

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-IV, KOTTAYAM

Present : Dr. Satheesh Kumar V., Addl. District Judge-IV, Kottayam

Tuesday the 31st day of March, 2026/10th day of Chaithra 1948

A. S. No.96/2020

(O. S. No.346/2016 of Munsiff's Court, Changanacherry)

Appellant : -

Mini Ganesan, aged 42 years, W/o Ganesan, Kattukulam House,
Urava Road, Perunna East Kara, Changanacherry Village,
Changanacherry Taluk.

By Adv. Anishkumar K

Respondent :-

- 1 C C Antony, aged about 62 years, S/o C M Cherian,
residing at Chiravalayil House, Thammanam Kara,
Poonithura Village, Kanayannur Taluk.
- 2 Rony Mathew, aged about 46 years, S/o Mathew, residing at
Kurisummuttil House, Urava Road, Perunna East Kara,
Changanacherry Village, Changanacherry Taluk.
- 3 Moni Sam, aged about 64 years, S/o Samuel,
residing at Pallayadimuriyil House, Urava Road,
Perunna East Kara, Changanacherry Village, Changanacherry Taluk.
- 4 Omana Moni, aged about 56 years, W/o Moni Sam,
residing at Pallayadimurivil House, Urava Road,
Perunna East Kara, Changanacherry Village, Changanacherry Taluk.

R1 - By Adv. Georgekutty C A

R2 to R4 – Exparte

This Appeal having been finally heard on 13.03.2026 and the Court on 31.03.2026 delivered the following :-

JUDGMENT

1. This appeal is preferred by the first defendant against the judgment and decree dated 28/02/2020 in O.S. No. 346/2016 passed by the Court of the Munsiff, Changanacherry. The trial court decreed the suit, fixing the

southern boundary of the plaintiff schedule A-1 property as the line marked 'APF' in the survey plan and granting a permanent prohibitory injunction. The parties are referred to in this appeal as they were arrayed in the original suit, for convenience.

2. The case of the plaintiff, in brief, is that he is the absolute owner in possession of the plaintiff schedule A-1 property having an extent of 8.90 Ares, obtained by virtue of Ext. A1 sale deed of the year 2014. The defendants are the owners of B-1, B-2, and B-3 schedule properties situated on the southern side of the plaintiff's property. Separating the properties of the plaintiff and the defendants, there exists a 12-feet wide cartable pathway, described as the C-1 schedule, which was originally set apart by the common ancestors of the larger tract with a straight alignment. The plaintiff alleged that the defendants, taking advantage of his absence, encroached on the pathway by shifting their northern boundary walls, thereby reducing the width of the C-1 pathway. It is further alleged that, to compensate for the reduced width, the first defendant trespassed into the southern portion of the plaintiff's A-1 property and unauthorisedly laid concrete over a small portion. Consequently, the plaintiff instituted the suit for the fixation of the southern boundary, a permanent prohibitory injunction, and a mandatory injunction to demolish encroached boundary walls.
3. The first defendant alone resisted the suit by filing a written statement denying the allegations of encroachment and trespass. She contends that the C-1 pathway currently holds a public status and is used by the community. Because of this status, the pathway was concreted for maintenance purposes. Regarding the construction of the northern boundary wall on the B-1 property, she asserted that the property was purchased in October 2000; the wall was built upon existing old boundary

marks and remains strictly within the survey limits of the B-1 property, and on the eastern side, the wall was constructed jointly with a neighbour on the central line between their properties. She denies reducing the original 12-foot width of the pathway, stating that the pathway maintains its width on both the eastern and western sides of her property. She maintains that the plaintiff has no right to a mandatory or prohibitory injunction and prays that the suit be dismissed.

4. Defendants 2 to 4 were set ex parte.
5. During the trial, oral and documentary evidence were adduced by both sides. The plaintiff was examined as PW1, and he deposed in conformity with the plaint averments, establishing his title and possession over the A-1 property through Ext. A1 sale deed and Ext. A2 tax receipt. He testified regarding the 12-feet pathway and the subsequent encroachment by the defendants. PW2, the Advocate Commissioner, testified regarding the local inspection and the preparation of Ext. C2 report. She clearly deposed that the properties were measured based on the physical boundaries existing on the three undisputed sides of the plaintiff's property, along with the title deeds, leading to the identification of a 4-square-meter encroached area marked 'PQF' where concrete was laid over the plaintiff's land. PW3, the Licensed Surveyor, corroborated the commissioner's report, explaining that since the re-survey sub-division records were not available, the boundary was fixed mathematically and scientifically by measuring the extent covered by Ext. A1 from the admitted, well-defined boundaries on the north, east, and west, resulting in the preparation of Ext. C2(a) plan. On the contrary, the first defendant, testifying as DW1, denied the allegations of encroachment, asserting that the boundary wall of B-1 property was constructed long ago and that the pathway was concreted by her and others.

DW2 was the commissioner through whom the earlier commission report and sketch were marked as Ext.C1 and C1(a).

6. The suit was filed for fixation of boundary, permanent prohibitory injunction, and mandatory injunction against the defendants. On the date of trial, the plaintiff chose to limit his claim solely to the fixation of the southern boundary of 'A-1' schedule property and a permanent prohibitory injunction to restrain the defendants from trespassing into 'A-1' schedule property.
7. The trial court, after evaluating the oral and documentary evidence, found that the Advocate Commissioner and the Surveyor had correctly identified the property based on the title deed and the existing clear boundaries. Accepting Ext. C2 report and Ext. C2(a) plan, the trial court concluded that there was an encroachment into the plaintiff's property and accordingly decreed the suit, fixing the southern boundary along the 'APF' line, and granting a permanent prohibitory injunction.
8. In the appeal memorandum and during the arguments, the learned counsel for the appellant strenuously contended that the trial court committed a grave error in relying on a survey conducted without official re-survey subdivision records. It was argued that the plaintiff abandoned certain original reliefs, and by limiting the claims, the comprehensive decree passed was improper. The appellant further argued that the evidence failed to prove any trespass on the public road, and the suit was procedurally barred for failing to seek recovery of possession of the 4-square-meter concreted area marked as 'PQF'. Per contra, the learned counsel for the respondent argued that the southern boundary must follow the original straight-line alignment of the 12-feet pathway. It was contended that the existing clear boundaries on three sides of the A-1 property allow for accurate measurement without a

formal sub-division plan, and the evidence of unauthorised concrete work clearly justifies the decree for fixation of the boundary and the injunction.

9. Considering the rival contentions, the following points are framed for determination in this appeal:

1. Whether the trial court was justified in fixing the southern boundary of plaint A-1 property along the line 'APF' in Ext. C2(a) plan in the absence of a re-survey sub-division plan?
2. Whether the suit is maintainable without a specific prayer for recovery of possession regarding the 4-square-meter area marked 'PQF'?
3. Whether the judgment and decree of the trial court warrant any interference?

10. Points 1 and 2: These points are considered together for the sake of convenience, as they are closely interconnected. The primary thrust of the appellant's argument is that PW3 measured the property solely on the basis of title deeds and current possession, which is legally impermissible in the absence of an official re-survey sub-division plan. On a careful re-appreciation of the evidence of PW2 and PW3, it is evident that the A-1 property has well-defined, undisputed boundary walls on its northern, eastern, and western sides. PW3 categorically deposed that by measuring from these fixed points in accordance with the measurements and extent specified in Ext. A1 title deed, the southern boundary can be accurately determined. The total extent found on the ground within the 'APF' line was 8.86 Ares, which is slightly less than the 8.90 Ares mentioned in the title deed, thereby reinforcing the plaintiff's claim of encroachment. When the details, lie, and location can be ascertained from the physical features and title deeds, a formal sub-division plan is not a strict prerequisite for fixing a boundary. The existing clear boundaries on three sides provided a mathematically certain

baseline to fix the southern boundary, rendering the appellant's objection unsustainable.

11. The appellant next argued that the plaintiff abandoned certain reliefs and failed to seek recovery of possession of the 'PQF' area, where concrete was allegedly laid. It was contended that a mere suit for boundary fixation is insufficient when a portion of land is in the physical possession of the defendant. This argument, though seemingly attractive at first blush, fails upon closer scrutiny. In a suit primarily aimed at the fixation of a boundary, the determination of the boundary line itself resolves the dispute over the adjoining narrow strips of land. It is a well-settled presumption in law that possession follows title. When dealing with minor encroachments along a boundary, such as the 4-square-meter strip marked 'PQF', the owner of the main tract is presumed to be in possession. The evidence of PW1 and PW2 clearly establishes that this was a clandestine effort by the first defendant to mitigate the narrowing of the road caused by her own boundary wall. By fixing the boundary line 'APF', the trial court merely declared the legal limits of the plaintiff's property. The failure to include a specific prayer for recovery of possession for this minuscule strip does not render the suit fatally flawed, as the core relief of boundary fixation inherently encompasses the protection of title over that strip.
12. The oral evidence of PW1, coupled with the physical features noted in Ext.C2 report, establishes that the 12-feet pathway originally had a straight alignment. The current "V" shape or bent alignment near the B-1 property probabilises the respondent's case that the appellant shifted the wall and subsequently encroached into the A-1 property to maintain the road's width. In civil jurisprudence, facts are established by a preponderance of probabilities. Drawing reasonable inferences from the proved facts, especially the measurements in Ext. C2(a) plan, it is highly probable that the defendants

encroached on the plaintiff's property. The appellant failed to produce any credible evidence to demolish the scientific measurements carried out by PW3. Points 1 and 2 are found against the appellant.

13. **Point 3:** In light of the comprehensive re-appreciation of the oral and documentary evidence, this court finds no illegality, irregularity, or perversity in the findings recorded by the trial court. The trial court has marshalled the evidence correctly, weighed the alternatives, and applied the sound principles of law. The fixation of the boundary along the line 'APF' is perfectly in order, and the decree granting the injunction is a natural corollary to protect the plaintiff's established legal rights. The appellant has failed to make out any valid grounds to interfere with the well-reasoned judgment of the court below.

14. **In the result,**

1. *The appeal is dismissed.*
2. *The judgment and decree dated 28/02/2020 passed by the Court of the Munsiff, Changanacherry, in O.S. No.346/2016 are hereby confirmed.*
3. *Considering the facts and circumstances of the case, the parties are directed to bear their respective costs in this appeal.*

(Dictated to and typed by the Dragon Dictation Software, corrected by me and pronounced in open court on this 31st day of March, 2026)

Sd/-
Dr. Satheesh Kumar V
Addl. District Judge-IV

APPENDIX- Nil

Id/-
Addl. District Judge-IV

// True Copy //

Copied by :-
Compared by:-

Sd/-
Dr. Satheesh Kumar V
Addl. District Judge-IV