

IN THE COURT OF THE MUNSIFF OF KUTHUPARAMBA

Present:- Smt. Athira Nair., Munsiff.

Saturday, the 4th day of April, 2026/ 14th Chaithra, 1948.

ORIGINAL SUIT Nos. 337/2019 and 487/2019

OS No.337/2019

Jose George, S/o.Varkey @ George, Aged 62 years, Retired Teacher, Madathinakam House, Edoor, Ayyankunnu amsom desom, (PO) Mundiamparamba.]]]]	Plaintiff.
Vs.			
1.	Thadathil Clara, W/o.Devassia, Aged about 65 years, No occupation, Thadathil House, Balankari, Ayyamkunnu amsom desom, (PO)Koomanthode, Iritty Taluk.]]]]	Defendants.
2.	Thadathil Shaju, S/o.Devassia, Aged 45 years, Labourer, Thadathil House, Balankari, Ayyamkunnu amsom desom, (PO)Koomanthode, Iritty Taluk.]]]]	
3.	Thadathil Shiboy, S/o.Devassia, Aged 43 years, Mechanic, Thadathil House, Balankari, Ayyamkunnu amsom desom, (PO)Koomanthode, Iritty Taluk.]]]]	
4.	Thadathil Saiju, S/o.Devassia, Aged 38 years, Electrician, Thadathil House, Balankari, Ayyamkunnu amsom desom, (PO)Koomanthode, Iritty Taluk.]]]]	

OS No.487/2019

1.	Thadathil Clara, W/o.Devassia, aged 63 years, No occupation, Thadathil House, Ayyankunnu amsom desom, (PO)Koomanthode -670 704.]]]]	Plaintiffs
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2.	Thadathil Shaju, S/o.Devassia, Agriculturist, Thadathil House, Ayyankunnu amsom desom, (PO)Koomanthode-670 704.]	Plaintiffs
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3.	Thadathil Shiboy, S/o.Devassia, aged 42 years, Mechanic, Thadathil House, Ayyankunnu amsom desom, (PO)Koomanthode-670 704.]	
]	
4.	Thadathil Saiju, S/o.Devassia, aged 40 years, Agriculturist, Thadathil House, Ayyankunnu amsom desom, (PO)Koomanthode-670 704.]	
]	
Vs.			
	Jose George, S/o.Varkey, aged about 65 years, Money lender, Residing at Madathinakam, Companinirth, Ayyankunnu amsom desom, (PO) Mundayamparamba.]	Defendant
]	

These suits coming on the 26th day of March, 2026 for final hearing before me in the presence of Sri. N. Premarajan and P. Vijayan, Advocates for the Plaintiff in OS. 337/2019 and Defendant in OS. 487/2019 ; of S/Sri. John Joseph and Jaison. P, Advocates for the Defendants in OS. 337/2019 and Plaintiffs in OS.487/2019 and having stood over for consideration till this day; the court delivered the following:

ORDER

Order passed on the preliminary issue of Res judicata.

2. The present order arises in consideration of the preliminary issue of *res judicata* raised in OS No. 487 of 2019, which was jointly tried along with OS No. 337 of 2019 pursuant to the order dated 21.09.2023 allowing IA No. 12 of 2022. The joint trial was permitted on the ground that the parties are the same, the properties described in the schedules are situated within the same Survey Number, and the

disputes are interrelated. Though the joint trial order did not expressly record that the properties are identical, the affidavit filed by the defendants in support of the joint trial petition contained a categorical admission that the property involved in both suits is one and the same. The plaintiff in OS No. 337 of 2019 raised no objection to such admission. Hence, for the purpose of adjudication, it is taken that the property in dispute in both suits is the same.

3. The factual background may be briefly recounted. OS No. 337 of 2019 is a suit filed by Jose George seeking a decree of permanent prohibitory injunction and damages against the defendants Thadathil Clara, Thadathil Shaju, Thadathil Shiboy, and Thadathil Saiju. Conversely, the said defendants instituted OS No. 487 of 2019 against Jose George seeking a decree of permanent prohibitory injunction in respect of the same property. Thus, both suits involve the same parties and the same property, though the reliefs claimed differ.

4. In OS No. 487 of 2019, Jose George raised the plea of *res judicata*, contending that the defendants are barred from re-litigating the matter in view of earlier adjudications. He relied upon OS No. 218 of 2007, wherein he had sought an injunction in respect of 1.50 Acres, including the present plaint schedule property. That suit was decreed on 28.03.2011, holding that Devassiya, predecessor of the plaintiffs in OS No. 487 of 2019, had already sold the property and had no subsisting right. Again, in OS No. 457 of 2014, Devassiya and his legal heirs sought cancellation of the Sale Deed and Injunction, but the suit was dismissed on 02.02.2017, reaffirming that Devassiya had no right or possession. These adjudications, according to Jose George, operate as *res judicata* against the defendants.

5. Evidence was adduced in OS No. 337 of 2019, which was treated as the leading case. Exhibits A1 to A39 and C1 to C4 were marked for the plaintiff, and Exhibits B1 to B8 for the defendants. Exhibit A27 is the judgment in OS No. 218 of 2007, Exhibit A26 the decree therein, and Exhibit A22 the order in EA No. 280 of 2006 in EP No. 110 of 2004, wherein the executing Court under Order XXI Rule 58 CPC found Jose George to be the absolute owner of the petition schedule property. This finding directly relates to the same property now in dispute and affirms his title and possession.

6. It is true that the schedules of OS No. 337 of 2019 and OS No. 487 of 2019 differ in boundary description. However, *res judicata* being a mixed question of law and fact, the Court is bound to examine the pleadings and evidence to ascertain whether both properties are one and the same. The pleadings of the plaintiffs in OS No. 487 of 2019 reveal that their case is not that Jose George's property is distinct, but that the document in his favour was obtained fraudulently. They allege that Devassiya had borrowed ₹.1,00,000/- (Rupees One Lakh only) from Jose George in 1996, and that by misrepresentation, he created documents in favour of his brother-in-law and thereafter in his own favour. Their case is thus one of fraud, not of distinct property. As already noted, there are prior findings by competent courts affirming Jose George's title. Such questions cannot be re-agitated.

7. On a consideration of the pleadings and evidence, it is clear that the matter in issue in OS No. 487 of 2019 was directly and substantially in issue in the earlier suits OS No. 218 of 2007 and OS No. 457 of 2014. The parties are the same, the property is the same,

and the earlier adjudications were final and binding. The defendants are therefore barred by *res judicata* from re-agitating the matter in OS No. 487 of 2019. The plea raised by Jose George is well-founded and must be upheld.

8. As regards OS No. 337 of 2019, it is to be noted that the suit is not merely for injunction but also for damages. The claim for damages is a distinct relief, not covered by the earlier adjudications. Hence, OS No. 337 of 2019 is not barred either by *res judicata* or by Order II Rule 2 CPC.

RESULT:

1. The preliminary issue of *res judicata* in OS No. 487 of 2019 is answered in favour of Jose George. The suit OS No. 487 of 2019 is barred by *res judicata* and is not maintainable.
2. OS No. 337 of 2019, being one for injunction and damages, is not barred and shall proceed to trial on the merits.

(Dictated through Adalat-AI, arranged in proper form by Confidential Assistant, corrected and pronounced by me in open court on this day, the 4th day of April 2026).

Sd/-
MUNSIFF

Appendix:-

Plaintiff's Witnesses:- Nil

Plaintiff's Exhibits:-

A1.	09-11-1983	Certified copy of Doc. No.2111/1983 of the SRO, Uliyil.
A2.	26-02-1996	Certified copy of Basic Tax Receipt in the name of Sri. Thadathil Devassia issued by Village Office, Ayyankunnu.

A3.	23-10-1996	Certified copy of Doc. No.4097/1996 of the SRO, Uliyil.
A4.	01-01-1997	Certified copy of Jamathiri Fee Receipt in the name of Sri. Nelluvalil Joy issued by the Village Office, Ayyankunnu
A5.	09-02-1998	Certified copy of Basic Tax Receipt in the name of Sri. Nelluvelil Joy issued by Village Office Ayyankunnu.
A6.	11-11-1998	Certified copy of Doc. No.3239/1998 of the SRO, Uliyil.
A7.	10-02-2006	Certified copy of Doc. No.517/2006 of the SRO, Uliyil.
A8.	23-03-2006	Certified copy of Agreement executed by Sri.Jose George and Sri.Jaison.
A9.	22-06-2006	Certified copy of Doc. No.2229/2006 of the SRO, Uliyil.
A10.	22-05-2000	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A11.	30-04-2007	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A12.	05-07-2003	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A13.	25-05-2004	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A14.	27-05-2005	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A15.	22-07-2006	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A16.	29-05-2007	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.

A17.	24-04-2008	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A18.	22-10-2009	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A19.	10-06-2010	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office Ayyankunnu.
A20.	10-08-2011	Certified copy of Basic Tax Receipt in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A21.	25-05-2006	Certified copy of Possession Certificate in the name of Sri. Madathinakath Jose George issued by Village Office, Ayyankunnu.
A22.	10-09-2015	Certified copy of Order in EA No.280/2006 in EP No 110/2004 of this court.
A23.	17-05-2010	Certified copy of Commission Report in EP No.110/2004 of this court.
A24.	17-05-2010	Certified copy of Plan in EP No.110/2004 of this court.
A25.	02-07-2014	Certified copy of Encumbrance Certificate issued by SRO, Uliyil.
A26.	28-03-2011	Certified copy of Decree in OS No.218/2007 of this court.
A27.	28-03-2011	Certified copy of Judgment in OS No.218/2007 of this court.
A28.	13-11-2007	Certified copy of Summons to the Defendant No.4 in OS 218/2007 of this court.
A29.	16-07-2013	Certified copy of Order in I.A.No. 2587/2012 in AS No.81/2012 of the Hon'ble Prl. Sub Court, Thalassery.
A30.	21-06-2012	Certified copy of Notice to the Respondent No. 3 in AS No.81/2012 of the Hon'ble Prl. Sub Court, Thalassery.
A31.	09-08-2012	Certified copy of Vakalath of Sri.E.Sanilkumar in AS No.81/2012 of the Hon'ble Prl. Sub Court, Thalassery.

A32.	16-07-2013	Certified copy of Decree in AS No.81/2012 of the Hon'ble Prl. Sub Court, Thalassery.
A33.	22-01-2016	Certified copy of Deposition of Witness No.1 in I.A No.801/2014 in AS No.82/2014 of the Hon'ble Addl. Sub Court, Thalassery.
A34.	17-02-2018	Certified copy of Order in IA No.801/2015 in AS No.82/2014 of the Hon'ble Addl. Sub Court, Thalassery.
A35.	26-10-2016	Certified copy of Chief affidavit and Deposition of Witness of PW1 in OS No.457/2014 of this court.
A36.	02-02-2017	Certified copy of Judgment in OS 457/2014 of this court.
A37.	02-02-2017	Certified copy of Decree in OS 457/2014 of this court.
A38.	30-06-2022	Certified Copy of Judgment in AS No.37/2017 of Hon'ble Prl. Sub Court, Thalassery.
A39.	04-11-2014	Copy of Complaint in OS 457/2014 of this court.

Defendants Witnesses:- Nil.

Defendants Exhibits:-

B1.	05-06-2020	Copy of Basic Tax Receipt issued by Village Office, Ayyankunnu.
B2.	25-02-2020	Copy of Commission Report and Plan in IA No.2200/2019 in OS 487/2019 of this court.
B3.	20-10-1971	Copy of Purchase Certificate No.228/1971 of Land Tribunal, Kakkeyangad.
B4.	29-04-1992	Copy of Doc. No.36/3/1992 of SRO, Uliyil.
B5.	16-02-2011	Copy of Doc. No.811/2011 of SRO, Uliyil.
B6.	16-02-2011	Copy of Doc. No.809/2011 of SRO, Uliyil.
B7.	16-02-2011	Copy of Doc. No.810/2011 of SRO, Uliyil.
B8.	16-02-2011	Copy of Doc. No.808/2011 of SRO, Uliyil.

Court Exhibits:-

C1.	06-03-2020	Commission report submitted by Sri. Noble Mathew, Advocate Commissioner in OS. 337/2019.
C2.	06-03-2020	Plan submitted by Sri.Noble Mathew, Advocate Commissioner in OS. 337/2019.

C3.	25-02-2020	Commission report submitted by Smt. Meena. E.K. Advocate Commissioner in OS. 487/2019.
C4.	25-02-2020	Plan submitted by Smt. Meena. E.K. Advocate Commissioner in OS. 487/2019.

Sd/-
MUNSIFF

kps/

**Fair/Copy /Carbon copy
of Common Order in
OS No.337/2019 and
OS No. 487/2019.
Dated :04-04-2026.**