

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Sri. Nishad Ibrahim., Principal Munsiff

Tuesday the 04th day of November, 2025/ 13th Karthika, 1947

O.S. No. 316/2018

Plaintiffs:-

1. T.J. George, aged 63 years, S/o. Jacob, Thaliyath House, Rameswaram Village, Palluruthy, Kochi – 6.
2. T.J. Thomas, aged 54 years, S/o. Jacob, Thaliyath House, Rameswaram Village, Palluruthy, Kochi – 6.

**By Advs. N. Retheesh, Suma Retheesh, Aravind Ajith,
M. Mohammed Haneef & Ahammed Thasleen C.T.**

Defendant:-

T.J. Joseph, aged 57 years, S/o. Jacob, Thaliyath House, Rameswaram Village, Palluruthy, Kochi – 6.

By Advs. K.G. Sarath Kumar & S. Raj Kumar

This suit come up for hearing on 22.10.2025 and the court on 04.11.2025, delivered the following:-

J U D G M E N T

Suit for fixation of boundary and perpetual injunction.

2. **The plaint summary:** a) The plaintiffs and the defendant are brothers. The 1st plaintiff is the absolute owner and possessor of the plaint A schedule property (A schedule in the partition deed No.1085/1990 of S.R.O., Kochi). The 2nd plaintiff owns and possesses the plaint B schedule property

(C schedule in the said partition deed). The defendant owns and possesses the plaint C and D schedule properties (items 1 and 2 of B schedule in the same partition deed). All the above properties originally belonged to the plaintiff's and defendant's father, Thaliath Chakkappan alias Jacob, under the document No.749/1121 M.E. of the District Registry, Thrissivaperoor. After Jacob's death, the property devolved upon his wife Mariyam, sons (the plaintiffs and the defendant) and daughters Ammini alias Kathrina and Annie. The sisters, having received their shares at marriage, relinquished their rights. Consequently, in 1990, the legal heirs executed the partition deed No.1085/1990 of S.R.O., Kochi, dividing 24 cents of land in Sy. Nos. 646 and 642 into five portions.

b) Mariyam, the mother of the parties, was allotted 3.350 cents described as the D schedule in the partition deed and also possessed an additional 2 cents of land on its north which was transferred to the defendant as per the document No.3041/1987 of S.R.O., Kochi, described as the plaint E schedule property. A common pathway was also created - 9.5 links wide from the public road up to the northern boundary of the plaint A schedule property, then 5 links wide westward to the boundary of the plaint C schedule property - having a total length of 294 links. This pathway, lying on the eastern

side of the plaint B, C, D, and E properties and on the north of the plaint A property, is described as the plaint F schedule property.

c) At the time of the 1990 partition, the property obtained by Jacob under the document No.749/1121 M.E. was measured. Jacob had earlier obtained *Patta* from the Thrissivaperoor District Collectorate on 7.4.1956. During measurement, a strip of land along the eastern side of the plaint F schedule pathway - about 3.5 links wide and 220 links long - was identified as the plaint G schedule property. Together, the F and G schedules formed a 13-link-wide pathway (9.5 + 3.5) for four-wheeler access to all the properties. All properties lie contiguously, and parties took possession and made constructions accordingly. A house in the plaint B schedule property was allotted to the 2nd plaintiff and it was reconstructed, where the 2nd plaintiff now resides. Mariyam gifted 4 cents to the 1st plaintiff, who built and resides in the house No.18/1142A (new No.12/994). The defendant built house No.18/1142B in the plaint C schedule property and operates a workshop in the plaint D property in building No.18/1142C.

d) The parties peacefully possessed their properties for over 28 years without disputes regarding the boundaries or use of the plaint F and G schedule pathways, which they jointly used for ingress,

egress, and vehicular access. The entire property is enclosed by a compound wall. The plaintiffs have no alternate access and have continuously used the F and G pathways openly, as of right and without obstruction, since partition. On 12.10.2018, the plaintiffs noticed the defendant and others measuring the plaintiff D and E schedule properties, encroaching upon the F and G schedule pathway. The defendant was preparing to construct a building reducing the width of the pathway. The plaintiff's attempt for joint measurement with the Village Officer failed due to the unreasonable obstructions made by the defendant. Encroachment would narrow the pathway, hindering vehicular access to the plaintiff's properties. The defendant has no right or title to encroach upon or construct within the plaintiff F and G schedule pathways, which he also uses for access. The defendant filed a Caveat Petition on 15.10.2018 before the Munsiff's Court, Kochi and a copy was received by the 2nd plaintiff on 16.10.2018. As the defendant continues his construction attempts, it is just and necessary to measure and fix the property boundaries by metes and bounds.

e) In the above circumstances, the suit is instituted to fix the boundaries of the plaintiff schedule properties through an Advocate Commissioner and Taluk Surveyor based on documents No.749/1121

M.E., 3041/1987, and 1085/1990 of S.R.O., Kochi, and related records; and for a decree of perpetual injunction restraining the defendant, his men, and agents from trespassing into the plaintiff F and G schedule pathways and interfering with their peaceful use by the plaintiffs and those claiming under them.

3. **The defendant's written statement :-** a) The suit is not maintainable either in law or on facts. The plaintiffs have instituted this suit by suppressing material facts, with the mala fide intent to obstruct the smooth functioning of the defendant's workshop and to harass him and his family by abusing the process of law. The suit was instituted when the defendant undertook maintenance work in his workshop shed, solely to disrupt his business. The defendant purchased 2 cents of land in Sy. No. 647/1 of Rameswaram Village from his mother under the sale deed No.3041/87 of SRO, Kochi. The pathway therein was only 6 links wide, taken from a total extent of 2.150 cents owned by the mother. After deducting this pathway, the defendant purchased the remaining 2 cents. There are no properties as described in the plaintiff F and G schedules; they are imaginary, fabricated, and non-existent. The claims in paragraph 4 of the plaint are also false, fabricated, and intended to falsely create a vehicular right of way for the plaintiffs, to which they are not entitled. No measurement was conducted in 1990 as alleged, and the description of the F and G schedule properties is fictitious.

There is no land measuring 3.5 x 20 links or any 13-link pathway as alleged. It is admitted that the defendant resides in the B schedule property and conducts his workshop in the D schedule property. The plaintiffs have no right over the E schedule property, which is in the exclusive ownership and possession of the defendant. The allegation that a 9.5 links wide pathway was created from the public road to the A schedule property is false and denied. There are no pathways as described in the E, F and G schedules. The entire property is not fully enclosed by a compound wall. The claim that the plaintiffs have used such pathways uninterruptedly and exclusively for the past 28 years is false. They have no right over the defendant's property and possess alternative access routes to their own lands.

b) The D schedule property in the partition deed, originally allotted to their mother Mariyam, adjoins the 2nd plaintiff's property. After her death, the D schedule property came into joint ownership of the plaintiffs and the defendant and is having direct road frontage on the west. The plaintiffs have described the plaint schedule properties with the mala fide intent to create a new vehicular pathway by misrepresenting facts and contradicting their title deeds. The boundaries stated in the plaint are false and inconsistent with their documents. They deliberately limited the width of the defendant's pathway to his residence to 5 links.

c) The plaintiffs have colluded to create obstacles to the lawful operation of the defendant's workshop situated in the plaint D schedule property, which is his sole source of livelihood. Allowing this suit would cause irreparable hardship to the defendant. The fabricated description of the plaint F and G pathways is a calculated attempt to create an unlawful right for the plaintiffs at the defendant's expense. The suit lacks bona fides, and the balance of convenience clearly favours the defendant. The plaintiffs are not entitled to any of the reliefs claimed. The defendant has no objection to measure and to fix the boundaries based on the title deeds of both parties.

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

1. Is any pathway described as the E, G and F in the plaint in existence ?
 2. Are the plaintiffs entitled for fixation of boundaries of the plaint schedule properties as prayed for ?
 3. Are the plaintiffs entitled for permanent prohibitory injunction as prayed for ?
 4. Reliefs and costs ?
5. On the side of the plaintiffs, the 2nd plaintiff was examined as PW1 and Exts.A1 to A7 were marked. On the side of the defendant, DW1 was examined. The documents sought to be marked as Exts.B1 to B6 were

rejected and Ext. B7 was not produced. The reports and the sketches filed by the learned Advocate Commissioner were marked as Exts.C1 series to C3 series.

6. Heard both sides.

7. **Issue nos.(i) to (iii)** :- The 2nd plaintiff was examined as PW1. According to him, the property of the 1st plaintiff, himself and the defendant were scheduled as A to D schedules in the plaint. PW1 stated that their mother was assigned 3.350 cents of property as per the partition deed bearing No.1085/1990 of SRO, Kochi, the certified copy of which was marked as Ext.A1. It was the D schedule in Ext.A1 which was allotted to the mother. Apart from the said property, the mother had another 2 cents of property lying adjacent to it. The said 2 cents were sold to the defendant by her as per the deed no.3041/1987 of SRO Kochi, the certified copy of which was marked as Ext.A2. PW1 claimed that a pathway with a width of 9.5 links was demarcated to the aforesaid properties which started from the public road on the north of the properties and reaching the northern boundary of the plaint A schedule property and thereafter traversed to the west with a width of 5 links and finally reaching the plaint C schedule. According to PW1, the said 9.5 links wide pathway having a length of 294 links is the plaint F schedule property. PW1 further claimed that when the property was measured for the purpose of partition, a strip of land with a width of 3.5 links

and 220 links length was found near the plaint F schedule which is scheduled as the G schedule. According to PW1, Ext.A1 partition deed was registered considering the pathway as having 13 links width in total through which four wheelers can be taken. PW1 further stated in the proof affidavit that during 1990, the properties assigned as per Ext.A1 were taken possession by the parties and without any dispute as to the properties or the boundaries, the property which was lying as the pathway including the F and G schedules was used for the purpose of transportation to the plaint A and B schedule properties. According to PW1, the plaintiffs were using the said pathway continuously without any objection for more than the past 28 years. According to him, the plaintiffs and their children were taking four wheelers to the plaint A and B schedule properties through the pathway which included the G and F schedules.

8. According to PW1, on 12.10.2018 the defendant and some others started measuring the plaint C, G and F schedules and disputes arose between the parties. According to him, the mother had transferred only 2 cents of property to the defendant by excluding the 6 links wide pathway. The claim of the defendant that the plaint E, F and G schedule properties were not in existence was false. The plaint schedule properties are lying contiguously and there is compound wall around it.

9. It may be noted here that the suit was instituted for a decree of fixation of the boundaries of the plaint schedule properties and also for a decree of perpetual injunction.

10. The defendant was examined as DW1. According to him, the attempt of the plaintiffs was to create a right of vehicular access to their properties for which they had no right at all. According to DW1, the plaint F and G schedule properties were imaginary and there was no property having 3.5 x 20 links dimension as alleged, and there is no 13 links wide pathway as claimed by the plaintiffs. According to him, he is in absolute ownership and possession of the E schedule property. According to DW1, there is no pathway described as the E, G and F schedules in the plaint.

11. The plaintiffs had taken out a measurement commission as IA 2768/2018 for the purpose of measuring the properties. The said report and the survey sketch filed by the learned commissioner were marked as Exts.C3 and C3 (a).

12. The learned counsel for the plaintiff argued that the defendant had admitted in paragraph 2 of the written statement that the properties were not measured and it was also stated in paragraph 3 that there was no compound wall. Accordingly, the learned counsel would argue that a suit for fixation of boundary would certainly lie. He also pointed out that the defendant had not filed any objection to Ext. C3 series. The learned counsel

for the defendant submitted that he had no objection in fixing the boundaries of the plaint schedule properties as per Ext. C3(a).

13. As per Ext.C3, the plaint A, B, C, D and E schedule properties were measured as per the deed numbers 1085/1990 and 3041/1987 of SRO, Kochi and the village records. As per Ext.C3, the plaint A schedule property is marked as A plot in Ext.C3(a). The plaint B schedule property is shown as B plot, the C schedule is marked as the C plot, the D schedule is marked as the D plot and the E schedule is marked as E plot in Ext.C3(a).

14. According to the learned Commissioner, the property shown as E plot was having an extent of 0.75 Ares and the plot shown as E1 was having an area of 0.06 Ares. Accordingly, the total extend would come to 0.81 Ares. The Commissioner also reported that on the western side of the said property, a triangle shaped portion which was not included in the title deed which was situated in Survey No. 646/3, having an extent of 0.05 Ares, was found to be in the possession of the defendant.

15. With respect to the plaint F schedule property, the learned Commissioner reported that as per the plaint, it started from the public road with a width of 9.5 links and reached the northern boundary of the plaint A schedule property and traversed to the west with a width of 5 links and reached the plaint C schedule property.

16. Regarding the plaint G schedule property, the commissioner reported that as per the plaint averments, it was the property situated on the north of the plaint A schedule property with a width of 3.5 links and a length of 2.20 links and that as per the plaint, the extent of the plaint G schedule property was shown as 750 square links. The learned Commissioner reported that such a property could not be identified on measurement. As per Ext.C3, the portion of property with a width of 6 links kept apart for the purpose of pathway as per the deed No. 3041/1987 is shown as the G Plot in Ext.C3(a), which had an extent of 0.11 Ares. The learned Commissioner also reported that, as per the measurements, the G plot was located on the east of the plaint E schedule property.

17. PW1 had stated in his proof affidavit that the plaint F schedule pathway started from the public way on the North of the properties with a width of 9.5 links till the northern boundary of A schedule and thereafter traversed to the West till the plaint C schedule with a width of 5 links. As I have already stated, the plaint C, D & E schedules belong to the defendant.

18. The major point of dispute between the parties is as to the width of the G portion of the pathway. The learned counsel for the plaintiffs had drawn the attention of this Court to Ext.A1. According to him, the E schedule therein was the property set apart as the pathway which had a width of 9.5 links. But it is pertinent to note that the northern boundary of the pathway as

per Ext.A1 is the C schedule therein and pathway. The extent of the said pathway is 1.100 cents which is equivalent to 34 sq. mtr. The learned counsel argued that the E schedule in Ext.A1 was set apart with a width of 9.5 links in continuation of the 9.5 links pathway from the public road on the eastern side of the defendant's property. On the other hand, the learned counsel for the defendant argued that the pathway on the eastern side of the said property of the defendant had only 6 links width. The learned counsel for the defendant also pointed out that PW1 had admitted during his cross-examination that as per Ext.A2 which was the title deed of the defendant with respect to the said property, the width of the pathway was stated to be 6 links. PW1 had also conceded that the public road was on the northern side of the schedule property and that the 6 links wide pathway started from there.

19. The learned counsel for the plaintiffs argued that it was the admitted case of the defendant that he had purchased 2 cents of property from the mother as per Ext.A2 which would come to 81 sq. mtr. According to the learned counsel, as per Ext.C3 (a), the portion marked as E2 was found to be the excess land in possession of the defendant. Accordingly, he would argue that the 2 cents of property covered by Ext.A2 is the plots marked as E and E2. He would point out that as per Ext.C3(a), the extent of the E plot is 0.75 Ares and that of the plot E2 is 0.05 Ares which would together come to 0.80 Ares corresponding approximately to 2 cents. Hence, according to the learned

counsel, the pathway on the eastern side of the said property of the defendant would consist of the plots marked as E1 and G in Ext.C3(a).

20. As per Ext.C3, the plaint E schedule property is the property covered by Ext.A2 which has an extent of 2 cents. According to the learned commissioner, the plots marked as E and E1 in Ext.C3 (a) would together have an extent of 0.81 Ares. When the learned commissioner had identified the property of the defendant covered by Ext.A2 as the plots marked as E and E1 in Ext.C3 (a), the above argument of the learned counsel for the plaintiff cannot be endorsed. With regard to the plaint F schedule property, the learned commissioner reported that it was only up to the southern side of the plot marked as G in Ext.C3 (a) though it was claimed as a pathway which started from the public road on the north with a width of 9.5 links. The said portion was marked as F plot in Ext.C3(a).

21. From the above discussion, it is only to be concluded that the boundaries of the plaint schedule properties are liable to be fixed as per Ext.C3 series. Since the plaintiffs could not substantiate their claims with regard to the F and G schedule properties, they are not entitled to get a perpetual injunction as sought for. Accordingly, issue nos.(i) and (iii) are answered against the plaintiffs and issue no.(ii) is answered in favour of the plaintiffs.

22. **Issue no.(iv)**: In view of my findings in issue nos.(i) to (iii), the suit is liable to be decreed in part. In the facts and circumstances of the case, both parties are directed to bear their costs.

In the result, the suit is decreed in part as follows :

- a) The boundaries of the plaint schedule properties are fixed as per Ext.C3(a).
- b) Ext.C3 series shall form part of the decree.
- c) 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 4th day of November, 2025.

Sd/-
Nishad Ibrahim
Principal Munsiff

APPENDIX:-

Plaintiff's Exhibits:-

A1	28.03.1990	Certified copy of the partition deed No. 1085/1990.
A2	27.09.1987	Certified copy of the sale deed No. 3041/1987.
A3	10.11.2023	Land tax receipt.
A4	07.11.2023	Building tax receipt in building No. 12/996-B.
A5	07.11.2023	Building tax receipt in building No. 12/996-B1.
A6	--	Caveat petition No. 83/2018.

A7(a)	--	Copy of the survey sketch issued by Village Officer, Rameswaram.
A7(b)	--	Copy of the survey sketch issued by Village Officer, Rameswaram.
A7(c)	--	Copy of the survey sketch issued by Village Officer, Rameswaram.
A7(d)	--	Copy of the survey sketch issued by Village Officer, Rameswaram.

Defendant's Exhibits:-

B1 series		Photographs (3 Nos.) Rejected.
B2	27.10.1999	Copy of License from Cochin Corporation. (Rejected)
B3	27.02.2018	Copy of the receipt. (Rejected)
B4	21.02.2018	Copy of the receipt. (Rejected)
B5	21.02.2018	Copy of the receipt. (Rejected)
B6	01.03.2000	Copy of the License. (Rejected)
B7	--	Not produced.

Court's Exhibits:-

C1	31.10.2018	Commission Report by Advocate Commissioner Seeja S.
C1 (a)	31.10.2018	Rough sketch along with Ext. C1.
C1 b(1)	31.10.2018	Photograph
C1 b(2)	31.10.2018	Photograph
C1 b(3)	31.10.2018	Photograph
C1 b(4)	31.10.2018	Photograph
C1 b(5)	31.10.2018	Photograph
C1 b(6)	31.10.2018	Photograph
C1 b(7)	31.10.2018	Photograph

C1 b(8)	31.10.2018	Photograph
C1 b(9)	31.10.2018	Photograph
C1 b(10)	31.10.2018	Photograph
C1 b(11)	31.10.2018	Photograph
C1 b(12)	31.10.2018	Photograph
C1 b(13)	31.10.2018	Photograph
C1 b(14)	31.10.2018	Photograph
C1 b(15)	31.10.2018	Photograph
C1 b(16)	31.10.2018	Photograph
C1 b(17)	31.10.2018	Photograph
C1 b(18)	31.10.2018	Photograph
C1 (c)	31.10.2018	C.D
C2	06.12.2018	Commission Report by Advocate Commissioner Seeja S.
C2 a(1)	06.12.2018	Photograph
C2 a(2)	06.12.2018	Photograph
C2 a(3)	06.12.2018	Photograph
C2 a(4)	06.12.2018	Photograph
C2 a(5)	06.12.2018	Photograph
C2 a(6)	06.12.2018	Photograph
C2 (b)	06.12.2018	C.D
C3	21.07.2023	Commission Report by Advocate Commissioner Seeja S.
C3 (a)	21.07.2023	Survey sketch along with Ext. C3.

Witness Exhibits

Nil

Plaintiff's Witness:-

PW1 04.10.2025 Thomas T.J.

Defendant's Witness:-

DW1 13.10.2025 Joseph T.J.

Court's Witness:-

Nil

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsiff

bk/-
Compd: by.AK

**JUDGMENT IN
O.S. No.316/2018
Dated : 04.11.2025**