

**IN THE COURT OF THE MUNSIFF, CHENGANNUR**

**Present: Sri.Biju.T.V., B. Sc., LL.B, Munsiff,  
Saturday the 6<sup>th</sup> day of April 2019/16<sup>th</sup> Chaithram,1941**

**OS NO.197/2015**

(Filed on 20.05.15)

**Plaintiff**

John, Aged 65 years, S/o Abraham,  
Tharayil Veedu from Nakkolaikkal North,  
Cheriyamad East Muri, Cheriyamad Village.

(Adv.Zachariah Oommen).

**Defendants**

- 1) Raveendran Nair, Aged 50 years,  
Chandralayam, Cheriyamad East Muri,  
Cheriyamad Village.
- 2) Madhu, Aged 45 years,  
Kalarkodiyil Veettil-do-
- 3) Kunjumon, Aged 50 years,  
Akhil Nivas-do-.
- 4) Rooby, Aged 40 years,  
S/o John,  
Chakkalayil Puthen Veettil-do-
- 5) Remanan Pillai, Aged 60 years,  
S/o Madhava Kurup,  
Padmalayathil-do-
- 6) Shaji, Aged 45 years,  
Paraikattu-do-

(Exparte).

This suit having been finally heard on 02.04.19 and the court on 06.04.19  
delivered the following.

**JUDGMENT**  
**IN**  
**O.S. 197/2015**

Suit for injunction and damages.

Plaint averments, in brief, are as follows:-

Property described under plaintiff schedule was originally owned by the deceased father of the plaintiff. As per the Will deed executed by him, the property got vested upon the children of the plaintiff. As they were married off, it is now under the possession of the plaintiff, who hold it on behalf of his daughters. It situates on the eastern side of a public road at an average height of 5 feet from the road. Property on the adjacent southern side is owned by the 5<sup>th</sup> defendant and it is at a depth of 4-5 feet than the plaintiff schedule property. There exists an old toe-wall on the southern boundary and the eastern side property is situated at a height of about 2 feet and the 4<sup>th</sup> defendant is residing there. All other defendants are residing on the further eastern side of plaintiff schedule property. In order to make an easy direct access to the public road on the western side, the defendants and their affiliates with an intention to cut open a new pathway had trespassed on it on 5.8.2015 and cleared the thicket on the southern side of the plaintiff schedule property and damaged the south western boundary to a length of about 12 feet towards east and it was levelled by them. Plaintiff on hearing the same had rushed to the property and on his arrival the defendant had temporarily withdrawn from the scene. They are not having any right over the plaintiff schedule property and the plaintiff has got credible information that the defendants are trying to cut open a new pathway

through his property . As the plaintiff is residing far off from the plaint schedule property, he is not in a position to resist the defendants from perpetrating their unlawful acts. Hence they are to be interdicted by a temporary injunction and an amount of Rs.5,000/- is to be awarded as compensation for restoring the property to its prior position.

3. The defendants entered appearance and filed written statement denying the entire plaint averments. According to them, a way has been in existence along the southern boundary of the plaintiff's property . The said way commences from the western side public road and it proceeds towards east up to the eastern boundary of the plaint schedule property and then it branches off towards further east through the property owned by other persons. Defendants and the general public have been using the said way as their means of access for the last more than 40 years. The way is clearly identifiable on field with trees lined up in row on its either side. Defendants have never committed any mischief as alleged by the plaintiff and he has sought for damages without any basis. As the defendants are using the way along the southern side of plaint schedule property in continuation of their predecessors , the plaintiff's claim for injunction is not grantable under any circumstances and they pleaded to dismiss the suit with costs.

4. After having filed such a highly contentious written statement, the defendants abstained from trial. Plaintiff filed affidavit wherein all the plaint averments have been reaffirmed. Exts.A1 to A4 were marked. Commission reports were marked as C1 to C3 & C4 to C6. Ext.A1 is the will deed in respect

of the plaint schedule property and A2 is its tax receipt. The suit property got entangled in some litigations earlier, which ended up in favour of the plaintiff. The uncontroverted avermetns in the plaint together with the facts sworn in the affidavit and the accompanying documents go on to show that the apprehension articulated by the plaintiff with regard to the threat of invasion of his possessory right in favour of the plaint schedule property is well justified. He has also sought for damages to the tune of Rs.5,000/- for restoring the property to its original position. There is nothing on record which show that an amount of Rs.5,000/- would be required to undo the mischief allegedly committed in the plaint schedule property. Plaintiff's self serving statements are hardly suffice to impose pecuniary liability on the defendants and the relief of damages is declined due to dearth of evidence. In the absence of any evidence to the contrary, the relief of injunction sought for by the plaintiff is found grantable.

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

Defendants or persons under them are hereby restrained by a prohibitory injunction from trespassing on plaint schedule property, from cutting open any new pathway through it , from committing any waste or mischief or using any of its portion as a pathway.

Dictated to CA, transcribed and typed by her,, corrected by me and pronounced in open court, on this the 06<sup>h</sup> day of April, 2019

Sd/-  
**BIJU T.V**  
Munsiff.

APPENDIXWitness for the Plaintiff's side-NilExhibits for the Plaintiff's side

- A1- Certified copy of will deed No.52 III, of Cheriayanad S.R.O, dated 06.08.2001.  
A2- Tax Receipt, dated 07.04.15.  
A3-Copy of Judgment in A.S.147/1991 of Addl.District Court, Mavelikara.  
A4- Copy of decree in A.S.147/1991.

Exhibits & Witness for the Defendant's side-NilCourt Exhibits

- C1- Report prepared by Adv.Sinju Krishnan, dated 09.06.15.  
C2- Mahazar dated 21.05.15.  
C3-Rough Sketch dated 21.05.15.  
C4- Certified Copy of report in O.S.219/10 of Munsiff's Court, Chengannur prepared by Adv.V.Sadasivan Pillai, dated 16.07.1991.  
C5-Certified copy of Mahazar, dated 13.07.1991.  
C6-Certified copy of Plan dated, 15.07.1991 prepared by Special Commissioner S.Paramu Nair.

Id/-  
MUNSIFF

Typed by: JI  
Compd by: