

**IN THE COURT OF THE MUNSIFF, HARIPAD.
Present: Smt. Maneesha K Bhadran, Munsiff
Friday, 27th March, 2026/6th Chaithram, 1948**

OS 301/2019

(Filed on 16.11.2019)

- Plaintiffs:**
1. Nadeshan, aged 47 years, S/o. Sukumaran, Moodoli Vadakkathil Veedu, Chingoli Muri, Chingoli Village.
 2. Suni, aged 36 years, W/o. Nadeshan, Moodoli Vadakkathil Veedu, Chingoli Muri, Chingoli Village.

(By Adv.P. Prakash)

- Defendants:**
1. Maheen, aged 37 years, S/o. Nainar Ravuthar, Moodoli Vadakkathil Veedu, Chingoli Muri, Chingoli Village.
 2. Asuma Beevi, aged 58 years, W/o. Nainar Ravuthar, Moodoli Vadakkathil Veedu, Chingoli Muri, Chingoli Village.

(D1 and D2 by Adv. T. S. Thaha)

This suit having been finally heard on 27.03.2026 and the court on the same day passed the following:

J U D G M E N T

Suit for injunction both mandatory and prohibitory.

2. **Plaint averments in brief are as follows:** - Plaintiffs obtained plot A schedule property as per Sale Deed No. 1589/2002 and are in exclusive possession and enjoyment of the same with residential building therein. Plot A schedule property is lying within specific boundary demarcations. Second plaintiff is the wife of first

plaintiff. Defendants are residing on the north of plaintiff A schedule property. Second defendant is the mother of first defendant. The siblings of first plaintiff are residing on the east and west of plaintiff A schedule property. On the east of plaintiff A schedule property is the family house of first plaintiff, wherein his younger brother is residing. The siblings of first plaintiff are accessing the pathway on the north of plaintiff A schedule property in east-west direction. The said pathway was formed 6 years ago for the exclusive enjoyment of plaintiffs and siblings of first plaintiff and they are accessing the same through vehicles and nobody else is having any right of way through the same. Plaintiff A schedule property and the property of defendants are separated by barbed wire fencing on the north. Defendants are accessing the panchayath road on the east of their property by proceeding towards east-north. Defendants demanded plaintiffs to permit them to access the pathway on the south of their property for ingress and egress to the Panchayath road on the west of plaintiff A schedule property which was permitted by plaintiffs. Defendants were permitted to access the Panchayath Road on the west of plaintiff A schedule property by foot through a 1 metre wide pathway. Accordingly, a portion of the barbed wire fence to a width of 1 metre was removed for facilitating the ingress and egress of defendants to the panchayath pathway on the west. Defendants were accessing the

1 metre wide pathway on the north of plaintiff A schedule property with the permission of plaintiffs. On 14.11.2019, taking advantage of the absence of plaintiffs, first defendant demolished the barbed wire fencing on north of plaintiff A schedule property to a width of 3 metres for facilitating vehicular access to his property. When plaintiffs questioned the same, defendants threatened them with dire consequences. Plaintiff B schedule is the portion of the barbed wire fence which was demolished by defendants. Defendants have no right of vehicular access through the pathway on the north of plaintiff A schedule property. Hence the above suit for mandatory injunction for directing defendants to reconstruct plaintiff B schedule barbed fencing portion and for a permanent prohibitory injunction restraining them from further trespassing into plaintiff A schedule property, facilitating vehicular access through the pathway on the north of plaintiff A schedule property and committing any waste therein.

3. Defendants filed written statement on the following terms: - Plaintiff A schedule property was lying without specific boundary demarcations preceding the institution of the suit. On the north of plaintiff A schedule property is a pathway having a width of 3 metres. Defendants are having right of easement by prescription over one metre wide pathway on the north of plaintiff A schedule property to access the Panchayath road on the west. Defendants were enjoying

the said pathway openly, peaceably, as of right, without any obstruction from 15.08.1991. Plaintiffs have no right to obstruct the said pathway accessed by defendants and three other families. In 2015, defendants and others facilitated a pathway having a width of 3 meters towards the panchayath road on the west. Accordingly, plaintiffs have set apart property on the north of plaint A schedule property for the pathway. First defendant purchased 15 sq. metres of property as per Sale Deed No. 815/2015 of Cheppad SRO from one Uthaman for facilitating the cartable pathway having a width of 3 metres for the access of other families including plaintiffs. Had first defendant not purchased the above 15 square metres of property, plaintiffs would be unable to access the 3 metres wide pathway. It is categorically denied that on the north of plaint A schedule property is the property of defendants separated with barbed wire fencing. The barbed wire fencing is on the north of the pathway. Defendants have not accessed the pathway to the east of their property and no such pathway exists. Plaintiffs, defendants and three other families have equal right to enjoy the 3 metres wide pathway for ingress and egress to their respective properties. Plaintiffs have no right to obstruct the enjoyment of defendants. From 2012 itself, prior to the purchase of the property, the parties were enjoying the 3 metres wide pathway and respective property owners have set apart their property. It is

denied that defendants have demolished the barbed wire fencing on 14.11.2019. Plaint B schedule fencing is constructed by defendants and the same is not liable to be reconstructed. Defendants have not trespassed into plaint A schedule property and committed any act of trespass therein. The above suit is without any bonafides and is liable to be dismissed.

4. The following issues arise for consideration: -

1. Are the plaintiffs in absolute ownership and possession of plaint A schedule property?
2. Does there exist a way through the eastern side of plaint A schedule property towards west?
3. Have the defendants demolished the fencing on the northern boundary of plaint A schedule property?
4. Are the plaintiffs entitled to injunction reliefs as prayed for?
5. Reliefs and costs?

5. On the side of plaintiffs, PW1 and PW2 were examined and Exts.A1 to A4 and C1 series were marked. DW1 was examined and Exts.B1 to B7 were marked from the side of defendants.

6. Heard both sides.

7. **Issue Nos.1 to 4:-** The static contention of plaintiffs is that they are the absolute owners in exclusive possession and enjoyment of plaint A schedule property and there is a way on the north of their property which is for the exclusive ingress and egress of

plaintiffs and siblings of first plaintiff and defendants have no right of way through the same. It is further contented that plaintiffs have permitted defendants to access a one metre wide pathway on the north of plaint A schedule property and defendants have demolished the barbed wire fencing on the north of plaint A schedule property to facilitate a cartable pathway capable of vehicular access to their property. Defendants on the other hand contend that they are having easement by prescription over a pathway having a width of 1 metre on the north of plaint A schedule property to reach the Panchayath road on the west. It is further contended that plaintiffs have relinquished a portion of their property to form a pathway having a width of 3 metres to the residential building of plaintiffs, defendants and three other families from the panchayath road on the west and first defendant had purchased 15 sq. metres of property for the same.

8. PW1, the first plaintiff adduced evidence in tune with the case of plaintiffs. PW2 is the advocate commissioner who prepared Ext.C1 series commission report. Ext.A1 is the certified copy of Sale Deed No. 1589/2002 of Cheppad SRO, whereby plaintiffs purchased plaint A schedule property. Exts.A2 and A3 are the tax receipts of plaint A schedule property. Ext.A4 is the agreement executed between plaintiffs and others with respect to right of way for them. Ext.B1 is the sale deed No. 815/15 of Cheppad SRO whereby first defendant

purchased 15 sq.meters of property from Uthaman for valid sale consideration. Ext.B2 is the tax receipt of the above said property. Ext.B3 is the copy of complaint filed by first defendant before Kareelakulangara Police Station. Ext.B4 is the receipt of the same. Exts.B5 and B6 are the RC books of the vehicles of first defendant. Ext.B7 is the copy of the resurvey plan.

9. Ext.C1 commission report has identified the property of plaintiffs, the pathway on its north, the property of defendants, the barbed wire fencing and the opening in the portion of the barbed wire fencing to a width of 3.57 metres. It is categorically shown in the Ext.C1 commission report that the barbed wire fencing is seen demolished and the boundary stones are seen removed. Evidence of PW2 would show that the fencing on the north of plaint A schedule property to an extent of 3.57 meters is seen removed.

10. PW1 in his evidence has categorically denied that plaintiffs have permitted vehicular access of defendants through the pathway on the north of plaint A schedule property. His evidence would clearly show that the said pathway is for accessing his family house and there is an agreement executed between the parties with respect to the same. It has also come out in evidence of PW1 that the said pathway was in existence for about 5 to 6 years. The boundary descriptions in Ext. A1 would show a pathway on its west and the

property of Rawthar on its north. It is clear from Ext.A1 that there is no pathway on the north of plaint A schedule property. A conjoint reading of the evidence of PW1 and Ext.A1 would show that there was no pathway on the north at the time of execution of Ext.A1 and the said pathway was newly formed. Defendants also admit that the 3 metres wide pathway on the north of plaint A schedule property was formed in 2012. The moot question to be considered is whether defendants have any right of way through the pathway on the north of plaint A schedule property.

11. The static contention of first defendant is that he has purchased property as per Ext.B1 sale deed adjoining the panchayath road to facilitate the 3 metre wide pathway. The boundary description in Ext.B1 would show Panchayath Road on the west. The eastern and southern boundary is the property of Rohini. However, whether defendants can rely upon the same and claim a right of way through the north of plaint A schedule property is to be considered.

12. It is pertinent to note that defendants have no case that they have right of easement by prescription over a pathway having a width more than 1 metre. Further nothing is brought forth to substantiate the same also. DW1 has deposed that the pathway having a width of 3 metres was formed in 2012 and the 1 metre wide pathway was accessed for over many years and the same is lying

contiguously with the 3 metre wide pathway. His evidence would further show that plaintiffs are accessing the property purchased by him. It is denied by DW1 that plaintiffs have not permitted him to access the 3 metre wide pathway. Ext.A4 dated 9/09/2012 is the document whereby plaintiffs and others agreed for right of way having a width of 2.30 metres for their enjoyment. Defendants are not parties to the above said deed. DW1 in his evidence has admitted the execution of Ext A4 between plaintiffs and others as to right of way and him being not a party to the same.

13. The static case of plaintiffs is that they have not permitted defendants to access pathway on the north of plaint A schedule property having a width of 3 metres. The contention of defendants is that there is a reciprocal agreement between the parties. As first defendant has purchased property as per Ext.B1, which is accessed by plaintiffs and others, defendants are entitled for the pathway having a width of 3 metres on the north of plaint A schedule property. However, there is nothing on record to substantiate the same. In the absence of any evidence to show that there is a reciprocal arrangement whereby property purchased as per Ext.B1 is for forming 3 meter wide pathway towards the west of plaint A schedule property, the case of defendants cannot be accepted. Ext.B7 resurvey plan will not come to the rescue of defendants in proving

that the property comprised in Ext.B1 is for forming the 3 metre wide pathway towards the west of plaint A schedule property. When it is categorically denied by plaintiffs that there is no such agreement and the absence of defendants in Ext. A1, the case of defendants cannot be accepted. It cannot be contended that defendants who are not parties to the Ext. A4 deed also have right of way through the pathway set apart therein. Further if the pathway was formed in 2012, then why first defendant purchased the property in 2015 is not explained. Ext.B1 would show that the possession of the property was given only at the time of its execution. I am unable to accept as true the evidence of DW1 that he is having right to enjoy the pathway on the north of plaint A schedule property as plaintiffs are accessing the property purchased by him as pathway.

14. Learned counsel for defendants placed reliance upon the dictum of Hon'ble High Court Supreme Court in ***Dalip Singh v. State of UP 2010(1) KLT Online 1128 (SC)*** and contented that plaintiffs are not entitled for the equitable relief of injunction as they have suppressed the material facts from the court. However, from the evidence on record, it cannot be gathered that there is a reciprocal agreement for the pathway on the north of plaint A schedule property for the property purchased by first defendant as per Ext.B1. The evidence of PW1 would categorically show that the said pathway is

exclusively for the enjoyment of his siblings residing on the west and east of his property. Even for argument sake, defendants cannot be found to be entitled for a pathway having a width of 3 metres as they have miserably failed to establish any manner of right to use the said portion of plaintiff A schedule property as a pathway.

15. Though PW1 was cross examined at length, nothing was brought forth to disbelieve him that defendants have no right of way through the pathway on the north of plaintiff A schedule property having a width of 3 metres and defendants have recently demolished the fencing and I accept his evidence as true. As defendants failed to prove that they have right of way by easement by grant, they are not entitled to enjoy the pathway on the north of plaintiff A schedule property. As plaintiffs have admitted the 1 metre wide pathway, the same can be enjoyed by defendants without any obstruction. On an overall appreciation of facts and evidence in the case, I have no hesitation to hold that defendants have miserably failed to establish that they have a right of way on the north of plaintiff A schedule property having a width of 3 metres. Plaintiffs have established their exclusive possession over the plaintiff A schedule property, the existence of the pathway on its north and their right over it as per Ext. A4 and the mischief done by the defendants to plaintiff B schedule fencing. The above issues are answered in favour of plaintiffs.

16. **Issue No.5:** As it is already found that defendants have no right of way through the 3 metre wide pathway on the north of plaint A schedule property, plaintiffs are entitled for a mandatory injunction to restore the same as sought for. The apprehension of plaintiffs in possession of plaint A schedule property is well founded and they are also entitled for a prohibitory injunction as sought for. The above issue is answered in favour of plaintiffs.

17. **Issue No.6:** Considering the facts and circumstances of the case, plaintiffs being entitled for a decree are also entitled to realise costs of the suit from the defendants.

In the result, the suit is decreed on the following terms.

- 1) Defendants are directed by a mandatory injunction to restore plaint B schedule fencing within two months from the date of decree, failing which plaintiffs can execute the same through process of court.
2. Defendants are restrained by a permanent prohibitory injunction from further demolishing the fencing on the north of plaint A schedule property, accessing plaint A schedule property with vehicles and committing any waste therein, other than enjoying the one metre wide pathway.
3. Defendants are directed to pay costs of the suit to plaintiffs.

(Dictated to the Confidential Assistant, corrected and pronounced by me in open court, on this 27th day of March 2026)

Sd/-
Maneesha K Bhadran
Munsiff

APPENDIX:

Witness Examined for the Plaintiff

PW1	19.12.2023	Nadeshan
PW2	22.01.2024	Jyothi Krishna

Witness Examined for the Defendant

DW1	20.03.2025	Maheen Aboobakker Ravuthar
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Exhibits for the Plaintiff's side

A1	23.10.2002	Certified copy of sale deed no.1589/2002 of Cheppad S R O.
A2	14.11.2019	Tax receipt issued by Chingoli Village.
A3	03.08.2022	Tax receipt issued by Chingoli Village.
A4	09.09.2012	Agreement.

Exhibits for the Defendant's side

B1	21.05.2015	Sale deed no. 815/2015 of Cheppad S R O.
B2	14.01.2025	Tax receipt issued by Chingoli Village.
B3	14.11.2019	Copy of complaint filed before Kareelakulangara Police Station.
B4	14.11.2019	Receipt No. 237 issued by Kareelakulangara Police Station.
B5	28.05.1996	R. C Book bearing Reg. No. KL-02 P 2095.

B6	04.10.2012	R. C Book bearing Reg. No. KL-29 E 9034.
B7	24.11.2025	Copy of resurvey plan issued by Survey Superintendent Office (A.L.C), Haripad.

Court Exhibits

C1	Report prepared by Advocate Commissioner Smt. Jyothi Krishna.
C1(a)	Mahazar prepared by Advocate Commissioner Smt. Jyothi Krishna.
C1(b)	Rough sketch prepared by Advocate Commissioner Smt. Jyothi Krishna.

Id/-
Munsiff