

IN THE COURT OF MUNSIFF-MAGISTRATE, PERAMBRA

**Present : Smt. Varada Surendran
Tuesday, the 31st day of March, 2026.**

ORIGINAL SUIT NO: 99/2023

Between :-

Sajeevan, S/o Kanaran, aged 47 years, Puthanpurakkal house, Chakkittapara P.O, 673526, Chakkittapara Village, Pillaperuvanna, Koyilandy Taluk, Kozhikode District.	}	Plaintiff
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And :-

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| 1. Thaiparambil George, S/o Mathayi, aged 67 years, Annakuttanchalil, Peruvannamuzhi P.O, 673528, Chakkittapara Village, Pillaperuvanna Koyilandy Taluk, Kozhikode District. | } | Defendants |
| 2. Thaiparambil Moly, W/o George, aged 65 years, Annakuttanchalil, Peruvannamuzhi P.O, 673528, Chakkittapara Village, Pillaperuvanna Koyilandy Taluk, Kozhikode District. | | |

This suit coming on 27th day of March, 2026 for final hearing before me in the presence of Sri. V.V. Domy, Advocate for plaintiff and Sri. Rajeevan Mallissery, Advocate for defendants and having stood over to this day for consideration, the court delivered the following:

J U D G M E N T

Suit for mandatory injunction and permanent prohibitory injunction

2. Plaint averments in brief are as follows: The plaintiff schedule A property was obtained by the plaintiff as per Sale Deed No. 275/2008 of the Koorachundu SRO. He has been in ownership and possession of the same. There exists a residential building bearing No. C.P.10/29 in the property, wherein the plaintiff and

his family members are residing permanently. From out of the property originally belonging to the defendants as per documents No. 167/19 of Perambra SRO and No. 650/1967 of Koorachundu SRO, an extent of 10 cents described in plaint A schedule was assigned by the plaintiff to one Pilathottathil Balan Nair as per document No. 712/1995 of Koorachundu SRO. After the death of the said Balan Nair, his legal heirs Preethi and Prema reassigned the said property to the plaintiff as per document No. 276/2000 of Koorachundu SRO. Thus, the plaintiff is in ownership and possession of the plaint A schedule property. The plaintiff and his family members have access to the A schedule property only through the pathway described in plaint B schedule. It forms part of the property belonging to the defendants as per documents No. 147/1979 and 550/1987. There is no other access to the A schedule property except the B schedule pathway. Without the B schedule pathway, the A schedule property cannot be used. The plaintiff and his predecessors have been using the B schedule pathway peacefully, continuously, openly, as of right, and without obstruction for the past 28 years, and the plaintiff has acquired an easement of necessity over the said pathway. It lies along the southern boundary of the defendants' property, having a length of 16.10 metres and a width of 90 centimetres. The defendants' property is described as plaint C schedule. To the south of the pathway lies the property of K.P.K. Choyi, separated by a barbed wire fence. The northern side of the pathway has no boundary. An electric post is situated by the side of the pathway, from which an electric line has been drawn across the surface of the pathway to the plaintiff's house.

3. The plaint A schedule property is reached from the Chakkittapara–Peruvannamoozhi road by first proceeding 17 metres north along a concrete pathway, and thereafter continuing for 16.10 metres through the B schedule pathway, which runs along the southern boundary of the C schedule property. With the intention of obstructing the plaintiff and his family from using the B schedule pathway, the defendants, suppressing true facts and raising false contentions, had

filed O.S. No. 110/2016 before the Munsiff Court, Perambra against the plaintiff. The said suit was dismissed after finding that the contentions raised therein were not correct. The C schedule property herein is the plaintiff schedule property in the said suit. In the judgment in O.S. No. 110/2016, it has been observed that the defendants have an easement of necessity through the plaintiff schedule property therein, and since their property was carved out from the said property, the plaintiff is bound to provide a pathway to the defendants, which is necessary for the beneficial enjoyment of their property. No appeal has been filed against the said judgment.

4. While the plaintiff has been using the B schedule pathway openly, continuously, peacefully, without obstruction, and as of right, the defendants have, on 07.07.2023, created temporary obstructions on the western side of the B schedule pathway by placing small stones, tree branches, barbed wire, etc. The plaintiff has also received reliable information on 10.07.2023 that the defendants are making preparations to further obstruct and even obliterate the pathway. If the defendants act as intended, the plaintiff will suffer irreparable loss and hardship. The defendants have no right to obstruct or interfere with the plaintiff's use of the B schedule pathway. Hence, the suit.

5. Contentions in written statement filed by the defendants: The defendants admit that the plaintiff A schedule property is in the ownership and possession of the plaintiff. No pathway as described in the B schedule has ever existed. The B schedule pathway is a creation of the plaintiff's imagination. The properties described as B schedule belong exclusively to these defendants, and no right of any nature has ever been vested in the plaintiff or any other person over the said property.

6. The A schedule property lies on the south-eastern side of the defendants' property. On the southern boundary of the defendants' property lie the properties in the possession of K.P.K. Choyi and Thonakkara Benny, and on the south-west lie the

properties of Kaalayil Johny and Kaalayil Kunhumon. The Peruvannamoozhi–Chakkittapara road lies further south of these properties. From the said road, the plaintiff, his family members, and his predecessor Balan Nair and family used to access the property through the land of Thonakkara Benny. The plaintiff's house, which faces south, is accessed by descending steps on the southern side and passing through Benny's property. The allegation that the plaintiff has been using the B schedule pathway is absolutely false and without any basis. The plaintiff has never acquired any easement of necessity through the alleged B schedule property, nor has the plaintiff or his predecessors ever used such a pathway. The actual access to the defendants' property is through a pathway lying between the properties of Choyi on the west and Kaalayil Johny and Kunhumon on the east, connecting to the said public road. The plaintiff had requested the defendants to demolish the western boundary wall of their property to create a pathway to his house through the defendants' land for his convenience. As this would endanger the safety of the property and result in loss of valuable improvements, the defendants refused. Due to such refusal, the plaintiff threatened to demolish the boundary wall and create a pathway by force. The claim of easement of necessity over a non-existent pathway is exaggerated and untenable.

7. On 11.03.2016, while the defendants were engaged in agricultural work, the plaintiff and others allegedly attempted to demolish the boundary wall and create a pathway by force; on resistance, an altercation ensued resulting in injuries and registration of Crime No.72/2016. Consequently, the defendants filed O.S. No.110/2016, which was dismissed, and no appeal was preferred due to financial constraints.

8. Cause of action alleged in the plaint is false. The stones lying there are those from the boundary wall earlier demolished by the plaintiff. The statement that there exists a boundary fence separating the property of K.P.K. Choyi and the

alleged B schedule pathway itself shows that no such pathway exists through the defendants' property. The electric line drawn to the plaintiff's house is only a routine connection and does not establish any right of pathway. If the plaintiff had any such right, he could have raised a counterclaim in O.S. No. 110/2016 and obtained appropriate relief. Therefore, the present claim is barred by the principles of res judicata and is not legally sustainable. Hence, prayed to dismiss the above suit with costs.

9. From the above pleadings the following issues were raised:

1. Is plaintiff B schedule property in existence? If so, what is the correct description?
2. What is the right of plaintiff over plaintiff B schedule property?
3. Is the plaintiff entitled for a decree of mandatory injunction as prayed for?
4. Is the plaintiff entitled for a decree of permanent prohibitory injunction as prayed for?
5. Costs and reliefs?

10. **Evidence:-** From the side of plaintiff PW1 was examined. Exts A1 to A8 were marked. From the side of defendant DW1 was examined

11. **Issue Nos.1 and 2:-**

These issues are taken up together as they are interconnected. The burden is on the plaintiff to establish the existence of the B schedule pathway and his right over the same. The pleadings of the plaintiff specifically assert that the A schedule property is landlocked and that access is available only through the B schedule pathway, which has been used continuously as of easement of necessity. The defendants, while admitting title, deny the existence of such pathway and contend that there is alternative access through the property of Thonakkara Benny.

12. In evidence, the plaintiff examined himself as PW1 and relied on Exts.A1

to A7. Ext.A1 establishes his title over the A schedule property. Exts.A2 and A3, being the judgment and decree in O.S. No.110/2016, assume crucial relevance. The court, after considering evidence including commissioner's reports, has found that the property was severed and that access is necessary through the adjoining property. Under Section 13 of the Indian Easements Act, such severance gives rise to an easement of necessity when the dominant tenement cannot be enjoyed without such access. In the said judgment, the court has found that the property now held by the plaintiff was severed from a larger extent and that access is necessary through the adjoining property. The said finding has attained finality. Though Ext.A2 is not a judgment in rem, under Section 43 of the Evidence Act, the finding regarding necessity of access operates as a binding determination between the parties and clearly supports the plaintiff's claim of easement of necessity.

13. Exts. A4 to A7, being the commissioner's plan and reports, further probabilise the existence of a pathway. In particular, Ext.A7 report shows that the plaintiff's property is enclosed by neighbouring properties and fencing, leaving practically no access except through a passage along the boundary, and also notes obstruction caused by fencing put up by the defendants.

14. The oral evidence of PW1 is consistent with the pleadings. In cross-examination, PW1 admitted that there are obstructions such as fencing, stones and other materials and that he is presently using the side portion of the pathway by avoiding such obstructions. He also admitted that such obstruction has been existing for some time. These admissions do not discredit his case; rather, they indicate that the pathway existed and was subsequently obstructed. Significantly, PW1 has denied the suggestion that he has a proper or legally available alternative access through Benny's property.

15. On the side of the defendants, DW1 has deposed in line with the written statement denying the existence of the B schedule pathway and asserting alternative

access through Benny's property. However, this contention remains a bare assertion. The alleged alternative pathway is neither specifically proved nor supported by any independent evidence. Thonakkara Benny, through whose property the alleged access is said to exist, has not been examined, nor is there any material to show that the plaintiff has a legally enforceable right over such property. If at all such a pathway exists, a mere uncertain access through a third party's land cannot defeat a claim of easement of necessity.

16. Applying the standard of preponderance of probability, which governs civil cases, the version of the plaintiff appears more probable and acceptable. The documentary evidence, particularly Ext.A2, coupled with the commissioner's report and surrounding circumstances, probabilises both the existence of the pathway and the necessity of access, whereas the defence version remains unsupported and improbable. Accordingly, Issue Nos.1 and 2 are found in favour of the plaintiff.

17. Issue Nos.3 and 4:-

The learned counsel for the defendants contended that the present suit is barred by res judicata in view of the earlier judgment in O.S. No.110/2016. Per contra, the learned counsel for the plaintiff submitted that the said contention is unsustainable as the present suit is founded on a distinct and subsequent cause of action. It is therefore necessary to examine whether the essential ingredients of Section 11 CPC are satisfied. Section 11 of the Code of Civil Procedure embodies the doctrine of res judicata, which bars a court from trying any suit or issue that has been directly and substantially in issue in a former suit between the same parties (or their privies), and has been finally decided by a competent court. For its application, there must be identity of parties, subject matter, and issues, and the earlier decision must be final and on merits. The principle is founded on public policy to ensure finality of litigation and to prevent multiplicity of proceedings. It also includes constructive res judicata, whereby matters that ought to have been raised in the

earlier suit are deemed to have been decided. However, the bar applies only when the cause of action and issues are the same; if the subsequent suit arises from a distinct or subsequent cause of action, *res judicata* will not apply, though earlier findings may still operate as issue estoppel.

18. A perusal of Ext.A2 judgment in O.S. No.110/2016 shows that the said suit was one for prohibitory injunction filed by the present defendants, wherein the question that arose for consideration was whether the present plaintiff (defendant therein) had a right of way through the property and whether the plaintiffs therein were entitled to restrain such user. In that context, the court entered a finding that the property now held by the plaintiff was severed from a larger extent and that an easement of necessity existed in his favour. The suit was ultimately dismissed, thereby negating the claim for injunction.

19. In the present suit, the reliefs sought are for mandatory injunction to remove specific obstructions allegedly created on 07.07.2023 and for consequential prohibitory injunction restraining future interference. Thus, the cause of action pleaded is the subsequent act of obstruction and interference with the pathway. This is a distinct and recurring cause of action which arose long after the disposal of O.S. No.110/2016. Therefore, the matter directly and substantially in issue in the present suit—namely, the existence of present obstruction and the entitlement to its removal—was neither directly nor substantially in issue in the former suit.

20. Further, for *res judicata* to apply, there must be identity of cause of action and issues. While there is identity of parties and the earlier decision is final, the issues in the present suit are not identical. The earlier suit did not adjudicate upon the alleged obstruction of 2023 or the plaintiff's entitlement to a mandatory injunction to remove such obstruction. Hence, one of the essential ingredients of Section 11 CPC is clearly absent.

21. On the other hand, the finding in Ext.A2 regarding easement of necessity operates in favour of the plaintiff. That finding, having attained finality, binds the parties and cannot be re-agitated by the defendants to contend that no such right exists. At best, the earlier judgment gives rise to issue estoppel on the question of necessity and right of way, but it does not bar the present suit. Rather, it strengthens the plaintiff's claim.

22. It is also pertinent to note that obstruction to an easement gives rise to a continuing and recurring cause of action. Each act of obstruction furnishes a fresh cause of action. Therefore, even assuming that similar issues were earlier considered, the present suit based on subsequent interference cannot be barred by res judicata. In the above circumstances, it is clear that the present suit is not barred by res judicata. The plea raised by the defendants is therefore unsustainable and liable to be rejected. Accordingly, Issue Nos.3 and 4 are also found in favour of the plaintiff.

23. Issue No.5:-

In the result, the suit is decreed as follows:

1. The defendants are directed by a decree of mandatory injunction to remove the obstructions created in the plaintiff B schedule pathway, including stones, branches, barbed wire and other materials.
2. The defendants and their men are restrained by a decree of permanent prohibitory injunction from in any manner obstructing or interfering with the plaintiff's use of the plaintiff B schedule pathway.
3. The plaintiff is entitled to costs of the suit.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 31st day of March 2026)

Sd/-
Munsiff-Magistrate

Plaintiff's Witness:-

P.W.1 03.3.2026 Sajeewan

Plaintiff's Exhibits:-

A1	5.2.2008	Photocopy of Janmam Assignment Deed No. 275/08 of SRO Koorachundu executed by Preethi and another and Sajeew Kumar
A2	23.3.2022	Certified copy of judgment in OS 110/16 on the file of Munsiff- Magistrate Court, Perambra
A3	23.3.2022	Certified copy of Decree in OS 110/16 on the file of Munsiff- Magistrate Court, Perambra.
A4	22.7.2016	Certified copy of Commission plan in OS 110/16 on the file of Munsiff- Magistrate Court, Perambra
A5	21.7.2016	Certified copy of inspection report in OS 110/16 on the file of Munsiff- Magistrate Court, Perambra
A6	1.8.2019	Certified copy of commission plan in OS 110/16 on the file of Munsiff- Magistrate Court, Perambra
A7	1.8.2019	Certified copy of inspection report in OS 110/16 on the file of Munsiff- Magistrate Court, Perambra
A8	17.3.2016	Certified copy of plaint in OS 110/16 on the file of Munsiff- Magistrate Court, Perambra

Defendant's Witness:-

D.W.1 5.3.2026 George, S/o Mathayi

Defendant's Exhibits:-

Nil

Sd/-
Munsiff-Magistrate

//True copy//

mkg

Munsiff-Magistrate

Fair/Copy of judgment in OS
99/23 dt 31.3.2026