

**STATE OF KERALA**  
**IN THE COURT OF SUBORDINATE JUDGE, KOYILANDY,**

**Present:- Sri. Manoj. M.N, , Sub Judge**

**Thursday the 26<sup>th</sup> day of March, 2026.**

**AS No. 38/2024**

**Between:**

Kalluvalappil Raveendran S/o Unni Nair, aged 63 years, Business, Residing at Cherikka Parambil, Kokkallur amsom desom, Kokkallur(PO), Koyilandy Taluk, Kozhikode District.		Appellant
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**And:**

Kuttiyappurath Veetil Ramakrishnan, S/o KunhIRaman, aged 56 years, Business, Arikkulam amsom desom, Arikkulam (PO), Koyilandy Taluk, Kozhikode District.		Respondent
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On Appeal against the judgment and decree passed by the Hon,ble  
Munsiff Koyilandy, Miss. Raveena Naz, dated 10.07.2024 made in OS.65/2020

**OS 65/2020**

**Between:**

Kuttiyappurath Veetil Ramakrishnan, S/o KunhIRaman, aged 56 years, Business, Arikkulam amsom desom, Arikkulam (PO), Koyilandy Taluk, Kozhikode District.		
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**And:**

Kalluvalappil Raveendran S/o Unni Nair, aged 63 years, Business, Residing at Cherikka Parambil, Kokkallur amsom desom, Kokkallur(PO), Koyilandy Taluk, Kozhikode District.		
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This appeal coming on this day for hearing before me in the presence of Sri. ....  
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and the court passed the following.

**J U D G M E N T**

This appeal has been preferred by the appellant/defendant against the judgment and decree dated 10.07.2024 in O.S. No. 65/2020 on the files of the Munsiff Court, Koyilandy. The respondent in this appeal is the plaintiff in the said suit.

2. The averments in the plaint in O.S. No. 65/2020 on the file of the Munsiff Court, Koyilandy, in brief, are as follows: The plaint A and B schedule properties are under the joint ownership and possession of the plaintiff, Ramakrishnan, and another person named Baskaran. The plaintiff is managing the plaint schedule property items for and on behalf of the aforementioned co-owner, Baskaran, as well. A portion of the property situated on the western side of the plaint A schedule property, having a width of 1.30 metres on the south and 2.20 metres on the north and a length of 33.60 metres, is the property scheduled as plaint B schedule in the above suit. The said B schedule property is part and parcel of the plaint A schedule property. In the year 2010, the plaintiff Ramakrishnan, along with Sri Baskaran and Sri Surendran, jointly purchased the plaint A schedule property from one Kamalakshy Amma by virtue of Sale Deed No. 2709/2010 of the Sub Registry Office, Balussery. Later, the said Surendran assigned his undivided 1/3 share in favour of the plaintiff by executing a release deed to that effect. There was a stone boundary wall having a height of 1.5 metres and a length of 33.60 metres along the entire western boundary of the plaint schedule properties. There is a pathway having a width of 1 metre outside the western boundary of the plaint B schedule property.

The said pathway leads to the house of the defendant and is used only by the defendant. The property of the defendant lies on the northern side of the said pathway. Due to excavation of earth by cutting and removing stones, large pits were formed on the eastern side of the plaintiff schedule property. As a result, the plaintiff removed soil from the western area of the plaintiff schedule property, leaving a gap of 1.30 metres on the south and 2.02 metres on the north, and levelled the plaintiff schedule property. The portion of the property on the western side of the plaintiff A schedule, having a length of 33.60 metres and a width of 1.30 metres on the south and 2.20 metres on the north, is the plaintiff B schedule property in this case. In connection with his employment, the plaintiff resides at Wayanad and returns to his native place only once every two or three months. Taking advantage of the plaintiff's absence from the locality, the defendant, along with his men, demolished the stone boundary wall mentioned above, which was situated along the western boundary of the plaintiff's property and had a height of 1.5 metres. They also removed the soil therein to a height of about 1 metre and with a width varying between 1.30 metres and 2.20 metres, extending to a length of 33.60 metres. The said area constitutes the property more specifically described as the plaintiff B schedule. The defendant thus converted the plaintiff B schedule property to the same level as that of the pathway situated on the western side of the plaintiff B schedule property. On 25.02.2020, when the plaintiff returned from Wayanad, he realised the above activities carried out by the defendant. Upon enquiry with nearby residents, they informed him that the defendant and his men had carried out the above acts about three months earlier. When the plaintiff directly interacted with the defendant regarding the same, the defendant admitted that the said acts had been done by him, but made it clear that he was not prepared to reinstate the plaintiff B schedule property in its original condition. The plaintiff then approached the Balussery Police Station to redress his grievance, but no action was taken. The defendant further threatened the plaintiff that he would remove the basement of the retaining wall situated along the western side of the plaintiff B schedule property and create a road

through the said property. Due to the above acts and activities on the part of the defendant, the plaintiff sustained a loss of ₹2,00,000.00 (Rupees two lakh only). Hence, the plaintiff filed the suit seeking the relief of a permanent prohibitory injunction, restraining the defendant or his men from trespassing into the plaint schedule properties, and also seeking the relief of a mandatory injunction directing the defendant to reinstate the plaint B schedule property and the western boundary wall of the plaint B schedule property.

3. The defendant filed a written statement opposing the plaint averments, and the case of the defendant is as follows: The defendant denied the plaint averments. The defendant also denied the plaintiff's ownership as well as possession of the plaint schedule property items. It is further contended that the plaint schedule property items are not identifiable. It is contended that there was no boundary wall along the western side of the plaint schedule property items as averred in the plaint. The defendant also denied the plaint averment that there is a pathway on the western side of the western boundary of the plaint schedule property items and that the said pathway leads exclusively to the house of the defendant. The defendant contended that the stone boundary on the western side of the plaint schedule properties mentioned in the plaint is not the boundary demarcation of the plaintiff's property. The defendant denied the plaint averment that there were large pits in the plaint schedule property items as a result of the cutting and removal of stones, and that the property was levelled by the plaintiff by taking soil from the western portion of the plaint property after leaving a portion of the property therein. The defendant contended that he had not demolished the boundary wall on the western side of the plaint schedule property items, nor had he interfered with the western boundary of those properties. The defendant further denied the plaint averment that he had threatened to encroach into the plaint B schedule property and demolish the retaining wall on the western side of the said property, thereby causing a loss of ₹2,00,000.00 (Rupees two lakh only) to the plaintiff. The pathway situated on the western side of the plaint schedule property items is, according to the

defendant, a road leading not only to the defendant's house but also to a quarry functioning on the western side of the defendant's house, and even lorries carrying stones were passing through the said road towards the quarry. It is also contended that the intention of the plaintiff in filing the above suit is to encroach upon the aforesaid pathway situated on the western side of the plaintiff schedule property items. The defendant denied the plaintiff's averment regarding the plaintiff approaching the defendant concerning the alleged demolition of the compound wall, as well as the subsequent approach made by the plaintiff to the Balussery Police Station to redress his grievance. According to the defendant, there is no cause of action for the suit. Accordingly, it is contended that the suit is liable to be dismissed with costs to the defendant.

4. The learned Munsiff settled four issues for trial as follows:
  - 1) Is there any cause of action for the suit?
  - 2) Is the plaintiff entitled to a decree of permanent prohibitory injunction restraining the defendant from trespassing into plaintiff schedule property?
  - 3) Is the plaintiff entitled to a decree of mandatory injunction directing the defendant to reinstate plaintiff B schedule property and the boundary wall along the western boundary of plaintiff B schedule property?
  - 4) What shall be the orders as to costs?

5. On the side of the plaintiff, the plaintiff himself was examined as PW1, and Exhibits A1 to A3 were marked. Exhibit A3 was marked subject to the production of the original, but the original was not produced. The report and plan prepared by the Advocate Commissioner were marked as Exhibits C1 and C2, respectively, and the Advocate Commissioner was examined as PW2 on the side of the plaintiff. On the side of the defendant, the defendant was examined as DW1, and another witness on the side of the defendant was examined as DW2.

6. After hearing both sides, by judgment dated 10-07-2024, the learned Munsiff Court, Muvattupuzha decreed the suit in part, to the effect that the plaintiff is entitled to a decree of permanent prohibitory injunction restraining the defendant from trespassing into the plaint schedule property or causing damage to, or obstructing the peaceful possession of, the plaint schedule property by the plaintiff. The plaintiff was also held entitled to realise the costs of the suit from the defendant. However, the relief of mandatory injunction sought in the suit was not granted in favour of the plaintiff.

7. Being aggrieved by the said judgment and decree, the defendant preferred this appeal. The main grounds raised in the memorandum of appeal are as follows: The decree and judgment passed by the Munsiff Court granting a prohibitory injunction restraining the defendant from trespassing into the plaint schedule property are against law, the weight of evidence, and the probabilities of the case, and are therefore liable to be set aside. The Munsiff Court ought to have held that the title, ownership, and possession of the plaintiff over the plaint schedule property were not proved. The court failed to appreciate the fact that the identity of the plaint schedule property was not proved. The Munsiff Court ought also to have found that the plaint B schedule property shown in the plaint is not a part of the A schedule property. The Munsiff Court further ought to have found that there exists a public road on the western side of the plaint schedule property. The court failed to properly appreciate the evidence adduced by the appellant in the suit and also failed to properly evaluate the oral evidence tendered by the defendant. The Munsiff Court also failed to distinguish between the plaint A and B schedule properties. The finding of the Munsiff Court regarding the existence of a cause of action is erroneous. The evidence of the plaintiff ought to have been discarded as it is not trustworthy. The Munsiff Court ought to have dismissed the suit with costs to the defendant.

8. Both sides were heard in detail. The learned counsel for the appellant/defendant argued that the impugned judgment and decree are liable to be set aside on the grounds mentioned in the memorandum of appeal. The learned

counsel for the respondent/plaintiff argued that the judgment and decree are perfectly legal and that there are no grounds warranting interference.

9. The points formulated for consideration are as follows:

- 1) Whether the plaintiff has any right and possession over the plaint A and B schedule property items?
- 2) Whether the plaint A and B schedule property items are identifiable?
- 3) Is there any cause of action for the suit?
- 4) Whether the impugned judgment and decree of the trial court warrant interference?
- 5) Reliefs and order as to costs?

10. The appellant is the defendant in O.S. No. 65/2020 on the file of the Munsiff Court, Koyilandy. The respondent is the plaintiff in the said suit. Hereinafter, in this judgment, the parties will be referred to according to their status in the suit.

11. **Point Nos. 1 to 4:** Since the facts relating to these points are interlinked, they are considered together for the sake of convenience.

12. Regarding the first point, the substance of the pleadings of the plaintiff clearly shows that he claims ownership rights, as a co-owner, over the plaint A and B schedule property items and also claims possession over the same. The plaint averments and a careful examination of the schedule of properties given in the plaint clearly show that the plaint B schedule property is an integral part of the plaint A schedule property. Thus, whenever the plaint refers to the plaint schedule property or the plaint A schedule property, it includes the plaint B schedule property as well. According to the plaint averments, the plaintiff purchased the plaint schedule property from one Kamalakshy Amma. When the plaintiff was examined as PW1, he affirmed these facts. A perusal of Exhibit A1 Kanam assignment deed shows that the plaintiff Ramakrishnan, one Mr Baskaran, and another person named Surendran obtained ownership over the plaint A schedule property as joint owners. It can be

seen that although the plaintiff has a case that the above-mentioned Surendran assigned his undivided 1/3 share in the plaint schedule property in favour of the plaintiff, he failed to produce the original of Exhibit A3 to prove this fact by way of documentary evidence. However, the evidence of the plaintiff as PW1, together with the contents of Exhibit A1, clearly shows that the plaintiff is a co-owner of the plaint A schedule property. Nothing was elicited in the cross-examination of PW1 to show that the above case and the evidence of the plaintiff cannot be believed. Thus, it is clearly established that the plaintiff has ownership right as a co-owner over the plaint A schedule property.

13. It is relevant to note that the defendant contended that the plaintiff has no right to institute the suit since he did not obtain the consent of the other co-owners. However, the co-ownership of the plaintiff over the plaint schedule property is clearly discernible from the evidence on record and the pleadings of the parties as already stated above. It is well settled that each co-owner has a right over every part of the property and such a co-owner can maintain a suit to protect his interest as well as the interest of the other co-owners. In the present case, there are no materials or proved circumstances to show that the suit was instituted by the plaintiff with mala fide intention or in conflict with the interests of the other co-owners. Therefore, it is clear that the plaintiff is entitled to institute and maintain the present suit for the protection of the property in question.

14. A perusal of the evidence of PW2, the Advocate Commissioner, shows that she visited the property in question and identified the same after examining the plaint averments and the title deed of the plaintiff. A perusal of the commission report and sketch (Exhibits C1 and C2) and the evidence of PW2 clearly shows that she identified the property described in the plaint as the plaint A and B schedule properties during her inspection. Under Order VII Rule 3 of the Code of Civil Procedure, where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, where possible, specify the boundaries or survey numbers. In the present case, the plaintiff has

clearly given detailed schedules describing the boundaries of the plaintiff A and B schedule property items. There is no ambiguity in the description of the property given in the plaint. The Advocate Commissioner also identified the property in accordance with the title deed. There is nothing in the evidence on record to support the defendant's contention that the property scheduled in the suit was not properly identified or that it is not identifiable.

15. In his plaint and in his evidence as PW1, the plaintiff has clearly asserted that he is in possession of the plaintiff A and B schedule properties along with the other co-owners. When these facts are considered together with the contents of the report of PW2 contained in Exhibit C1 and her oral evidence, it can be reasonably concluded that the plaintiff is in possession of the plaintiff A and B schedule properties. Nothing has been brought on record by the defendant, either through positive evidence, proved circumstances, or through cross-examination of PW1 or PW2, to show that the plaintiff is not in possession of the said properties.

16. From the above discussion, it is clear that the plaintiff has ownership rights and possession over the plaintiff A and B schedule property items and that those property items are clearly identifiable. A reading of the impugned judgment shows that the learned Munsiff has also arrived at the same conclusion while considering the issues framed in the suit. Therefore, there are no grounds to interfere with that finding of the learned Munsiff. Accordingly, **Point Nos. 1 and 2** are answered in favour of the plaintiff to the effect that the plaintiff has successfully discharged his burden of proving that he has co-ownership rights and possession over the plaintiff A and B schedule properties and that the properties described in the plaint are clearly identifiable.

17. A perusal of Exhibit C1 commission report and Exhibit C2 sketch clearly shows that soil had been removed from the plaintiff B schedule area. The cross-examination of PW2, the Advocate Commissioner, shows that during her inspection, she noticed that the compound wall situated on the western side of the plaintiff's property had been demolished. The western side of the said property forms the

western boundary of the plaintiff A and B schedule properties. The plaintiff has a definite case that the defendant demolished the boundary wall and removed soil from the area. The fact that the compound wall in that area had been demolished and that soil had been removed is clearly discernible from the evidence of PW2 and from Exhibits C1 and C2. From the written statement of the defendant, it is clear that the defendant disputes the ownership and possession of the plaintiff over the plaintiff schedule property. It is also evident from the pleadings and evidence that a pathway exists on the western side of the plaintiff A and B schedule properties. The defendant disputes the width and nature of that pathway and contends that it is a public road. However, the pleadings and evidence of the plaintiff, the report of the Advocate Commissioner, and the fact that the compound wall on the western boundary of the property is presently in a demolished condition clearly indicate that there exists a threat to the plaintiff's right to possess and enjoy the plaintiff A and B schedule properties without interference from the defendant. These circumstances discussed above are sufficient to constitute a cause of action for the institution of the present suit. Accordingly, **Point No. 3** is answered in favour of the plaintiff, holding that there exists a cause of action for the institution of the suit and that the finding of the learned Munsiff in this regard does not require any interference.

18. On going through the impugned judgment and decree, it can be seen that the learned Munsiff decreed the suit in part by granting a permanent prohibitory injunction restraining the defendant from trespassing into the plaintiff schedule property or causing damage to, or obstructing the peaceful possession of, the plaintiff schedule property by the plaintiff. The plaintiff was also held entitled to realise the costs of the suit from the defendant. Issue No. 3 in the suit, namely, whether the plaintiff is entitled to a decree of mandatory injunction directing the defendant to reinstate the plaintiff B schedule property and the boundary wall along the western boundary of the plaintiff B schedule property, was answered against the plaintiff. The discussion held above, while considering Points Nos. 1 to 3, clearly shows that the plaintiff has ownership rights as a co-owner over the plaintiff A and B schedule

properties and that he is in possession of the same. The plaint schedule properties are identifiable, and there exists a cause of action in favour of the plaintiff for seeking a permanent prohibitory injunction. Thus, the finding of the learned Munsiff on the above aspects and the grant of a permanent prohibitory injunction in favour of the plaintiff cannot be treated as erroneous and does not warrant interference.

19. With regard to the third issue mentioned above, it can be seen from the pleadings of the plaintiff that his specific case is that the pathway situated on the western side of the plaint A and B schedule properties is a way leading exclusively to the property of the defendant. The defendant, however, contended that it is not merely a pathway but a road leading to a quarry situated in the nearby locality. A careful perusal of the evidence on record shows that there is no convincing evidence on the part of the plaintiff to establish that the said pathway was used exclusively by the defendant. The evidence on record also does not conclusively show that the demolition of the boundary wall on the western side of the plaint A and B schedule properties was carried out by the defendant or his men. After considering the pleadings of the parties and the evidence on record, it cannot be confidently held that the defendant was the person who demolished the boundary wall on the western side of the plaint B schedule property. The plaintiff does not have a case that he personally witnessed the defendant demolishing the said boundary wall. Although the plaintiff stated that he came to know from nearby residents that the defendant had done the same, none of those persons were examined before the court to establish this fact. In such circumstances, in the absence of clear, convincing and reliable evidence to prove that the defendant demolished the boundary wall, a decree of mandatory injunction cannot be granted against the defendant as prayed for. Accordingly, I am of the view that the finding of the learned Munsiff regarding Issue No. 3 does not warrant interference.

20. The learned counsel for the appellant then argued that in both the judgment and decree, the learned Munsiff granted a decree of permanent prohibitory injunction restraining the defendant from trespassing into the plaint schedule

property or causing damage to, or obstructing the peaceful possession of, the plaintiff schedule property by the plaintiff. The learned counsel pointed out that in the suit, the plaintiff sought a permanent prohibitory injunction only in respect of the plaintiff B schedule property, and that on going through the judgment and decree, it is not clear whether the injunction granted relates to the plaintiff B schedule property alone or to the plaintiff A schedule property. On the other hand, the learned counsel for the respondent contended that there is no ambiguity in this regard. According to him, the plaintiff A schedule property includes the plaintiff B schedule property, since the plaintiff B schedule is an integral part of the plaintiff A schedule property situated on its western side. Therefore, the reference to the 'plaintiff schedule property' in the judgment and decree necessarily includes the plaintiff B schedule property as well.

21. It is relevant to note that a perusal of the pleadings of the parties and the evidence adduced, as discussed above, clearly shows that the disputed property in the present suit forms part of the plaintiff A schedule property. It is also evident that the plaintiff B schedule property is an integral part of the plaintiff A schedule property on its western side. Therefore, it can be seen that, whenever the term "plaintiff schedule property" is used in the judgment, it refers to the plaintiff A schedule property, which naturally includes the plaintiff B schedule property as well. The description of the property as B schedule in the plaintiff appears to have been made by the plaintiff for the purpose of clearly explaining the cause of action and the specific portion where the alleged acts occurred. In such circumstances, when the judgment and decree state that the defendant is restrained from trespassing into the plaintiff schedule property, it necessarily means that the defendant is restrained from entering the plaintiff A schedule property, which would also include the plaintiff B schedule property. In view of the above, I am of the opinion that there is no ambiguity in the decree granted by the learned Munsiff. The permanent prohibitory injunction granted in respect of the plaintiff schedule property effectively covers both the plaintiff A and B schedule properties. Therefore, there is no reason to interfere with the finding of the learned Munsiff granting a permanent prohibitory injunction restraining the defendant

from trespassing into the plaint schedule property. This conclusion is further supported by the fact that the plaint B schedule property is only a part of the plaint A schedule property and that the dispute between the parties relates to the ownership, possession, and enjoyment of the plaint A schedule property as a whole. Accordingly, I am of the view that the grant of permanent prohibitory injunction in favour of the plaintiff restraining the defendant from trespassing into the 'plaint schedule property' does not warrant any interference.

22. It is also relevant to note that in the impugned judgment and decree, the learned Munsiff held that the plaintiff is entitled to realise the costs of the suit from the defendant. From the discussion held above and upon a careful consideration of the evidence on record, it is clear that there are no grounds to interfere with the said finding of the learned Munsiff regarding the award of costs.

23. A thorough perusal of the impugned judgment rendered by the trial court clearly shows that the trial court has appreciated the evidence on record in its proper perspective and arrived at a correct finding by granting a decree of permanent prohibitory injunction in favour of the plaintiff and declining the relief of mandatory injunction in the suit in question. Hence, I am of the view that there is no reason to interfere with the findings of the trial court. Accordingly, **Point No. 4** is answered in favour of the plaintiff/respondent.

24. **Point No5:** In view of the findings given above with respect to Points Nos. 1 to 4, it is evident that the present appeal is liable to be dismissed by confirming the judgment and decree passed by the Munsiff Court, Koyilandy in O.S. No. 65/2020 on the file of that court. Further, from the discussions held above and after considering the factual circumstances explained therein, I am of the view that both parties shall bear their respective costs in this Appeal Suit. Accordingly, **Point No. 5** is answered to the effects as stated above.

In the result:

- a) The judgment and decree passed by the trial court in O.S. No. 65/2020 on the file of the Munsiff Court, Koyilandy, are hereby confirmed, and the appeal is dismissed.
- b) The parties in this Appeal shall bear their respective costs.

Dictated in Adalath Ai, corrected and pronounced by me in open court on this the 26<sup>th</sup> day of March, 2026.

**Sub Judge**





