

IN THE COURT OF THE MUNSIFF, KOTTARAKARA.

Present :- Sri. Fazil Rahiman, Munsiff.

Thursday the 13th day of February, 2025/24th day of Magha, 1946

OS. No.324/2013

Between

Plaintiffs:-

1. G.Sasikumar, aged 50 years,
S/o.Gopalan, Thenguvelil Veedu,
Kudavattoor.P.O., Odanavattom Village,
Kottarakara Taluk, Kollam.
2. G.Sadanandan, aged 62 years,
S/o.Gopalan, Thenguvelil Veedu,
Kudavattoor.P.O., Odanavattom Village,
Kottarakara Taluk, Kollam.
3. G.Biju, aged 40 years,
S/o.Gopalan, Thenguvelil Veedu,
Kudavattoor.P.O., Odanavattom Village,
Kottarakara Taluk, Kollam.

By Adv. S. Radhakrishnan Nair.

And

Defendant:-

1. Vimalkumar, aged 35 years,
S/o.Maniyan, Geetha Bhavan,
Kudavattoor P.O., Odanavattom Village,
Kottarakara Taluk, Kollam.
- Addl. 2. Sathy Amma Prasad, aged 65 years,
D/o. Gopalan, Thenguvelil Veedu,
Kudavattoor P.O., Odanavattom Village,
Kottarakara Taluk.
- Addl. 3. Radhamony, aged 61 years,
D/o. Gopalan, Syamavila Veedu,
Edakkidom P.O, Kareepra Village,
Kottarakara Taluk.
- Addl. 4. Leela Jayan, aged 52 years,
D/o. Gopalan, Thenguvelil Veedu,
Kudavattoor P.O., Odanavattom Village,
Kottarakara Taluk.

(Addl.Defendants 2 to 4 were impleaded as per
Order in IA No.3539/2018 dated 01.01.2019)

By Adv. Shaju Lukose (D1) &

Adv. S. Radhakrishnan Nair (Addl. D2 to D4)

This suit is filed U/S. 26, Order VII Rule 1 of CPC 1908, for fixation of boundary, recovery of possession, declaration of right of easement by grant and for both permanent and mandatory injunctions, coming on for hearing before me on 13.02.2025 and the court on the same day delivered the following:-

JUDGMENT

The suit is for fixation of boundary, recovery of possession, declaration of right of easement by grant and for both permanent and mandatory injunctions.

2. The plaint averments in nutshell is that :- The 1st plaintiff is the brother of 2nd and 3rd plaintiffs. Along with the plaintiffs, three other sisters named Sathy Amma, aged 60 years, Radhamony, aged 56 years, Leela Gopal, aged 47 years are the children born to Gopalan. They also got right over the properties of the said Gopalan and as they are not in station, they are made of defendants Nos.2 to 4 in this suit. The 1st defendant is the owner in possession of 7.5 cents of property situated in the southern side of the plaint schedule property. The 1st defendant purchased the property from one Mr. Pavizhendran who is one of the close relative of the plaintiffs. The defendant's property is situated in a higher position than that of the plaint schedule property. A panchayath road is situated in the southern side of the 1st defendant property in the east-west direction. On 29.10.1985, Retnakaran, S/o. Nanu executed the plaint A schedule property by virtue of the sale deed No.2012/1985 having an extent of 12 Ares 14 Sq.meters of Pooyappally Sub Registry. The mutation is effected in the name of Gopalan and the land tax paid up to the year 2013-14 on 29.04.2013 for the plaint A schedule property. The above said Gopalan died intestate on 08.08.2010. Even after his death, the plaint A schedule property is vested in his name and possessed by the legal heirs of

Sri.Gopalan. There is a 'Bhadrakali Kavu' situated in the plaint schedule property. From more than 50 years back, the family members were worshiped in the almighty in the 'Bhadrakali Kavu'. The father of the plaintiffs, Sri.Gopalan is the bonafied purchaser of the plaint schedule property. Though he was a member of the family, he used to worship in though he situated in the plaint schedule property. The plaintiffs and their three sisters and their family members and the other people in the locality were worshiped in the Kavu. They used to light the lamps on every day evening and special Poojas were conducted on Tuesdays and Fridays. They believed in the name of their ancestors that it is a Kudumba Kavu, worshiped in the name of their ancestors and even now it is continuing. On 29.10.1985, the father of the plaintiffs purchased the plaint schedule property from one Mr.Retnakaran, S/o.Nanu, by virtue of the sale deed No.2102 of 1985 of Pooyappally Sub Registry having an extent of 12 Ares 14 Sq.meters. On 08.01.1985, the executants Retnakaran obtained the property by virtue of the sale deed No.63 of 1985 of Pooyappally Sub Registry, having an extent of 12 Ares 14 Sq.meters executed by his sisters Sathiyamma and Vimalayamma. They obtained the right over the property by virtue of the gift deed No.1017 of 1981 executed by Nanu, in favour of Pavizhendran, Sathiyamma and Vimalamma and each of them were given their shares as A, B and C schedule properties respectively. The above said B and C schedule properties were acquired by one of the brother of the executants Retnakaran, S/o. Nanu by virtue of the sale deed No.63 of 1985 dated 08.01.1985 executed by Sathiyamma and Vimalamma. The mutation is effected in the name of Sri. Retnakaran. By virtue of this, he executed the sale deed No.2102 of 1985 dated 29.10.1985 in favour of the father of the plaintiffs, late Sri. Gopalan having an

extent of 12 Ares 14 Sq. meters. The plaintiff A schedule property in the gift deed No.1017 of 1981, the A schedule property is transferred in the name of Pavishendran, one of the other brother of Sathiyamma and Vimalamma. After the mutation in his name he executed a sale deed in favour of the defendant. This property has the road frontage in the southern side. While executing the Gift deed in favour of Pavishendran, Sathiyamma and Vimalamma, the executants Nanu, described a pathway through A schedule property in the eastern side of the property in the south-north direction to the plaintiff schedule property. Even though A schedule property was sold by him to the defendant, the pathway is still existing and it is the only pathway to the Badrakali Kavu, for the worship of almighty by the family members and other people in the locality. The pathway is to be protected for the functioning of relay. The property having an extent of 03.35 Ares comprised in Re.sy.No.272/23 of block No.31 of Odanavattom village belong to 1st defendant is the C schedule property. Plaintiff A Schedule property lies on the north of the plaintiff C schedule property. The pathway having a width of 2 feet was granted in the gift deed No.1017/1981 of Pooyappally S.R.O., and the said way was granted through the eastern portion of the plaintiff C schedule property, which starts from the south road and leads to plaintiff A schedule property and as used as way to the plaintiff A schedule property and to 'Kavu' exists in the plaintiff A schedule property by the plaintiff and others, is scheduled as the plaintiff B schedule way. After acquiring the property by the defendant, the pathway was used by the family members and others. Now, the 1st defendant is constructing a side wall with rocks in the northern side of his property and in the southern side of the plaintiff schedule property in the east-west direction. Now the plaintiff got reliable information that the defendant is

planning to construct the side wall by obstructing the pathway in the eastern side of the property to the plaint schedule property. So it is highly necessary to restrain the 1st defendant's property from making any obstruction or disturbances in the pathway to the temple compound by a prohibitory injunction. The plaint B schedule pathway having a width of 2 feet was granted in the deed No.1017/1981 and established and used by the plaintiffs and 1st defendant constructed foundation basement of the 1st defendant's property by including the plaint B schedule way portion and the right of easement by grant right over the plaint B schedule way is to be declared. Also the 1st defendant constructed boundaries by encroaching into plaint A schedule property also by including about 14 Sq.meters of the south-eastern portion of the plaint A schedule property is to be directed by way of mandatory injunction to remove the structures constructed, as the north and south of the plaint B schedule way and also remove the constructions made in the plaint A schedule property by encroaching in it. The said 14 Sq. Meters of property is scheduled as the plaint D schedule property. Hence the suit.

3. The 1st defendant resisted the suit and filed written statement and counter claim as follows:- The suit is not maintainable. The suit is bad for non-joinder of necessary parties. Since the deceased Gopalan is having another legal heirs Sadhy Amma, Radhamony and Leela Gopal, the defendant did not purchase his property from one Mr.Pavizhendran. The property of the defendant is having an extent of 9 cents and not that of 7 cents. The defendant purchased his property by virtue of the sale deed No.1868/2008 of Pooyappally register office. The plaintiffs themselves knew that the property of the defendant is having the extent of 9 cents and the plaintiffs falsely stated the extent of the property of the defendant as 7.5

cents after encroaching the 1.5 cents of property of the defendant. The plaintiff's father Gopalan did not get the property by virtue of the deed No.2012/1985 of Pooyappally Sub Registrar office. A 'Badrakali kavu' is not situated in the plaint schedule property and the plaintiffs are not offering any worship in the kavu. The parties of the gift deed was not interested to create a way as provided in the gift deed No.1017/1981. The plaintiffs did not produce any documents to prove the existence of the way as explained by them. The plaint B schedule property is not the way to reach the 'Badrakali kavu'. The plaintiffs did not describe the place in which the 'Badrakali kavu' is existing. Only rubber trees are there in the plaint schedule property. The plaintiffs are having a way to reach the plaint schedule property from the eastern public road which is having the width of 12 feet and it is a concreted one. Recently, the plaintiffs constructed a 'Vilakkuthara' and started lightning of lamp there. In order to reach in the 'Vilakkuthara', the plaintiffs can use the said way from the eastern public road. With ulterior motives, the plaintiffs are claiming a way to through the property of the defendants to reach an imaginary kavu. The plaintiffs did not use any portion of the defendant as a way after the purchase of the property by the defendant. At the time of the purchase of the property by the defendant, there was a boundary within the property of the plaintiffs and defendants were separated and the boundary stones were erected there. The 3rd plaintiff rooted out the boundary stones to encroach the portions of the property of the defendant and encroached the portion of the property having the extent of 1.45 cents. On noticing the same, the defendant was amenable for to survey the property. But the 3rd plaintiff obstructed the same. The construction of rubble boundary wall in the property of the defendant was completed 3 years ago. Hence

the defendant prayed for the dismissal of the suit and to grant the counter claim reliefs.

4. Heard both sides.

5. The following issues were raised for consideration:-

1. Whether the prayer for permanent prohibitory injunction is allowable?
2. What is the order as to cost?

Counterclaim issues

1. Whether the prayer for fixation of boundary is allowable?
2. Whether the prayer for recovery of possession is allowable?
3. Whether the prayer for permanent prohibitory injunction is allowable?
4. Whether the prayer for mandatory injunction is allowable?
5. What is the order as to costs?

6. When the case was listed for trial for taking evidence, the defendants remain absent and was not ready to cross examine the plaintiff. Thereafter, the case was proceeded exparte against the defendants. The case proceeded with the evidence of plaintiffs then. The counter claim was dismissed for default.

7. The evidence of the plaintiffs consists of the evidence of PW1, Exts.A1 to A5 and Exts.C1 to C9. The 3rd plaintiff himself is examined as PW1. Ext.A1 is the certified copy of the gift deed No.1017/1981, Ext.A2 is the certified copy of the sale deed No.63/1985, Ext.A3 is the certified copy of the sale deed No.2102/1985, Ext.A4 is the tax receipt dated 29.04.2013, Ext.A5 is the death certificate, Ext.C1 to C3 are the report, mahazar and rough sketch, Ext.C4 to C6 are the report, mahazar and plan dated 26.08.2014, Ext.C7 to C9 are the commission report,

mahazar and rough sketch. Ext.A1 to A4 substantiating the ownership and possession of the plaintiff over the plaint A schedule property. Ext.A5 death certificate shows the death of the father of the plaintiffs. Ext.C1 to C9 establishing the identity and description of the plaint schedule properties. Ext.C1 to C3 shows that the plaint A schedule property situates on the northern side of the property of the defendants. A rubble wall boundary having the height of 7 feet is separating the plaint A schedule property with the property of the 1st defendant. In Ext.C1 to C3, the commissioner categorically reported the existence of plaint B schedule property and the plaint B schedule property ends at the plaint A schedule property. Ext.C1 to C3 shows that the plaint B schedule property lies continuously with the property of the 1st defendant and a boundary wall is constructed on the eastern side of the plaint B schedule property. In Ext.C6 plan, the plaint A schedule property is shown in letters as 'ILFGHJI', the plaint B schedule property in letters as 'KEFLK' and the C schedule property owned by the 1st defendant is shown in letters as 'DKEFLID'. The portion encroached by the 1st defendant which is scheduled as D schedule property is shown in letters as 'FJIF' in Ext.C6 plan. The perusal of Ext.A1 gift deed shows that the right to use a way in 2 feet width on the eastern side of their property in south-north direction is provided. Ext.A1 categorically substantiating the case of the plaintiffs regarding their right to use the plaint B schedule property as an easement by grant. The perusal of Ext.C6 to C9 shows that the plaint B schedule property is now exists inside the eastern boundary wall of the 1st defendant and northern portion of the B schedule pathway is now closed by the 1st defendant by constructing a rubble wall boundary. Ext.C7 to C9 further shows that after the filing of Ext.C1 to C3, the 1st defendant

constructed a boundary wall having the height of 4 feet in his property using cement bricks. The said new boundary wall is constructed by closing the plaint B schedule pathway. Ext.C6 to C9 categorically shows that the 1st defendant obstructed the user of the pathway by the plaintiffs. The plaint A schedule property is shown in letters as 'ILFGHJI' and the same is having 10.5 Ares. The B schedule property is shown in letters as 'KEFLK' and the same is having the extent of 00.14 Ares. The property of the 1st defendant is shown in letters as 'DKEFLID' and the same is having the extent of 3.35 Ares. The Exts.C4 to C6 categorically negating the case of the 1st defendant that the plaintiffs encroached into the property of the 1st defendant. The evidence of the plaintiff remains unchallenged. In the absence of contra evidence from the side of the defendants and considering the uncontroverted testimony of PW1 and Exts.A1 to A5 and Exts.C1 to C9, this court is of the considered opinion that the plaintiffs are entitled for the decree as prayed for.

5. In the result, the suit is decreed as follows:-

1. The easement right of grant of the plaintiffs and the defendants Nos.2 to 4 over the plaint B schedule way which is shown in letters as 'KEFLK' in Ext.C6 plan through the eastern portion of the plaint C schedule property is hereby declared.

2. The 1st defendant and men under them are perpetually restrained from making any obstructions or disturbances against the user of the plaint B schedule pathway by the plaintiffs and defendants Nos.2 to 4 and from committing any mischief and waste their in the plaint B schedule pathway.

3. The 1st defendant and men under him are perpetually restrained from alienating the plaint B schedule pathway by including the B schedule portion into the plaint C schedule property and from making any alteration in the plaint B schedule pathway.

4. The plaintiffs are allowed to recover the plaint B schedule property from the 1st defendant through the process of the court.

5. The 1st defendant is directed to remove the foundation basements constructed on the north and south of the plaint B schedule pathway and also directed to remove the foundation basements constructed by encroaching 14 sq.meters portion into the plaint A schedule property within 2 months from the date of the decree. If the 1st defendant fail to do so, the plaintiffs are allowed to remove the foundation basements constructed on the north and south of the plaint B schedule way and the foundation basement constructed in the plaint A schedule property through the process of this court at the expense of the plaintiffs and the plaintiffs can realize the same from the 1st defendant and from his assets.

6. The plaintiffs are allowed to realize the cost of the suit from the 1st defendant and from his assets.

7. Ext.C6 plan shall form part of the decree.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 13th day of February, 2025.

**FAZIL RAHIMAN,
MUNSIFF**

APPENDIX:-

Exhibits for the plaintiffs :-

- A1 : 01.06.1981 : Certified copy of Gift Deed No.1017/1981.
- A2 : 08.01.1985 : Certified copy of Sale Deed No.63/1985 of the Sub Registrar Office, Pooyappally.
- A3 : 29.10.1985 : Certified copy of Sale Deed No.2102/1985 of the Sub Registrar Office, Pooyappally.
- A4 : 29.04.2013 : Tax receipt No.1489942 of Odanavattom Village Office
- A5 : 24.09.2010 : Death certificate of Gopalan, issued by Nedumpana Grama Panchayath.

Exhibits marked for the defendant :- NIL

Court Exhibits :-

- C1 : 17.05.2013 : Commission Report prepared by Adv.M.Kannan
- C2 : 17.05.2013 : Mahazar prepared by Adv.M.Kannan
- C3 : 17.05.2013 : Rough Sketch prepared by Adv.M.Kannan.
- C4 : 26.08.2014 : Commission Report prepared by Adv.P.T.Susamma
- C5 : 26.08.2014 : Mahazar prepared by Adv.P.T.Susamma
- C6 : 26.08.2014 : Plan prepared by N.Gopinatha Pillai, Joint Commissioner.
- C7 : 22.01.2014 : Commission Report prepared by Adv.L.Lekshmi
- C8 : 22.01.2014 : Mahazar prepared by Adv.L.Lekshmi
- C9 : 22.01.2014 : Rough Sketch prepared by Adv.L.Lekshmi

Witness Examined for the plaintiffs :-

PW1 : 13.02.2025 : Biju.G

Id/- Munsiff

Typed by : Jayamohan.M.S
Compared by :

MUNSIFF