

**IN THE COURT OF THE MUNSIF, CHENGANNUR**

**PRESENT SMT.RAGI.S, MUNSIF**

**Saturday, the 27<sup>th</sup> day of August 2022/ 5<sup>th</sup> Bhadra, 1944**

**O.S.No.92/2020**

(Filed on 01.06.2020)

**Plaintiff** : V.C Zachariah, aged 72 years,  
S/o Cherian,  
Vadakkekuttu Veetil,  
Kuttamperoor Muri,  
Mannar Village,  
Chengannur Taluk.

***(By Adv.Roy Philip)***

**Defendants:**

1. Karthika, aged 60 years,  
W/o. Gopi,  
Uppamoottil Thekkethil,  
Kuttamperoor Muri,  
Mannar Village,  
Chengannur Taluk.
2. Gopi, aged 64 years,  
S/o. Kittan,  
Uppamoottil Thekkethil,

Kuttamperoor Muri,  
Mannar Village,  
Chengannur Taluk.  
*(Exparte)*

This suit having been finally heard on 19.08.2022 and the court on 27.08.2022 delivered the following.

### **JUDGMENT**

Suit for mandatory injunction and permanent prohibitory injunction.

2. The plaint averments in brief, are as follows:-

Plaint schedule item No.1 property absolutely belongs to plaintiff by virtue of Sale deed No. 1809/79 of SRO, Mannar. Plaintiff and his family are residing in the building situated in Plaint schedule item No.1 property. Plaint schedule item No.2 property belongs to first defendant, which is situated on the western side of plaint schedule item No.1 property. Second defendant is the husband of the first defendant. On the western side of plaint schedule item No.2 property there is a panchayath road. A pathway commences from the said panchayath road through the northern side of plaint schedule item No.1 and 2 properties and continues towards east, scheduled herein as plaint schedule item

No.3. Plaint schedule item No.3 is having 4 feet width. The plaintiff and his predecessors has been using plaint schedule item No.3 pathway from the year 1979 onwards. Hence the plaintiff has easement by prescription right over the pathway.

3. There is no boundary wall separating plaint schedule item No.2 and 3 properties. Taking advantage of this situation,the defendants planted trees and some other plants along the boundary and created obstruction to the free passage of plaintiff through plaint item No.3 pathway. Defendants have no manner of right to obstruct the plaintiff. So many trees and plants are slanting towards plaint schedule item No.3 pathway which obstruct the free passage through plaint schedule item No.3 pathway. Plaintiff has demanded to the defendants to cut and remove those trees but they didn't heed the same. Hence the suit is filed, prayed for a mandatory injunction to cut down the trees and plants which slanting towards the plaint schedule item No.3 pathway and for a permanent prohibitory injunction restraining the defendants from trespassing into the plaint schedule item No.3 pathway and from reducing its width by planting trees along the boundary and from

obstructing the peaceful enjoyment of plaint schedule item No.3 pathway by the plaintiff and also from committing any waste therein.

4. The defendants remained exparte.
5. Plaintiff filed affidavit in lieu of examination in chief and examined as PW1. Exts.A1 and A2 were marked. Commissioner advocate was examined as CW1 and Ext.C1 series were marked.
6. Now the only point that arise for consideration is:-  
Whether the plaintiff is entitled to get a decree as sought for?
7. Heard the learned counsel for the plaintiff.
8. **The point:-** Ext.A1, Sale deed No. 1809/79 of SRO, Mannar and Ext.A2 Tax receipts would prove that plaintiff is the absolute owner and in exclusive possession of plaint schedule item No.1 property. As per Ext.C1 series Commissioner identified plaint schedule properties and reported that plaint schedule item No.3 pathway is having 4 feet width. In Ext.C1(a), Mahazar and Ext.C1(b) rough sketch the commissioner clearly shows that some trees are slanting over plaint schedule item No.3 pathway. Thus it can safely concluded that the

defendants making obstructions over plaint schedule item No.3 pathway. Ext.C1 series support plaintiff's case. There is no contra evidence.

9. On considering the apprehension of the plaintiff regarding the trespass over plaint schedule item No.3 pathway by the defendants, I am of the view that the defendants are to be restrained. There is no challenge to the pleadings and evidence adduced by the plaintiff. The evidence of the plaintiff coupled with Exts. A1, A2 and C1 series would prove the cause of action. The plaintiff is entitled to get the decree as sought for. Hence the point is found in favour of the plaintiff.

In the result, the suit is decreed with costs as follows:-

1. Defendants are permanently restrained from trespassing into the plaint schedule item No.3 pathway and from reducing its width and from making obstructions to the peaceful enjoyment of plaint schedule item No.3 pathway by the plaintiff and also from committing any waste therein.
2. The defendants are directed to remove the trees slanting towards the plaint schedule item No.3 pathway, which

obstruct the free passage along plaint schedule item No.3 within one month, failing which the plaintiff is entitled to do the same through the process of the Court and entitled to realise the costs from the defendants.

3. Plaintiff is also entitled to realise the costs of the suit from the defendant.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 27<sup>th</sup> day of August 2022.)*

**Sd/-  
RAGI.S  
MUNSIFF**

### **APPENDIX**

#### **Witness for plaintiff:-**

PW1            20.06.2022            V.C.Zachariah

#### **Exhibits for plaintiff:-**

A1            17.08.1979            Copy of Sale Deed No. 1809/1979 of SRO, Mannar.

A2            22.05.2020            Tax Receipt No. Kl.04050601429/2020 of Village Office, Mannar

**Witness for Defendants :**            Nil

**Exhibits for Defendants:-**            Nil

Court Witness:-

CW1	02.07.2022	Adv.Sreenu Raj. N
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Court Exhibits:-

C1	26.06.2020	Commission Report
C1 (a)	26.06.2020	Mahazar
C1(b)	26.06.2020	Rough Sketch

***Id/-***  
**MUNSIF**