

IN THE COURT OF THE SUB JUDGE, CHERTHALA

Present: Ms. Lakshmy.S, Sub Judge

Saturday, the 28th March 2026 / 7th Chaithra 1948

COMMON JUDGMENT IN AS.73/2017, AS.74/2017 & AS.75/2017

(These Appeal Suits filed against the Judgment and decree dated 19.08.2017 in OS.342/1986, 19.08.2017 in OS.204/1986 and 19.08.2017 in OS.112/1986 of the Additional Munsiff's Court, Cherthala)

AS.73/2017

(Filed on 03.11.2017)

Appellant:

Chandrabhanu, aged 68 years,
S/o. Narayanan, residing at Padathuveli,
Perumthuruthu Muri, Kanjikuzhi Village

By Adv. T. Jayakrishnan, Adv. Hormis Abraham,
Adv. S. Lekha, Adv. M.V. Baiju &
Adv. Ananthalakshmy. S

Respondents:

1. P. Ramachandran, aged about 56 years,
S/o. Parameswara Kurup, residing at Palackal Veettil,
from Edayakannattu, Mararikulam Muri,
Mararikulam North Village
2. P. Jeevan, aged about 54 years, residing at – do – do -
3. Mathruka, aged about 52 years, residing at – do – do -
4. Sreelatha, aged about 50 years, residing at – do – do -

By Adv. Jacob Tomlin Varghese

AS.74/2017
(Filed on 06.11.2017)

Appellant: Chandrabhanu, aged 68 years,
S/o. Narayanan, residing at Padathuveli,
Perumthuruthu Muri, Kanjikuzhi Village

By Adv. T. Jayakrishnan, Adv. Hormis Abraham,
Adv. S. Lekha, Adv. M.V. Baiju &
Adv. Ananthalakshmy. S

Respondents: 1. Sarojini Gopidas, aged about 74 years,
W/o. Gopidas, residing at Ponnittusseril Chirayil,
Perumthuruth Muri, Kanjikuzhi Village

2. Snehajan, aged about 48 years,
S/o. Gopidas, residing at – do – do -

3. Prathapan, aged about 46 years,
S/o. Gopidas, residing at – do – do -

4. Harilal, aged about 44 years,
S/o. Gopidas, residing at – do – do -

By Adv. Jacob Tomlin Varghese

AS.75/2017
(Filed on 06.11.2017)

Appellant: Chandrabhanu, aged 68 years,
S/o. Narayanan, residing at Padathuveli,
Perumthuruthu Muri, Kanjikuzhi Village

By Adv. T. Jayakrishnan, Adv. Hormis Abraham,
Adv. S. Lekha, Adv. M.V. Baiju &
Adv. Ananthalakshmy. S

- Respondents:
1. Chellappan, aged about 80 years,
S/o. Ayyan, residing at Padathuveliyil,
Perumthuruth Muri, Kanjikuzhi Village (Died)
 2. Thankamma Padmakshy, aged about 70 years,
W/o. Chellappan, residing at – do – do -
 3. Santhan, aged about 72 years, S/o. Ayyan,
residing at Pattathaneth, Perunnermangalam Muri,
Mararikulam North Village
 4. Padmanabhan, aged about 70 years,
S/o. Ayyan, residing at – do – do - (Died)

Addl.R5. Sujatha, aged about 55 years,
D/o. Late Chellappan, Saji Nivas, SL Puram.P.O,
Perunnermangalam Muri, Cherthala

Addl.R6. Sreelekha, aged about 53 years,
D/o. Late Chellappan of – do – do -

Addl.R7. Geetha, aged about 50 years,
D/o. Late Chellappan of – do – do -

Addl.R8. Sajimon, aged about 47 years,
S/o. Late Chellappan of – do – do -

Addl.R9. Minimol, aged about 45 years,
D/o. Late Chellappan of – do – do -

(R2 and Addl. R5 to Addl.R9 were impeded as the
legal heirs of deceased 1st respondent as per order
dated 07.09.2023 in IA.769/2019)

Addl.R10. Sobhana, aged about 70 years,
W/o. Late Padmanabhan, residing at Pattathaneth,
Perunnermangalam Muri, Mararikulam North Village

Addl.R11. Maya, aged about 48 years,
D/o. Late Padmanabhan of – do – do -

Addl.R12. Mahesh, aged about 46 years,
S/o. Late Padmanabhan of – do – do -

Addl.R13. Manoj, aged about 44 years,
S/o. Late Padmanabhan of – do – do -

(Addl.R10 to Addl.R13 were impleaded as the legal heirs of deceased 4th respondent as per order dated 07.09.2023 in IA.4/2022)

These memorandum of appeals were preferred against the Judgment and decree dated 19.08.2017 in OS.342/1986, 19.08.2017 in OS.204/1986 and 19.08.2017 in OS.112/1986 of the Additional Munsiff's Court, Cherthala, which coming on for final hearing on 27.03.2026 and the court on 28.03.2026 delivered the following:

COMMON JUDGMENT

AS 73/2017: This appeal is preferred by the plaintiff against the judgment and decree dated 19.08.2017 in OS.342/86 of the Additional Munsiff's Court, Cherthala whereby the suit for declaration of title, recovery of possession, mandatory injunction and for mesne profits, was dismissed by the trial court.

AS 74/2017: This appeal is preferred by the plaintiff against the judgment and decree dated 19.08.2017 in OS.204/86 of the Additional Munsiff's Court, Cherthala whereby the suit for declaration of title, recovery of possession and mandatory injunction, was dismissed by the trial court.

AS 75/2017: This appeal is preferred by the plaintiffs against the judgment and decree dated 19.08.2017 in OS.112/86 of the Additional Munsiff's Court, Cherthala whereby the suit for fixation of boundary, permanent prohibitory injunction and mandatory injunction, was dismissed by the trial court.

1.2 The appeals were taken up together and since the trial court records appreciated by the trial court in all the three suits are the same, the Appeal Suits are heard together for convenience and a common judgment is passed.

2. **OS.342/86**

The plaint averments in brief are as follows: The plaint schedule property is 83 cents of land forming part and parcel of 2.13 Acres of land in Sy.No.121/4 of Kanjikkuzhi Village. The plaintiff's father had mortgaged 2.13 Acres of land and he was in possession of entire 2.13 Acres. In the year 1956, a partition had taken place in the Janmi tarawad whereby this 2.13 Acres of land was allotted to the share of Chacko and Ouseph. In the year 1963 the Chacko and Ouseph redeemed 92 cents of land and sold the balance 1.21 Acres of land to the plaintiff by deed No.3086/63. The sale consideration was paid by the plaintiff's father. The plaintiff executed a sale deed in favour of plaintiff's father in the year 1966. Thereafter, in the year 1976 plaintiff's father executed a gift deed in favour of the plaintiff. Out of the total 1.21 Acres of land, 20 cents of

land was given as kudikidappu and 18 cents of land was mortgaged. The balance 82 cents is in the possession of plaintiff and he is paying tax for the same. By virtue of deed in the year 1963, plaintiff came into possession of 1.21 Acres of land, but in spite of mutation was effected only for 1.20 cents of land. It was by way of a mistake. By virtue of gift deed of 1976 the plaintiff was given 1.1 Acres of land, but mutation was effected only for one Acres of land. From this 1.1 Acres, 18 cents of land is in the possession of strangers by virtue of a mortgage deed. The 18 cents in the mortgage deed was mutated in favour of one Palakkal Narayana Kurup Parameswara Kurup by mistake and the plaintiff had filed P.V.Appeal against the same. The nilam situated on the western side of plaint schedule property belongs to the defendant. Now the defendant trespassed into the property of plaintiffs in Sy.No.121/4 and had taken away sand and planted two coconut saplings in the chira situated therein. Plaintiff belongs to scheduled caste community. The defendant after exploiting the situation, in the month of May 1979 had trespassed into the plaintiff's property and had taken possession of the same. The 16 cents of property trespassed and taken possession by the defendant is scheduled herein as plaint schedule property. Hence the suit is filed for declaration of plaintiff's right over 16 cents of property and to recover possession. O.S.408/1985 was filed by the defendant against the plaintiff claiming title over certain property lying on the eastern side of plaint schedule property. Even though the plaintiff filed a

counter claim in that suit, the counter claim was excluded by requiring the plaintiff to file a fresh suit. Hence the suit.

3. The original defendant filed written statement contending as follows:

The plaintiff has no right to file the suit. It is filed without any bonafides. The defendant denied the plaintiff's right and possession over 2.13 acres of land in Sy.No.121/4. He is not aware of the partition deed of 1956. The defendant is denying the deed executed in the year 1963 and he is not aware of the deed executed in the year 1973. The plaintiff schedule property is not coming within the Sy.No.121/4. The plaintiff schedule property belongs to the defendant and is in his possession. If at all the plaintiff is having any right over the said property it is lost by adverse possession. The plaintiff has not submitted as to who was given kudikidappu of 20 cents. It was the defendant who provided kudikidappu in Sy.No.121/4. The deed 3702 of 1976 is fraudulently created and void. The plaintiff is not entitled to any property mentioned in the said deed. The plaintiff has no title and possession over 1.1 cents of land. Mutation was not effected for 1.21 Acres of land, because of the said 1.21 Acres of land is not in existence. The averments that mutation was effected for 1.20 cents of land even prior to the gift deed itself shows that the gift deed is fraudulently created. The averment that 18 cents of land is in the possession of plaintiff by virtue of mortgage deed is not correct. The defendant

has more extent of land and his possession is not on the basis of mortgage deed. Mutation is not effected for 18 cents of land in the name of defendant and he is not aware of any P.V. Appeal preferred by the plaintiff. There is no nilam on the western side of plaintiff's property. A chira is situated on the western side of plaintiff's property and further west lies the nilam. The chira and the nilam belongs to the defendant. The defendant had not taken sand from the plaintiff's property. He planted coconut trees in the chira belonging to him. The defendant had filed O.S.408/1985 against the plaintiff and obtained a temporary injunction against the plaintiff and it is still in force. Taking advantage of the fact that the plaintiff belongs to scheduled caste community, he approached the officials and is trying to take possession of the defendant's property. The defendant never attempted to acquire plaintiff's property. The plaintiff filed the suit as a counter suit against the suit filed by the defendant herein. The plaintiff is not having title and possession over plaintiff's property. He is not entitled to get any declaration as prayed for. Hence the suit to be dismissed.

4. **OS.204/86**

The plaintiff's averments in brief are as follows: The plaintiff's father had taken mortgage of 2.13 Acres of land in Sy.No.121/4 and he was in possession of entire property. In the year 1956, a partition was effected in the janmi tarawad and said 2.13 Acres of land was allotted to the share of one Chacko and Ouseph, 92 cents of property on the eastern side was redeemed by

Ouseph and Chacko and plaintiff's father purchased the rest 1.21 Acres of land from them by virtue of sale deed No.3086/1963 in the name of the plaintiff. In the year 1973, the plaintiff registered a sale deed No.3557/73 in favour of his father for 1.21 Acres of land. 20 cents of land were given as kudikidappu and the balance 1.1 Acres of land was given to the plaintiff by his father in the year 1976 by way of gift deed. On the southern side, 18 cents of land was mortgaged and was in possession of strangers. Out of the total 1.21 cents of land, 20 cents of land was given as kudikidappu and 18 cents of land was mortgaged. The balance 83 cents is in the possession of plaintiff and he is paying tax for the same. The defendant is one of the kudikidappukaran of the plaintiff. On the northern side of said kudikidappu, the defendant had put up a fence and had taken possession of some of the properties belonging to the plaintiff. The defendant took possession of such property in the month of April 1980. Even though the plaintiff demanded the defendant to remove the fence and to surrender possession, he was not willing for the same. The 3.07 Ares of property trespassed by the defendant is scheduled as plaint schedule property. Hence the suit.

5. The defendant filed written statement contending as follows:

The suit is not maintainable. It is not filed with bonafide intention. The plaintiff has no right to file the suit of this nature. The derivation of plaintiff's title is denied. The plaintiff had not specifically pleaded as from

whom the defendant had obtained kudikidappu. The plaintiff has no right over plaintiff schedule property. The suit is filed on an experimental basis. The defendant is not aware of partition deed No.1505/1956. The total extent of 2.13 cent is denied. The janmies redeemed 1/2 of the total extent of plaintiff schedule property. The description of property in the deed of 3086/1963 is not correct. The subsequent deeds created on the basis of said deed is also not correct. It is the creation of the plaintiff. He had never taken possession of the extent mentioned in the deeds and the plaintiff and his father had created deeds one after the other among themselves in order to acquire possession over the said property. They had never taken possession of 1.21 cents of land. The defendant obtained kudikidappu by virtue of O.A.1816/1970. The landlord of the defendant is one Palakkal Narayana Kurup Parameswara Kurup. The plaintiff has no right over the said property. The defendant has taken possession of his property by Parameswara Kurup. He obtained kudikidappu for 10 cents of land. On the western and southern side of the said 10 cents of land lies the property of Parameswara Kurup. The 18 cents of land alleged to be given for mortgage by the plaintiff is not mentioned and identified. The plaint is silent with respect to fact of mortgage. No averments as to who had given mortgage, and to whom, is stated in the plaint. From the time of obtaining kudikidappu a fence existed on the northern boundary of defendant's property. The said fence was the northern boundary of defendant's Janmi Parameswara Kurup. He was given

possession of the said property from the date of kudikidappu. The defendants have not constructed a fence encroaching into the plaintiff's property. The defendant never trespassed into the plaintiff's property. The land in his possession is enjoyed by the defendant openly from time immemorial with intention to take the same adverse to the interest of the plaintiff and the right, if any, acquired by the plaintiff is lost by adverse possession of the defendant. The plaintiff is not entitled to the reliefs sought for. The suit is only to be dismissed.

6. **OS.112/86**

The plaint averments in brief are as follows: The plaint schedule property is 83 cents of land forming part and parcel of 2.13 Acres of land in Sy.No.121/4 of Kanjikkuzhi Village. The plaintiff's father had taken mortgage of 2.13 Acres of land and he was in possession of entire 2.13 Acres. In the year 1956, a partition had taken place in the Janmi tarawad whereby this 2.13 Acres of land was allotted to the share of Chacko and Ouseph. In the year 1963 the Chacko and Ouseph redeemed 92 cents of land and sold the balance 1.21 Acres of land to the plaintiff by deed No.3086/63. The sale consideration was paid by the plaintiff's father. The plaintiff executed a sale deed in favour of plaintiff's father in the year 1966. Thereafter, in the year 1976 plaintiff's father executed a gift deed in favour of the plaintiff. Out of the total 1.21 Acres of land, 20 cents of land was given as kudikidappu and 18 cents of land was mortgaged. The balance 83 cents is in the possession of plaintiff and he is paying tax for 82

cents. By virtue of deed in the year 1963, plaintiff came into possession of 1.21 Acres of land, but by mistake mutation was effected only for 1.20 cents of land. By virtue of gift deed of 1976 the plaintiff was given 1.1 Acres of land, but mutation was effected only for one Acres of land. From this 1.1 Acres, 18 cents of land is in the possession of strangers by virtue of a mortgage deed. The 18 cents in the mortgage deed was mutated in favour of one Palakkal Narayana Kurup Parameswara Kurup by mistake and the plaintiff had filed P.V. Appeal against the same. The defendants are the persons who purchased 92 cents of land from the Ouseph and Chacko. Their property lies on the eastern side of plaint schedule property. Now the defendants are creating dispute with respect to the property on the eastern boundary and have trespassed into the property and have planted coconut saplings. The defendant had no right to do so. Hence the eastern boundary of plaint schedule property is to be fixed and mandatory injunction is to be passed against them to remove the coconut saplings. Hence the suit.

7. The defendants filed written statement contending as follows:

The suit is not maintainable either in law or on facts. The plaintiff has no right to file the suit. The derivation of title is admitted, but the extent of the property obtained by the plaintiff is disputed. The defendants' predecessor had redeemed 93 cents of property from the plaintiff's father. The defendants had taken possession of 93 cents of land from their predecessors. The

defendants purchased 93 cents of land in the year 1966. The defendant's predecessor had redeemed 93 cents of land by virtue of deed No.1842/1966. After purchasing the property, the defendants measured out the property after filing application to the Taluk Office and boundary stones were laid after measuring the property in the year 1968. In the year 1968 itself, they had taken possession of that property and had laid Kaitha plants on their western boundary. There are other trees like mango tree, jack tree, pine tree, cashew-nut tree, kaitha in their boundaries. The plaintiff nor his predecessor has no property in the said area. Even if the plaintiff is having any right over such property, it is lost by way of adverse possession of the defendants. The defendants are in possession of the property since 1963. Mutation was not effected in favour of the plaintiff for 1.20 Acres of land. Whereas the defendants are paying tax for 93 cents of land and mutation was effected for 93 cents of land in the name of the defendants. The alleged cause of action is denied. The plaintiff is not entitled to the relief as claimed for and the suit is only to be dismissed.

8. After framing issues in all suits, the trial court listed the suits for trial. Joint trial was ordered treating OS 112/86 as the leading case. No oral evidence was adduced from the side of both parties. Exts.A1 to A6, Exts.B1 to B9 and Exts.C1 to C4 were marked. Thereafter OS 342/1986 was dismissed and OS 112/86 and OS 204/86 were decreed which was challenged in

AS 15/2007, AS 17/2007 and AS 24/2007. This Court set aside the judgment and decree of trial court and remanded the matter for fresh consideration with observations to obtain fresh comprehensive plan on production of title deeds.

9. After remand, fresh Commission Reports were obtained by the trial court. DW1 and DW2 were examined and Exts.B1 to B10 were marked afresh from the side of the defendants. Exts.C1 to C7 were also marked. Thereafter the trial court dismissed all the suits vide common judgment.

10. The appeal is directed against the common judgment passed by the learned Munsiff in O.S. Nos.112/86, 204/86 and 342/86 after remand, whereby all the suits were dismissed on the finding that the plaintiffs failed to establish title and, more importantly, the identity of the suit properties. The appellants challenge the said findings contending that the trial court failed to properly appreciate the evidence on record and failed to grant a fair opportunity to cure the shortcomings in the Commission Report.

11. Heard both sides and perused records.

12. The following points arise for consideration in this appeal:

- (i) *Whether the finding of the trial court that plaintiff could not establish title over the plaint schedule property and to prove its identity, is correct?*
- (ii) *Whether the judgment and decree of the trial Court require interference?*
- (iii) *Reliefs and costs?*

13. **Point Nos.1 and 2:**

For the sake of convenience, the parties are addressed according to their status before the trial court. In O.S. No.112/86, the plaintiff claimed that the plaintiff schedule property having an extent of 83 cents forms part of 1.21 acres obtained under a Sale Deed of the year 1963, which in turn forms part of 2.13 acres which was originally allotted to Chacko and Ouseph in a family partition. It is contended that after setting apart 20 cents as kudikidappu and 18 cents as mortgage, the balance remained in the plaintiff's possession, and that the defendants, who purchased the eastern 92 cents, trespassed into the said property, necessitating fixation of boundary and injunction.

14. The defendants in the said suit contended that they had purchased 93 cents of land from Chacko and Ouseph, and after measurement through the Taluk authorities, they took possession of property with well-defined boundaries. They denied any encroachment and asserted that the plaintiff never had possession over the extent claimed, and in any event, their long possession had matured into title.

15. In O.S.No.204/86, the plaintiff alleged that the defendant, who was stated to be a kudikidappukaran under him, had trespassed into an additional extent of 3.07ares beyond the allotted portion and put up a fence, thereby seeking declaration, recovery and mandatory injunction. The defendant therein contended that he was not a kudikidappukaran under the plaintiff but under

another landlord and that the plaintiff had no title or possession over the property. The entire claim was disputed and adverse possession was also pleaded.

16. In O.S. No.342/86, the plaintiff claimed declaration and recovery of 16 cents of land forming part of the same larger extent, alleging trespass and unlawful acts by the defendant. The defendant in that suit denied the plaintiff's title and possession, contending that the property in his possession belonged to him and relied on a prior mortgage transaction of the year 1952 evidencing possession over a larger extent. It was further contended that the plaintiff had suppressed material facts and that the property claimed by him was not identifiable.

17. On a careful re-appreciation of the records, this Court finds that the learned Munsiff has elaborately considered the issue of identification of the suit property, which was specifically remitted for fresh consideration. The reasoning adopted by the trial court in this regard is both comprehensive and well-founded. The learned Munsiff has noted that the very foundation of the plaintiff's case rests upon the proper identification of the 92 cents of land stated to have been redeemed by Chacko and Ouseph and lying on the eastern extremity of the total extent of 2.13 acres.

18. This Court while remanding the matter for fresh consideration specifically required identification of the 92 cents as stretching from South to

North. However, the Commissioner failed to identify this crucial portion in accordance with the direction. The Commissioner himself expressed inability to identify the said extent. The learned Munsiff has further reasoned that in the absence of proper identification of the 92 cents, the residual extent claimed by the plaintiff cannot be located with certainty. Since the plaintiff's claim over 83 cents is derived after deducting portions allegedly set apart for kudikidappu and mortgage from the total extent, the failure to fix the base extent renders the entire claim indeterminate.

19. The trial court has also taken note of the discrepancy between the recitals in the title deeds and the physical lie of the property as reported by the Commissioner. While the gift deed describes the kudikidappu as lying in the middle portion, the Commissioner reported its location at the northern extremity, thereby creating serious doubt regarding the correctness of the description in the documents relied upon by the plaintiff.

20. Another significant aspect highlighted by the learned Munsiff is the suppression of material documents by the plaintiff. Despite specific directions from this court, the plaintiff failed to produce the prior title deed and the mortgage deed. On the other hand, the defendants produced the mortgage deed which disclosed that 28 cents of land had been mortgaged as early as in 1952. This directly contradicted the plaintiff's case that only 18 cents was under mortgage. The trial court rightly observed that this suppression casts

serious doubt on the bonafides of the plaintiff and affects the credibility of his entire claim.

21. The learned Munsiff has also pointed out that the Commissioner, even after perusing a copy of the mortgage deed, failed to correctly identify the extent under mortgage and erroneously reported only 18 cents instead of 28 cents. This further rendered the commission report unreliable for the purpose of identification. The variation in the extent of land for which tax was paid by the plaintiff over different periods was also taken into account. The unexplained reduction in extent from one acre to 82 cents and subsequently to a much lesser extent was found to be inconsistent with the claim of possession over 83 cents and indicative of lack of clarity regarding the actual extent in possession.

22. The trial court has thus concluded that the commission report does not provide any reliable basis for locating the suit property and that the identity of the property remains unestablished. It has been rightly held that unless the property is clearly identified, no decree for declaration or recovery can be granted.

23. This Court finds that the above reasoning is based on a proper appreciation of the evidence and is in strict conformity with the settled principles governing suits for declaration of title and recovery of possession. The identification of the property is a sine qua non for granting such reliefs,

and in the absence of clear and cogent evidence enabling such identification, the plaintiff cannot succeed.

24. The learned Munsiff has also correctly drawn adverse inference against the plaintiff for non-production of material documents and for not adducing oral evidence. The cumulative effect of the discrepancies, suppression of material facts, and failure to comply with the remand directions has been rightly appreciated to non-suit the plaintiff. The points are found against the appellant.

25. **Point No.3:** - In view of the above findings on point No.1 and 2, the appeals are to be dismissed, with costs.

In the result, the appeals are dismissed, with costs.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 28th day of March, 2026.

Sd/-
LAKSHMY.S,
SUB JUDGE

Appendix : Nil

Id/-
SUB JUDGE