

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Sri. M.I. Johnson, B.A., LL.B., Munsiff.

Saturday, the 31st day of October, 2015/9th Karthika, 1937.

O.S.No.47/2011 & 94/2011

O.S.No. 47/2011

Plaintiffs:-

1. Vijayakumari, aged 51 years, D/o Kunju Nair, Aitholil, residing at Vrindavanam, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk.
2. Thankamaniamma, aged 75 years, W/o Kunju Nair, Aitholil, residing at Vrindavanam, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk.

By Adv: G. Govindan Nair, K.M. Alias and P.V. Shiji

Defendants:-

1. V.K. Muhammad, aged 48 years, S/o Thachi, Veluthedathkudy, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk.
2. V.M.Jasia Beevi, aged 40 years, W/o Muhammad, Veluthedathkudy, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk.
3. Jafar, aged 40 years, S/o Thachi, Veluthedathkudy, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk.

Addl D4: Thachi, D/o Beeran, aged 75 years, Veluthedathukudy, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk.

(Addl D4 is impleaded as per order in IA 500/11 dated 26.3.2011)

D1 to D3 By Adv: T.V. Eldho

D4 By Adv: Moitheen M Pareeth.

O.S.No. 94/2011

Plaintiffs:-

1. Thachi, aged 75 years, D/o Beeran Veluthedathukudy House, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.
2. V.K. Muhammad, aged 51 years, S/o Kochumuhammed, Veluthedathukudy House, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.
3. V.M. Jasiya Beevi, aged 49 year, W/o Muhammad, Veluthedathukudy House, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.
4. Jafar, aged 41 years, S/o Kochumuhammad, Veluthedathukudy House, Oorakkattu Kara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.

By Adv: Moitheen M. Pareeth and P.K. Latha

Defendants:-

1. Vijayakumari, aged 51 years, D/o Kunchu Nair, Vrindavanam House, Oorakkattukara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.
2. Thankamani Amma, aged 75 years, W/o Kunchu Nair, Vrindavanam House, Oorakkattukara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.
3. Sreedevi, aged 46 years, D/o Kunchu Nair, Vrindavanam House, Oorakkattukara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.

4. Nandakumar, S/o Kunchu Nair, Vrindavanam House, Oorakkattukara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.
5. Shobhanadevi, D/o Kunchu Nair, Vrindavanam House, Oorakkattukara, Kizhakkambalam Village, Kunnathunadu Taluk, Ernakulam District.

D1 to D4 By Adv: G. Govindan Nair, K.M. Alias and P.V. Shiji

D5 Ex-parte.

These suits having been finally heard before me on 31.10.2015 and the Court on the same day delivered the following:-

COMMON JUDGMENT

O.S.No.47/2011

Plaint averments in brief are stated as follows:- Plaint schedule property is belonged to plaintiffs and it comprises of 7.28 Ares of land belongs to 1st plaintiff and 2.49 Ares of land belongs to 2nd plaintiff where 1st plaintiff obtained the property through document No.798/97 of Puthencuriz, SRO and 2nd plaintiff obtained the property through document No.198/1969 of Ayikkaranad, SRO. Eastern boundary of plaint schedule property is property of defendants. There was well demarcated boundary separating both these properties. But, defendants removed several portions of aforesaid boundary. Defendants tried to destroy remaining portions of aforesaid boundary on 31.12.2010. Defendants have no

right to trespass into plaintiff schedule property and to destroy the boundary separating both these properties. Defendants made a complaint before survey authorities alleging that, some property belonged to defendants is now shown as part of plaintiffs property. There is a boundary separating both these properties and defendants have no right to trespass into the property of plaintiffs. Hence, defendants are to be restrained by a permanent prohibitory injunction from trespassing into plaintiff schedule property, from committing any waste therein, from destroying its eastern boundary and from obstructing the plaintiffs in conducting agricultural operations and taking yield from the same. For the same, plaintiffs filed the suit.

2. Defendants 1 to 3 filed written statement with contentions briefly stated as follows:- Property of plaintiffs is situated on western side of properties of defendants 1, 2 and 4. In the immediate past, plaintiffs made an attempt to trespass into the properties of defendants on its north western side, and as part of the same, destroyed boundary in that portion. Thereafter, plaintiffs made a complaint before District Survey Superintendent, Ernakulam for correction of mistake in resurvey. Survey

Superintendent reported that, since there is boundary dispute, the same cannot be decided in that office. From the petition filed by plaintiffs before Survey Superintendent, it can be seen that there is boundary dispute and hence, the injunction order as prayed for cannot be granted. Plaintiffs are not in possession of the property shown in the plaint schedule. A portion of property from the property of 1st plaintiff was surrendered for construction of a road. Plaintiffs filed the suit after showing a portion of property of defendants as part of property of plaintiffs. Description and boundaries of plaint schedule property are incorrect. 2nd plaintiff has no right at all over the 2.429 Ares of land as alleged by the plaintiff. It is not correct to say that defendants destroyed a portion of boundary separating properties of plaintiffs and defendants. Defendants never tried to destroy the alleged boundaries. Since, plaintiffs have not prayed for fixation of boundary and for declaration, the suit is liable to be dismissed. Plaintiffs are not entitled to get any of the relief sought for in the suit. The suit is liable to be dismissed with costs of defendants.

3. 4th additional defendant was impleaded as per order in I.A.No.500/2011, dated, 20.03.2011 and 4th additional defendant

filed written statement with contentions briefly stated as follows:-
For the past many years, boundary dispute is going on in between 4th defendant and 2nd plaintiff and her husband. In 1997, when aforesaid property was partitioned, 4th defendant made complaint before officers concerned against mutation of the property due to boundary dispute. Plaint schedule property includes a portion of property of 4th defendant. Actually, suit for fixation of boundary was to be filed. There is no boundary between the properties of plaintiffs and defendants. Defendants 1 to 3 have no property near the boundary of plaint schedule property. Defendants have filed a suit for fixation of boundary as O.S.No.94/2011. Plaintiffs are not entitled to get any of the relief sought for in the suit. The suit is liable to be dismissed with cost of defendants.

4. Upon the pleadings, following issues were raised for consideration:

- 1) Whether plaintiffs are entitled to get a decree for permanent prohibitory injunction as prayed for ?
- 2) Relief and costs ?

O.S.No.94/2011

5. Averments in the plaint and amended plaint are stated as

follows:- 1st plaintiff obtained 27 Cents of land lying in old survey No.122/1 and 62 Cents of land lying in old Survey No.119/2, of Kizhakkambalam Village through document No.1121/60 of Aickaranadu SRO. From the same, 1st plaintiff surrendered 5 Cents of property for developing a road on southern side of aforesaid property. Thereafter, 1st plaintiff sold out 17 Cents of land from aforesaid property to one Kakkanadan Thambi through document No.2903/2001 of Ayikkaranad SRO and that property is now belonged to 4th plaintiff. 1st plaintiff sold out another 24 Cents of land to 2nd and 3rd plaintiffs through document No.490/96. Remaining property in the name of 1st plaintiff as per resurvey is shown as plaint A schedule property. Through document No.1121/1960, sister of 1st plaintiff, namely, Ayishumma obtained 94 Cents of land. Aforesaid property was finally vested with 2nd defendant and her husband Kunchu Nair. From the same, they surrendered 5 Cents of land to public road. Remaining property was partitioned among defendants by Kunchu Nair on 7.2.1997 and that property as per resurvey is shown as plaint B schedule. In the past many years, boundary disputes are going on in between plaintiffs and defendants. A portion of plaint A schedule property is in the possession of 1st defendant where defendants have no

right at all over plaint A schedule property. Hence, plaintiffs are entitled to get recovery of possession of aforesaid property from 1st defendant. On 20.7.2010, 4th defendant cut down 5 trees from plaint A schedule property having a total value of Rs.49,000/-. Even though plaintiffs approached District Survey Superintendent, no remedy was obtained. In the meanwhile, defendants 1 and 2 herein filed O.S.No.47/2011 for a permanent prohibitory injunction. Since there is dispute with respect to boundary, western boundary of plaint A schedule property is to be fixed by the Court. Plaintiffs are entitled to get recovery of possession of plaint A schedule property from defendants and are entitled to get a permanent prohibitory injunction restraining the defendants from removing the trees from plaint A schedule property and from trespassing into plaint A schedule property. For the said reliefs plaintiffs filed the suit.

6. Defendants filed written statement and additional written statement with contentions briefly stated as follows:- It is true that, there were disputes with respect to the boundary separating properties of plaintiffs from that of defendants. Eastern boundary of plaint B schedule property is property of plaintiffs and there is

clear demarcation separating both these properties. A portion of the same was destroyed by defendants. When defendants tried to demolish remaining portion, the same was obstructed by plaintiffs. Plaintiffs have no right to enter into plaint B schedule property. Plaintiffs have no right to cut and remove trees in plaint B schedule property. Plaintiffs filed complaint before Survey authorities alleging that a portion of their property is now part of property of defendants. But, Survey authorities conducted an inspection and told that, there is well demarcated boundary separating both these properties. When plaintiffs made an attempt to trespass into plaint B schedule property, these defendants filed O.S.No.47/2011. Plaintiffs have not produced documents to prove their title over their property. Plaintiffs are not entitled to get any of the relief sought for in the suit. The suit is liable to be dismissed with costs of defendants.

7. Upon the pleadings, following issues were raised for consideration:

- 1) Whether plaintiffs are entitled to get a decree for fixation of western boundary of plaint A schedule property and if so through which line ?

- 2) Whether plaintiffs are entitled to get a decree for damages and if so what shall be the amount ?
- 3) Whether plaintiffs are entitled to get a decree for permanent prohibitory injunction as prayed for ?
- 4) Whether plaintiffs are entitled to get a decree for recovery of possession of any portion of property as prayed for ?
- 5) Relief and costs ?

8. Both these suits were tried jointly as per order in I.A.No.1409/11, dated, 17.2.2012 and evidence was adduced in O.S.No.94/2011 as leading suit.

9. Plaintiffs' evidence in this case is comprised of oral testimonies of PW1 to 3 and documents marked as Exts.A1 to A13. Defendants' evidence is comprised of oral testimonies of DW1 to DW4 and documents marked as Exts.B1 to B5. Commission Reports, rough sketch and plans were marked as Ext.C1 to C8(a).

10. I heard the counsel for both sides.

11. Issue No.1 in O.S.No.94/2011:- Defendants 1 and 2 in O.S.No.94/11 are the plaintiffs in O.S.No.47/11 and plaintiffs in O.S.No.94/11 are the defendants in O.S.No.47/2011. Plaintiffs in

O.S.No.94/2011 will be herein after called as “plaintiffs” and defendants in O.S.No.94/2011 will be hereinafter called as “defendants”.

12. Case of the plaintiffs is that, father of 1st plaintiff was owner of several properties and he partitioned the same among 1st plaintiff and her sister Ayishumma through document No.121/1960 of Ayikkaranad SRO. Further case of plaintiffs is that, the property obtained by 1st plaintiff comprises of 27 Cents of land lying in old survey NO.122/1 and 62 Cents of land lying in old Survey No.119/2. Plaintiffs have further case that, aforesaid 89 Cents of land is now lying in Resurvey No.126/2 of Kizhakkambalam Village. Further case of the plaintiffs is that, from aforesaid 89 Cents, 1st plaintiff granted 5 Cents of land for developing a road on southern side of aforesaid property and thereafter sold out 12 Cents of land to one Kakkanadan Thampi which was finally vested with 4th plaintiff. Plaintiffs have further case that, 1st plaintiff assigned another 24 Cents of land to 2nd and 3rd plaintiffs and they are in possession of that property. Plaintiffs showed aforesaid 89 Cents of land as plaint schedule property and later on its extent was amended as 75.61 Cents. Plaintiffs have prayed for fixation of western boundary of this property where property of defendants is

situated on western side of the said property and property now belonged to defendants was originally belonged to Ayishumma and she obtained the same from her father through document NO.1121/1960. Plaintiffs have shown the property belongs to defendants as plaint B schedule property.

13. Plaintiffs have the specific case that at present there is no boundary separating plaint A and B schedule properties. On the other hand, defendants have the case that, earlier there was a physical boundary separating both these properties and a portion of the same was destroyed by plaintiffs. At the same time, defendants have admitted that, there is dispute with respect to the boundary separating both these properties and several mediation talks occurred, were failed. In the said circumstances, fixation of boundary separating the properties of plaintiffs from that of defendants is absolutely necessary.

14. Plaintiffs have prayed for fixation of western boundary of their property as per resurvey. According to them, resurvey in that locality was finalized in the year, 1970 and defendants have not challenged the resurvey within the statutory period. Hence,

resurvey is to be relied on for fixing the disputed boundary. It is argued by counsel for plaintiffs that, as per Survey and Boundaries Act, if there is any dispute with respect to resurvey, a suit is to be filed within one year from the date of finalisation of resurvey and since, defendants have not filed a suit for fixation of boundary as per old survey, within the statutory period, boundary is to be fixed only as per resurvey. Counsel for plaintiffs relied on the decision of Hon'ble High Court of Kerala in *Devaki Amma V. Kunhi Parvathy Amma* (it is not a reported case) and decision of Hon'ble High Court of Kerala in *Thomas V. P.S.Philip* (it is not a reported case) to substantiate aforesaid argument.

15. It is true that, in "*Devaki Amma V. Kunhi Parvathy Amma*" it was held that, "The suit provided under S.14 is a suit by an aggrieved person against the determination of any boundary under S.9, S.10 or 11 and it provides that such a suit shall be instituted within one year from the date of notification as provided under S.13, either to set aside or modify the determination." Significantly, in "*Thomas V. P.S.Philip*", it was held that, " Even if the resurvey is finalised, a suit for fixation of boundary based on the title deed is not barred." It is significant to note that, plaintiffs

are claiming title over plaint schedule property on the basis of document numbers 1121/1960 and 53/1962 of Ayikkaranad, SRO. Originals of which were marked as Ext.A1 and A2 respectively. Plaintiffs have not produced any document created after the alleged finalisation of resurvey. It is very significant to note that, plaintiffs are claiming recovery of possession of some property from the defendants and relied on Ext.A1 and A2 for proving their title over the same. In the said circumstances, it is only to be held that, plaintiffs are claiming for fixation of boundary of plaint schedule properties on the basis of title. Hence, they are not entitled to claim that, resurvey shall be the basis for fixation of boundary. In other words, the disputed boundary is to be fixed as per old survey.

16. Another significant fact is that, in the plaint, plaintiffs have alleged that, the boundary dispute is in existence for past many years. It is further alleged that, on 7.2.1997, when plaint B schedule property was partitioned among defendants, plaintiffs made a complaint before authorities concerned for not to effect mutation. Hence, it is very much clear that the boundary dispute was in existence prior to 1997 also. Very significantly, plaintiffs

have not stated, from which date onwards, the dispute was started. Hence, it is only to be presumed that, the dispute was arised prior to resurvey. Hence, also boundary cannot be fixed as per resurvey measurements. In the said circumstances, claim of plaintiffs for fixation of boundary as per resurvey is only to be discarded. Since, resurvey cannot be relied on for fixation of boundary separating the disputed properties, boundary can be fixed only as per old survey.

17. Admittedly, 1st plaintiff obtained properties through Ext.A1 document and predecessor of defendants namely Ayishumma also obtained her properties through Ext.A1 document. Prior to that, as per the case of plaintiffs, aforesaid property was belonged to Beeran. In the said circumstances, it is clear that, the property was divided through Ext.A1 document and thereafter, property set apart to 1st plaintiff was finally vested with plaintiffs 1 to 4 and properties set apart to Ayishumma was finally vested with defendants herein. Plaintiffs have prayed for fixation of boundary separating both these properties. Hence, the disputed boundaries can be fixed as per the recitals in Ext.A1 document.

18. Earlier the Commissioner and Surveyor deputed by this Court filed Commission Report and plan on 15.3.2014. The same were marked as Ext.C4 to C4(b). Since Ext.C4, C4(a) and C4(b) are not sufficient to decide the suit, the same were remitted back with specific directions as per order in I.A.No.2129/2014 dated, 21.10.2014. Thereafter, Commissioner and Surveyor filed another Commission Report and three plans. The same were also remitted back, since, Commissioner and Surveyor did not comply the directions in the order in I.A.No.2129/2014. Thereafter, Commissioner and Surveyor filed another Commission report and three plans. The same were marked as Ext.C7, C7(a), C7(b) and C7(c). Thereafter, Commissioner and Surveyor filed another Commission Report and a plan which were marked as Ext.C8 and C8(a).

19. From the perusal of Ext.C8 series Commission Report and plan it can be seen that, Commissioner and Surveyor measured the properties as per old survey and as per Ext.A1 and some other documents. Ext.C7 series, comprise of plans prepared as per old survey and resurvey. It comprises a composite plan also.

20. From Ext.A1, it can be seen that, B schedule in the same was set apart to 1st plaintiff herein and A schedule in the same was set apart to Ayishumma. B schedule in Ext.A1 comprised of 27 Cents of land lying in old Survey NO.122/1 and 62 Cents of land lying in old Survey No.119/2 which are jointly shown as plaint A schedule property herein. A schedule in Ext.A1 comprises of 27 Cents of land lying in old survey No.122/1 and 82 Cents of land lying in old survey No.119/2, which is the property finally vested with defendants and shown as plaint B schedule.

21 From the recitals in Ext.A1 it can be seen that, 27 cents each, was set apart to 1st plaintiff and Ayishumma in old survey 122/1, from the 54 Cents of land lying on the eastern side of aforesaid survey, after deducting the property already alienated. From Ext.C7(a), it can be seen that, 27 Cents of land belonged to plaintiffs and lying in old survey No.122/1 are plots 1, 2 and 3 and 27 Cents of land belonged to defendants is plots 8 and 9. The property belonged to plaintiffs and lying in old survey No.122/1, is shown in Ext.C8(a) plan, as plots 1 and 2 and property belonged to defendants in that survey number, is shown as plots six and seven in the same. In considering Ext.C7(a) and C8(a), there is no

difference with respect to the properties belonged to plaintiffs and defendants and lying in old Survey 122/1.

22. Remaining property belonged to plaintiffs and defendants are lying in old survey No.119/2. In Ext.C7(a) plan, surveyor has shown property belonged to plaintiffs and lying in old survey No.119/2 as plots 4, 5, 6 and 7. Properties belonged to defendants and lying in that survey numbers are shown as plots 10,11, 12, 13 and 14. From Ext.B1, it can be seen that, 1st plaintiff and Ayishumma were given properties in old survey No.119/2 on the northern and southern sides of a road. In other words, as per the recitals in Ext.A1, there is a road passing through resurvey 119/2 and 50 Cents of land set apart to 1st plaintiff is lying on northern side of aforesaid road and remaining 12 Cents of land is situated on the southern side of aforesaid road, where, 70 Cents of land set apart to Ayishumma is situated on the northern side of aforesaid road and 12 Cents of land is situated on southern side of aforesaid road. It can further be seen that, at present, a portion of aforesaid 70 Cents of land originally set apart to Ayishumma is part of aforesaid road and the same is shown as plot No.12. The plot has an extent of 2.70 Ares. At the same time, only 5 Sq. meters of land belonged to plaintiffs, is at present, part of aforesaid road, which is

shown as plot No.6 in Ext.C7(a) plan. As per Ext.C7(a) plan, the road in between the plots set apart to Ayishumma in old survey 119/2, has had an original width of two meters where the said road has at present, a width of around 7.5 meters. On the other hand, as per Ext A7(a) plan, original width of aforesaid road, on the southern side of 50 cents of land set apart to 1st plaintiff in old survey 119/2, is 7.5 meters and at present also aforesaid road has a width of 7.5 meters. As already stated, 2.5 Ares of land originally set apart to Ayishumma, is now part of aforesaid road and only 5 square meters of property, originally set apart to 1st plaintiff has became part of present road. In other words, as per Ext.C7(a) plan, original road had different widths on different portions without any proportion. The Surveyor, who was examined as PW3, has deposed that, he prepared a plan in such a way, since, there was a physical boundary on the eastern side of property of Ayishumma, on its southern end, separating the same from property of plaintiffs. According to him, he took aforesaid physical boundary as the eastern boundary of defendants property on that side and the property was measured towards west from that boundary and accordingly, aforesaid 2.5 Ares of land became part of the road now in existence.

23. In the written statement, defendants have contended that, originally there was a physical boundary and a portion of the same was destroyed by the plaintiffs. According to them, the destroyed portion of boundary was reported by the Commissioner in C4 Commission Report and C4(a) rough sketch. In Ext.C4 report, Commissioner has reported that, boundary separating properties of plaintiffs and defendants on its northern side is seen demolished and there is boundary separating both these properties on the southern portion. In considering the version of PW3 Surveyor, it is to be presumed that, the physical boundary seen in the field in the southern portion of the disputed boundary in between the properties of plaintiffs and defendants, might have been taken by surveyor as the original boundary separating both these properties. Significantly, there is no evidence before this Court, on which date such a boundary was came into existence. Moreover, plaintiffs have the case that, 5 Cents of land from their property was taken for the construction of aforesaid way along with 5 Cents of land from the property of defendants. On the other hand, in Ext.C7(a) plan, only 5 Sq. meters of land is seen taken for the construction of aforesaid road from the property of plaintiffs where

2.5 Ares of land from the property of defendants, is seen taken for the construction of the present road. The same is not tallying with pleaded case of plaintiffs. Hence, aforesaid alleged physical boundary portion, cannot be taken as the boundary separating both these properties.

24. Another significant fact is that, plaintiffs have alleged that, there is no boundary separating the properties of plaintiffs and defendants and the same is to be fixed by the Court. Apart from that, defendants have the case that, there was physical boundary separating properties of plaintiffs and defendants, in north south direction extending from south to north up to the northern boundary of old survey No.122/1. If that be so, a portion of plaintiffs property lying in old survey 122/1, will become part of property of defendants. The said portion is shown as plot No.3 in Ext.C7(a) plan, by the surveyor. As per the extent and recitals in Ext.A1 document, defendants have obtained only 27 Cents of land lying in old Survey No.122/1 and hence they are not entitled to claim any excess land in that survey number. If the boundary is a straight line as contended by defendants, 97 Sq.meters of land belonged to plaintiffs lying in old survey 122/1, will become part of

property of defendants and hence, even if there was physical boundary separating both these properties, as contended by defendants, the same cannot be taken as the actual boundary separating these properties. Hence, also, the portion of alleged physical boundary, alleged to be in existence in the field, cannot be taken as the basis for separating the property of plaintiffs and defendants. Hence, Ext.C7(a) plan cannot be accepted.

25. Surveyor prepared Ext.C8(a) plan with the presumption that, the road in existence at the time of execution of Ext.A1 had approximately equal width on all the points. As per Ext.A1, 1st plaintiff obtained 50 Cents of land on the northern side of aforesaid road and Ayishumma obtained 70 Cents of land on the northern side of aforesaid road. Accordingly, altogether 1.20 Acres of land was there on the northern side of aforesaid road, lying in old survey 119/2. Accordingly, surveyor located aforesaid 1.20 Acres of land on the northern side of road, lying in old survey 119/2 and thereafter 50 Cents of land was located on its eastern side as per the recitals in Ext.A1. Remaining 70 Cents on the western side is shown as the property originally set apart to Ayishumma as per Ext.A1. As per this measurement, 1.44 Acres of land originally set

apart to Ayishumma is now part of the road on its southern side and 1.13 Ares of land originally set apart to 1st plaintiff is now part of aforesaid way on its southern side. As already stated, plaintiffs have the case that, around 5 Cents of land each from the properties of plaintiffs and defendants were taken for construction of the road. In considering the same and in considering Ext.A1 document, I am of the view that, Surveyor has located the properties belonged to plaintiffs and defendants, on the northern side of the road, in Ext.C8(a) plan. There is no dispute with respect to the properties belonged to plaintiffs and defendants lying in old survey 119/2 and situated on the southern side of aforesaid road.

26. In considering aforesaid discussions and in considering Ext.C8(a) plan, I am of the view that, Surveyor has correctly located properties belonged to plaintiffs and defendants, lying in old survey 122/1 and 119/2 in Ext.C8(a) plan. Admittedly, properties of plaintiffs and defendants are lying in old survey 122/1 and 119/2 where properties belonged to them lying in old survey 119/2, are lying on northern and southern sides of a road passing across aforesaid survey number. As per Ext C8(a) plan, line 'A-1'

shown in Ext.C8(a) plan, can be fixed as the boundary separating properties of plaintiffs and defendants in that survey number. Line 'E23' in Ext.C8(a) plan can be fixed as the boundary separating properties of plaintiffs and defendants, lying in old survey No.119/2 and on northern side of the road. Line 'J-M' shown in Ext.C8(a) plan, can be fixed as the boundary separating properties of plaintiffs and defendants lying in old Survey NO.119/2 and on southern side of the road. This issue is found accordingly.

27. **Issue No.2 in O.S.No.94/2011**:- It is true that, plaintiffs have alleged that defendants have cut and removed 5 trees from the property belonged to plaintiffs. They have prayed for a compensation of Rs.49,000/- for the same, from defendants. Very significantly, plaintiffs did not take any steps to report the position of the alleged trees in any of the survey plans. Hence, it is not possible to find out the position of the trees, which were cut and removed by the defendants. In other words, plaintiffs failed to prove that, the trees cut and removed by the defendants, were standing in the properties belonged to the plaintiffs. Hence, plaintiffs are not entitled to get any damages for cut and removal of the trees. This issue is found accordingly, against the plaintiffs.

28. **Issue No.3 in O.S.No.94/2011:-** Plaintiffs have prayed for a permanent prohibitory injunction restraining the defendants from trespassing into plaint schedule property. Admittedly, there was dispute with respect to boundaries separating properties of plaintiffs and defendants. Plaintiffs have the specific case that defendants tried to trespass into the property of plaintiffs and to cut and remove trees from the same. Since, defendants have no right at all over the properties belonged to plaintiffs, they are not entitled to enter into that property. Hence, plaintiffs are entitled to get a permanent prohibitory injunction restraining the defendants from entering into the properties of plaintiffs, boundary of which, can be fixed as per Ext.C8(a) plan. This issue is found accordingly in favour of the plaintiffs.

29. **Issue No.1 in O.S.No.47/2011:-** As already stated, defendants 1 and 2 in O.S.No.94/2011 filed this suit. In this suit, they have alleged that, defendants are trying to trespass into their property and to commit waste therein. As already stated, there was boundary dispute in between plaintiffs and defendants. It is already found that boundaries of properties of plaintiffs and

defendants can be fixed as per Ext.C8(a) plan. Defendants in O.S.No.47/2011 have no claim over the properties belonged to the plaintiffs in that suit and hence they are not entitled to enter into their properties, from destroying its boundaries and from obstructing the plaintiffs in that suit in conducting agricultural operations and taking yield from the same. Hence, plaintiffs in O.S.No.47/2011 are entitled to get a decree of permanent prohibitory injunction restraining the defendants in the same, from trespassing into their property, from destroying its boundaries and from obstructing the plaintiffs therein in conducting agricultural operations and taking yield from the same, where boundaries separating the properties of plaintiffs therein and defendants therein can be fixed as per Ext.C8(a) plan. This issue is accordingly found in favour of plaintiffs in O.S.No.47/2011.

28. **Issue No.4 in O.S.No.94/2011 and Issue No.2 in O.S.No.47/2011:-** Both these issues can be considered together for avoiding repetition. Considering the facts and circumstances of the case, there is no costs in both the suits. Both these issues are found accordingly.

In the result, O.S.No.47/2011 is decreed and O.S.No.94/2011 is decreed in part. Defendants in O.S.No.47/2011 are hereby restrained by a permanent prohibitory injunction, from trespassing into the property of plaintiffs therein, from destroying its boundaries and from obstructing the plaintiffs therein, conducting agricultural operations in their property and taking yield from the same, where, boundary separating both these properties can be fixed as per Ext.C8(a) plan. Line 1-A in Ext.C8(a) plan, is fixed as the boundary separating properties of plaintiffs and defendants in OS 94/14, lying in old survey No.122/1. Line 23-E in Ext.C8(a) plan, is fixed as the boundary separating the properties of plaintiffs and defendants lying in old survey No.119/2 and on the northern side of the road. Line M-J in Ext C8(a) plan is fixed as boundary separating properties of plaintiffs and defendants lying in old survey NO.119/2 and on the southern side of the road. Line A-23 is fixed as the boundary separating properties of plaintiffs lying in old survey No.122/1 and properties of defendants lying in old survey No.119/2. Properties of plaintiffs is shown in light green colour in Ext.C8(a) plan, where properties of defendants is shown in orange colour in Ext.C8(a) plan. The road is shown in light blue colour. Defendants in O.S.No.94/2011 are hereby restrained by a

permanent prohibitory injunction from entering into properties of plaintiffs in O.S.No.94/2011. Prayer for damages in O.S.No.94/2011 is hereby dismissed. There is no costs in both the suits. Ext.C8(a) plan shall form part of the decree.

Dictated to Confl. Asst., transcribed and typed by him, corrected and pronounced by me in the open Court on this the 31st day of October, 2015.

M.I.JOHNSON,
MUNSIFF.

APPENDIX

Plaintiffs Exhibits:-

A1	24.3.1960	Partition deed No. 1121/60 of SRO, Aickaranadu
A2	30.11.1961	Sale deed No. 53/1962 of SRO, Aickaranadu
A3	19.2.2014	Tax receipt No. 4451502 of Kizhakkambalam Village.
A4	28.5.2012	Notice No. G-1- 1989/10 of Collectorate (Sruvey department) Civil Station Kakkanad.
A5	31.1.2011	Copy of complaint
A6	26.5.2010	Copy of report No. C 54004/10 from Additional Tahsildar Kunnathunadu
A7	19.3.1997	Notice from Deputy Director Survey, Ernakulam.
A8	28.1.2012	Copy of certificate of Village Officer, Kizhakkambalam
A9	11.1.2012	Copy of FIR No. 17/12 of Thadiyittaparambu Police Station.
A10	5.2.2012	Copy of final report in Crime 17/12 of Thadiyittaparambu Police Station.
A11series		CD and photographs

A12 Certified copy of Re-survey plan
A13 23.11.2007 Encumbrance certificate.

Defendants Exhibits :

B1 7.2.1997 Partition deed No. 798/97 of SRO, Puthencruz
B2 10.2.2011 Report from Superintendent survey and land records
Collectorate, Ernakulam
B3 21.2.2011 Tax receipt No. 4601614 of Village, Kizhakkambalam
B4 28.1.1969 Certified copy of Sale deed No. 198/69 of SRO,
Aickaranadu
B5 26.2.2011 Certified copy of FIR No. 61/2011 of
Thadiyittaparambu Police station.

Court Exhibits :

C1& 7.4.2011 Commission report and rough sektch submitted by
C1(a) Adv. Subash D.
C2 20.1.2012 Commission report submitted by Adv. Subash D.
C3& 30.5.2013 Commission report and 2 plans submitted by Adv.
C3(a), (b) Subash D.
C4& 15.3.2014 Commission report and 2 plans submitted by Adv.
C4(a), (b) Subash D.
C5 10.3.2011 Commission report and rough sketch submitted by
Adv. Joby Mathew
C6& 5.3.2015 Commission report and 3 plans submitted by Adv.
C6(a) Subash D
C7& 27.10.2015 Commission report and 3 plans submitted by Adv.
C7(a), (b),(c) Subash D.
C8& 30.10.2015 Commission report and plan submitted by Adv.
C8(a) Subash D.

Plaintiffs Witnesses:-

PW1 16.9.2014 Thachi
PW2 16.9.2014 Surendran N.S.
PW3 30.10.2015 K.K. Rajeev

Defendants Witnesses :

DW1 16.9.2014	Vijayakumari N.
DW2 16.9.2014	Benny K.J.
DW3 17.9.2014	Adv. Joby Mathew
DW4 30.10.2015	Adv. Subash D.

Id/-
MUNSIFF.

//true copy//

MUNSIFF.

UU.
Comp.by:

Copy of common Judgment in O.S.47/2011 & 94/2011	
Dated	31.10.2015