

**IN THE COURT OF THE MUNSIFF, HARIPAD.
Present: Smt. Maneesha K Bhadran, Munsiff
Saturday, 4th April, 2026/14th Chaithram, 1948**

OS 05/2020

(Filed on 3.01.2020)

Plaintiffs:

1. Mathai Scaria, aged 74 years, S/o. Mathai Medadeal Veettil, Melpadam Muri, Veeyapuram Village.
2. Thankamma, aged 73 years, W/o Thomas, Medadeal Veettil, Melpadam Muri, Veeyapuram Village

(By Adv. M. Rajendra Gopinath)

Defendant:

Joseph Varkey @ Shaji, aged 52 years, Virappil Melpadam Muri, Veeyapuram Village

(By Adv. M. J. Varghese)

This suit having been finally heard on 04.04.2026 and the court on same day delivered the following:

J U D G M E N T

Suit for declaration and injunction both mandatory and prohibitory.

2. **Averments in the plaint in brief are as follows:** - First plaintiff obtained plaint schedule item No. 1 property as per Sale Deed No. 4817/1966 of Haripad SRO and is in exclusive possession and enjoyment of the same. Second plaintiff obtained plaint schedule item No.2 property as per Sale Deed No. 4815/1966 of Haripad SRO and is in exclusive possession and enjoyment of the same. From the time of purchase of the above said properties, plaintiffs were accessing

plaint schedule item No. 3 property having a width of 2.5 metres on the west of plaint schedule item Nos. 1 and 2 properties through the east of the defendants' property towards south through the south eastern corner to reach the Panchayath road on the west. Plaintiffs were residing with their relatives in connection with their treatment at Pushpagiri Hospital, Thiruvalla and sister of defendant filed OS 34/2015 against first plaintiff and husband of second plaintiff for permanent prohibitory injunction which was subsequently dismissed. Plaintiffs obtained right of way over plaint schedule item No. 3 property as per Document dated 03.01.1973 executed by P.N.Chacko, Preethi Bhavan, Pulikkanakkumuri, Kayamkulam. He had conferred right of way over his one and a half cents of property comprised in Survey No.3572 of Veeyapuram village to reach the Panchayath road on the west and plaintiffs were accessing the said pathway having a width of 2.5 metres to reach the Panchayath Road. There was *pathal* fencing over 15 years old on the property of defendant from the commencement of the road to south eastern corner of defendant's property. However, defendant cleared the same and encroached the pathway and constructed fencing with old stones, pursuant to which plaintiffs filed OS 392/2015 which was subsequently rejected for defect in court fees. Defendant has no right to obstruct the pathway granted as per deed executed on 03.01.1973 and the said pathway is

to be restored to its old width. Hence the above suit for declaration of easement by grant over plaintiff schedule Item No. 3 property having a width of 2.5 meters, for mandatory injunction to remove the encroachment in the pathway and for permanent prohibitory injunction obstructing the ingress and egress of plaintiffs through the same.

3. Defendant entered appearance and filed written statement through his power of attorney on the following terms:

Plaintiffs are attempting to facilitate a cartable pathway capable of vehicular access to their property. Plaintiff item No.3 property does not exist and is the imagination of plaintiffs. Plaintiffs are accessing a pathway having a width of 4 feet. It is denied that a 2.5 metres wide pathway exists and the same was conveyed to plaintiffs as per Deed dated 03.01.1973 executed by P.N.Chacko with respect to his property comprised in Survey No.3572 of Veeyapuram Village. Such a document is not binding on defendant. Plaintiffs have right over 1.2 meters wide pathway and they were accessing the same and defendant has never obstructed the same. Plaintiffs were residing at their residence and has not shifted their residence as pleaded. The foundation and fencing on the south of defendant's property is over 30 years old. When a portion of the fence of defendant was damaged due to passage of time, the same was reconstructed. It is denied that

the said fencing is constructed by encroaching into the 2.5 meters wide pathway with old boulders after clearing the *pathal* fencing. The said pathway is concreted by the Veeyapuram Grama Panchayath. It is denied that defendant trespassed into the pathway, constructed fencing and obstructed the ingress and egress of the plaintiffs. The above suit is without any bonafides and is liable to be dismissed.

4. The following issues are raised for consideration: -
 1. Are the plaintiffs entitled for declaration over plaint schedule item No. 3 way as prayed for?
 2. Are the plaintiffs entitled for mandatory injunction as prayed for?
 3. Are the plaintiffs entitled for permanent prohibitory injunction as prayed for?
 4. Reliefs and costs?

Additional issue:

1. Whether the suit is barred by law of limitation?
5. PW1 to PW4 were examined and Exts.A1 to A5 and C1 series were marked from the side of plaintiffs. DW1 and DW2 were examined and Exts.X1 and X2 were marked from the side of defendant.
6. Heard both sides. Perused records.
7. **Issue Nos.1 to 3 :-** The static contention of plaintiffs is that they are entitled for right of easement by grant through plaint schedule item No. 3 pathway as per Ext.A3 executed by P. N. Chacko.

It is further contended that defendant has trespassed into the pathway and constructed a fencing therein reducing its width. Defendant on the other hand vehemently content that plaintiffs have never accessed a pathway having a width of 2.5 metres. It is categorically contented that the pathway accessed by plaintiffs is having a width of 1.2 metres and Ext.A3 is a fabricated document and is not binding on him.

8. PW1, the power of attorney of plaintiffs adduced evidence in tune with the case of plaintiffs. Exts. A1 and A2 are the certified copies of Sale Deed Nos.4817/1966 and 4815/1966 of Haripad SRO whereby plaintiffs obtained plaint schedule item no. 1 and 2 properties. Ext. A3 is the deed dated 03.01.1973 executed by P.N.Chacko. Exts A4 and A5 are the medical certificates issued to plaintiffs. PW2 is the brother of PW1 who is acquainted with the case. PW3 is the Advocate Commissioner who filed Ext. C1 commission report in OS 392/2015. PW4 is the grandson of late P N Chacko, who executed Ext. A3 document. DW1 is the power of Attorney of defendant. DW2 is the Secretary in charge of Veeyapuram Grama Panchayath who produced Ext.X1 and Ext.X2.

9. Ext.A3 is the document allegedly issued by P.N.Chacko. PW4, the grandson of P.N.Chacko, identified the signature of P.N.Chacko in Exhibit A3. However, the recitals in Ext.A3 is not clear

as to the exact extent of the pathway. It is pertinent to note that the pathway comprised in Ext. A3 is specifically stated as a $\text{ms } \text{r} \text{r} \text{r}$ comprised in survey no.3872. Exts. A1 and A2 are with respect to properties comprised in survey no. 3574/3. Ext. A3 specifies a pathway to be accessed by foot as against the case of plaintiffs.

10. It is pertinent to note that Ext. A3 is an unregistered document. However, the non-registration of the document will not defeat the right of easement by grant, as the same can even be oral. However, in the case in hand, it is to be noted that mere admission of the signature or proving the signature alone will not come to the rescue of plaintiffs in proving the contents of Ext. A3 as to easement by grant over plaint schedule item no. 3 pathway having a width of 2.5 meters as its execution and genuineness is disputed. DW1, the daughter of P. N. Cacko has denied the execution of the said deed. A perusal of Ext.A3 with naked eyes would also show that there is ambiguity whether right over half cent or one and half cents was conferred. No attempt is made to prove the execution of the same by examining its witnesses also. Whether the said P.M. Chacko had one and a half cents in his possession in survey no.3572 in proximity to plaint schedule item no.1 and 2 properties at the time of execution of Ext.A3 is also not proved. No attempt is made from the part of plaintiffs to establish the identity of plaint schedule item no.3

pathway having a width of 2.5 meters as that set apart as per Ext.A3 comprised in survey no. 3572 of the said P N chacko. The evidence of PW4 as to execution of Ext. A3 by P N Chacko with respect to plaint schedule item no.3 pathway is not convincing and acceptable.

11. PW1 has admitted the existence of coconut tree on the south eastern corner of the property of defendant. Ext. C1 also would show the existence of the said coconut tree. The case of PW1 is that the said coconut tree was not felled even though repeated demands were made by plaintiffs. If a 2.5 metre wide pathway was existing and accessed by the plaintiffs as contented, the existence of the coconut tree does not make the same probable. It is categorically denied by PW1 that the pitching of the fencing is very old. However, she admitted that the same is 10 to 15 years old.

12. Ext C1 commission report in O S 392/2015 has identified plaint schedule item No.3 pathway as the only pathway to plaint schedule item No. 1 and 2 properties to reach the Panchayath road. Ext.C1 would clearly show that the fencing and the foundation are not recently constructed and the property of defendant is lying elevated from the pathway. PW3 the advocate commissioner deposed accordingly and stated that the pitching and fence are not recently constructed.

13. It is categorically testified by PW1 that the fencing is constructed subsequent to 1973. However, no specific date is stated by PW1. A conjoint reading of evidence of PW3 with the deposition of PW1 as to no specific date of the alleged act of trespass would cast doubt upon the case of plaintiffs. The existence of *pathal* fencing is seen reported towards east from the west of defendant's property. PW1 has admitted that the said reclamation was pursuant to 1973. However, no specific date is specified. It is also stated that a portion of the fencing was demolished in the flood during 2018. The same would give credence to the defence version that boundary fencing was not recently constructed. If the said fencing was not existing formerly, then why complaint was not filed by the plaintiffs is not explained. As per Ext.X1 and X2, a 1.2 metre wide pathway is included in the asset register of Veeyapuram Gram Panchayath. The same would also give credence to the case of defendant.

14. Plaintiffs are bound to prove the existence of 2.5 metre pathway as provided by the P.N. Chacko. Without the establishing the said pathway over the property of the said P.N. Chacko, Ext.A3 will not incur any benefit to plaintiffs. No documents are brought forth to substantiate that the pathway having a width of 2.5 metres was granted to plaintiffs as a pathway as per Ext.A3. As the said P.N. Chacko is no more, the establishment of the pathway and the

property and his right at the time of conferring the easement by grant if any by Ext. A3 is to be clearly established. In the failure of the same defendants cannot claim any benefit under Ext. A3. Plaintiffs have to establish the existence of easement by grant which they failed to establish over the plaint schedule item no.3 pathway having a width of 2.5 metres. Desire to take vehicles seem to be the intention of PW1, if her evidence is analyzed as a whole. However Ext. A3 even for argument sake if considered has only granted right of way accessible by foot.

15. It is pertinent to note that the relief of mandatory injunction is sought and from the pleadings itself it can be seen that the said construction was made prior to filing of OS 392/2015 and suit was instituted by plaintiff for the same. A perusal of plaint and proof affidavit would go show that the width, length and height of the fence are not furnished by plaintiffs. No schedule for identification of such part of the property is also appended with the plaint. The long and short of the above discussion is that the plaintiffs palpably failed to establish that the defendant trespassed into the pathway. Mere oral assertion of the power of attorney plaintiffs is not sufficient to grant a decree. There is nothing on record to show that the defendant trespassed into any inch of pathway for constructing the fencing. The evidence available on record does not prove that defendant

constructed fencing in the pathway reducing its width. Plaintiffs could not establish that the defendant has trespassed upon the plaintiff schedule property item no. 3 way and committed any mischief. On and overall appreciation of facts and evidence in the case I have no hesitation to hold that plaintiffs could not establish that they have easement by grant over plaintiff item no. 3 property. So, the above issues are found against the plaintiffs.

16. **Additional Issue:** The most important aspect to be looked into is that nowhere in the plaint, plaintiff stated when defendant constructed the fence in the plaintiff schedule item no 3 property. It proves foul play on the part of plaintiffs. The relief of mandatory injunction asked is with respect to a construction prior to 2015. The cause of action accrued on the plaintiff when the fence was constructed. The relief of mandatory injunction is hopelessly time barred. Court cannot protect a person who has been sleeping over his cause of action. The prayer of mandatory injunction is barred by limitation. The above issue is found against the plaintiffs.

17. **Issues No. 4:-** In view of the finding on the above issues, the plaintiffs are not entitled to get any reliefs. The plaintiffs are directed to pay costs of the suit to the defendant.

In the result,

1. The suit is dismissed.
2. The plaintiff is directed to pay cost of the suit to the defendants.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, on the 04th day of April, 2026.

Sd/-
Maneesha K Bhadran
Munsiff

APPENDIX:

Witness examined for the Plaintiff

PW1	06.11.2024	Annamma Scaria
PW2	13.11.2024	Varghese Jacob
PW3	07.12.2024	Advocate. V. Madhu
PW4	22.01.2025	Prem Prasad

Witness examined for the Defendant

DW1	16.01.2026	Eliyamma Varkey
DW2	04.02.2026	Aneesh Chandran. C.

Exhibits for the Plaintiff's

A1	22.09.1966	Certified copy of sale deed No. 4817/1966 of Haripad SRO.
A2	22.09.1966	Certified copy of sale deed No. 4815/1966 of Haripad SRO
A3	3.01.1973	Deed executed by P.N. Chacko
A4	26.01.2015	Certified copy of Medical certificate issued by Pushpagiri Medical College Hospital, Thiruvalla
A5	13.10.2015	Certified copy of Medical certificate issued by Dr. Umesh Kumar T.M.M. Hospital , Thiruvalla

Court Exhibits

C1	22.01.2016	Mahazar prepared by Adv. Commissioner V. Madhu
C1(a)	22.01.2016	Commission Report prepared by Adv. Commissioner V. Madhu
C1(b)		Rough sketch prepared by Adv. Commissioner V. Madhu

Exhibits for Witness

X1		Certified copy of the relevant page of the asset Register of Veeyapuram Grama Panchayath
X2		Certified copy of the relevant page of the asset Register of Veeyapuram Grama Panchayath

Id/-
Munsiff