

IN THE COURT OF THE MUNSIFF OF KUTHUPARAMBA

Present:- Smt. Athira Nair., Munsiff.

Thursday, the 26th day of March, 2026/ 5th Chaithra, 1948.

ORIGINAL SUIT No.73 OF 2018.

M.K.Abdul Salim, S/o. Sooppi, aged 40 years, business, Cheriya Pothiyal House, Panoor amsom, Puthoor desom, Mavileri, PO.Chendayad, Pin. 670 692, Thalassery Taluk.]]]]	Plaintiff.
Vs.			
1.	Mappilarkandy Rukhiya, W/o. Yousuf, aged 43 years, Housewife, Mappilarkandy House, Kottayam amsom, Koovappadi desom, Po.Kottayam Malabar, Thalassery Taluk. Pin.670 643.]]]]]]	Defendants.
2.	Yousuf, S/o. Moideen, aged 56 years, coolie, Mappilarkandy House, Kottayam amsom, Koovappadi desom, PO.Kottayam Malabar, Thalassery Taluk. Pin.670 643.]]]]]	
3.	Salim.C.P, S/o. Manhu, aged 47 years, coolie, 'Siyaj Manzil', Palliyath, Kottayam amsom, Koovappadi desom, Po.Kottayam Malabar, Thalassery Taluk. Pin.670 643.]]]]]	
4.	Pathumma, D/o. Saru, aged 67 years, No occupation, Uppi Paramba House, Kottayam amsom, Koovappadi desom, Po.Kottayam Malabar, Thalassery Taluk. Pin.670 643.]]]]]	
5.	Beebi, father's name and age not known, housewife, 'Seenath Manzil', Kottayam amsom, Koovappadi desom, Po.Kottayam Malabar, Thalassery Taluk. Pin.670 643.]]]]]	

This Suit coming on the 24th day of March, 2026 for hearing before me in the presence of Sri. Janardhanan. PK, Advocate for the Plaintiff ; Sri. K. Mukundan, Advocate for the Defendant No.1 and 2 reported no instruction and hence their name called absent, declared ex-parte ; of Sri. K.V. Anilkumar, Advocate for the Defendant No. 3 ; of Sri. C.V. Anilprakash, Advocate for the Defendant No. 4 and 5 ; and having stood over for consideration till this day; the court delivered the following:

J U D G M E N T

The suit is one for a relief of a mandatory injunction, a permanent prohibitory injunction.

2. **Plaintiff's case:-** The plaintiff is one of the co-owners of plaint 'A' schedule property, holding an undivided right and share of 13/21 therein. The other co-owners of plaint 'A' schedule property are defendant Nos. 3 and 4, who have been impleaded as proper parties to the suit. The present suit is instituted by the plaintiff not only to safeguard his own rights but also to protect the rights and interests of defendant Nos. 3 and 4.

3. Defendant No. 1 is the wife of defendant No. 2 and the sister of the plaintiff. Defendant No. 1 is the owner and in possession of the property situated at the north-western corner of the plaint 'A' schedule property. The property to the west of the plaint 'A' schedule property, including the residential house situated there, is owned and possessed by the plaintiff. Kuthuparamba–Koovapadi Road runs along the southern boundary of the plaint 'A' schedule property.

4. On 09.02.2018, defendant Nos. 1, 2, and 5, along with certain workers, unlawfully encroached upon the western portion of plaint 'A'

schedule A property and began laying laterite stones there with the aim of creating a road through plaint 'A' schedule property, connecting the Kuthuparamba–Koovapadi road to their property. The plaintiff obstructed this attempt and halted the work. However, the defendants threatened to proceed with making the road.

5. On 19.02.2018, defendant Nos. 1, 2, and 5 again trespassed into the western part of plaint 'A' schedule property and laid a row of laterite stones extending 10 feet from the western boundary. The act of the defendants constitutes an illegal trespass and is against the law. Therefore, the present suit is filed seeking a decree of permanent prohibitory injunction to restrain defendant Nos. 1, 2, and 5 from trespassing onto the plaint 'A' schedule property and creating a road therein, as well as a mandatory injunction directing the defendants to remove the laterite stones laid in the property, which is separately described as the plaint 'B' schedule property.

6. **Defendants' case:-** The defendants were served with a summons. Defendants appeared and filed written statements. Defendant No.2 failed to file written statement. Defendant Nos. 1 and 2 jointly argued that the suit is not maintainable. They contested the identity of the property and denied the allegation that defendant Nos. 1, 2, and 5 encroached upon the western portion of the plaint 'A' schedule property or attempted to create a road there. They claimed that no trespass was committed and that the laterite stones were laid solely within their own property. According to them, there was no encroachment on the plaintiff's land, and therefore, the suit is liable to be dismissed. Subsequently, D1 and D2 remained absent declared exparte.

7. Defendant No. 4 submitted a separate written statement arguing that the suit is not maintainable. He stated that his property is located on the eastern side of the plaint 'A' schedule property, with no boundary separating the two. The plaintiff and other co-owners had sold 12 cents of property to defendant No. 1, which is on the southern side adjoining Kuthuparamba–Koovappadi road. Of this, defendant Nos. 1 and 5 jointly sold 6.5 cents to Muhammed Shafeer, while the remaining portion was sold to Kunhatha. As a result, defendant No. 1 currently owns no property. According to defendant No. 4, the plaintiff became upset when defendant No. 1 sold property to her son, and the suit has been filed without sufficient cause. Therefore, the suit should be dismissed.

8. Defendant No. 5 filed a written statement denying the plaint allegations in their entirety, in line with the contentions raised by defendant No. 4.

9. **Evidence**:- From the side of the plaintiff, PW1 was examined and Exhibits A1 to A7, C1 to C4 were marked. On the defendants' side, DW1 was examined, and Exhibits B1 to B6 were marked.

10. Heard both sides.

11. **Issues arise for consideration**:

1. *Is the plaint 'A' schedule property identifiable?*
2. *Is the plaint 'B' schedule property identifiable? If yes, does it form part of plaint 'A' schedule property?*
3. *Is the plaintiff in possession of the properties in the 'B' schedule?*

4. *Did the defendant Nos. 1, 2 and 5 lay laterite stones in the plaint 'B' schedule property?*
5. *Is the apprehension of the plaintiff well-founded?*
6. *Is the plaintiff entitled to a mandatory injunction as prayed for?*
7. *Is the plaintiff entitled to a prohibitory injunction as prayed for?*
8. *Reliefs and costs?*

12. **Issue Nos. 1 and 2:** The plaintiff, as a co-owner of the plaint 'A' schedule property with an undivided share of 13/21, filed the suit to protect her rights as well as those of defendant Nos. 3 and 4, who are co-owners. She contends that defendant Nos. 1, 2 and 5 unlawfully encroached upon the western part of the plaint 'A' schedule property, laid laterite stones with the intention of creating a road through the property, and thereby committed acts of trespass. The plaintiff asserts that such acts are illegal, violate her proprietary rights, and warrant the grant of a permanent prohibitory injunction alongside a mandatory injunction directing the removal of the stones laid in the plaint 'B' schedule property.

13. On the other hand, defendant Nos. 1 and 2, in their joint written statement, dispute the maintainability of the suit and deny any act of trespass. They contend that the laterite stones were laid only within their own property and not in plaint 'A' schedule property. Defendant No. 4, in his written statement, also challenges the maintainability of the suit, pointing out that the plaintiff and other co-owners had earlier sold portions of the property to defendant No. 1, who

subsequently alienated the same to third parties. According to him, defendant No. 1 presently holds no property, and the suit has been filed without sufficient cause. Defendant No. 5, in alignment with defendant No. 4, denies the plaint allegations in their entirety. Thus, while the plaintiff alleges unlawful encroachment and seeks injunctive relief, the defendants uniformly deny trespass and maintain that the suit is without merit and should be dismissed.

14. The suit is one founded on possession. Yet, the identity of plaint 'A' and 'B' schedule properties remains in dispute. In such circumstances, the burden lies upon the plaintiff to establish the precise identity of the properties. To discharge this burden, the plaintiff obtained two sets of commission reports and plans, which were marked as Exhibits C1 to C4. Commission in his Exbt C4 plan identified A plot as A schedule without B schedule, A1 plot as B schedule and B plot as the defendant's property. Commissioner Identifies A1 Plot as a disputed property.

15. The counsel for defendant Nos. 4 and 5 argues that Exhibits C1 to C4 do not adequately establish the identity of the property. They rely on Exhibit B4, a registered document signed by 13 persons in favour of defendant No. 1, with the plaintiff also as a signatory. Although PW1 denied during cross-examination that he had signed Exhibit B4, in re-examination he admitted, “പെങ്ങൾക്ക് കൊടുത്ത വസ്തുവിൽ ഞാൻ ഒപ്പിട്ടിട്ടുണ്ട്,” thereby acknowledging the execution of Exhibit B4 in favour of defendant No. 1.

16. Furthermore, Exhibit B3 demonstrates that defendant No. 1 sold property to defendant No. 5, with the schedule therein describing 2.63 Ares (equivalent to 6.5 Cents). The plaintiff's case is that defendant

No. 1 possessed only 5 Cents of land, asserting that although Exhibit B4 mentions 12 Cents, only 10 Cents were actually in possession. According to the plaintiff, after transferring 5 Cents, the remaining 5 Cents were conveyed to defendant No. 5. Exhibit C4 plan shows defendant No. 5's property as B plot, which is 5.07 Cents, and on this basis, the plaintiff claims that only 5 Cents were transferred.

17. However, Exhibit B3 contains an attached plan showing both a pathway and landed property. The defendants argue that this pathway corresponds to the 'B' schedule pathway in the plaint. If the measurement is taken including the pathway, the extent amounts to 6.5 Cents, consistent with Exhibit B3. Moreover, the southern boundary of Exhibit B3 schedule refers to a Panchayath road and Kunhathu's property. Exhibit C4 shows that Kunhathu's property was later purchased by Saleem, the plaintiff. There is no dispute that this property lies to the south of defendant's land. Yet, the recital in Exhibit B3 clearly places the Panchayath road and Kunjathu's property on the southern side of the land conveyed. If so, the 'A1' plot shown in Exhibit C4 must form part of defendant No. 5's property under Exhibit B3. Only then will the Panchayath road lie on the southern side of the defendant's property. Defendant has no case that the plan was added fraudulently. Even then, in a document, a plan is always attached for clarity and must be read as part of the conveyance. Reliance can be placed on the principle in **Savari Muthu Nadar v. Kanakukallipillai Padmanabha Pillai** [1957 KLT 825]. Here, the plan clarifies that the A1 plot is also a part of the property conveyed under the Exbt B3 document.

18. This circumstance undermines the plaintiff's contention that the 'A1' plot is not part of the defendant's holding. Consequently, the

plaintiff has failed to establish that 'A1' plot forms part of 'A' schedule property. The identity of Plaintiff 'A' and 'B' schedule properties has not been satisfactorily proved before the Court.

19. **Issue No.3:-** The question of possession over the 'B' schedule property depends on the plaintiff's ability to prove its identity as part of the 'A' schedule property. Possession, in law, must be demonstrated clearly and definitively, and when the property's identity itself is disputed, the burden falls heavily on the plaintiff. In this case, the evidentiary materials relied upon have not sufficiently clarified the issue of identification. Without such proof, the claim of possession cannot be sustained. Therefore, it cannot be concluded that the plaintiff has proven possession of the 'B' schedule property.

20. **Issue No.4:-** On the materials placed before the Court, it cannot be held that defendant Nos. 1, 2 and 5 have laid laterite stones within the plaintiff 'B' schedule property which is a part and parcel of plaintiff's property. The allegation of trespass and formation of a road rests upon the plaintiff's assertion, but the identity of the 'B' schedule property itself has not been satisfactorily established. In the absence of clear proof of identification and possession, the allegation that defendant Nos. 1, 2 and 5 encroached and laid stones in 'B' schedule property does not stand proved.

21. **Issue Nos.5, 6 and 7:-** The plaintiff's apprehension, resting upon allegations of encroachment and formation of a road, cannot be said to be well founded in the absence of clear proof of identity and possession of the 'B' schedule property. Where the foundational facts remain unestablished, the apprehension of future interference loses its legal weight.

22. Consequently, the reliefs sought also cannot be granted. A mandatory injunction requires the plaintiff to prove unlawful acts already committed within her property, and a prohibitory injunction requires proof of imminent threat to possession. As the plaintiff has not succeeded in proving the identity of the property or possession therein, neither the mandatory injunction nor the prohibitory injunction prayed for can be granted.

23. **Issue No. 8:-** Considering the facts of this case, this Court is of the view that defendants Nos 4 and 5 are entitled to realise their cost of litigation from the plaintiff.

In the result, suit is dismissed. Defendant Nos. 4 and 5 are entitled to realise their cost of litigation from the plaintiff.

(Dictated to Adalat-AI, arranged in proper form by Confidential Assistant, corrected and pronounced by me in open court on this day, the 26th day of March 2026).

Sd/-
MUNSIFF

Appendix:-

Plaintiff's Witnesses:-

PW1 : Sri. M.K. Abdul Saleem.

Plaintiff's Exhibits:-

A1.	11-08-2008	Certified copy of Document No. 3092/2008 of SRO, Kuthuparamba.
A2.	12-02-2018	Tax receipt issued by the Village Office, Kottayam in the name of Plaintiff.
A3.	28-06-2007	Certified copy of Document No. 1927/2007 of SRO, Kuthuparamba.
A4.	17-06-2009	Certified copy of Document No. 1910/2009 of SRO, Kuthuparamba.

A5.	31-05-2011	Copy of Tax receipt issued by the Village Office, Kottayam in the name of Plaintiff.
A6.	18-08-2014	Copy of Tax receipt issued by the Village Office, Kottayam in the name of Plaintiff.
A7.	12-09-2022	Tax receipt issued by the Village Office, Kottayam in the name of Plaintiff.

Defendant's Witnesses:-

DW1 : Sri. Salim. C.P

Defendant's Exhibits:-

B1.	09-06-2008	Certified copy of Document No. 2171/2008 of SRO, Kuthuparamba.
B2.	23-07-2011	Certified copy of Document No. 2758/2011 of SRO, Kuthuparamba.
B3.	08-02-2018	Certified copy of Document No. 415/2018 of SRO, Kuthuparamba.
B4.	11-10-2000	Document No.2645/2000 of SRO, Kuthuparamba.
B5.	31-08-2022	Tax receipt issued by the Village Office, Kottayam.
B6.	17-03-2018	Possession Certificate issued by the Village Office, Kottayam.

Court Exhibits:-

C1.	06-10-2018	Report submitted by Smt. Shyma.VV, Advocate Commissioner in the above matter.
C2.	06-10-2018	Plan submitted by Smt. Shyma.VV, Advocate Commissioner in the above matter.
C3.	07-06-2023	Second Report submitted by Smt. Shyma.VV, Advocate Commissioner in the above matter.
C4.	07-06-2023	Plan submitted by Smt. Shyma.VV, Advocate Commissioner in the above matter.

Sd/-
MUNSIFF

Fair/Copy of Judgment
in OS No.73/2018.
Dated : 26-03-2026.