

IN THE COURT OF THE MUNSIFF OF MANJERI

Present:- Sri.Vishnu Subhash, Munsiff

Friday, the 31st day of May, 2024

10th day of Jyaishta, 1946

ORIGINAL SUIT No. 273/2011

Between:-

Cheerangan Muhammedkutty, 72 Years,
S/o Koyakkutty Musliyar, Karakkad Parambil,
Karippur Amsom, Chirayil Desom, Karippur P.O.,
Tirurangadi Taluk.

} **Plaintiff**

And:-

1. **Padinjare Peediyekkal Alavi**, 60 Years, Munniyoor
Amsom Desom, Kaliyattumukk, Velimukk P.O.,
Tirurangadi Taluk.
 2. **1st Defendant's Wife, Allippara Pathumma**,
55 Years, D/o Aalikkutty, Munniyoor Amsom Desom,
Kaliyattumukk, Velimukk P.O., Tirurangadi Taluk.
 3. **Allippara Aalikkutty Haji**, 53 Years, S/o Aalikkutty.
 4. **3rd Defendant's son, Allippara Fsalu Rahman**,
35 Years.
 5. **Allippara Abdul Gafoor**, 38 Years, S/o Moosakkutty,
Puthanpurakkal House.
 6. **Allippara Shamsudheen**, 37 Years, S/o Moosakkutty,
Uthirankuzhiyil House.
- 3rd to 6th Defendants are residing at Pallikkal Amsom
Desom, Karippur P.O., Tirurangadi Taluk.

} **Defendants**

This suit coming on this the 30th day of May, 2024 for hearing before me, in the presence of **Sri.C. Harigovind and Sri.E.C. Suresh**, Advocates for the Plaintiff and of **Sri.Abdussamad K.K and Sri.M. Kesavan Nair**, Advocates for the Defendants and having stood over to this day for consideration, the court delivered the following:-

J U D G M E N T

Suit for fixation of boundary, recovery of possession and injunction.

2. **Plaint averments, in brief, are as follows: -**

The plaint A schedule property belongs to the plaintiff's father by kanam assignment deed registered as document no.44/1943. The plaintiff's father subsequently obtained a purchase certificate from the Kondotty Land Tribunal as certificate no.95/1973. After the death of the plaintiff's father, the A schedule property was inherited by the plaintiff's mother, the plaintiff, and others. The sharers sold their rights over the property in favour of the plaintiff's mother by document no.1401/1977. After the death of the plaintiff's mother, her properties were partitioned by partition deed no.2281/2010. Item no.1 of the partition deed was the plaint A schedule property, and the same was allotted to the plaintiff. The measurement and extent shown in the partition deed are incorrect. The plaintiff has in his possession 46.45 cents property. Karippur-Chirayil AMLP School is situated in the plaint A schedule property. The school was constructed long back. Plaint A scheduled property is situated in resurvey no. 398/2. The north of the plaint A schedule property lies the property of the second defendant. The second defendant's property is situated in resurvey no.398/1. On the west of the second defendant's property lies the property of Nafeesa. There was a four-foot-high old stone wall separating the plaint A schedule property and the second defendant's property. The second defendant informed the plaintiff that the second defendant has some right over some of the property situated in resurvey no.398/2. The first and second defendants demanded that the stone wall is to be demolished. The plaintiff was not ready to demolish the wall and the defendants destroyed the stone wall on the day before the institution of the suit. The defendants threatened that they would construct a new compound wall by including portions of plaint A schedule property. Even though the plaintiff informed the matter to the Karippur police station, no steps were taken by the Police. The northern boundary of the plaint A schedule property is to be fixed.

The encroached portion is scheduled as plaintiff B schedule property. On the north of the plaintiff A schedule property, defendants 2 and 6 have some property. Since a relief of fixation of boundary is sought, the defendant's property is scheduled as C schedule property. The northern boundary of the plaintiff schedule property is to be fixed according to documents, measurements, extent and survey. The defendants are to be restrained from trespassing, constructing, or obstructing the plaintiff's construction of a wall on the northern boundary of plaintiff A schedule property. The possession over plaintiff B schedule property is to be recovered from the defendants. Hence the suit.

3. The defendants entered an appearance and filed a joint written statement. The plaintiff was amended as per order in IA 01/2021, and the defendants filed an additional written statement. The written statement and additional written statement are as follows:-

The defendants did not understand the plaintiff schedule property as per the descriptions in the plaintiff. The defendants did not understand what A and B schedule properties after the amendment of the plaintiff. The plaintiff does not have possession of a property as scheduled in the plaintiff. The second and sixth defendant has some property in resurvey no.398/1 of block 2 of Pallikkal village of Tirurangadi taluk. The old survey number of the defendant's property is 388/2. The total extent of the defendant's property had been 54 cents; however, after the resurvey, the extent is now shown as 41.24 cents. The south of the second defendant's property is the wall of Karippur AMLP School. On the east of the second defendant's property lies the property of the sixth defendant. Both these properties have been kept as a single plot since the time of the predecessors of the defendants. The second defendant reaches the road on the west through a way on the north of the AMLP School. The second defendant's son is now constructing a house on the second defendant's property. There was a column pillar on the north of the AMLP School and inside the defendant's property. The water from the eaves of the AMLP School falls on this pillar. During the resurvey, the property in between the AMLP School building and this column pillar was shown as property of the school. The mistake in the resurvey

came to the knowledge of the defendant only after receipt of the notice, and on 23.09.2011, the second and sixth defendants filed an application before the appropriate authorities. The intention of the plaintiff is to encroach on the property on the north of the AMLP School building. It can be seen from document no.2281/2010 of SRO Kondotty, that the plaintiff has not obtained a property as scheduled in the plaint as A schedule. There is no basis or showing the total extent of A schedule as 46.45 cents. There is no such property as B schedule. The measurements and extents of C schedule is wrong. The defendant denies the allegations in the plaint regarding the acts mentioned to have happened on 01.09.2011. The defendants deny the allegation that they are in enmity with the plaintiff. The defendants deny the allegation that they destroyed the stone wall on the north of the plaint A schedule property. The defendants deny the allegations that they threatened the plaintiff. There is no dispute as to the boundaries of the properties of the second and sixth defendants, which are lying together. The plaintiff is not entitled to any reliefs as sought for. The suit is liable to be dismissed with costs.

4.The following issues were framed for consideration: -

1. Whether the plaint schedule properties are identifiable?
2. Whether the plaintiff is entitled to relief of fixation of northern boundary of plaint A schedule property?
3. Whether the plaintiff is entitled to the relief of injunction claimed?
- 4.Reliefs and costs?

Additional issue

5. Whether the plaintiff is entitled to recovery of possession of plaint B schedule property?

5. PW1 was examined on the part of the plaintiff. Ext.A1 and A2 were marked. No oral evidence was adduced on the part of the defendants. Ext B1 to B5 were marked from the part of the defendants. The commissioner was examined as CW1. Exts.C1 to C7 were marked as court exhibits.

6. Heard both sides.

7. **Issue No:1 & 2** – The second issue is related to the fixation of the northern boundary, which is closely connected with the identity of the property. So, for the sake of convenience both issues are considered together. The plaintiff's case is that there existed a stone wall, which was the northern boundary of plaintiff A schedule property. The defendants destroyed the stone wall and encroached on plaintiff A schedule property. Since there is no boundary in the north, the northern boundary of the plaintiff A schedule property is to be fixed, and the encroached portion is to be recovered.

8. The plaintiff filed an affidavit in lieu of examination in chief as PW1. PW1 gave evidence that plaintiff A schedule property was owned by the plaintiff's father, Koyakutti Musaliyar, as per kanam deed no.44/1943. The plaintiff's father obtained a certificate from the Kondotty Land Tribunal as certificate no. 95/1973. PW1 gave evidence that after the death of Koyakutti Musaliyar, plaintiff A scheduled property was inherited by Kunjikadiyumma, the plaintiff and others. Plaintiff and others sold the right over the property in favour of Kunjikadiyumma by document no.1401/1977 of SRO Kondotty. PW1 gave evidence that after the death of Kunjikadiyumma, the properties were partitioned by document no.2281/2010 of SRO Kondotty and plaintiff A schedule property was item no.1 in the said document. PW1's evidence also covered that plaintiff A scheduled property was allotted to the plaintiff. The certified copy of document no. 2281/2010 of SRO Kondotty is marked as Ext A1.

9. The certified copy of prior title deed of Ext A1 was produced as Ext B1. The photographs of the plaintiff A schedule property is produced as Ext B2 series. The title deed of the defendants is produced as Ext B3. A letter issued by additional Tahasildar, Tirurangadi dated 22.03.2012, is produced as Ext.B4. The field plan of old survey no.388 is produced as Ext.B5. Ext B3 to B5 were marked subject to proof. No one was examined by the defendant. PW1 has stated in his affidavit that the extent and measurements of the plaintiff A schedule property shown in document no.2281/2010 are not correct. He gave evidence that originally, 46.45 cents of property were in the possession of the plaintiff. Regarding the mistake in Ext. A1,

PW1 explains that his father's brother helped in the partitioning of the property. PW1 deposed that, as per Ext. A1, the west of the item no.1 property is a pathway. He gave evidence that a compound wall was constructed on the western boundary 10-25 years ago. He gave evidence that the south of item no.1 of Ext. A1 is his brother's property. He also stated that the northern boundary of Plaintiff A scheduled property is to be fixed according to the commissioner's plan dated 28.01.2014. He also gave evidence that Plaintiff A schedule property is lying in resurvey no.398/2 of Karippur amsom. The tax receipt dated 24.01.2023 is marked as Ext A2. On scrutiny of Ext A2, it can be seen that the plaintiff is paying tax for 16 Ares 39 Square meters of property in resurvey no.398/2-2. If the extent mentioned in Ext A2 is converted to cents, that would amount to 40.504 cents. PW1 gave evidence that the properties in the four directions of Plaintiff A's scheduled property are lying in different survey numbers.

10. The plaintiff's counsel argued that there was an old stone fencing separating Plaintiff A schedule property from the property of the defendants and that stone fencing is the boundary to be fixed. The property of the defendants, which is lying on the north of the Plaintiff A schedule property, is scheduled as Plaintiff C schedule. The property that is shown as encroached by the defendants from Plaintiff A schedule property is scheduled as B schedule property in the plaintiff. PW1, in cross-examination, gave evidence that the wall that existed on the north of Plaintiff A scheduled property is known as rubble masonry. He admitted in the cross-examination that the stone wall existed in the entire east-west boundary. He also added that the stone wall had a height of 4 ½ feet. He also gave evidence that the stone wall and the wall on the west of Plaintiff A scheduled property were separated by approximately 10 feet. The plaintiff's counsel argued that the title of the plaintiff is established by the evidence of PW1 and Ext A1. Item no.1 of Ext A1 is the Plaintiff A schedule property. On scrutiny of Ext A1, it can be seen that item no.1 of Ext A1 is scheduled as 40 ½ cents of property in old survey no.388/7,8,9. As per the descriptions in Ext A1, item no.1 is the western portion of Karakkattuparamaba,

which includes AMLP School. From the descriptions of Ext A1, the property in which the school is located is covered by Ext. A1.

11. The commissioner has inspected the property and has filed 7 reports. All the commissioner's reports were prepared before the amendment of the schedule in the plaint, and hence, instead of A schedule, the word plaint schedule property is stated in all the commissioner's reports. The commissioner was examined as CW1. The commissioner's report filed on 26.09.2011 is marked as Ext C1. The sketch filed along with the commissioner's report is marked as Ext C1(a). The commissioner in Ext C1 has reported that the second defendant's property is lying on the northern side of the plaint schedule property. At the time of the institution of the suit and at the time of the first inspection by the commissioner, there was only one schedule in the plaint. That is why the commissioner has reported it as a plaint schedule property instead of a plaint A schedule property. Subsequently, the plaint schedule property was amended and changed to plaint A schedule property. The commissioner has reported that throughout the AD line, the commissioner could see pieces of laterate stones that were scattered. The commissioner also reported that the AD line is about 41 meters in length. In the CD line in Ext C1(a), the commissioner reported seeing a granite wall about half a foot high and the continuation of the same is also seen in the AB line. The commissioner has filed a second report on 08.11.2011. The second report is marked as Ext C2. In Ext C2, the commissioner has reported that the laterate stone pieces, which were seen scattered throughout the AD line, were seen missing at this inspection. As per Ext C2, the second inspection was done on 29.10.2011.

12. CW1 gave evidence that a half-foot compound wall was seen in the CD line in Ext C1(a). No construction was seen in the BC line in Ext C1(a). In the cross-examination, CW1 deposed that there is a laterate stone wall in the CD line, but the age of the same is not reported. As per the evidence of CW1, she is not sure whether the CD line continues towards the east. CW1 admits that whether the wall in the CD line and the DE line is of the same nature or not is not reported.

13. From the commissioner's evidence, the presence of an earlier wall through the AB and CD lines can be seen. PW1 has also given evidence that there was an old stone wall separating the property of the second defendant in the north. The plaintiff's case itself is that the stone wall was destroyed by the defendants on 05.9.2011. In the written statement, the defendants have raised a case that the construction was there in order to prevent the water from falling from the eaves of the AMLP School and to divert it towards the road on the west. The existence of a structure on the north of AMLP School is not completely denied by the defendants. The evidence of the commissioner and commissioner's report also supports PW1's case regarding the existence of a prior structure on the north of AMLP School.

14. As per the defendants' case, their southern boundary is the building of the AMLP School. They have raised a case that due to a mistake in the survey, the property between the stone structure and the school has been shown as part of the school. CW1 also gave evidence that the northern portion of the compound wall on the west ends parallel to the B1 building shown in Ext C1(a).

15. PW1 was suggested in cross-examination that there was no wall, but in reality, it was only a structure built by the defendant to channel water. PW1 denied the suggestion. So even as per the written statement and cross-examination, the defendants are admitting their existed a structure. The defendant's only case is that that structure was not the boundary between the properties, but indeed, it was a structure constructed by them in order to initiate the flow of rainwater. The learned counsel for the defendant argued that PW1 admitted in the cross-examination that there existed a wall with rubble masonry. The counsel argued that the commissioner did not see the remains of such a wall, as stated by PW1. The mere fact that the commissioner has not reported on what material the remains of the old wall were constructed will not adversely affect the case. In this case, the existence of a prior structure is not even disputed by the defendants. But the question to be considered is whether the old wall was at the boundary. That structure can be fixed as the boundary

only if that is found out as the northern boundary when the property is measured as per title deeds.

16. The commissioner inspected the property again and filed an interim report on 22.5.2013. The report filed on 22.5.2013 is marked as Ext C3. CW1 gave evidence that the plan prepared by the surveyor was not in accordance with the property visit. The commissioner's report filed on 28.01.2014 is marked as Ext C4, and a plan filed along with the C4 report is marked as Ext C4(a). A commissioner's report filed on 22.07.2016 is marked as Ext C5, and the plan produced along with Ext C5 is marked as Ext C5(a). The interim commissioner's report filed on 22.11.2016 is marked as Ext C6. The commissioner's report filed on 06.02.2020 is marked as Ext C7. The plan produced along with Ext C7 is marked as Ext C7(a).

17. Factors like physical boundaries, title documents, extent, measurements, survey numbers, etc., are relevant for identifying a property. The Hon'ble High Court of Kerala in **Devan Krishnan Kartha V Kochu Mohamed Pariathu [1955 KLT 647]** has held as follows:

“The evidence supplied by boundaries, extent, survey numbers and lekkoms forms the determining factors when the identity of the property is put in issue. If all these factors harmonise there is little difficulty to identify the property in dispute. But when some of them are in conflict with the rest as where the extent and survey numbers do not agree with the boundaries, usually the boundaries predominate and the rest is regarded as erroneous or inaccurate descriptions. This is not an inflexible rule and the guiding principle is to apply that test which is most unlikely to be vitiated by error”

Documents and extent of property:-

18. It is already discussed above that PW1 has given evidence that he obtained A scheduled property through Ext A1. As per the plaintiffs' case, the real extent of plaintiff A schedule property is 46.45 cents. However, as per Ext A1 schedule, the extent is only 40 ½ cents. PW1 has specifically deposed that there was no occasion

to measure the property before executing Ext A1. This is the reason for changes in the measurement of A scheduled property while comparing with the prior title deeds.

19. The certified copy of the prior title deed of Ext A1 was shown to PW1 in cross-examination, and he admitted that the same is the prior title deed. The prior title deed is document no.1401/1977 of SRO Kondotty. The certified copy of document no.1401/1977 of SRO Kondotty is marked as Ext B1. PW1, in the cross-examination, has admitted that item no.1 of Ext A1 is the property in Ext B1. He has further stated that he is not aware as to how the south-north length was shown as 62 meters instead of 22 Kote. PW1 has deposed in the cross-examination that the boundaries and measurements in Ext A1 were made as per the prior title documents. On scrutiny of Ext B1, it can be seen that there are considerable changes in the extent and measurement of the same property in Ext A1.

20. Ext A2 also shows that the plaintiff is paying tax only for 16 Ares 39 Square meters (40.504 cents) of property. The extent in the schedule in Ext B1 states about 0.162 hectares of property. If the value is converted to cents, it will amount to approximately 40.034 cents. It is for the plaintiff to explain as to how these changes occurred. The plaintiff cannot evade his responsibility by merely stating that there are some mistakes that occurred while preparing Ext A1. Now it is already proved by evidence that there are considerable changes in Ext A1 and its prior title deed. Now, even as per Ext A1 schedule, the plaintiff is entitled only to 40 ½ cents. The plaintiff cannot claim more property than what is allotted to him. The only way a party can show that more property than what is stated in the document is available to him is by showing that the four boundaries of the property are the same and the extent has increased within these four physical boundaries. The Hon'ble High Court of Kerala in **Kunjumani v Jayalakshmi (R. S. A. No. 72 of 2015)** has held that : "As far as question No.2 is concerned, it is well settled law that, when properties are found within the well defined boundaries in excess of what has been described in the title deed, boundaries would prevail over the extent and in such view of the matter, the property found by the commissioner in resurvey No.475/4 and

475/2 within the red enclosed boundaries, to be held as the property of the plaintiff, where the plaintiff has title on the basis of A1 and A3 and he has been in possession of the same”. Whether the A scheduled property is situated within four clear physical boundaries is considered hereafter. As of now, the extent of the plaint schedule and the documents, prior documents and tax receipts are different.

Physical boundaries:-

21. The northern boundary is the boundary sought to be fixed by the court. Hence, there is no doubt that there are no boundary structures at present in the northern boundary. PW1 has given evidence that the western boundary is a public road. In the cross-examination PW1 has given evidence that the western boundary of the plaint A schedule property is the road and property of Nafeesa. He further went on to state that he does not have a property wherein the panchayath road is the exclusive western boundary. PW1 gave evidence that east of plaint A scheduled property lies the property of the plaintiff in resurvey number 398/3. He also gave evidence that the north of plaint A schedule property is the property of the second defendant, and it is lying in resurvey no.398/1. PW1, in the cross-examination, admitted that there are no boundary structures between the property allotted to him by Ext.A1 and his property in the east. PW1 also gave evidence that his brother's property lies on the south of the property obtained by him by Ext A1. He has given evidence that there is no reason as to why he has failed to mention the existence of physical boundary structures between his brother's property and plaint A schedule property. Moreover, the property of Nafeesa, as stated by PW1 on the west of plaint A schedule property, is not identified.

22. From the evidence of PW1, it can be seen that there is no evidence to show there exist any physical boundaries between plaint A schedule property and the property in the east and south. CW1 has given evidence that the plaintiff has not shown the physical boundaries of the property, and the same was not reported. CW1 has given evidence that during the inspection to prepare Ext C7, the western

boundary was reported. In order to fix the northern boundary of plaintiff A schedule property, the property has to be measured as per the extent. The plaintiff himself has a case in which the extent stated in the documents is not intact with the actual extent in his possession. If he has such a case, he has to prove that he is in possession of more extent of property within the same four boundaries. Here, there is no evidence to show the existence of physical boundaries in the east and south. Hence, the exact identification of the property on the basis of physical boundaries is not practicable in this case.

Survey number:-

23. The commissioner has inspected the property several times. A total of seven commissioners' reports are marked in evidence. Three of the reports were filed with the assistance of a taluk surveyor. The first such report was Ext C4. Ext C4 was accompanied by the surveyor's plan, which was marked as Ext C4(a). The second survey commission's report and plan were marked as Ext C5 and C5(a). The third report and plan filed with the assistance of the surveyor were marked as Ext C7 and C7(a).

24. On going through Ext C4(a), C5(a) and C7(a), it can be seen that there are considerable changes in the survey plans. All these plans contain old and new survey lines. The old survey line separating survey numbers 388/2 and 388/7 is passing through the north of the school building as per Ext C4(a). However, the very same survey line is passing inside the school building in Ext C5(a) and C7(a) plan. The commissioner has filed an additional report as Ext C5. The commissioner in Ext C5 has reported that the C5(a) plan by the surveyor is not proper, and a description of the properties cannot be clearly determined by this plan.

25. The resurvey line in Ext. C5(a) is passing through the building of the defendants. However, in Ext C4(a) and C7(a), the resurvey line does not touch the building of the defendant, instead it passes through the south of the building. So, there are differences in the survey and resurvey line in all the survey and resurvey plans produced along with the commissioner's report.

26. Another important aspect in the commissioner's evidence is that she has deposed that plaint A schedule property is shown inside the exact boundaries of the new survey line. CW1 has also given evidence that, as per the resurvey, there is no property for the defendants, which reaches the road on the west, but as per the old survey, the property of the defendants reaches the western road. This itself is absurd. On re-survey, only the survey lines will change, and it will not change the ownership of the property. If the defendant had a property reaching the road, the ownership over that property would not change even after the resurvey. The Hon'ble High Court of Kerala in **Ibrahim and Others v. Saythumammed and Others 2013(4) KHC 241**, wherein it was observed as follows :

“simply because it was wrongly shown in the survey plan or the basic tax register that a portion of the property covered by Ext. A1 stood in the name of another person, that does not mean that the plaintiff has lost his title to the property nor can it be presumed, based on such a wrong entry in the revenue records or plan, that the plaintiff was out of possession of the property or that the other person in whose name it is registered could obtain title to the property.”

27. The Hon'ble High Court of Kerala in **Thomas and Others v. Philip 2022(4) KHC 451** held as follows:

“. The title and possession are matters to be decided by a Civil Court. Merely because a portion of the plaintiff's property is shown in the resurvey records as with defendant's survey number, it cannot lead to an inference that possession was with the defendant. The changes in the extent of the property in the resurvey would not confer title”.

28. CW1 has also given evidence that in the Ext C4 report, the plaint schedule property is marked as 'ABCDEFGH' as per the new survey and 'PQRSTUP' as per the old survey. Moreover, on going through the Ext C4 report, it can be seen that the commissioner has reported that the plaint schedule property has an extent of 46.45 cents when measured as per resurvey, and the same property has an extent of 34 cents when measured as per old survey. This itself shows there are mistakes in the

measurement of the property. There cannot be two plaintiff schedule property on the basis of survey and resurvey, since the property is to be shown on the basis of extent and boundaries in the title deed.

29. As per the learned counsel for the defendant, the commissioner has marked the old survey number 388/7 as the plaintiff schedule property. The counsel has argued that the commissioner has taken the four survey lines of 388/7 and has stated the same as the plaintiff schedule property as per old survey of the plan. Similarly, the commissioner has stated new survey no.398/2 as the plaintiff schedule property as per the new survey. The commissioner has taken the four boundaries of resurvey no.398/2 as the boundaries of the plaintiff schedule property as per the new survey number.

30. The very same approach is taken by the commissioner in the Ext C7 report and C7(a) plan. The north, south and east of the plaintiff A schedule property shown in Ext C7 (a) plan is the exact resurvey boundary of resurvey no.398/2. In the west, the road is shown as the boundary. The existence of any boundary structures in the north, south or east is not reported by the commissioner along with the resurvey boundary line. Then, the basis on which the commissioner has identified the north, south and east of the plaintiff schedule property is not stated in the report or deposition. It is already discussed above that CW1 has given evidence that the plaintiff did not show any physical boundaries.

31. The learned counsel for the plaintiff relying on the dictum of the Hon'ble High Court of Kerala in **Lakshmi B v Suku, (2024(1) KHC 380)** has argued that, the title would prevail over revenue records and resurvey numbers. The Hon'ble High Court of Kerala in **Lakshmi B, V .Suku, (Supra)** has held as follows:

“ . Therefore, in suits involving title dispute, title would prevail over revenue records, if it is found on measurement that the property covered by the title deed is identified properly justifying the declaration of title and recovery of possession on the strength of title. The said reliefs never be denied merely on the ground that in the revenue

records/resurvey records, the said portion of the property is not shown as the property of the plaintiffs.”

32. Even in the said dictum the Hon’ble High Court of Kerala has clearly stated that it is applicable if the property covered by the title deed is identified. Here, that is not the case; the title deeds would not actually help the clear identification of property. Ext A1 is the plaintiff’s title deed. On scrutiny of Ext A1, it can be seen that the old survey numbers stated are 388/7, 388/8 and 388/9. So, as per Ext A1, the plaintiff does not have any right over property in old survey no. 388/2. After the resurvey, resurvey no.398/2 contains some portions of old survey no.388/2. In short, the plaintiff cannot claim the entire new survey no.398/2. Here, as per the commissioner’s report and Ext C7(a) plan, the entire 398/2, except some western portions already allotted to the road, is shown as the plaintiff schedule property. Which is not the correct identification of the property.

Analysis

33. It has already been discussed above that the extent of the plaintiff schedule property was only 40 ½ cent as per Ext A1. The commissioner’s report that the property was 34 cents as per the old survey plan and 46. 45 cents as per the new survey plan is without any basis. The commissioner has shown the exact extent of the entire old survey no.388/7 as the exact extent of the plaintiff schedule property in Ext C4(a). All these aspects also show that the identification of the plaintiff schedule property is not correct. The duty of the commissioner and the plaintiff is to locate the 40 ½ cents covered by the title deed inside the survey lines. However, what is done is the entire resurvey lines in resurvey no.398/2 is shown as the plaintiff A schedule property.

34. Now the boundary fixation is sought on the basis of Ext C7(a) plan. The old survey line in Ext C7(a) plan is seen passing through the inside of the school building. However in Ext C4, the survey line is seen passing on the north of the school building. Admittedly, the old survey number of the defendants does not include 388/7 and the old survey number of the defendants property is in 388/2. The

school is admittedly an old school. Hence if C7(a) plan is admitted, a portion of the building of the school was in defendants property before resurvey. Any portion of the school was never located in survey 388/2, even as per the case of both parties. Then it is for the commissioner to explain why some portion of the school is shown in old survey no.388/2. In Ext C4(a) plan no portion of the school building is shown as lying in old survey number 388/2. This also reveals about the improper identification of the property. Even though the existence of an old wall on the north of the school building was established, there is no evidence to show that it was the real boundary as per the title.

35. The commissioner's evidence and reports reveal that the commissioner believes that the northern boundary of A scheduled property is the northern survey line of survey number 398/2. However, the northern survey lines measurements themselves are different in the survey plans. As per Ext C7(a), the northern survey line of resurvey number 398/2 is 39.8 meters. However, as per Ext C4(a) and C5(a), it is 41.4 meters. The commissioner, in this case, was assisted by the taluk surveyors. Even if there are minor changes in the survey lines at the time of measurement, the surveyors cannot redefine the survey boundaries. They cannot take the view that resurveys measurements were wrong. They should have taken appropriate measures to redefine boundaries as per law. They cannot change the measurements of the survey lines for the purpose of this case. The Hon'ble High Court of Kerala in **Cheriyana Grama Panchayath v. State of Kerala and Others 2019(5) KHC 699** held as follows :

“A conjoint reading of S.10 and S.14 of the Act would abundantly make it clear that the power vested with the survey officer to determine and record a disputed boundary with reasons confined only to the determination of the disputes regarding fixation of boundary between the owners / sharers out of a large extent comprised in a particular survey so as to effect divisions based on ownership within that survey (any particular survey number or sub-division number). It really amounts to drawing a dividing line based on ownership within a particular survey. Necessarily, the survey

officer empowered under S.10 of the Act will not have any authority to re - define the boundary lines of a particular survey already settled by old survey records”

36. The above dictum is based on a case of redefining the boundaries by the surveyors, in a case falling under S.10,14 of the Surveys and Boundaries Act. This same principle is applicable here. Without redefining the survey lines as per law, the surveyors cannot take a stand that the survey line measurement is wrong.

37. As per the plaintiff's counsel, the DE line in Ext.C7(a) is the northern boundary line of A schedule property, which separates A schedule property from the defendant property. The area of B schedule property is shown in Ext C7(a) as 5 cents. A scheduled property is shown in the C7(a) plan as ENOPQRBCDE. However, the area of the A schedule property is not stated in the plan or report. Without mentioning the extent of A schedule property in Ext C7 or C7(a) plan, the real extent of property allotted to the plaintiff is not known. The plaintiff did not take any steps to remit Ext C7(a) or C7 in order to further inspect the property for stating the extent of A schedule property in case the DE line is considered as the northern boundary. There is no evidence to show that the boundaries of resurvey 398/2 is the exact physical boundary of plaintiff A schedule property.

38. The defendant has produced their title deed as Ext B3. The learned counsel for the plaintiff has argued that item no.14 of Ext,B3 is one of the property of the defendants in old survey no.388/2. The counsel has stated that southern boundary of item no.14 of Ext.B3 is stated as Karakkattuparamba and School paramba. The counsel argued that this itself shows that the wall of the school is not the boundary in between them, but there is a parambu in between school property and defendants property. Even if that argument is accepted, the property has to be clearly identified as per the title deed in order to fix a line in between the school building and defendants property. Moreover, the commissioner has not reported in Ext C7 that the DE line is the line where the old alleged *kallezhu* was situated. Hence, the court is unable to fix the northern boundary as sought by the plaintiff from the available

evidence. The identification of the property is also not proper. Issues 1 and 2 are found against the plaintiff.

39. **Issues 3 and 5:-** It is already discussed in issue nos. 1 and 2, that the properties are not clearly identified. Hence an injunction and recovery of possession as sought for cannot be granted. Issues 3 and 5 are found against the plaintiff.

40. **Issue no.4:-** In the light of findings in issues no.1 to 3 and 5, the suit is liable to be dismissed. Considering the facts and circumstances of this particular case, this court is of the view that no costs are to be imposed.

In the result,

Suit is dismissed. No costs.

(Dictated to the Confidential Assistant, corrected and pronounced by me in the Open Court, this the 31st day of May, 2024).

**Sd/-
Munsiff**

Appendix :

Witness examined from the side of Plaintiff :

PW1 : 31-01-2024 : Cheerangan Muhammedkutty.

Witness examined from the side of Defendants : Nil

Exhibits marked from the side of Plaintiff :

A1 : 10-05-2010 : Certified copy of document no. 2281/2010 of SRO Kondotty.

A2 : 24-01-2023 : Land Tax receipt.

Exhibits marked from the side of Defendants :

B1 : ----- : The certified copy of prior title deed of Ext A1.

B2 : ----- : Photographs of plaint A Schedule property.

(Series)

B3 : 16-03-1983 : Title deed of Defendant.

B4 : 22-03-2012 : Letter issued by Additional Tahsildar, Tirurangadi.

B5 : ----- : copy of Field plan of old survey no. 388.

Court Witness :**CW1 : 22-02-2024 : Soudath K.K.****Court Exhibits :****C1 : 26-09-2011 : Commission Report.****C1(a) : 26-09-2011 : Plan.****C2 : 08-11-2011 : Commission Report.****C3 : 22-05-2013 : Commission Report.****C4 : 28-01-2014 : Commission Report.****C4(a) : 28-01-2014 : Plan.****C5 : 22-07-2016 : Commission Report.****C5(a) : 22-07-2016 : Plan.****C6 : 22-11-2016 : Commission Report.****C7 : 06-02-2020 : Commission Report.****C7(a) : 06-02-2020 : Plan.**

**Sd/-
Munsiff**

Typed by : Arun

Compared by:

1.Arun

2. Deepa

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Fair/Copy of Judgment in O.S.No. 273/2011
Dated: 31-05-2024

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