valari Thodu was constructed through 'B' schedule property to reach the south-eastern corner of the plaint 'A' schedule property to reach the plaintiff's house. The plaintiff and her family members alone used the road, and no others have any right to use the plaint 'B' schedule property and the private road. In pursuance of the litigation before this court in OS No.47/2014 and OS No.57/2014, a compromise was effected, in which the parties therein, including the wife and siblings of D1, agreed to cut open a new road through the western portion of the Valari Thodu. Defendants were using the newly constructed road, adjoining the 'B' schedule private road, since the said cases were compromised on 30.06.2016 to reach their respective properties. Recently, the eastern portion of

the plaint 'B' schedule property was damaged due to a heavy rush of rainwater from the adjacent panchayath road and the roof of the house of one Stephen Thottunkal. The defendant blamed the plaintiff for the destruction of the 'B' schedule private road and threatened him to obstruct the road. On 22.06.2021, D1 to D3 obstructed the plaintiff from taking timbers in the vehicle along the 'B' schedule property. Thereafter, the defendants, along with Gramapanchayath members Suresh V T and Sreeni Thankappan, threatened that they would encroach upon the plaint 'A' schedule property to facilitate carving the existing road further eastwards to link with Kannanmala - Pious Mount Panchayath road on the west. The plaintiff got reliable information from nearby residents that the defendants are trying to trespass by demolishing the northern boundary kayyala and the compound wall of the plaint 'A' schedule property, near the portion of the residence of D1 to carve a new road to reach Kannanmala panchyath road on the west. D1 to D3 have no right to encroach upon the plaint 'A' schedule property. Hence, the suit is filed seeking a permanent prohibitory injunction against the defendants from trespassing into the plaint 'A' schedule property, demolishing the northern boundary Kayyala and the

compound wall for the extension of the road, and from obstructing or interfering with plaintiff's title, possession and usage of the 'B' schedule road and obstructing the transportation of teak and heavy timber through the property.

3. The defendants filed the written statement contending as follows:- The suit is not maintainable either in law or on the facts. All averments except those specifically admitted are false and hence denied. The plaintiff has no cause of action to file the suit against the defendants. The averment that the plaintiff is the absolute owner and the person in possession of plaintiff 'A' schedule property is not fully correct. The plaintiff 'B' schedule property is not a private road; it is a public road that starts from Chettukulam - Pious Mount Panchayath road, passes through the southern side of one Annakutty John and the northern side of the 2nd defendant, and again passes through the property of the plaintiff and reaches to Kannanmala Panchayath road. The neighbouring property owners and the local inhabitants were using the said road for ingress and egress for the beneficial enjoyment of their properties. The defendants never threatened the plaintiff. The 2nd defendant is the absolute owner-in-possession of 9.65 Ares

of property comprised in resurvey No.150/1 of Monippally village, which lies on the southern side of the plaint 'A' schedule property. The plaintiff had approached the 2nd defendant and Annakutty with a demand to sell some portion of their property for outrage sale at a low price. As they were not amenable to the same, the plaintiff was in enmity with them. When the plaintiff attempted to trespass onto the property of the 2nd defendant and Annakutty, and also attempted to pull wooden locks through their property without their consent, they filed a suit as OS No. 132/2021 and obtained an injunction order against the plaintiff's illegal act. The averment that the defendants are taking hasty preparations to trespass by demolishing the boundary kayyala and compound wall of 'A' schedule property is false. The suit is filed by the plaintiff on an experimental basis with a view to snatching away the portion of the defendants' property and the property of Annakutty. The reliefs sought in the suit are not allowable; hence, the suit may be dismissed.

OS No.132/2021

4. **The averments in the plaint, in brief, are as follows:-** The 1st plaintiff obtained the plaint schedule No.1 property, measuring 9.65 Ares, as per resurvey No.150/1 (formerly survey 423/6, 423/4B) of Monippally Village, through Sale Deed No.503/2017 of Kurvavilangad SRO. This property was mutated in his favour, and he has possessed it ever since the deed was executed. The property is clearly demarcated with defined boundaries. The husband of the 2nd plaintiff, John, acquired title to the property in the plaint schedule No.2, measuring 62.14 Ares, as per re-survey No.161/15, 161/6 of Monippally Village, through Sale Deed No.2299/2009 of Kuravilangad SRO. After his death, the 2nd plaintiff has been in possession and enjoyment of this property. The defendant's property is situated on the northern side of the plaint schedule No.1 property. A strip of land, part of the plaint schedule No.2 property, lies on the south-eastern corner of the same property, which the 2nd plaintiff possesses and enjoys, and is described as the plaint schedule No.3 property. A significant number of trees grew on the defendant's property, which she cut

down and heaped on her property. The defendant approached the plaintiffs and demanded a portion of the plaint schedule Nos.1 and 3 properties for sale; however, the plaintiffs rejected her demand, and ever since the defendant has harboured enmity towards them. On 11.07.2021, the defendant and her henchmen attempted to trespass onto the plaint schedule Nos. 1 and 3 properties and tried to pull wooden logs through the plaint schedule 1 and 3 properties. Due to the timely intervention of the first plaintiff and nearby residents, their efforts failed. Subsequently, the defendant and others threatened to trespass again and cause damage to the properties. The defendant does not hold title or possession over the plaint schedule Nos.1 and 3 properties, and the plaintiffs seek a prohibitory injunction to prevent the defendant from trespassing on these properties.

5. **The defendants filed a written statement with a counterclaim, contending as follows:-** All averments in the plaint, except those specifically admitted hereunder, are false and are therefore denied. The allegation regarding the strip of land, shown as part and parcel of the plaint schedule No.2 property, is

false and misleading. The averment that the property lying on the southeastern side of the defendant's property is in possession and enjoyment of the plaintiff is also false and therefore denied. The attempt in the plaint to schedule the said extent separately as item No.3 property is also false and misleading, since the extent of property already includes the extent of the road leading to the defendant's property and residence from Chettukulam - Pious Mount road. The averment that the defendant approached the plaintiffs demanding the sale of a portion of item Nos.1 and 3 properties is false. The averment that the defendant trespassed into the plaint schedule Nos.1 and 3 properties and threatened the plaintiff is also false and therefore denied. There is no cause of action for the suit. The plaintiff's apprehension is not well-founded. The defendant is the owner in possession of the counterclaim 'A' schedule property, comprising an extent of 40.10 Ares, within resurvey No. 161/10 in block No. 4 (Old survey No. 424/1) of Monippally Village. The counterclaim plaintiff and her predecessors used the counterclaim 'B' schedule road, starting from Chettukulam - Pious Mount road with a width of 4 metres, which leads to the counterclaim 'A' schedule property and the

residence situated there. The road was constructed in 1988 and was later modified to its present form when the defendant's father, Sreedharan Nair, obtained a grant from Joseph Chacko in 1991 for its maintenance. The condition of the counterclaim 'B' schedule road was further improved for vehicular transport by constructing a concrete bridge (culvert) across Valari Thodu in 1996 to reach Thodu Puramboke and about half cent of property owned by the 1st plaintiff, which merged with the counterclaim road by acquiescence to reach the counterclaim 'A' schedule property. The culvert was constructed with money from the defendant's father, and the 1st plaintiff had provided 1/2 cent of the property. The present form of the counterclaim 'B' schedule road is regularly used for ingress and egress to the defendant's property without interruption, openly as of right, and continuously for the last 33 years and more. The plaintiffs have no right to obstruct the defendant's use of the road. The plaintiffs are attempting to interfere with the defendant's use of the way through the counterclaim 'B' schedule road, starting from the Chettukulam - Pious Mount road, with a width of 4 metres, leading to the counterclaim 'A' schedule property and the defendant's

residence. The defendant's right of way over the counterclaim 'B' schedule road should be declared, and the plaintiffs and those under them should be restrained by a permanent prohibitory injunction from causing any obstruction to the defendant's peaceful use of the counterclaim 'B' schedule road. Therefore, the suit should be dismissed, and the counterclaim decreed.

6. **Plaintiffs filed a replication** denying the counterclaim raised by the defendant. Plaint schedule No.3 property, having an extent of $\frac{1}{2}$ cent, is part and parcel of Plaint schedule No.2 property, which is situated at the south-eastern corner of the defendant's property and is in the absolute possession and enjoyment of the second plaintiff. The description of the counterclaim property is not correct. The defendant is not entitled to the relief sought in the counterclaim, and there is no cause of action against the plaintiff.

7. **Based on the rival contentions in OS No. 119/2021, my predecessor in office framed the issues, which are recast as follows:**

1. Is the plaintiff entitled to get a decree for a permanent prohibitory injunction by restraining the defendants from trespassing upon the plaint 'A' schedule property and demolishing the northern boundary Kayyala, as prayed for?
2. Is the plaintiff entitled to get a decree for a permanent prohibitory injunction restraining the defendants from obstructing the plaintiff's title, possession and use of the plaintiff's 'B' schedule private road and from obstructing the transportation of timber through the road, as prayed for?
3. Order as to costs?

8. **Based on the rival contentions in OS No. 132/2021 and the counterclaim, my predecessor in office framed the issues, which are recast as follows:**

1. Are the plaintiffs entitled to get a decree of a permanent prohibitory injunction restraining the defendant from trespassing into the plaint schedule Nos. 1 and 3 properties and from pulling the wooden log through the properties, as prayed for?

2. Is the defendant/ counterclaim plaintiff entitled to get a decree by declaring her right of way over the counterclaim 'B' schedule road, as prayed for?
3. Is the defendant/ counterclaim plaintiff entitled to obtain a permanent prohibitory injunction against the counterclaim defendants to prevent obstruction of her use of the Counterclaim B schedule road, as prayed for?
4. Order as to costs?

9. This court, by its order dated 04.03.2022 in IA No.3/2021 in OS No.119/2021, directed a joint trial of OS No. 119/2021 and OS No. 132/2021, with OS No.119/2021 as the lead case, and evidence was adduced accordingly. The plaintiff in OS No.119/2021 and the defendant in OS 132/2021 are the same person and are hereinafter referred to as the plaintiff. Defendant No.2 in OS No.119/2021 and Plaintiff No. 1 in OS 132/2021 are the same person and are hereinafter referred to as the second defendant. D1 and D3 in OS No.119/2021 are hereinafter referred to as D1 and D3, respectively, and the second plaintiff in OS 132/2021 is referred to as the "fourth defendant".

10. On the plaintiff's side, PW1 and PW2 were examined, and Exts.A1 to A6 were marked. On the defendant's side, DW1 and DW2 were examined, and Exts.B1 to B4 were marked. The Commission Reports and Rough sketches were marked as Exts.C1, C1(a), C2 and C2(a).

11. Heard both sides.

12. **Issue No.1 in OS No. 119/2021:-** The relief sought by the plaintiff is that the defendants be restrained by a permanent prohibitory injunction from trespassing into the plaint 'A' schedule property and demolishing the northern boundary kayyala and compound wall for road extension. The plaintiff's version is that she received reliable information that the defendants are making hasty preparations to trespass into the plaint 'A' schedule property by demolishing the northern boundary kayyala and compound wall of the plaint 'A' schedule property to carve a new road to reach Kannanmala panchayath road on the west. However, the defendants denied the allegation in their written statement. Though it is stated in the plaint that the plaintiff received reliable information about the apprehension of trespass, she

could not adduce any evidence to prove that her apprehension is well-founded. Even the plaintiff does not have a specific case regarding the source of the information. The plaintiff does not have a specific case showing that any overt act was committed by the defendants to cut open a road by destroying the northern boundary mud wall. In the above circumstances, I am of the view that there is absolutely no evidence to prove that the defendants are attempting to trespass upon the northern boundary of the plaint 'A' schedule property, and a mere vague allegation of the plaintiff is insufficient to pass a permanent prohibitory injunction against the defendants, and hence the relief cannot be allowed. Hence, the issue is found against the plaintiff.

13. **Issues No.2 in OS 119/2021:-** The plaintiff's case is that she and her ancestors used a pathway starting from Chettukulam - Pious Mount Panchayath road, passing through the southern boundary of Vilangappara Elavumkal property, for access to their properties. To improve transportation to the schedule property, the plaintiff's father obtained a grant from a person named Joseph in 1991. The grant allowed the use of a 2.43-acre

property in Re-Survey No.160/1-2 in block No.4 of Uzhavoor village as a private road, scheduled as 'B' schedule property. In 1996, a new motorable road with a culvert across Valeri Thode was built using only the plaintiff's father's funds, to reach the south-eastern corner of the plaint schedule 'A' property. Only the plaintiff and her family used this private road. The grant was transferred to the plaintiff through sale deed No.654/2014 of Kuravilangadu SRO, dated 25.03.2014. The plaintiff firmly asserts that the defendants obstructed her from transporting timber and loaded vehicles through the 'B' schedule private road. Therefore, the defendants should be restrained from obstructing or interfering with her title, possession, and use of the 'B' schedule road, and from blocking the transportation of teak timber along this private road.

14. In counterclaim to OS No.132/21, the plaintiff claims that she and her predecessors used the counterclaim 'B' Schedule Road starting from Chettukulam-Pious Mount Road, which has 4 metres width and leads to the counterclaim 'A' Schedule property. The road was established in 1988 and modified to its current form when her father, Sreedharan Nair, obtained a grant

from Joseph Chacko in 1991 for its maintenance. The road was further improved for vehicular access by constructing a concrete bridge/ culvert across the Valari Thodu in 1996, enabling access to Thodu Puramboke and the property having an extent of half cent, owned by D2, which was merged with the road by acquiescence to reach the counterclaim 'A' Schedule property. The bridge was built entirely from her father's funds, with the first defendant providing half a cent of property for the road. Currently, the counterclaim 'B' Schedule Road is regularly used for ingress and egress to the plaintiff's property, openly, continuously, and as of right, for more than 33 years without interruption. The relief sought in the counterclaim is a decree declaring the plaintiff's rights over the 'B' Schedule Road and an order of permanent prohibitory injunction restraining the defendants from obstructing the plaintiff's use of the property.

15. The definite case of the defendants is that the prohibitory injunction sought by the plaintiff in OS No.119/2021 and the declaratory relief and the consequential prohibitory injunction sought in counterclaim to OS No.132/2021 cannot be granted in

favour of the plaintiff on several reasons. To obtain a prohibitory injunction, the plaintiff must prove that the property is properly identifiable and is in her possession on the date of the suit. As per the plaintiff's case, the plaint schedule 'B' property, and the counterclaim 'B' schedule property are the same and are being used as conveyance to her 'A' schedule property from the eastern public road. But the descriptions of the plaint 'B' schedule property and counterclaim 'B' schedule property are entirely different. According to the description of the 'B' schedule property in OS No.119/2021, it has an extent of 2.43 Ares in resurvey **No.160/1-2** in block No.4 of Uzhavoor Village, bounded on the east by Chettukulam - Pious Mount panchayath road, on the south by the properties of Joseph and Stephen, on the west by Valari Thodu, and on the north by Elavunkal property and the property of Sheeja Joseph. However, the counterclaim 'B' schedule description includes properties in resurvey Nos.160/1-2 and 161/6, 15 in block No.4 of Uzhavoor and Monippally village, with a length of 650 feet and a width of 4 metres and the counterclaim 'A' schedule property is situated on the west. From the above descriptions, it is evident that the plaint schedule 'B' property in OS No.119/2021 ends at

Valari Thodu, whereas, according to the counterclaim 'B' schedule description, the road reaches the counterclaim 'A' schedule property (plaint 'A' schedule property in OS No.119/2021) on the west, and they are not the same.

16. Another important aspect is that, from the Ext.C1 commission report, it is seen that the property of D2 lies on the western side of the 'B' schedule road, and the plaintiff and D2 use the mud road that passes along the property of D2 for their conveyance to their houses. In OS No.119/2021, the plaintiff did not claim that D2 has any property in the 'B' schedule property, and the 'B' schedule road passes through any portion of the property of D2. She also did not claim any rights over the properties of D2 and D4. The plaintiff's main assertion is that she acquired title to the plaint schedule 'B' road through Ext.A3 sale deed. The plaintiff's definite case is that the 'B' schedule property was purchased by her. As per the sale deed description and the plaint description, the road ends at Valary Thodu on the west. But as per the counterclaim, the 'B' schedule road is a single road that starts from the Public road on the east and ends at the 'A' schedule

property on the western side. The defendant's definite case is that the 'B' schedule property is a public road. In the Ext.C1 report, the commissioner stated that the 'B' schedule road has a 73.50-meter length from the public road on the east to Valari Thode on the west. The report also stated that the house of the D2 is on the western side of the road, and in continuation of the B schedule road, there is a mud road through the property of the second defendant, and it is being used by the plaintiff and the second defendant for their ingress and egress to their houses. Considering all these aspects, it is clear that the plaintiff has not been able to prove that the 'B' schedule property is a private road leading to her 'A' schedule property and that it is specifically demarcated from other properties. On the contrary, the property is found as part of a public road and cannot be identified, and so a prohibitory injunction cannot be granted against the defendants from causing any obstruction to transporting timber along the road.

17. Another important aspect is whether the plaintiff can prove that the 'B' schedule property was in her possession on the date of the suit. It is seen that a portion of the road was purchased

by the plaintiff. However, the plaintiff herself admitted that there was a mud road even before she purchased the property. The defendants' case is that it is a public road. According to the commission report, in continuation of the plaint 'B' schedule property, after the culvert, two mud roads pass towards the south and north. Another important aspect is that, upon perusing the Ext.A3 sale deed, it is evident that the property was purchased for use as a road. Out of 2.43 ares of property, 1.22 ares were given as a gift, and the remaining property was transferred for consideration. The sale deed also clearly states that the property was transferred for the use of the road, while reserving the seller's and his predecessor's right to use the property for their conveyance. From the evidence, it is clear that it is not a private road, and the nearby residents, including the defendants, also use the way for their conveyance from the public road to their property, and there is no alternative route for their conveyance from the public road to the east. Hence, I am of the view that the plaintiff could not prove that she had possession of the 'B' schedule property on the date of the suit.

18. Another important aspect is that the defendants' clear case is that they prevented the plaintiff from trespassing on the property owned by D2 and D4 Annakkutty, and they have not obstructed the transport of timber through the road. Based on the evidence brought before the court, it appears that there are some properties between the plaint 'B' Schedule road and the plaint 'A' Schedule property, and the plaintiff has no rights over those portions. The plaintiff only holds title to the property transferred under the Ext. A3 sale deed, and beyond that, cannot claim rights over the entire road. On this ground also, the plaintiff cannot claim any right to the entire road, and a permanent prohibitory injunction cannot be granted. Hence, this issue is also found against the plaintiff.

19. **Issue No.1 in OS 132/2021:-** The relief sought by the defendant (plaintiff in OS No.132/2021) is that the plaintiff shall be restrained from trespassing upon the plaint schedule Nos.1 and 3 properties and from pulling the wooden logs through the properties. Their case is that Plaint schedule No.1 property absolutely belongs to the second defendant and has been in his

possession and enjoyment, and that Plaintiff schedule No.3 property is in the possession and enjoyment of the fourth defendant. The defendant's version is that on 11.07.2021, the plaintiff (defendant in OS No.132/21) and her henchmen attempted to trespass upon the plaintiff schedule Nos.1 and 3 properties and attempted to pull wooden logs through the properties. On perusal of the plaint, it is seen that the property of the plaintiff lies on the northern side of the plaintiff schedule No.1 property was owned by D2, and the strip of land described as Schedule No.3, which lies on the south-eastern corner of the plaintiff's property, is in absolute possession and enjoyment of D4 Annakkutty. The defendant's version is that the plaintiff attempted to trespass upon the plaintiff schedule Nos.1 and 3 properties. Going through Exts.C1 and C1(a), commission report and rough sketch, it is seen that the plaintiff schedule 'B' is a mud road starting from Chettukulam - Pious Mount road towards the west, and it reaches to the culvert constructed at the beginning of a pathway in continuation of 'B' schedule road. It is also reported that in continuation of the 'B' schedule road, there is a mud road along the property of the 2nd defendant, which is used by the plaintiff and the 2nd defendant.

Going through the Exts.C2 and C2(a) commission report and rough sketch also, it is seen that the 'Valari thodu was made fit for transportation, and in continuation of the road from Pious Mount - Chettukulam road, a mud way passes along the plaint schedule No.1 property of the second defendant and it turns towards the property of the plaintiff and the 2nd defendant. It is seen that there is a mud way that passes along the plaint schedule No.1 property of D2, and the plaintiff and D4 jointly use the portion for their ingress and egress for their properties. Moreover, the defendants do not have a case for any boundary demarcation between the mud road portion and the remaining portion of the plaint schedule No.1 property. The only version of the defendant is that the plaintiff attempted to pull wooden logs through the properties.

20. Another version of the defendants is that the plaintiff attempted to trespass upon the plaint schedule No.3 property, which was in possession and enjoyment of D4. In this case as well, the defendants do not have a case that the property is identifiable and clearly demarcated from other properties. Examining Ext.C2, the Commission report reveals that the commissioner described

the plaint schedule No.3 property as a long triangular shape, but there was nothing on the plot to identify the property. He identified that part only on the basis that the defendant pointed to a portion of the property and claimed that it was in her possession. However, the defendants could not prove that it is part of D4's property. The commissioner did not report any marks on the plot to identify the Schedule No.3 property, and the defendants lack such evidence. It is settled that identification of the property and proof of the party's possession on the date of the suit are necessary for a prohibitory injunction. Since the Ext.C2 report shows that the plaint schedule No.3 property cannot be identified, it is part of the existing road, and the evidence does not meet the required conditions, the injunction cannot be granted in favour of the defendants. Therefore, this issue is found against the defendants.

21. **Issue No.2 in OS No.132/2021:-** One of the counterclaims raised by the plaintiff is that the counterclaim 'B' schedule road is regularly used for ingress and egress to her 'A' schedule property without interruption, openly as of right, and continuously for the last 33 years and more. It is evident from the

counterclaim that the plaintiff did not claim rights under the Ext.A3 sale deed. The defendant's version is that the relief sought by the plaintiff is inconsistent with the claim in the suit. In OS No.119/2021, the plaintiff's case is that the 'B' schedule property was purchased by him, and she has an absolute title over the property. The counterclaim 'B' schedule property description is also contradictory to the property description in the suit. The counterclaim version is that the second defendant had provided half cent of property to the road, when the plaintiff's father had constructed a culvert across the Valari thodu by spending his own funds and the portion was merged with the counterclaim road. But this contention was not taken by the plaintiff in the suit, and it is inconsistent with the suit's version. In OS No.132/2021, the defendants had contended that D4 Annakkutty is having a strip of land situated on the south-eastern corner of the plaintiff's property, which is part and parcel of the plaint schedule No.2 property owned by Annakkutty and which is in her absolute possession, and which is scheduled as schedule No.3 property. In OS No.132/2021, the definite case of the defendants is that the plaintiff attempted to trespass upon the plaint schedule No.1 property owned by D2, and

the plaint schedule No.3 property owned by D4, and also attempted to pull wooden logs through the property. Then, only, the plaintiff was convinced that her claim in OS No.119/2021 would not stand, and she had raised a fresh claim of easement by prescription through counterclaim. But the plaintiff deliberately avoided the word “easement” in the counterclaim and had also raised another contention that a half-cent of property was granted by the second defendant. The declaratory relief sought by the plaintiff cannot be granted, as the plaintiff does not have a consistent case regarding her right over the property.

22. Another important aspect is that the plaintiff has not taken any steps to have the entire road portion surveyed by a survey commission and to identify the property. In the decision, **2025 KHC 135, Shahul Hameed V. Abdul Hameed**, the Honourable High Court held that, in order to grant a relief of declaration of easement by prescription over a way, there should be a plan having sufficient measurements, showing the actual lie of the properties and the existing pathway, prepared by a competent surveyor.

23. In this case, a portion of the road was purchased by the plaintiff in 2014. Even according to the counterclaim description, the properties of D2 and D4 are also included in the Schedule 'B' property, and there is absolutely no evidence that the plaintiff has been using the Schedule 'B' road from the public road to the plaintiff's property for the last 33 years. In the decision, **2024(5) KHC 559, Chellappan P. K. @ Mani v. Sunny Baby@ Sunny**, the Honourable High Court held that the plaintiff must establish the essential requirements for claiming easement by prescription, especially whether he has proven usage of the pathway for the prescribed period of 20 years as required under section 15 of the Easement Act. In this case, the plaintiff could not produce sufficient evidence to prove that she has been using the Schedule 'B' property for the last 33 years, which contradicts her claim of title as per the Ext.A3 sale deed. Since specific pleadings are required for an easement by prescription, and because her claim in the counterclaim is inconsistent with her claim in OS No.119/2021, the plaintiff's counterclaim seeking a declaration of easement by prescription over the Schedule 'B' road cannot be granted. Therefore, this issue is found against the counterclaim plaintiff.

24. **Issue No.3 in OS 132/2021:-** As this court rejected the relief sought by the plaintiff in issue No.2 for the declaration of her right over the counterclaim 'B' schedule property is dismissed, the relief sought for the consequential prohibitory injunction is also dismissed. Hence, this issue is also found against the counterclaim plaintiff.

25. **Issue No.3 in OS No.119/2021 and Issue No.4 in OS No.132/2021:-** Considering the facts and circumstances of the case, there is no order as to costs.

26. **In the result,** OS No.119/2021, OS No.132/2021 and the counter claim are dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open Court on this the 31st day of March 2026)

Sd/-
HASHEEM S
MUNSIFF

APPENDIX:-

Exhibit marked for plaintiff/s:-

A1 28.09.1999 Certified copy of Will Deed No. 87/1999 of SRO,
Kuravilangad

A2	03.12.2020	Land Tax receipt No. KL05041304636/2020 of Monipally Village
A3	25.03.2014	Certified copy of Sale and Gift Deed No. 654/14 of Kuravilangad SRO
A4	29.11.2020	Land Tax receipt No. KL05042304009/2020 of Uzhavoor Village
A5	-	Photograph
A5(a)	-	Photograph
A5(b)	-	Compact Disk
A6	08.03.2022	Reply of RTI application No. A-7-643/2022 dated 16.02.2022

Exhibits marked for Defendant/s:

B1	05.04.2017	Partition Deed No. 503/2017 of SRO, Kuravilangad
B2	07.08.2023	Land Revenue tax receipt No. KL05041304195/2023 of Monipally Village
B3	22.12.2009	Certified Copy of Sale Deed No. 2299/2009 of Kuravilangad SRO
B4	20.01.2023	Land Lax Receipt No. KL05041300249/2023 of Monipally Village

Court Exhibit/s:

C1	09.08.2021	Commission report filed by Adv. Commissioner Shijo M John
C1(a)	09.08.2021	Rough Sketch
C2	03.08.2021	Commission Report filed by Adv. R. Manoj
C2(a)	03.08.2021	Rough Sketch

Third Party Exhibit/s : Nil

Witness Examined for Plaintiff/s:-

PW1	09.08.2023	S. Jayalakshmi
-----	------------	----------------

PW2 05.10.2023 Adv. Shijo M John

Witness Examined for Defendant/s:-

DW1 19.10.2023 Adv. R. Manoj

DW2 19.10.2023 Ramachandran Nair

Id/-
MUNSIFF

//True Copy//

Typed By: Biju
Comp. By: Sherina

Sd/-
HASHEEM S
MUNSIFF