

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Sri.Manikandan.C.K, Principal Munsiff, Kannur,
Wednesday, the 8th day of April, 2026 (18th Chaithra, 1948)

ORIGINAL SUIT No.91/2020

Sreeja Kunhipurayil, W/o.Babu,]
aged 50 years, Kaustubham,] Plaintiff
Mundayad.P.O, Valiyannur amsom,]
Varam desom, Kannur. Ph: 9496138605.]

V/s.

1. Ashokan Puthiya Purayil, S/o.Janaki,]
aged 58 years,Ushas, P.O.Mundayd,]
Valiyannur amsom, Varam desom,]
Kannur, Pin: 670597.]
- Supplemental Defendants:-] Defendants
2. Mohanan.K.P., S/o.Anandan,]
aged 80 years, Mangool House,]
P.O.Kottali, Kannur, Pin: 670005.]
3. Sarala.P.P., D/o.Anandan,]
Karimbil House, P.O.Varam,]
Near Sasthamkottam Temple,]
Kannur, Pin: 670594.]

This Suit coming on the 26th day of March, 2026 for hearing before me in the presence of Sri.C.K.Rathnakaran and Smt.P.V.Seena, Advocates for the plaintiff; Sri.A.V.Kesavan and Smt.Sushmitha.K.C., Advocates for the defendants; and having stood over for consideration till this day the court delivered the following:

J U D G M E N T

Suit for permanent prohibitory injunction.

2. The plaint averments in brief are as follows:- The plaint schedule property was formerly owned by the plaintiff's

grandfather Kunhiraman by way of sale deed No.702/1975 of SRO, Kannur. Thereafter, Kunhiraman purchased jenm right of the property by way of Purchase Certificate bearing No.4031/1976 from the Land Tribunal No.II, Kannur. Kunhiraman was possessing the plaint schedule property by paying land tax. On the southern side of the plaint schedule property to separate the plaint schedule property from the remaining property a mud wall having a height of 5 feet and width of 3 feet is in existence. The said mud wall is the part and parcel of the plaint schedule property. As per the above said sale deed, there is a 3 feet pathway situated adjacent to the southern boundary of the plaint schedule property. The said pathway as well as the property on the southern side is lying in a lower level. There is a visible boundary on all the four sides of the plaint schedule property including the southern side even at the time of purchasing the plaint schedule property by Kunhiraman by way of sale deed No.702/1975. Kunhiraman died on 01.07.1978. After the death of Kunhiraman, his right over the plaint schedule property devolved upon his wife and children. Wife also died. After the death of his wife, her right over the plaint schedule property also devolved upon her children namely

Soumini, Rajan, Leela, Radha, Prakashan and Kausalya. Kausalya died on 30.11.2010 and her only legal representative is her daughter who is the plaintiff herein. So the right of Kausalya over the plaint schedule property was devolved upon the plaintiff. As per the release deed No.532/2014 of SRO, Kannur, all other children of Kunhiraman released their undivided right over the plaint schedule property to the plaintiff. As such the plaintiff became the absolute owner in possession of the plaint schedule property by paying land tax. The plaintiff availed a loan from the Bank of Baroda, Kannur and constructed a two storied house in the plaint schedule property and is residing there with her two children who are students. Original title deed of the plaint schedule property was mortgaged before the bank. The defendants are the co-owners of the property lying on the southern side of the plaint schedule property. On the immediate south of mud wall situated on the southern boundary of the plaint schedule property there is a 3 feet pathway which was shown as the boundary in the title deed of the plaintiff. The defendants property situated further south, adjacent to the said pathway. Since Panchayath had made a road on the eastern side of the plaint schedule property and the said road is having

connection with the western side of the larger property of the plaintiff schedule property, nobody is using the said 3 feet pathway which is lying in lower level on the southern side of the plaintiff schedule property. The defendant No.1 was having a house in his property which was constructed about 20 years back. He had made a garden in the 3 feet pathway lying on the southern side of the plaintiff schedule property. Since the plaintiff is not using the said pathway, she did not object the same. Recently, the defendant No.1 started to demolish a portion of the mud wall lying on the southern side of the plaintiff schedule property with an intention to annex a portion of the mud wall into his property. The defendant No.1 is the person having high influence with the local political party. On 01.03.2020, the defendant No. 1 along with some workers attempted to demolish the entire mud wall situated on the southern side of the plaintiff schedule property to annex the land where the mud wall is situated to their property. Due to the timely intervention of the plaintiff, defendant No.1 could not succeed in his attempt. On that day, they returned from the place by saying that they will again come and demolish the mud wall and will construct a compound wall by encroaching into the plaintiff schedule property.

The plaintiff is a lady residing alone with school going children. She could not physically prevent the unlawful act of the defendant No.1. From the attitude of the defendant No.1 the plaintiff could understand that if the defendant No.1 is not restrained from trespassing into the plaintiff's schedule property or demolishing the compound wall, he will commit mischief to the mud wall and will trespass into the plaintiff's schedule property. So it has become necessary to pass a decree restraining the defendants, their men or agent or any person claiming through him from trespassing into the plaintiff's schedule property and from demolishing the mud wall situated on the southern side of the plaintiff's schedule property and committing any waste therein. Hence this suit.

3. The defendant No.1 entered appearance and filed written statement contending as follows:- The suit is not maintainable either in law or on facts. The facts stated in the plaintiff's schedule property are denied except those which are admitted hereunder. The allegation and claim explained in para Nos.1 to 4 in the plaintiff's schedule property are to be proved by the plaintiff. There is no separate fixed boundary on the south of the plaintiff's schedule property. It is the defendant who tried to excavate the property of the

defendant. It is untrue that the mud wall is that of the plaintiff. The plaintiff schedule property is not identifiable based on the description. A survey plan to be taken based on the document and village records. After the report by the Advocate Commissioner this defendant may be given chance to file additional written statement. It is true that the defendant has got property on the southern side of the plaintiff schedule property. But the defendant alone is not the owner. The co-owners are also should have been made as partner which was not done. The suit is bad for non-joinder of necessary parties. The cause of action shown is false, hence denied. Since this is a suit for injunction the plaintiff should plead and prove the whole right. The court fee paid and valuation shown is incorrect. The relief sought is unexecutable. Hence the suit is liable to be dismissed with costs.

4. As per order in IA 6/2025 the supplemental defendant Nos.2 and 3 were impleaded.

5. The defendant Nos.2 and 3 filed memo adopting the contentions in the written statement of the defendant No.1.

6. From the rival pleadings the following issues were settled for trial:-

1. Is the plaint schedule property identifiable?
2. Is the suit bad for non-joinder of necessary parties?
3. Is the plaintiff entitled to get a decree for permanent prohibitory injunction as prayed for?
4. Reliefs and costs?

7. From the side of the plaintiff, PW1 was examined and Exts. A1, A2, C1, C1 (a), C2, C2 (a), C3 and C3 (a) are marked. The 1st defendant was examined as DW1 and Exts. B1 to B4 were marked from the side of the defendants.

8. Heard both sides.

9. **Issue Nos.1 to 3:-** These issues are considered together for the sake of convenience. The contention of the plaintiff is that the plaint schedule property was originally belonged to plaintiff's grandfather Kunhiraman by virtue of Ext. A1 document. Thereafter, the purchase certificate No.4031/1976 was obtained by Kunhiraman from Land Tribunal, Kannur. Further contention of the plaintiff is that on the southern side of the plaint schedule property, there is a mud wall having a height of 5 feet and width of 3 feet in existence to separate the plaint schedule property from remaining property. The said mud wall is part and parcel of the plaint schedule property. As per Ext.A1

document, there is a 3 feet pathway situated adjacent to the southern boundary of the plaint schedule property. The said pathway as well as the property on the southern side is lying in a lower level. There is a visible boundary on all four sides of the plaint schedule property including the southern side even at the time of purchasing the property by Kunhiraman by virtue of Ext. A1 document .After the death of Kunhiraman and his wife, the right over the plaint schedule property devolved upon their children namely, Soumini, Rajan, Leela, Radha , Prakashan and Kausalya. Thereafter, Kausalya died on 30.11.2010. The plaintiff is the only legal representative of Kausalya. According to the plaintiff, the right of Kausalya over the plaint schedule property was devolved upon the plaintiff. Thereafter, the other children of Kunhiraman released their undivided right over the plaint schedule property to the plaintiff as per document bearing No.532/2014 of SRO, Kannur and ever since then the plaintiff became the absolute owner in possession of the plaint schedule property and paying land tax. The original title deed of the plaint schedule property mortgaged before the Bank of Baroda. Further contention of the plaintiff is that the defendants are the owners of the property lying on the southern side of the plaint

schedule property. On the immediate south of mud wall situated on the southern boundary of the plaint schedule property, there is a 3 feet pathway which was shown as boundary in the title deed of the plaintiff. The property of the defendants situated further south, adjacent to the said pathway. Since the Panchayath had made a road on the eastern side of the plaint schedule property and the said road is having connection with western side of larger property of the plaint schedule property, nobody is using the said 3 feet pathway which is lying lower level on the southern side of the plaint schedule property. Further contention of the plaintiff is that defendant No.1 was having a house in his property which was constructed about 20 years back and he had made a garden in 3 feet pathway lying on the southern side of plaint schedule property. Defendant No.1 started to demolish a portion of the mud wall lying on the southern side of the plaint schedule property, with an intention to annex a portion of the mud wall into his property.

10. On the other hand, the contention of the defendants is that there is no separate fixed boundary on the south of the plaint schedule property. Further contention of the defendants is that the plaint schedule property is not identified based on the

description and survey plan is to be taken based on the document and village records. Further contention of the defendants is that they have got property on the southern side of the plaint schedule property. But the 1st defendant alone is not the owner. Co-owners also should have been made as parties and therefore the suit is bad for non-joinder of necessary parties. Further contention of the defendants is that cause of action shown is false.

11. On going through the rival contention there is no dispute that the property of defendants situated on the southern side of the plaint schedule property. Further, there is no dispute that the plaint schedule property formerly owned by the plaintiff's grandfather KunhIRaman and jenm right over the said property was purchased by KunhIRaman. The main contention of the plaintiff is that to separate the plaint schedule property from the remaining property on the southern side of the plaint schedule property, there is a mud wall having a height of 5 feet and width of 3 feet is in existence and said mud wall is the part and parcel of the plaint schedule property. Further contention of the plaintiff is that as per the sale deed No.702/1975 of SRO, Kannur, there is a 3 feet pathway situated adjacent to the

southern side of the plaint schedule property and said pathway as well as the property on the southern side is lying in a lower level. The main contention of the plaintiff is that there is a visible boundary on all four sides of the plaint schedule property including the southern side even at the time of purchasing the plaint schedule property by Kunhiraman as per document bearing No.702/1975 of SRO, Kannur.

12. In short, the contention of the plaintiff is that on the immediate south of mud wall situated on the southern boundary of the plaint schedule property, there is a 3 feet pathway which was shown as the boundary in the title deed of plaintiff. According to the plaintiff, the defendants property situated further south, adjacent to the said pathway. According to the plaintiff, since the Panchayath had made a road on the eastern side of the plaint schedule property and the said road is having connection with the western side of the larger property of the plaint schedule property, nobody is using the said 3 feet pathway which is lying in lower level of the southern side of the plaint schedule property. According to the plaintiff, the defendants had made a garden in the 3 feet pathway lying on the southern side of the plaint schedule property. The crux of the contention taken

by the defendants in the written statement is that there is no separate fixed boundary on the south of the plaint schedule property. On going through the Ext.A1, the southern boundary of the property covered by Ext. A1 is shown as 3 feet width way and eastern boundary of the property covered by the said document is 'eda'. It is also to be noted that the southern boundary of the property covered by document bearing No.702/1975 of SRO, Kannur is shown as "വഴിക്കു് ഒഴിച്ചു് വെച്ചു റമ്പലം". In the plaint, the plaintiff took a contention that on the southern side of the plaint schedule property, to separate the plaint schedule property from the remaining property, a mud wall having a height of 5 feet and width of 3 feet is in existence and said mud wall is the part and parcel of the plaint schedule property. Further case of the plaintiff is that on the immediate south of mud wall situated on the southern boundary of the plaint schedule property, there is a 3 feet pathway which was shown as the boundary in the title deed of the plaintiff and further taken a contention that the property of the defendants situated further south, adjacent to the said pathway and also taken a contention that the defendants had made a garden in the

3 feet pathway lying on the southern side of the plaint schedule property.

13. The plaintiff is examined as PW1. She had deposed in tune with the averments in the plaint. During cross examination, PW1 deposed that "എന്റെ വസ്തുവിന്റെ തെക്ക്ഭാഗം അതിർ നടവഴിയാണ്. കമ്മീഷണർ വന്നപ്പോൾ തെക്ക്ഭാഗം നടവഴി കാണിച്ചുകൊടുത്തോ? നടവഴി അവിടെ ഉണ്ടായിട്ടില്ല (Answer). ആ നടവഴി അടക്കം അല്ല എന്റെ അന്യായ പട്ടിക വസ്തു. ഇന്ന് കൊടുത്ത അഫീഡവിറ്റിൽ മൺകിള അന്യായ പട്ടിക വസ്തുവിന്റെ ഭാഗമാണ് എന്ന് പറഞ്ഞിട്ടുണ്ട്. കമ്മീഷണർ വന്നപ്പോൾ മൺകിള അടക്കം കാണിച്ചു. മൺകിളക്ക് പുറത്താണ് ഇടവഴി ഉള്ളത് ". A close analysis of the evidence of PW1 in cross examination, it can be seen that PW1 deposed that the southern boundary of the property is 'nadavazhi' and said 'nadavazhi' was not there. On going through the Ext. C3 (a), no one can find that there is an existence of pathway as a southern boundary of the plaint schedule property. According to the plaintiff, the property of the defendants situated further south adjacent to the said pathway and said pathway situated on the immediate south of mud wall situated on the southern boundary of the plaint schedule property. According to the plaintiff, the alleged mud wall

situated on the southern boundary of the plaint schedule property is the part and parcel of the plaint schedule property.

14. Now the point to be decided is that is there any evidence to show that there is any visible boundary to separate the plaint schedule property from the property of the defendants on its southern side. PW1 categorically deposed during cross examination that when the commissioner came to the spot the Nadavazhi was not therein. The said evidence of PW1 is more than sufficient to hold that the southern boundary mentioned in the Ext. A1 document was not in existence at the time when the commissioner inspected the plaint schedule property. But the definite case of the plaintiff in the plaint is that there is a visible boundary on all four sides of the plaint schedule property including the southern side. In the plaint, the plaintiff had taken a contention that the defendants had made a garden in the 3 feet pathway lying on the southern side of the plaint schedule property. It is pertinent to note that the plaintiff does not have a case that there is any visible physical boundary to separate the alleged pathway from the property of the defendants on the southern side. In Ext. C3 report, the learned commissioner had reported that she could see a mud wall [ridge formed after

removal of soil for levelling the land of the plaintiff and defendants in the 'FPG' line in Ext. C3 (a)]. The definite case of the plaintiff is that the property of the defendants situated on the southern side of the 3 feet pathway.

15. During cross examination, DW1 (defendant No.1) deposed that 'GF' line is the line shown by the plaintiff to the commissioner and actual line on measurement is 'HE' line. DW1 categorically deposed that there is no 'munkila' in 'GF' line and he further added that "ഉയർന്നഭാഗം മണ്ണ് തറച്ച് താഴ്ന്നിടങ്ങളിൽ 2 ഭാഗങ്ങൾ അവശേഷിച്ച ഭാഗം ആണ് 'GF' ലൈനിലുള്ളത്" and also deposed that the said boundary came through 'GF' line when the plaintiff levelled the property at the time of construction of house. According to DW1, he had constructed the house in the year 1999 and thereafter, the plaintiff levelled her property for the purpose of construction of the house. Therefore, I am of the view that the 'GF' line cannot be treated as the physical boundary on the southern side of the plaint schedule property, since the plaintiff herself is having case that the boundary on the southern side is the 3 feet pathway and the evidence of PW1 that the said pathway was not there at the time of the commissioner came to this spot. Being a suit for injunction simplicitor, the first

question to be decided is whether the plaint schedule property is identifiable and whether the plaint schedule property is in the possession of the plaintiff. In **2014 (4) KHC 294 Arikkulangara Kunhikkeloth Righesh Babu and Others Vs. Pullanhodan Kunnoth Gopalan Nambiar and Others**, it was held that “in a suit for injunction based on possession, the burden is on the plaintiff to prove the identity of the plaint schedule property by its well defined boundaries and his possession over the plaint schedule property”.

16. Needless to say, unless and until the property is identifiable from the neighbouring property by its boundaries, no injunction can be granted with respect to such property. As far as the dispute as to identity of the plaint schedule property in this case is concerned, the defendants have taken specific contention in the written statement that there is no separate fixed boundary on the south of the plaint schedule property. In Ext. C3 report the learned commissioner had reported that the plaint schedule property as well as the property of the defendants and other adjacent properties seems to be the lower part of a hill area slanting from west to east. The learned commissioner also reported that the mud ridge in line ‘FPG’

seems to be in the possession of the plaintiff. PW1 categorically deposed before this court during cross examination that she had removed the mud from the plaint schedule property and she did not inform to the boundary holders in writing at the time of removing the mud. The learned commissioner reported in Ext. C3 that ridge was formed after removal of soil for levelling the land of the plaintiff and the defendants. If that be the situation, it can be safely concluded that the mud ridge formed through 'FPG' line is not the physical boundary on the southern side. During cross examination, PW1 deposed that the southern boundary of his property is the 'nadavazhi' and also deposed that there was no 'nadavazhi' at the time when the commissioner inspected the property. The evidence of PW1 would go to show that the southern boundary claimed by the plaintiff as per her document was not in existence at the time of the commissioner's inspection. In Ext.C1 (a), the learned commissioner had shown the alleged pathway with dotted line to the further south of the mud wall. In Ext. C1 report, the learned commissioner reported she could not see at the time of inspection about a visible pathway adjacent to the mud wall and commissioner could see the small garden in that area. A close

scanning through the averments in the plaint, the plaintiff had categorically stated that the defendants had made garden in the 3 feet pathway lying on the southern side of the plaint schedule property. That itself probablisise the case of the defendants that there is no fixed boundary on the southern side of the plaint schedule property. It is a trite law that if there is no physical boundary to separate the properties of the plaintiff and the defendants, the remedy of the plaintiff is to file a suit for fixation of boundary.

17. In the plaint, the total extent of the plaint schedule property is shown as 10 cents of property. During cross examination, PW1 deposed that as per her back document the eastern boundary of the 10 cents of property was edavazhi and also deposed that now the said edavazhi is a road. PW1 also deposed that "ഈ 10 സെന്റിൽനിന്ന് എത്ര സെന്റ് സ്ഥലം റോഡിന് പോയി അത് എനിക്ക് പറയാൻ പറ്റില്ല". PW1 also deposed that "റോഡിലേക്ക് പോയ സ്ഥലം കഴിച്ച് എന്റെ വസ്തു എത്രയാണ് ? അത് എനിക്കറിയില്ല (Answer). PW1 further deposed that " റോഡിന് പോയ സ്ഥലം കഴിച്ചുള്ള സ്ഥലം മാത്രമേ എനിക്കുള്ളൂ". From the above evidence of PW1, it can be seen that PW1 does not know what

extent of property gone for the road from her 10 cents of property and what is her total extent of the property after deducting the property gone for the road. PW1 categorically deposed before this court that she is having only the property after deducting the property gone for the road.

18. In Ext.C2 report, the learned commissioner had reported that the plot 'ELFE' (eastern side of the defendants property) is seen overlapping with the plaintiff's property and the extent of the said property is 0.43 cents of land and the said portion is seen as defendant's property as per his title deed is in the possession of the plaintiff. The learned commissioner also reported that an extent of 0.47 cents of land which is marked as 'GLHG' is in the possession of the defendant. Anyhow, as per the Ext.C2 report the portion of the property covered by the document of the defendants (plot 'ELFE') is in the possession of the plaintiff. There is no specific objection filed by the plaintiff to the above said report of the Advocate Commissioner. It is also pertinent to note that the plaintiff does not have a specific case that she has more extent of property than covered by her title deed. If any portion of the property gone for the purpose of the road on the eastern side of the plaintiff schedule property, the

remaining extent of the plaint schedule property will not be 10 cents of property, especially when the plaintiff does not have specific case that she has more extent of property than covered by her title deed. Under these circumstances, I have no hesitation to hold that the plaintiff is now not in possession of the entire extent of property covered by her title deed. It is also to be noted that on going through the measurement of the property by the commissioner, it can be seen that the extent of the property of the defendants is less than that of the property covered by their title deed. PW1 categorically deposed before this court during cross examination that she has objection in the measurement in Ext.C3 (a) and measurement made by the commissioner with records is wrong. PW1 categorically deposed before this court that she did not take any steps to cure the said defect. PW1 also deposed that the Ext.C3 (a) plan is wrong. The learned commissioner reported in Ext.C3 that all the documents executed after the document No.1733/1960 is necessary to identify the plaint schedule property as demanded by defendants. Since the plaintiff herself deposed during cross examination that Ext.C3 (a) plan is wrong and no further steps taken by the plaintiff to cure the said defects, this court cannot

accept Exts.C3 report and C3 (a) plan. In Ext. C2 report , the learned commissioner had reported that the portion of the land covered by the title deed of the defendants is in the possession of the plaintiff. Therefore, I am of the view that Exts. C2 and C2 (a) also cannot be relied upon to prove the identity of the plaintiff schedule property and also to prove that the plaintiff is now in possession of the entire extent of property covered by her title deed. Moreover that in Exts.C1 (a) and C2 (a), the learned commissioner had drawn a way. PW1 categorically deposed during cross examination that there was no nadavazhi at the time when the commissioner came to the property. Therefore, I am of the view that the Exts. C1 (a) and C2 (a) also cannot be relied upon to prove the identity of the property. Therefore the issue No.1 found against the plaintiff. Though the issue regarding non-joinder of necessary parties framed by this court, subsequently the plaintiff filed application to implead the defendant Nos.2 and 3 and the said application was allowed by this court as per order in IA 6/2025 dated 22.08.2025 and corresponding amendment was also made as per order in IA 7/2025 dated 22.08.2025. Thereafter, defendant Nos.2. and 3 filed a memo by adopting the written statement filed by the

defendant No.1. So, the issue No.2 does not arise for consideration. Hence, issue No.2 answered accordingly. Since the plaintiff failed to prove the identity of the plaint schedule property and also failed to prove the possession of the property with reference to the physical boundary on the southern side, I am of the view that the plaintiff is not entitled to get decree for injunction as prayed for. Hence the issue No.3 found against the plaintiff.

19. **Issue No.4:-** In view of my finding on issue Nos. 1 to 3, the plaintiff is not entitled to get a decree as prayed for.

In the result, the suit is dismissed without cost.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court, this the 8th day of April, 2026).

Sd/-
PRINCIPAL MUNSIFF

Plaintiff's Witnesses:-

PW1 : Sreeja Kunhipurayil. (Petitioner).

Plaintiff's Exhibits:-

A1 : 30.01.2014 : Certified copy of Document No.532/2014
of SRO, Kannur.

A2 : 07.02.2020 : The Land Tax Receipt.

Defendant's Witnesses:-

DW1 : P.P.Ashokan. (1st Defendant).

Defendant's Exhibits:-

- B1 : 02.03.1966 : Assignment deed executed by
Kottan Nair to Mohanan and others.
- B2 : 16.09.1993 : Certified copy of Document
No.2843/1993 of SRO, Kannur,
- B3 : 16.07.2025 : The Land Tax Receipt.
- B4 : 16.07.2025 : The Land Tax Receipt.

Court Exhibits:-

- C1 : 18.09.2020 : The report submitted by
Smt.Shirona.A., Advocate
Commissioner.
- C1(a) : 15.09.2020 : The plan submitted by Smt.Shirona.A.,
Advocate Commissioner.
- C2 : 14.12.2022 : The report submitted by
Smt.Shirona.A., Advocate
Commissioner.
- C2(a) : 14.12.2022 : The plan submitted by Smt.Shirona.A.,
Advocate Commissioner.
- C3 : 28.03.2025 : The report submitted by
Smt.Kavitha.G., Advocate
Commissioner.
- C3(a) : 28.03.2025 : The plan submitted by Smt.Kavitha.G.,
Advocate Commissioner.

Sd/-
PRINCIPAL MUNSIFF

(True Copy)

*Fair/ Spare of Judgment in
OS.91/2020 dtd: 08.04.2026.*