

IN THE COURT OF III ADDL. DISTRICT JUDGE, KOLLAM  
Present : Sri. M.C. Antony, III Addl. District Judge, Kollam.  
On Tuesday the 31<sup>st</sup> day of March, 2026/10<sup>th</sup> day of Chaithram, 1948.

**A.S. No. 33/2024**

Between

Appellants :-1. Sujith @ Sujith A. Panicker, aged 60 years,  
S/o. Varghese Panicker, Kallarackal Veedu,  
Elampalloor Cherry, Elampalloor Village, Kollam Taluk,  
now residing at 24/543, G.K.M Colony Chennai – 600082.

2. Annet @ Dr. Annette Mathews, aged 68 years,  
D/o. Varghese Panicker, Kallarackal Veedu,  
Elampalloor cherry, Kollam Taluk,now residing at 1173,  
Block 44, LIC Jeevan Bima Coloney, Anna Nagar  
West Extn, Chennai – 600 101.

By Adv. I. Stevenson & V. Moti

And

Respondent :-

Nainapanicker, aged 74 years, S/o. Mathunni Panicker,  
Kallarackal Nisara, Near LMS Hospital, Kundara, Kollam.

**In O.S. No.250/2016:**

Between

Plaintiff :- Nainapanicker

And

Defendant :- 1. Sujith @ Sujith A. Panicker,  
2. Annet

**Counter Claim in O.S. No.250/2016:**

Counter Claim Plaintiffs :- 1. Sujith @ Sujith A. Panicker,  
2. Annet

Vs.

Counter Claim Defendant :-

Nainapanicker

This appeal filed against the Judgment and Decree in Additional Munsiff Court, Kollam in O.S. No. 250/2016 on 30-01-2024. This appeal is coming on for hearing before me on 31.03.2026 and on the same day the court delivered the following:

**JUDGMENT**

This is an appeal filed under Order XLI Rule 1 of the Code of Civil Procedure by the defeated defendant in OS No. 250/2016 on the file of the Additional Munsiff Court, Kollam.

2. The suit is one for injunction simpliciter.

3. The plaint averments, in brief, are as follows. The plaint A schedule property absolutely belonged to the plaintiff and he is in possession of the same. Defendants are residing on the western side of plaint A schedule property. The said property is described as plaint B schedule. Kottiyam Kundara public road situates on the western side of plaint B schedule property. A way having a width of 7 feet, commencing from the said public road at the south-western side of plaint B schedule property, proceeds towards the east and ends in the property of plaintiff's brother named Varghese M. Panicker at the eastern side of plaint A schedule property. The said way is being used by the plaintiff for the last more than 50 years for transportation to the plaint A schedule property. He is having an easement by prescription. He has no other way for ingress and egress to the plaint A schedule property. He has been continuously, openly and uninterruptedly using this way for the last more than 50 years, as a right. The defendants have no right to obstruct the use of plaint C schedule way by the plaintiff. However, the defendants are trying to commit waste in the plaint C schedule way and cause obstruction. When the defendants tried to encroach upon plaint C schedule way and to construct a fence by reducing the width of the said way, plaintiff had

preferred a petition before the police on 03.03.2016. But, under the influence of the defendants, the police has not taken any action. Defendants openly declared that they would encroach upon plaintiff C schedule way and construct a compound wall. On 02.03.2016, the defendants started construction of a *snehamathil* (a boundary wall) at the south-eastern side of plaintiff B schedule property by trespassing into the plaintiff C schedule way. However, they could not succeed due to the timely intervention of the plaintiffs. If the defendants succeed in their attempt, it would cause irreparable loss, injury and hardship to the plaintiff. Therefore, the plaintiff prays for a prohibitory injunction restraining the defendants from causing any damages in the plaintiff C schedule way, constructing a compound wall by encroaching upon the plaintiff C schedule way and from causing any obstruction to the plaintiffs for transporting through the plaintiff C schedule way and also from forcefully trespassing into plaintiff A schedule property or committing any waste therein.

4. The defendants filed written statement contending as follows:-  
The suit is not maintainable either in law or on facts. The description of plaintiff B schedule property is incorrect. Plaintiff B schedule property is an ancestral property and all the legal heirs are not included in the party array. Hence, the

suit is bad for non-joinder of necessary parties. Plaintiff never acquired right of easement by prescription over the plaint C schedule property. The plaintiff has already constructed a *snehamathil* on the southern boundary of plaint A schedule property, separating it from the plaint C schedule property, and the defendants also started to build a *snehamathil* in their property along the same line, commencing from the south-eastern corner of plaint B schedule property by replacing the barbed wire fence. When the major portion of the work was completed, the plaintiff destroyed the said construction, causing a loss to the tune of ₹10,000/- to the defendants. The description of plaint C schedule property is incorrect. The claim of plaintiff regarding the width of plaint C schedule property as 7 feet is denied. The pathway situated at the southern side of plaint A and B schedule properties is having a width of only 2 feet. At the southern side of plaint C schedule property, there is a compound wall separating it from the property on its south. At the time of construction of the said wall, the said property owner had left one foot width land for development of the existing pathway. There is a granite wall on the western side of plaint B schedule property to separate it from the public road. There is a gate almost at the middle of this compound wall for ingress and egress to

the plaint B schedule property from the public road. All other boundaries were well demarcated and secured by barbed fence. After construction of the said granite wall, and after some years, the plaintiff approached the father of defendants and requested him to allow them to walk temporarily through the southern boundary of plaint B schedule property, as his brothers were obstructing him from using the right of way allotted to him as per his title deed. The defendants' father, by removing 2 feet granite wall, allowed to use a pathway at the southern side of the plaint B schedule property. Leaving these two feet width, defendants' father had fixed barbed fencing on the southern boundary. Permission was granted to use the way till the plaintiff gets a right of way from his brothers. There is a *snehamathil* at the southern side of plaint A schedule property separating it from the 2 feet way. Defendants also have a right to construct a compound wall separating their property from the 2 feet way. Plaintiff has an alternate pathway to his property, which has been suppressed by him. The defendants permitted to use 2 feet width property at the southern side of plaint B schedule property and the defendants have no intention to obstruct the same. Therefore, the suit is liable to be dismissed with compensatory costs.

5. The defendants preferred a counter claim, contending that the plaint B schedule property absolutely belonged to them and that they have got every right to construct a *snehamathil* for securing the boundary of the said property. Defendants had started construction of such a *snehamathil* at the southern side of plaint B schedule property along the same line of plaintiff constructed *snehamathil* at the southern side of plaint A schedule property. Defendants are ready to leave 3 feet width for the way. When major portion of the work was completed, plaintiff trespassed into the plaint B schedule property and destroyed all the constructions causing a loss to the tune of ₹ 10,000/-. Plaintiff has no right to take law in his hand. Therefore, defendants have every right to recover damages to the tune of ₹ 10,000/-. The defendants also have right to construct a fence and to seek an injunction restraining plaintiff and his family members from causing any obstruction. Therefore, the defendants pray for damages to the tune of ₹ 10,000/- and an injunction restraining plaintiff from causing obstruction in constructing the *snehamathil* at the southern boundary of plaint B schedule property, separating it from plaint C schedule property.

6. The plaintiff filed a written statement to the counter claim, denying the entire allegations and averments in the counter claim and reiterating the plaintiff averments. It is admitted that there is no cause of action for the counter claim and therefore it is liable to be dismissed with costs.

7. PWs1 to 3 were examined and Exts.A1 to A3 were marked on the side of the plaintiff. DW1 and DW2 were examined on the side of defendants. Ext.C1 series were also marked.

8. The trial court, vide judgment and decree dated 31.02.2024, decreed the suit by granting a prohibitory injunction, restraining defendants from causing any obstruction to the use of plaintiff C schedule property and also restraining them from constructing walls by encroaching into the plaintiff C schedule property. They are also restrained from trespassing into the plaintiff A schedule property or causing any damage. The counter claim was dismissed with costs. Aggrieved by the said judgment and decree, the defendants preferred this appeal on following, among other grounds. The judgment and decree of the trial court are contrary to the facts and evidence. The trial court failed to make a proper finding regarding the prescriptive right claimed by the plaintiff over plaintiff C schedule property. There was no evidence to prove the

continuous and uninterrupted use of the pathway for the statutory period required to establish an easement by prescription. There was no sufficient pleading to establish an easement by prescription. There was no evidence to establish the width of plaintiff C schedule property. Having not ascertained the length and width of the way, the plaintiff was not entitled to claim an injunction. The trial court wrongly dismissed the counter claim. The defendants have right to construct a boundary wall in their property. They were prepared to leave three feet way. The trial court failed to appreciate the evidence on record in its correct perspective. The trial court has not properly appreciated the commissioner's report. By dismissing the counter claim, the trial court indirectly granted license to the plaintiff to trespass into the defendant's property. The plaintiff approached the court with unclean hands by suppressing material facts.

9. Heard both sides.

10. The parties herein shall be referred to in terms of their status and rank in the trial court.

11. The points that arise for the consideration in this appeal are:

- 1) Is the plaint C schedule way in existence?
- 2) Is the plaintiff entitled for a permanent prohibitory injunction?
- 3) Did the plaintiff demolished the compound wall constructed by defendants?
- 4) Are the defendants entitled for damages?
- 5) Are the defendants entitled for an injunction as prayed for?
- 6) Whether the impugned judgment and decree of the trial court is liable to be set aside, varied or modified?
- 7) What is the order as to costs ?

12. **Point Nos. 1 to 6** : For the sake of convenience, these points are considered together. The case of plaintiff is that he is the absolute owner and in possession of plaint A schedule property. Plaint B schedule property, owned by defendants, situates on the western side of plaint A schedule property. Plaintiff have been using plaint C schedule way, having a width of 7 feet and commencing from the public road situated on the western side of plaint B schedule property, through the southern side of that property to reach plaint A schedule property. According to him, this way has been used by him for the last more than 50 years, as of right, openly and uninterruptedly and he claims a right of easement by prescription. According to him, the defendants tried to encroach upon the way and to reduce its width by putting up a fence.

Therefore, the suit was filed to restrain the defendants from committing any mischief in the way and from obstructing the user of this way.

13. The case of defendants, per contra, is that the plaint C schedule pathway is not having a width of 7 feet as claimed by the plaintiff. Though they admits a pathway through the southern side of their property leading to the plaint A schedule property, it is a two feet way being enjoyed by the plaintiff as permitted by the father of defendants. Thus according to them, they are entitled to put up a fence to separate their plaint B schedule property from the two feet way. It is their case that, when they have constructed such a fence and when it was almost complete, the plaintiff illegally demolished the same thereby causing a loss to the tune of ₹ 10,000/-. The plaintiff approached this court with unclean hands, it is argued.

14. The plaintiff and defendants have no serious dispute regarding their respective title and possession over plaint A and B schedule properties. The suit is one for injunction simpliciter. Though the plaintiff claims easement of prescription over the plaint C schedule way the court is not called upon to decide said right of plaintiff in this suit, as no declaratory relief is sought for. Thus, the only question is whether a way, as described as plaint

C schedule, is in existence which is being used by defendants and if so, whether it has been interrupted by the defendants.

15. The plaintiff was examined as PW1 and he has reiterated the plaint averments and denied the averments in the written statement and counter claim. He would say that the way is having a width of 7 feet. He has examined a witness as PW2, who is said to be a relative of both plaintiff and defendants. He says that he is familiar with the plaint schedule properties and according to him, the plaint C schedule is a way having a width of 6 feet and, as far as his memory serves, the plaintiff's brother and the plaintiff have been using this way. He says that there is no fence at the southern side of defendants' property. When he was asked if he could assert the width of the way, he said he does not know. He clarified that this way has been in use since 1962 and bullock cart and autorikshaw were taken through this way.

16. The first defendant was examined as DW1 and he reiterated the defendants' case in his examination in chief. He was also cross-examined at length. When he was asked if plaintiff is using plaint C schedule property to the ingress and egress of plaint A schedule property, he said that he is using it as a walk way only. When he was again asked if plaintiff and family are

using plaintiff C schedule property for ingress and egress, he said plaintiff is using it because of a permission given by his family. The defendants examined a witness as DW2 who deposed that the plaintiff is having an alternate way obtained at the time of partition of the property; but his brothers denied the said way. He also stated that the defendants' father permitted the plaintiff to use a walkway.

17. Learned counsel for the defendants fervently argued that the plaintiff approached the court by suppressing the fact of construction of fence by defendants and its demolition. There is no evidence to show that the way claimed by the plaintiff has a width of 7 feet. The Advocate Commissioner has also not seen such a way in the property. The commissioner has noted varying width for this way and it does not tally with the descriptions of plaintiff C schedule. He would further say that, though the defendants have a right to have a way only at a width of 2 feet through the southern side of plaintiff B schedule property, the defendants are ready to leave 3 feet for the use of the plaintiff.

18. Plaintiff, per contra, argued that the evidence of PWs 1 and 2 and the testimony of DW1 would clearly prove the existence of plaintiff C schedule

way and its user by the plaintiff. According to him, both DW1 and DW2 admits that the plaintiff has been using plaint C schedule way for ingress and egress of A schedule property. Further, the relief claimed in the counter claim is an injunction restraining the plaintiff from causing obstruction in the construction of a snehamathil at the southern boundary of plaint B schedule property separating it from 'plaint C schedule property'. Thus, the plaint C schedule property is admitted by the defendants even in their pleadings. Therefore, according to him, the defendants cannot turn around and deny the plaint C schedule way.

19. As already discussed, the suit being one for injunction simpliciter, the only question arise for consideration is the existence of plaint C schedule as claimed by the plaintiff and the alleged encroachment. Going through the evidence of plaintiff and defendants, there is no cogent and solid evidence as to how the way has come into existence. At the same time, both sides are not at variants regarding existence of a way through the southern side of plaint B schedule property for the use of plaint A schedule. The dispute is with respect to its width.

20. Of course, in the relief portion of the counter claim, the defendants seek a relief to construct a compound wall separating plaintiff B schedule and C schedule properties. However, learned counsel for defendants would say that is a mistake committed by the lawyer who drafted the counter claim and such an odd statement in the counter claim cannot be a ground to discard the entire case of the defendants. As rightly pointed out by learned counsel for defendants, the pleadings of a party cannot be understood by reading such odd statements in isolation. In other words, such a recital or pleadings cannot always be taken as an admission. An admission should be a statement by a party admitting the claim of the opposite party in unequivocal terms. The pleadings of a party should be read as a whole. Going through the written statement and the counter claim, the case of defendants, throughout, is that though there is a way through their property, it is having only a width of 2 feet and they have specifically denied the case of plaintiff that it is having a width of 7 feet. When that be so, the relief portion in the counter claim can only be understood as a mistake in the drafting, which cannot be encashed by the plaintiff. When the defendants are having a specific case regarding the width of the way, a mistake crept in the pleadings

cannot be magnified to portray it as an admission. In **Narain Prasad Agarwal v. State of M.P.(AIR 2007 SC 2349)** Hon'ble Supreme Court held that “The plaint might not have been very happily drafted. But it is well known that, ordinarily, moffusil pleadings are not to be strictly construed.” In **Des Raj v. Bhagat Ram, (2007 (3) SCALE 371)** it was held that “It may be true that in his plaint, the plaintiff did not specifically plead ouster but moffosil pleadings, as is well known, must be construed liberally. Pleadings must be construed as a whole.” Going by the pleadings of the defendants as a whole, the case of denial of the plaintiffs case regarding the width of the disputed way is very evident. In such circumstance, the said error in the drafting is not fatal to the case of the defendants.

21. Similarly, learned counsel for plaintiff places heavy reliance upon some of the answers given by DW1 and DW2 in the cross-examination regarding plaint C schedule way. At certain parts of the cross-examination, when PW1 was asked about the plaintiff's use of 'plaint C schedule way', he answered, in positive. A similar answer was given by DW2 as well. But it is to be noted that, whenever a suggestion was put that plaint C schedule way is having a width of 7 feet, that has been specifically denied and he made it

clear that the way is having only 2 feet and it is only a walkable way. Therefore, it is crystal clear that DW1 was clear in his mind about his case and he happened to give an answer in a positive note when he was asked about 'plaint C schedule way' as he understood it as the way in dispute. No doubt, this aspect is not seen clarified in the re-examination. However, getting a favourable answer in a deceitful manner, without giving the witness a room to understand the question properly, is not the purport of cross-examination. The court has to consider the testimony of a witness as a whole and cannot pick and choose such odd statements especially when the witness has repeatedly said about the width of the way whenever he was asked about the width. Therefore, such answers elicited in favour of plaintiff in the cross-examination of DWs 1 and 2 will not keep the defendants out of court.

22. Now, the question is whether the plaintiff has proved the nature and lie of plaint C schedule way, especially with reference to the width that he claimed. Going through the entire evidence, there is no document to show the exact width of the way through the southern side of plaint B schedule property. Of course, existence of a way is admitted. At this juncture, the court has to rely on the report of the Advocate Commissioner, who visited the

plaint schedule property. The Advocate Commissioner has filed Exhibit C1 report and he was examined as PW3. The Advocate Commissioner has reported about the C schedule way. He identified this way along the southern side of plaint A and B schedule properties and the property of Varghese Panicker. It starts from the Kottiyam-Kundara public road at the west and proceeds towards the east and ends at the property of Varghese Panicker. This way is having a total length of 140 metres. The commissioner has noted varying width for this way. At the opening of this way to the public road, it is having a width of 1.50 metres. After 19 metres towards east, he noticed a survey stone at the southern side of plaint B schedule property, abutting to the C schedule, where the width of this way is 1.40 metres. At about 40 metres towards east, i.e. at the south-eastern side of plaint B schedule property, the width of the way is 1.60 metres. When it enters the plaint A schedule property, the width is 2.17 meters. At the south-western side of plaint A schedule property, where the snehamathil in the plaint A schedule property commences, the width of the way is 1.57 metres. As it further goes to the east, the commissioner could see some more survey stones and there, the width of the way is 1.60 metres. As it proceeds further, the width comes

down to 142 centimeters and when it reaches to the property of Varghese Panicker at the east, its width is further reduced to 1.25 metres. Again as it goes east, the commissioner noted the width as 133 cms. Though he could see well-defined boundaries on the east, west and north of plaint B schedule property, he could not see any boundaries to separate plaint B schedule property from the plaint C schedule property that he identified. The commissioner, while reporting about the plaint B schedule property, it is stated that, at the south-eastern corner of this property, he could see a survey stone. Abutting the said survey stone, a layer of snehamadil is seen constructed at a height of 1.58 meters and at a length of 74 cms. and the said fence at a length of 8 metres is seen demolished and the commissioner noticed the poles and remnants of the said snehamathil. It is the case of defendants that when they constructed a compound wall separating their property from the way, the plaintiff has demolished the same. Interestingly, the plaintiff has not stated about such construction done by the defendants. What is stated is that, defendants started construction of a snehamathil; but could not succeed due to the timely intervention of the plaintiff. Interestingly, the plaintiff opted not to take out an Advocate Commissioner immediately

after filing the suit, despite the fact that the suit is one for injunction claiming right of way. In fact, the plaintiff has not taken out a commission at all throughout the suit proceedings. The Advocate Commissioner was deputed at the instance of the defendants. Thus, the commissioner could inspect the property only on 27.06.2016. But the suit was filed as early on 05.03.2016. The fact that Advocate Commissioner had noticed construction of a compound wall separating plaintiff B schedule property from the pathway and its demolition, coupled with the plaintiff not mentioning such a fact in the plaint and not taking out an Advocate Commissioner immediately after filing the suit to note down the lie and nature of the properties, shows that the plaintiff has suppressed certain material facts. Even though, defendants have not adduced any evidence to prove that the said compound wall was demolished by plaintiff, the suppression of facts and the conduct of plaintiff probalises the case of defendants that they have started construction of a compound wall and that it has been demolished. At the same time, the defendants have not adduced any evidence to quantify the actual loss sustained by them. So much so, the defendants are not entitled for the damages.

23. It is settled law that a person who approaches the court should come with clean hands. In normal case, a person who suppress material facts before the court is not entitled for any equitable relief. But in this case, existence of a way through the southern side of plaint B schedule property for the enjoyment of plaintiff is not disputed. The only dispute is with respect to the width of the way. Though parties are at variance regarding the actual width of the way, the Advocate Commissioner has reported that the width of the way is varying from 1.27 metres to 1.60 metres. Therefore, it is clear that the width of the way is 4 feet to 5 feet.

24. As far as this suit is one for injunction simpliciter, the short question that arise for consideration is as to the existence of the way as described in the plaint and the alleged encroachment upon the right or a reasonable apprehension. As already discussed, there is no dispute regarding the existence of a way; but the parties are at variance regarding the actual width. Even though, the plaintiff has not taken any positive steps to get the plaint C schedule property identified or to prove the actual width of the property, the defendants have taken out a commission and thereby the actual width of the way in dispute has been ascertained. As there is serious dispute

regarding the width of the way between the parties, the apprehension of the plaintiff is well founded. Therefore, this court is of the view that an injunction can be granted by molding the relief and limiting the right of way at a width of 5 feet from the southern boundary wall that separates the way from the property on its south. It goes without saying that, the defendants are free to construct a compound wall separating the plaintiff B schedule property from the 5 feet way, if they are so advised.

25. On an overall appreciation of the entire evidence on record and the facts and circumstances, the judgment and decree of the trial Court, allowing the suit as such and dismissing the counter claim with costs is to be interfered with. In the light of the discussions herein above and the findings, the judgment and decree of the trial court is hereby set aside. The plaintiff is not entitled for an injunction with respect to the entire plaintiff C schedule property as claimed; but only with respect to a way having a width of 5 feet.

26. So far as, the injunction granted in respect of plaintiff A schedule property is concerned, there is no serious challenge made by the defendants. It is pertinent to note that the defendants does not claim any right over plaintiff A schedule property that belongs to the plaintiff. However, having regard to

the dispute between the parties in relation to the pathway and the reasonable apprehension, the trial court is justified in granting an injunction in respect of plaintiff A schedule property. Therefore, no interference is warranted so far as that part of the judgment and decree is concerned.

27. **Point No.7:** In the normal course, costs shall follow the event. But, on a close scrutiny and on an overall appreciation of the entire facts and circumstances of the case, including the conduct of the plaintiff, this court is of the view that it is a fit case to take a deviation from the said normal rule. Therefore, the parties shall bear their respective costs, throughout.

In the result, the appeal is partly allowed as follows:

The judgment and decree of the trial court is set aside and it has been modified as follows. The defendants are restrained by way of a permanent prohibitory injunction from causing any obstruction to the plaintiff for the use of a way having a width of 5 feet through the southern side of plaintiff B schedule property. It is made clear that the defendants are free to put up a boundary wall at the southern side of plaintiff B schedule property, leaving the 5 feet way. The defendants are also restrained by way of a permanent

prohibitory injunction from trespassing into plaint A schedule property or committing any waste therein.

Parties shall bear their respective costs, throughout.

Dictated to the Confidential Assistant, transcribed and typed by her, revised and corrected by me and pronounced in the open court on this the 31<sup>st</sup> day of March, 2026.

Sd/-  
M.C. Antony  
III Additional District Judge

APPENDIX : NIL

Sd/-  
III Additional District Judge

Typed by : Smitha. N  
Compd by : Harikrishnan U.G

Judgment  
AS No.33/2024  
Dated:- 31/03/2026