

IN THE COURT OF MUNSIFF-MAGISTRATE, PERAMBRA

**Present : Smt. Varada Surendran
Friday, the 10th day of April, 2026.**

ORIGINAL SUIT NO: 149/2022

Between :

Ponnamma, D/o Peethambaran, aged 65 years, Swastham, Kodikkulath house, Kayanna P.O, Chakkittapara Village, Pillaperuvanna desom, Koyilandy Taluk, Kozhikode District.	}	Plaintiff
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And :-

Mary, W/o Late Baby, aged 65 years, Swastham, Kocheri house, Ottappalam Road, Koorachundu, Koorachundu P.O, Koorachundu amsom desom, Koyilandy Taluk, Kozhikode District.	}	Defendant
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This suit coming on 27th day of March, 2026 for final hearing before me in the presence of Sri. P.M. Thomas, Advocate for plaintiff and of S/Sri. N. Nipunkumar and N.K. Viswanathan, Advocates for defendant and having stood over to this day for consideration, the court delivered the following:

J U D G M E N T

suit for permanent prohibitory injunction

Plaint averments in brief are as follows:

2. The plaint A schedule properties were obtained by the plaintiff under registered Kanam Theeradham No.500/2004 dated 10.03.2004 of Koorachundu Sub Registrar Office, executed by one Mini George of Vengappally. Since then, the plaintiff has been in ownership possession and enjoyment of the property, paying land tax, planting and maintaining boundary markers, protecting the property, and

residing therein with family in the house situated in the said property. The two items comprised in plaint A schedule are lying contiguously as a single plot with definite boundaries and measurements. The plaint B schedule property is the pathway having a width of 3 feet lying from the Koorachundu Four Cent Colony Road situated on the western side of plaint A schedule properties, through which the predecessor-in-interest of the plaintiff and thereafter the plaintiff from the year 2004 onwards have been accessing the plaint A schedule property. The above referred title deed No.500/2004 under which the plaintiff obtained plaint A and B schedule properties is produced herewith. The ownership and description relating to plaint B schedule property are specifically mentioned in the said document. Except the plaint B schedule pathway, there is no other access to the plaint A schedule property.

3. On the eastern side of plaint A schedule properties lies the property belonging to the defendant. The husband of the defendant several years ago, in consensus with the plaintiff constructed an earthen road having a width of about 4 metres including plaint B schedule property. Since then, the same has been used as a smooth motorable road for access to plaint A schedule properties as well as the defendant's property. The said earthen road including plaint B schedule property is the plaint C schedule property. For the last 15 years, the plaintiff and her family have been using the said road including plaint B schedule property for ingress and egress to plaint A schedule properties and the residential house therein. Except the said road, there is no other way to access plaint A schedule properties.

4. The plaintiff is a physically challenged person aged 65 years suffering from chronic ailments. For more than the last 15 years, the plaintiff and her family have been openly, peacefully, continuously, independently and as of right using the property including plaint B schedule as pathway to access plaint A schedule properties and residence without obstruction from anyone. Neither the defendant nor anybody else has any right or authority to obstruct such use by the plaintiff and family or to extinguish the plaint B schedule pathway. However, on 18.11.2022, the defendant along with hired labourers came and attempted to block the western

entrance of the earthen road included in plaint B schedule and to obstruct the pathway being used by the plaintiff and others. When the plaintiff and her children jointly intervened and resisted the same, the defendant and labourers retreated after threatening that they would close and block the C schedule pathway at any cost. The defendant has no right or authority whatsoever to block the plaint C schedule road or to interfere with or obstruct the plaintiff's freedom of movement. Hence the suit.

Contentions in written statement filed by the defendant:

5. The suit has been instituted maliciously and vexatiously and is liable to be dismissed. It is devoid of any cause of action. The valuation and court fee shown in the plaint are incorrect. The plaintiff is not entitled to any of the reliefs prayed for and the suit is liable to be dismissed with costs.

6. The plaintiff has no right over plaint C schedule property. Plaint B schedule property is only a 3 feet wide footpath leading to plaint A schedule property. The plaintiff has only a right of user and no ownership over the same. It is true that except plaint B schedule pathway, there is no other access to plaint A schedule property. The defendant has no property on the eastern side of plaint A schedule property. The property there belonged to Augustine. The said property was settled in favour of Joby Augustine, son of Augustine, as per Settlement Deed No.816/2015 of Koorachundu Sub Registry Office, and he is in actual possession and enjoyment thereof. The said property is a rubber plantation. Since access road was necessary to the said plantation, defendant purchased 11¾ cents of property from Kakanattu George of Chembukodikil by virtue Sale Deed No.847/2003 of Koorachundu Sub Registry Office for valuable consideration and formed a road about 10 years ago and has been using the same for access to Augustine's property. The property over which plaintiff has pathway right is not included in the said road. The description and measurements shown for plaint C schedule are false and fabricated. The allegation that plaint B schedule is included in the mud road is made deliberately to mislead the court. The averment that plaintiff and family have been using the C schedule property including B schedule for more than 15 years for ingress and

egress to plaint A schedule property and house is false. The averment that plaintiff has been openly and independently using the same as of right without obstruction is also false. The plaintiff has filed the suit on false allegations under the misconception that she can encroach upon defendant's property and use the same as road to her house. The plaintiff, who has only pathway right through 3 feet width, is suppressing the same and is attempting to forcibly bring vehicles and encroach into defendant's property. Due to defendant's objection thereto, plaintiff and her son Jayan of Kodikkulath have even threatened to kill defendant's son Joby Augustine. Hence, prays to dismiss the suit with costs.

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

1. Is the plaintiff entitled for a decree of permanent prohibitory injunction as prayed for?
2. Costs and reliefs?

8. Evidence:

From the side of plaintiff PW1 was examined. Exts A1 to A3, C1 and C2 were marked. From the side of defendant DW1 was examined and Exts B1 and B2 were marked. Ext B3 was marked subject to proof.

Issue No. 1

9. The principal controversy in the present suit concerns the nature and extent of the plaintiff's rights over plaint B and C schedule properties. The plaintiff claims that plaint B schedule is the pathway leading to plaint A schedule residential property and that plaint C schedule is a wider mud road formed by incorporating plaint B schedule, over which she has acquired right by long and continuous use. The defendant, while admitting the plaintiff's pathway right over plaint B schedule, disputes any right whatsoever over plaint C schedule and contends that the same is her private road.

10. Plaint B schedule property is described in the pleadings, oral evidence, and commission records as a pathway having a width of 3 feet commencing from the Koorachundu Four Cent Colony Panchayat Road situated on the western side

and extending eastward to plaint A schedule property. Ext.A1, the registered Kanam Theeradham No.500/2004 relied on by the plaintiff, forms the basis of her claim over the said pathway. A reading of Ext.A1 shows that the plaintiff has been conferred only a right of pathway over plaint B schedule. During cross-examination, PW1 admitted that Ext.A1 is the only document evidencing her right over the pathway and further admitted that she is uncertain whether ownership over the pathway itself was conveyed to her. No other document has been produced by the plaintiff to establish title over plaint B schedule. These admissions make it clear that the plaintiff's right over plaint B schedule is not one of ownership, but only a limited right of user for ingress and egress to plaint A schedule property.

11. The identity and existence of plaint B schedule pathway stand corroborated by Ext.C1 Commission Report and Ext.C2 plan. The Advocate Commissioner has specifically reported that plaint B schedule is the 90 centimetres wide pathway commencing from the Panchayat road and leading to plaint A schedule property, and that no other access exists to the plaint A schedule property except through the said pathway. DW1 has also admitted in evidence that plaint B schedule is the only access available to the plaintiff to reach plaint A schedule property. Thus, the existence and identity of plaint B schedule pathway and the plaintiff's right of user over the same stand clearly established.

12. Plaint C schedule is described by the plaintiff as the wider mud road situated on the northern side of plaint B schedule commencing from the Panchayat road and extending eastward. According to the plaintiff, the defendant's husband formed the said road by including plaint B schedule pathway and that the same has been continuously used by both parties for more than 15 years. However, PW1 admitted during cross-examination that Ext.A1 contains no recital regarding plaint C schedule and that no separate document has been produced to show any grant or conveyance of right over the same. She further admitted that the road was formed by the defendant's husband and that no written document evidencing permission or grant for use of the said road has been executed in her favour. Therefore, the

plaintiff's claim over plaint C schedule rests solely on alleged long user.

13. DW1, on the other hand, consistently deposed that plaint C schedule is a separate private road formed after purchase of 11¾ cents of land under Ext.B1 for providing access to the eastern property belonging to her family. DW1 specifically denied that plaint B schedule forms part of the said road and maintained that the plaintiff has no right over plaint C schedule beyond her limited right of pathway through plaint B schedule. Her evidence remained consistent throughout cross-examination and supports the defence contention that plaint C schedule is not a common road.

14. Ext.C1 Commission Report and Ext.C2 plan show that plaint B and C schedule properties presently appear as one continuous mud road without visible demarcating boundaries. However, the Commissioner's report only establishes the present physical condition and lie of the property and cannot by itself determine the legal rights of parties. The Commissioner is not competent to adjudicate title or legal entitlement. Though the report supports the plaintiff's contention that B and C schedule presently appear merged physically, the same does not establish any legal right of the plaintiff over plaint C schedule. On the contrary, the Commissioner has separately identified plaint B schedule as the specific pathway leading to plaint A schedule property.

15. The plaintiff has attempted to contend that she has acquired right over plaint C schedule by long usage. However, the plaintiff has failed to establish any right over plaint C schedule either by adverse possession or by prescription. There is no plea of hostile possession over plaint C schedule so as to sustain a claim of adverse possession. On the contrary, the plaintiff's own case is that the road was formed by the defendant's husband and she was thereafter permitted to use the same. Possession or user which originates by permission can never ripen into adverse possession.

16. Likewise, the plaintiff has failed to establish an easement by prescription under Section 15 of the Indian Easements Act. To establish such a right,

the plaintiff must plead and prove peaceable, open, uninterrupted enjoyment as of right for a continuous period of twenty years. In the present case, the plaintiff has pleaded only about 15 years of use, which falls short of the statutory requirement. Further, no specific relief for declaration of prescriptive easement has been sought, nor have the necessary pleadings been made regarding commencement, continuity, and nature of enjoyment sufficient to constitute a prescriptive easement. Moreover, PW1's own admission that the use commenced after the defendant's husband formed the road and allowed her to use the same shows that the alleged use was permissive in nature and not "as of right." If the user originated from consent or permission, the enjoyment is precario (permissive), not "as of right," and therefore cannot mature into prescriptive easement.

17. Thus, the plaintiff has failed to establish any independent title, possession, grant, or legally enforceable easementary right over plaintiff C schedule property. The evidence on record, particularly Ext.A1 and the admissions of PW1, disclose only a limited pathway right over plaintiff B schedule. On an appreciation of the entire evidence, the preponderance of probability supports the defendant's contention that the plaintiff has only a limited right of pathway over plaintiff B schedule and no legally enforceable right over plaintiff C schedule.

18. Accordingly, this Court finds that the plaintiff has succeeded in proving only her right of user over plaintiff B schedule pathway as access to plaintiff A schedule property, but has failed to prove any independent title, possession, easementary right, or other enforceable claim over plaintiff C schedule property. In such circumstances, though the plaintiff is not entitled to claim any injunction in respect of plaintiff C schedule property, she is certainly entitled to protection of her admitted right of user over plaintiff B schedule pathway. Hence, the suit is liable to be decreed in part by protecting the plaintiff's right to use plaintiff B schedule pathway alone and by rejecting the relief sought over plaintiff C schedule property.

19. Accordingly, this issue is found partly in favour of the plaintiff.

20. Issue no. 2

In the result, the suit is decreed in part as follows:

1. The defendant, her men and agents are restrained by permanent prohibitory injunction from causing obstruction to the plaintiff's peaceful use and enjoyment of plaint B schedule pathway.
2. The prayer for injunction in respect of plaint C schedule property is rejected.
3. In the circumstances of the case, parties shall suffer their respective costs.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 10th day of April, 2026).

Sd/-

Munsiff-Magistrate

Plaintiff's Witness:-

P.W.1	4.3.2026	Ponnamma, D/o Peethambaran
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Plaintiff's Exhibits:-

A1	10.3.2004	Kanam Assignment Deed No. 500/2004 of SRO Koorachundu executed by Mini George in favour of Ponnamma
A2	26.9.2022	Land Tax receipt during the year 2022-23 issued by Chakkittapara Village Officer.
A3	5.5.2018	Disability Certificate of Ponnamma.K.P issued by Medical Board.

Defendant's Witness:-

D.W.1	18.3.26	Kochery Mary, W/o Augusty
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Defendant's Exhibits:-

B1	5.5.2003	Certified copy of Kanam Assignment Deed No. 847/2003 of SRO Koorachundu executed by Kakkanat George in favour of Kocheril Mary.
B2	-	Survey Plan
B3	14.11.2022	Copy of complaint filed by Smt. Mery before Station House Officer Koorachundu.

Court Exhibits:-

C1	25.1.2023	Commission Report
C2	25.1.2023	Commission Plan

Sd/-
Munsiff-Magistrate

//True copy//

Munsiff-Magistrate

Fair/Copy of judgment in OS
149/22 dt 10.4.2026