

**IN THE COURT OF THE SUBORDINATE JUDGE OF PAYYANNUR**

Present:- **Smt.Alshari.A**, Subordinate Judge

Wednesday, the 18<sup>th</sup> day of March, 2026

(27<sup>th</sup> Phalguna, 1947)

**APPEAL SUIT No. 44 OF 2011**

Marippurath Joseph, Aged 64 years,	]	Appellant/
S/o.Abraham, Payyavoor Amsom Desom,	]	Plaintiff
Chandanakkampara P.O, Taliparamba Taluk,	]	
Kannur District.	]	

Vs

Joseph Veliyamkulathel, Aged 60 years,	]	
S/o.Abraham, Payyavoor Amsom Desom,	]	Respondent/
Chandanakkampara P.O, Taliparamba Taluk,	]	Defendant
Morazha Amsom, Desom, Taliparamba Taluk.	]	

On Appeal against the Decree and Judgment dated 08.04.2011 on the file of the Munsiff Court, Taliapramba and made in:

**ORIGINAL SUIT NO.112 OF 2009**

**Between:**

Marippurath Joseph, Aged 64 years	]	Plaintiff
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Vs.

Joseph Veliyamkulathel, Aged 60 years	]	Defendant
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This appeal suit is coming on this day for hearing before me in the presence of Sri.A.V.Kesavan, Advocate for Appellant/Plaintiff; and of Sri.M.C.Ramachandran, Advocate for Respondent/Defendant and the Court delivered the following:

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

Appellant is the plaintiff before the Trial Court in a suit for injunction.

2. For easy reference the parties are referred as plaintiff and defendant herein also.

3. The plaint averment in brief is as follows:- The plaint A schedule property was purchased by the plaintiff by virtue of document bearing No.3667/1997 from one person namely Chacko, thereby, the plaintiff is in possession of Plaint A schedule property. Plaint B schedule road is being used as public road by the person, who are residing on the southern side of the plaint B schedule and persons who are residing on the eastern side of the plaint A schedule. The plaint B schedule road commence from the Chandanakamapara-Kanhirakolli main road, that situates on the western side and proceeds through the southern side of plaint A schedule property and the said plaint B schedule road is having a width of 3 meters at the beginning and having more than 3 meters while further proceeds to east. The timely maintenance were done by the plaintiff and the public.

4. With an intention to annex a portion of the road to the property of the defendant, the defendant had demolished the pathar which was situating as northern boundary of his property. When the defendant tried to construct the compound wall by encroaching to the road, it was obstructed by the plaintiff and others by which the defendant had preferred filed a suit bearing No.O.S.25/2004. The said suit bearing No.O.S.25/2004 was dismissed. After the dismissal of the suit, plaintiff and public had maintained the road, by filling the pits in the road. Then the defendant had dug a chal through the middle of the road, and caused obstruction to the road. Even though, plaintiff had complained before the Police Station, the Police had not taken action against the defendant. The defendant had threatened to encroach into the road and that he would obstruct the vehicular transportation through the road by making a chal. The defendant have no manner of right to reduce the width of the road or to dug any chal or obstruct the vehicular transportation to the road. The plaintiff have no other way of access to have vehicular transportation to plaint A schedule property. The acts of the defendant are illegal. Hence, the defendant is to be restrained from constructing any kalpathar by encroaching in to plaint B schedule road

or reduce its width or obstruct the vehicular transportation to the plant B schedule road in any manner. Hence, the suit.

5. Defendant had written statement denying the plaint averments. The plaint schedule property is not properly identifiable from its description and must be verified with village records. The plaintiff's claim of ownership and possession is denied, and it is asserted that the burden of proof lies on the plaintiff. The defendant owns 2 acres and 59 cents in Payyavoor Village resurvey No. 1/1, with defined boundaries, and disputes that the plaintiff's property lies as claimed or that any alleged pathway forms part of the plaintiff's rights. The existence, dimensions, and usage of the alleged pathway are specifically denied. It is further contended that the suit is speculative, that no road exists as claimed, and that the defendant has not encroached or interfered. The previous suit O.S.25/04 was dismissed on technical grounds without any relief to the plaintiff. The defendant also denies any wrong doing, influence over authorities, or violation of court orders, and asserts that the suit lacks cause of action and is improperly valued, hence liable to be dismissed.

6. From the above rival pleadings, the trial court settled issues regarding the identity of the plaint A and B schedule property by description, description of the plaint B schedule road and consequential injunction. Evidences in this case consisted of testimonies of PW1, DW1 and documentary evidence Ext.A1 to Ext.A4, Ext.C1 and C2. The trial Court after considering the materials on record, dismissed the suit. Aggrieved by the said decree, the plaintiff filed this Appeal.

7. According to the appellant/plaintiff, The decree and judgment of the trial Court are contrary to law, the weight of evidence, and the probabilities of the case. The trial Court failed to properly analyze the documents and appreciate the evidence on record, particularly in its findings on Issues Nos. 1 and 3. It ought to have noted that the defendant did not dispute the identity of the plaint 'A' schedule property. The trial Court also erred in not properly considering material exhibits, including Ext. A5 marked pursuant to the order in I.A.No. 254/2011, and Ext.A2, being the copy of the judgment in O.S.No.25/2004. Further, it wrongly discarded Ext.A3, which establishes the plaintiff's possession and includes the parent document of title. The reports and plans submitted by the Commissioner, marked as Ext.s C1

and C2, were also not given due weight. The trial Court ought to have decreed the suit with costs. Hence, the appeal.

8. The learned counsel for respondent/defendant contended that the Trial Court had correctly appreciated the evidence and material based for it and found that the plaintiff is not having possession over the property and rightly dismissed the suit. There is no ground or reason to interfere with the judgment and decree of the Trial Court. Hence, the appeal is to be dismissed.

9. Heard both sides.

10. Following points arise for consideration in this appeal:-

1. Whether the judgment of the trial court requires any interference?

2. Reliefs and costs.

11. **Points No.1:-** As per the case of the plaintiff, plaint B schedule road is being used by the plaintiff and nearby residents in common. According to plaintiff, the said road is being maintained by plaintiff and the public. So as per the case of the plaintiff in the plaint, plaint B schedule road is a public road. The defendants are now trying to obstruct the road, by digging pit in the road and also tries to annex the

road to their property, by encroaching to the road. When Plaintiff was examined as PW1, he deposed that, plaint B schedule road is being used in common by the plaintiff and near by residents as stated in the plaint is not correct. He had also deposed that, the road is maintained by the plaintiff and the public as stated in the plaint is not correct. According to PW1, plaint B schedule road is included in his document marked as Ext.A1 and Ext.A2. PW1 had also deposed that he is not seeking for any right upon the road other than the right based on his document.

12. As per the averments in the plaint, the plaintiff have no case that the plaint B schedule road is included in his document or does he have any exclusive right over the road. On the other hand, plaintiff is claiming the public right over the plaint B schedule road, which is entirely inconsistent and contrary to the case put forward by PW1 during his evidence. PW1 had given a complete go-bye to the case put forward by him in the plaint by claiming a public right of B schedule road. Therefore, it is not possible to see, the plaintiff to be having any public right over the plaint B schedule road as averred in the plaint. Plaintiff have no case of any claim of exclusive right over the plaint B schedule road or that the plaint B schedule road is included in plaint A

schedule or rather covered by his document marked as Ext.A2, in the plaint. So the evidence tendered to that effect is quiet not acceptable for want of pleadings.

13. The defendants had categorically disputed the identity of the plaint B schedule road. The plaintiff had taken out the Commission, by which the Commissioner had filed report and eye sketch marked as Ext.C1 and Ext.C2. As per Ext.C1, the commissioner had noted the plaint B schedule road to be a old mud road lying in east-west direction starting from Chandanakampara-Kanhirakkolly tar road. The said road is having a width of 3.50 meters at the beginning and way is noted to be having an approximate average width of about 4.5 meters with length of 41 meters. The Commissioner had reported that digging of pits in the road made it unusable for vehicular transportation. The Commissioner had also noted the digging of chal at the beginning of the road. So, it can be seen that the presence pits and chal dug on the beginning of the plaint B schedule road, identified by the Commissioner made it unusable for having vehicle and transportation through the same.

14. The defendant was examined as DW1. DW1 had deposed that, he is claiming the plaint B schedule road to be included in his property. The suit was filed numbered as O.S.25/2004, claiming B

schedule road to be included in their property was dismissed by the Court and there is no appeal against judgment and decree in O.S.25/2004. So, from the case of defendant, it can be seen that they are claiming right over the plaint B schedule road to be included in their property, which was not recognized by the court. However, it is the duty of the plaintiff to prove his right upon the way, while seeking for relief of injunction pertaining to disputed plaint B schedule road. Even though, the defendants are claiming right over the plaint B schedule road and the presence of pits and chal made the way unusable for vehicle and transportation, that itself would not be a ground to see the plaintiff to be entitled for an injunction, unless and until, the plaintiff proves his right over the way, or disputed portion of the property as averred in the plaint. But herein this case, the plaintiff had tendered evidence completely inconsistent or contrary to the right claimed in the plaint. The exclusive right of the plaint by the plaintiff in the evidence is not supported with any pleadings. So when the plaintiff had failed to prove his right claimed upon the plaint B schedule road, it is not possible to the plaintiff to be entitled for relief of injunction as prayed for.

15. According to the plaintiff, the plaint B schedule road is having a length 18 meters with a width of 3 meters at the beginning and it is

having more than 3 meters towards east. But plaint B schedule road identified by the Commissioner as per Ext.C1 and Ext.C2 is having a length of 41 meters. PW1 in his evidence stated that, he had not shown any road with a width of 4.5 meters and length of 41 meters to the Commissioner. He had also deposed that, he had shown plaint B schedule road with a length of 18 meters and 3 meters in width to the Commissioner. But as per Ext.C1 and C2, it is not possible to see the Commissioner to have identified any road with a length of 18 meters and with a width of 3 meters, as scheduled in the plaint. Also, PW1 had deposed that he had not shown the property with an extent of 1 ½ cent as shown in plaint B schedule, to the Commissioner. PW1 had deposed that his property is lying on the southern side of the plaint B schedule and there is no boundary to demarcate the same.

16. The plaintiff did not take out any commission to identify the plaint B schedule property, to be covered by the document of the plaintiff with the assistance of the Surveyor. As per Ext.C1 and Ext.C2, the Commissioner did not refer to any documents for identification of plaint B schedule road. When the southern side of the plaint B schedule property is not lying demarcated from the property of the plaintiff as per the evidence of PW1, then it is not possible to discern, how

Commissioner had identified the plaintiff B schedule road, from plaintiff A schedule property, that is lying on the northern side of the plaintiff B schedule road. As per Ext.C1 and Ext.C2, the Commissioner had noted the compound wall of the defendant on the southern side of the road. But the boundaries on the northern side of the road is not seen reported by the Commissioner as per Ext.C1 and Ext.C2. From Ext.C1 and Ext.C2, it is not possible to see the plaintiff B schedule property to be part and parcel of plaintiff A schedule or that plaintiff B schedule road is lying demarcated from the plaintiff A schedule property noted by the Commissioner.

17. As per the evidence of PW1, plaintiff A schedule property or the property that belonged to the plaintiff is lying contiguous to plaintiff B schedule road. Also the boundaries of the the plaintiff B schedule road as shown in the plaintiff is not seen reported by the Commissioner as per Ext.C1 and Ext.C2. As already seen the length of the plaintiff B schedule road is not tallying with the measurement of the road noted by the Commissioner as per Ext.C1 and Ext.C2. Therefore, in the above discussed scenario, it is not possible to see the plaintiff had established the identity of the plaintiff B schedule road, as per description in the plaintiff schedule.

18. As per Ext.A1 document, the plaintiff is claiming right over plaint A schedule property, which does not refer to any road or way on any of the boundaries of the property covered by Ext.A1 document. Ext.A4 is a purchase certificate issued in favour of predecessor in interest of the plaintiff. In Ext.A4, the northern boundary shown as Parambil Joseph. As per Ext.C1 and Ext.C2, the southern boundary shown as Vadakayil Devaswom Kaivasaham. Southern boundary of the plaint A schedule property is plaint B schedule road as per Ext.C1 and Ext.C2. On other hand, as per Ext.A4, there is a road on the eastern boundary property covered by Ext.A4. Ext.A4 is pertaining the property with 3 acres and 56 cents. As per Ext.A1, the plaintiff had purchased the property, with an extent of 1 acre of 77 cent from the property covered by Ext.A4 document. It is obvious that there may be changes in the boundaries.

19. From the evidence of DW1, it can be seen that the claim of the defendant is that the plaint B schedule property is part and parcel of their property. DW1 had also admitted that he had not produced any document to show that plaint B schedule road is included in their property. DW1 had admitted that, he is having plan with him and it is not produced. The plaintiff had produced the judgment in O.S. 25/2004

was marked as Ext.A4. The said suit filed by the defendant was dismissed. That itself, would not entitle the plaintiff for the relief prayed for, when the matter in adjudication in the earlier suit O.S.25/2004 is pertaining to the right of the defendant over the disputed property. The deposition of the defendant in the earlier suit bearing No. O.S.25/2004 was produced and marked as Ext.B1, during the evidence of DW1. On the perusal of Ext.B1, it can be seen that the 2<sup>nd</sup> defendant in OS 25/2004 namely Antony had given evidence for and on behalf the plaintiff herein in the earlier suit bearing No.O.S.25/2004. From the evidence of DW1 also, nothing is brought out to prove the right of the plaintiff over the plaint B schedule road or the identity of the plaint B schedule road.

20 From the available evidence, it is not possible to see the plaint B schedule road is covered by Ext.A1 document as stated by PW1 in his evidence. Even otherwise, the case put forward during the evidence of PW1 cannot be taken as matter of adjudication, as there is no pleadings to that affect. Even if, the defendants fails to prove their right over the plaint B schedule or that plaint B schedule road is covered by their document, that will not entitle the plaintiff for relief of injunction, as prayed for unless and until the plaintiff proves his right to use the road

and identity of road as described in the plaint . Therefore, I could not find, the plaintiff to be entitled for the relief of permanent prohibitory injunction as prayed for, as rightly found by the trial Court. So I find that there is no scope for any interference into the judgment of the Trial Court. Accordingly, this point found against the appellant/plaintiff.

21. **Point No.2:-** Upon my finding in the above point, I reach a conclusion that the appeal deserves no merit and which is liable to be dismissed.

**In the result,** the appeal dismissed and the decree and judgment of the Trial Court is hereby confirmed. No order as to costs.

*(Dictated to the Confidential Assistant typed by him corrected and pronounced by me in the open court on this the 18<sup>th</sup> day of March, 2026).*

Sd/-  
Civil Judge (Senior Division)