

**IN THE COURT OF ADDL.DISTRICT JUDGE-II (SPECIAL) KOTTAYAM**

Present : Sri. Subash.S, Addl.District Judge-II (Special), Kottayam.

Friday, the 10<sup>th</sup> day of April 2026.  
20<sup>th</sup> day of Chaithra, 1948.

**Appeal Suit Nos.102/2020 and 105/2020**

**Appeal Sutin No.102/2020**

(O.S.No.366/2012 of Munsiff Court,  
Changanacherry.)

**Appellant/Defendant/Counter Claim Plaintiffs:-**

1. Thankamma, W/o. Thomas, Pathalil House,  
Paruthimood Bhagom, Kangazha.P.O,  
Changanacherry Taluk, Kottayam.
2. Leelamma Thomas, D/o. Thomas,  
Pathalil House, Kangazha.P.O,  
Changanacherry Taluk, Kottayam.
3. Mathew Thomas, S/o. Thomas,  
Pathalil House, Kangazha P.O,  
Changanacherry Taluk, Kottayam .

By Adv. Sajan A Varghese and Adv. Blessen G. Mathews.

**Respondent/Plaintiff/Counter Claim Defendant:-**

Sasidharan, S/o. Veluthakunju,  
Sujith Bhavan, Paruthimoodu Bhagom,  
Kangazha P.O, Changanacherry Taluk,  
Kottayam.

By Adv. Anil D Kartha and Adv. S.Aditya Santhosh.

**Appeal Sutt No.105/2020**  
(O.S.No.333/2012 of Munsiff Court,  
Changanacherry.)

**Appellant/Plaintiff:-**

Thankamma, W/o. Thomas, Pathalil House,  
Paruthimood Bhagom, Kangazha.P.O,  
Changanacherry Taluk, Kottayam.

By Adv. Sajan A Varghese and Adv. Blessen G. Mathews.

**Respondents/Defendants:-**

1. Sasidharan, S/o. Veluthakunju,  
Sujith Bhavan, Paruthimoodu Bhagom,  
Kangazha P.O, Changanacherry Taluk,  
Kottayam.
2. Kamala, W/o. Sasidharan, Sujith Bhavan,  
Paruthimoodu Bhagom, Kangazha P.O,  
Changanacherry Taluk, Kottayam.

R1 By Adv. Anil D Kartha and Adv. S.Aditya Santhosh.

R2 No vakalath seen filed.

Petition filed U/s.96 and Order XLI of C.P.C. 1908, against  
the judgment & Decree in O.S. No.366/2012 of Munsiff's Court,  
Changanacherry, dated 30.11.2019.

This Appeal Suit having been finally heard on 03.03.2026  
and the court on 10.04.2026 delivered the following :

**COMMON JUDGMENT**

The counter claimants in O.S. No.366/2012 on the file of the Munsiff's Court, Changanacherry, are the appellants in A.S. No.102/2020. The plaintiff in O.S. No.333/2012 on the file of the Munsiff's Court, Changanacherry, is the appellant in A.S. No.105/2020. The parties are referred to in their original status in the trial court for convenience.

2. The brief facts leading to A.S. No.102/2020, and A.S. No.105/2020 are as follows:

The plaintiff instituted O.S. No.333/2012 for prohibitory injunction. The case of the plaintiff is that plaintiff schedule item No.1 property belongs to the plaintiff and her husband. There is a way having 4 feet width and 30 mtr length from the plaintiff schedule item No.1 property, and it reaches at plaintiff schedule item No.3 way. There is a public way that starts from the Paruthimood - Kangazha PWD road, and it leads to Karimala Colony. Plaintiff schedule item No.3 is the portion of the said public way from the PWD road and up to the place where the plaintiff schedule item No.2 way joins item No.3 way. Item No.3 way portion has a width of 10 feet and a length of 150 mtr. The

plaintiff is using item No.3 way for ingress and egress to her property. There is no other way than the said way for ingress and egress to her property. There existed a 4 feet width pathway having an age of more than 150 years through the northern side of plaint schedule item Nos.1 and 2 properties from PWD road to Karimala colony. The plaint schedule item No.3 way was constructed by widening the already existed 4 feet way by annexing a portion of channel lying on the southern side of the way and the nearby property. To widen the said way 1<sup>st</sup> defendant also surrendered a portion of his land. As the plaintiff refused to sell item No.1 property to the 1<sup>st</sup> defendant, he was in enmity towards the plaintiff. Thereafter, the 1<sup>st</sup> defendant installed a gate at the middle portion of item No.3 pathway and said gate was installed at a distance of 200 mtr west of the house of the defendant and 50 mtr east of the PWD road. Even though the plaintiff required the 1<sup>st</sup> defendant to remove the said gate, the 1<sup>st</sup> defendant was not ready to do so. The defendants have no right to construct a gate across item No.3 way. While so, the 1<sup>st</sup> defendant made an attempt to obstruct item No.3 way by collecting granite pieces in the said way on 18.10.2012, but as the plaintiff resisted the said act, he

did not do the same. After the institution of the suit, the plaint was amended and incorporated the relief of mandatory injunction. According to the plaintiff, after the institution of this suit on 21.10.2012, the 1<sup>st</sup> defendant locked the said gate and thereby obstructed the right of way of the plaintiff. Even though the plaintiff required the 1<sup>st</sup> defendant to open the gate, they were not ready to do so, and they also threatened that they would obstruct the right of way through item No.2, which belongs to the plaintiff. Of the gate installed by the defendants in item No.3 way, the southern concrete pole alone was in the property of the defendants, but the northern concrete pole and iron gate were installed in item No.3 way. As the defendants locked the said gate, the right of way of the defendants was obstructed. In the circumstances, the plaintiff instituted the above suit for permanent prohibitory injunction as well as mandatory injunction.

3. The defendants, who are the plaintiffs in OS No.366/2012, filed written statement contending as follows;

As the plaint schedule item No.1 property originally belonged to the plaintiff and her husband, on the death of her husband, his right devolved upon his children and the plaintiff.

As the children of the plaintiff were not joined as plaintiffs, the above suit is bad for the non-joinder of necessary parties. The defendants are senior citizens, but as alleged in the plaint, the 1<sup>st</sup> defendant is not an active member of any political party nor a real estate businessman. A cartable way having a width of 4 mtr and a length of 105 mtr is there starting from Paruthimmoodu - Kangazha PWD road, and the said way terminates on the western boundary of the property of the defendants. A portion of the said way, having a length of 55 mtr, was purchased by the 1<sup>st</sup> defendant as per the sale deed No.1701/2001, and the said portion is in his possession and enjoyment. After buying the said portion, the 1<sup>st</sup> defendant installed concrete pillars on the southern and northern sides of the said way and erected a gate. Paruthimmoodu - Kangazha PWD road lies at a distance of 50 mtr from the said gate. The property lying on the southern and northern sides of the plaint schedule item No.3 belongs to the 1<sup>st</sup> defendant. There lies a way on the southern side of plaint schedule item No.3 for ingress and egress to the property of Sivan Gopivilasam. Plaint schedule item No.3 way has been used by the defendant, and the said Sivan, for the last many years. The plaintiff never used

the said way, and she has no right to use the same. The defendants permitted the plaintiff to use item No.2 way to have access to the PWD road. There is no way to the colony through the northern side of item no.1 and 2 properties. The defendants have not done any act for widening item No.3 way by encroaching upon the portion of the channel lying on the south. Gate was installed in item No.3 way 12 years ago, and at that time, the plaintiff didn't raise any objection. The defendants would lock the gate by using a padlock from the time the gate was installed. The defendants have not caused any obstruction to the use of item No. 2 way by the plaintiff.

4. The defendants filed additional written statement contending that item No.3 way was made a cartable way by the plaintiffs along with Gopivilasam Sivan. The 1<sup>st</sup> defendant has the right to lock the gate installed in his own property. The plaintiff has to establish her right over item No. 3 way. The 1<sup>st</sup> defendant had instituted O.S. No.224/2009 against the plaintiff, and the plaintiff's daughter, Leelamma Thomas, had instituted O.S. No.355/2009 against the defendants; after trial, O.S. No.224/2009 was dismissed, and O.S. No.355/2009 was decreed. The 1<sup>st</sup> defendant preferred A.S. No.134/2011 and A.S

135/2011 before the District Court, Kottayam against the decrees in the above suits. As per the common judgment in the above appeals, dated 07.06.2014, the decree in O.S.No. 355/2009 was modified, and the boundary between the property belonging to the 1<sup>st</sup> defendant as per the sale deed No.1701/2001 and the property of the daughter of the plaintiff was fixed through the ABCD line as per the commissioner's report and plan, and the daughter of the plaintiff was permitted to construct boundary wall through the said line. The plaintiff has instituted this suit, suppressing the above facts.

5. Based on the above pleadings, the following issues were framed in the above suit:-

1. Is the suit bad for non-joinder of necessary parties?
2. Whether the plaintiff got any right over plaint item No.3?
3. Whether the plaintiff is entitled to get a decree for mandatory injunction as prayed for?
4. Whether the plaintiff is entitled to get a decree for permanent prohibitory injunction as prayed for?
5. What is the order as to costs?

6. The defendants in O.S. No.333/2012 instituted O.S. No.366/2012 for permanent prohibitory and mandatory

injunction. The case of the plaintiff is that plaintiff schedule item No.1 property belongs to the plaintiff by virtue of sale deed No.1701/2001 of Karukachal SRO, and he is in exclusive possession and enjoyment of the said property. Plaintiff schedule item No.2 property belongs to him by virtue of the settlement deed No.576/2010, and he is in exclusive possession and enjoyment of the said property also. The plaintiff schedule item No.2 is lying on the southern side of item No.1. The properties of the defendants are situated on the south-east of item No.1 and the eastern side of item No.2. Plaintiff and defendants are neighbours. To the west of plaintiff schedule item No.1, Paruthummoodu - Kangazha PWD road lies. There is a road having a width of 12 feet and a length of 30 metres starting from the said PWD road, and the said road goes to the house of Sivan, Gopi Bhavan, through the western side of the iron gate installed by the plaintiff on the western side of the item No.1 property. The properties lying on either side of the said road at the place where it starts from the PWD road belong to the plaintiff. The said road lies through the plaintiff schedule item No.1 property, and it goes to the house of the plaintiff situated on the eastern side of item No.1. The plaintiff is using the said

road for vehicular access. The gate installed by the plaintiff in the said road is permanently locked, and he would open the said gate as and when required. A channel having a width of 1 mtr is lying on the southern side of the plaint schedule item No.1 and on the northern side of the plaint schedule item No.2. On the western side of the plaint schedule item No.1 property, the plaintiff constructed concrete pillars on the northern and southern sides of item No.1 property and erected an iron gate in 2001. On the southern side of the southern pillar of the gate, there lies a pathway having a width of 3 feet. The said way goes east through the southern portion of plaint schedule item No.1, then it crosses the water channel and goes south, and through the plaint schedule item No.2 property, it goes further to the properties of the defendants. The defendants are using the said pathway for ingress and egress to their properties. While so, the defendants conspired together to cut open a new pathway for ingress and egress to their properties and in pursuance to the said conspiracy, on 18.10.2012, taking advantage of the absence of plaintiff and his family members in station, the defendants constructed a retaining walls having a length of 3 feet each on either side of the water channel and

connected the two retaining walls by placing a concrete slab and a portion of an old concrete pillar. The plaintiff made a complaint before the Karukachal police station, but the 1<sup>st</sup> defendant instituted OS No.333/2012 before the Munsiff's Court, stating false allegations. As the 1<sup>st</sup> defendant instituted the above suit, the police did not initiate any proceedings against the defendants. The defendants obstructed the water channel constructed by the plaintiff for the flow of water coming from the plaintiff's property situated on the eastern side of plaint schedule item No.1. After instituting OS No.333/2012, the defendants are taking hasty steps to cut open a new pathway for vehicular access to their property. The defendants have constructed four concrete slabs with a length of 1 mtr and a width of 1 mtr to construct a bridge across the water channel on the southern side of plaint schedule item No.1 property. The defendants are also trying to demolish the pillars and gate constructed by the plaintiff on the western side of plaint schedule item No.1 property, thereby cutting open a new pathway through plaint schedule item No.1 property. In the circumstances, the plaintiff instituted the above suit for permanent prohibitory as well as mandatory injunction.

7. Defendants entered appearance and filed written statement contending as follows;

The plaintiffs, defendants and other persons residing at Karimala colony have been using public way having a 4 feet width for ingress and egress to their properties. The said way is 150 years old. While so, the plaintiff, the defendants and the nearby residents cut opened a new pathway with a length of 150 mtr starting from PWD road, and for the purpose of construction of the said pathway the plaintiff surrendered a portion of his property. The said public way is being used by the plaintiff, defendants and nearby residents. The plaintiff has installed a gate in the said pathway. The description of plaintiff schedule item No.1 is not correct. The public way starts from Paruthimoodu - Kangazha PWD road divides into two ways and one goes to Karimala colony and other goes to south-east area. The way which goes to the Karimala colony lies in north-south direction on the western side of plaintiff's property. The plaintiff constructed a private pathway having a length of 30 mtr to his house. Even though the plaintiff made an attempt to make the said way a private way by closing the gate, due to the resistance from the public, the plaintiff could not close the gate.

The attempt to convert the said pathway as his private way was defeated by the public. The averment in the plaint that the defendants are using plaint schedule item No.2 property as a way is not correct. The defendants have a private way through the eastern side of plaint schedule item No.2 property. The said way will not come within plaint schedule item No.2 property. There is a private way towards the property of the defendants and the said way starts from the public way leading to Karimala colony from PWD road and there is concrete slab bridge across the water channel, and the defendants travel to the public way through the bridge constructed by them across the water channel. The plaintiff instituted a suit before the Munsiff's Court, Changanacherry in the name of one Sivan in order to obstruct the pathway being used by the defendants and the said suit was dismissed. Subsequently, the plaintiff tried to purchase the property belonging to the 1<sup>st</sup> defendant, however, the 1<sup>st</sup> defendant was not willing to sell her property. Hence, the plaintiff removed the stones on which the slab across the water channel had been fixed, and thereby obstructed the way; 1<sup>st</sup> defendant refixed the stones by plastering the same with cement. Even though the defendants made complaint at

Karukachal police station against plaintiff, no proceedings were initiated against him due to his influence. While so, on 18.10.2012, the plaintiff made an attempt to obstruct the way by unloading rocks in the way portion belongs to the plaintiff. The defendants instituted O.S. No.333/2012, as the plaintiff made an attempt to obstruct the pathway and the said suit is pending. The defendants never constructed bridge connecting the properties of the plaintiff, but the bridge is in the way belongs to the defendants. The said bridge was in existence for many years. The defendants have not obstructed the water channel constructed by the plaintiff either on 18.10.2012 or on any other dates. There is a bridge across plaint schedule item No.1 property and the said way has a width of 4 feet. Plaint schedule item No.1 property is a vehicular access and there is no need to cut open a new pathway through that area.

8. Defendants raised counter claim in the above suit contending as follows;

The counter claim schedule 1 is a public way having a width of 10 feet and a length of 200 mtr; the said way starts from Paruthimmoodu - Kangazha PWD road and it goes to the house of the counter claim defendant and then it turns to north

through the western side of the property of counter claim defendants and it reaches at Karimala colony. The counter claimants, counter claim defendants and the nearby residents and the persons residing at the colony are using the said way. Counter claim schedule item No.2 property belongs to the counter claim defendant as per sale deed No.1701/2001 of Karukachal SRO. The counter claim schedule item No.1 way was constructed by using the 4 feet width pathway, reclaimed portion of channel and the portion of land surrendered by the counter claim defendant. While so, the counter claim defendant erected two pillars in the said road at a distance of 50 mtr away from the western PWD road and erected item No.3 gate there. Even though the people in the locality made a complaint to remove the said gate, no action was taken due to the influence of the counter claim defendant. Item No.3 gate was constructed by including the pathway of the public and even though the counter claim defendant was required to remove the said gate, he was not ready to remove the same. The counter claim defendant is trying to obstruct the pathway being used by the counter claim plaintiffs and other people in the locality. The counter claim defendant told the counter claimants that the

plaint schedule item No.1 way is a private way and he has erected the gate in the property purchased by him as per sale deed No.1701/2001, and hence he cannot remove the gate from there. The boundary demarcation between the property surrendered by the counter claim defendant and the already existed way were destroyed and hence the said portion is lying contiguously. Therefore, the property belongs to the counterclaim defendant is to be measured out, otherwise, the way of the counter claimants will be obstructed. While measuring out the property of the counter claim defendant, the gate erected by the plaintiff obstructing the item No.1 way is to be removed and item No.1 way shall be reinstated to its original position. In the circumstances, the defendants raised counter claim for measuring out the counter claim schedule item No.2 property and for mandatory as well as prohibitory injunction.

9. Counterclaim defendant filed written statement to the counterclaim, contending as follows;

The counterclaim schedule item No.1 way is not a public way. He constructed a house in the share allotted to him out of his ancestral property in the year 1979, and he has been residing in the said house. At the time when the house was

constructed, there was a way with a width of 2 feet from the Kangazha - Paruthummoodu road for ingress and egress to his property. At the time of construction of his house, the building materials were brought to his property through the said way. As it was difficult to travel through the said narrow way, he purchased the property of one Mathew, which lies at the starting point of the said way from Kangazha - Paruthimmoodu road. Thereafter, the property on the eastern side of the property purchased by the counterclaim defendant was purchased by Gopivilasam Sivan in 2000 from the said Mathew. The counterclaim defendant, along with the said Sivan, constructed a way having 10 feet width and a length of 50 mtr through the said properties. The said way extended up to the western boundary of the property of Thundathil Mathew, which lies on the eastern side of the property purchased by Gopivilasam Sivan. Accordingly, the counterclaim defendant, along with Gopivilasam Sivan, constructed a cartable road having a length of 50 mtr. The way that existed before the construction of the way, having a width of 10 feet, has been used by the counter claimants also, for ingress and egress to their property. There exists no colony in the name of Karimala

and there existed no way at any point of time leading towards Karimala colony from the Kangazha - Paruthummoodu road. After the construction of the present way, the counterclaim defendant installed pillars on the western side of the said way and erected gate. The counterclaim defendant would lock the gate permanently. While erecting the gate, the way on the southern side of the southern pillar of the gate was retained. By erecting the gate, the right of way of the counterclaimants was not obstructed, and nobody except the counter claimants has complained of the construction of the gate by the counterclaim defendant. There is no cartable way towards the property of the counter claimants, and the counterclaim defendants never obstructed the pathway used by the counter claimants. The counter claimants are trying to make a cartable road by placing slab across the channel lying through the property of the counterclaim defendant.

10. The counterclaim defendants filed additional written statement to the counterclaim, contending that the 1<sup>st</sup> counter claim defendant had instituted O.S.No.224/2009 against the 1<sup>st</sup> counter claimant and her daughter, Leelamma Thomas. The daughter of the 1<sup>st</sup> counter claimant had instituted O.S.

No.355/2009 against the counterclaim defendants; after trial, O.S.No.224/2009 was dismissed, and O.S. No.355/2009 was decreed. The 1<sup>st</sup> counter claim defendant preferred A.S.134/2011 and A.S 135/2011 before the District Court, Kottayam, challenged the decrees in the above suits. As per the common judgment in the above appeals, dated 07.06.2014, the decree in O.S.355/2009 was modified, and the boundary between the property belonging to the 1<sup>st</sup> counter claim defendant as per the sale deed No.1701/2001 and the property of the daughter of the counter claimant was fixed through the ABCD line as per the commissioner's report and plan, and the daughter of the plaintiff was permitted to construct boundary wall through the said line. The counterclaim was raised, suppressing the above facts.

11. Based on the above pleadings, the following issues were framed in O.S. No.366/2012:-

1. Is the counterclaim hit by res judicata?
2. Has the plaintiff got possession over the entire plaint item No.1?
3. Is there any pathway in existence through plaint item No.1 as alleged by the defendants?
4. Is the plaintiff entitled to get a decree for permanent prohibitory injunction as prayed for?

5. Is the plaintiff entitled to get a decree for a mandatory injunction as prayed for?
6. Is there a public way in existence as counterclaim item No.1?
7. Are the counterclaim plaintiffs entitled to get a decree for fixation of boundary as prayed for?
8. If so, which are the boundary lines of counterclaim item No.2?
9. Are the counterclaim plaintiffs entitled to get a decree for a mandatory injunction as prayed for?
10. Are the counterclaim plaintiffs entitled to get a decree for permanent prohibitory injunction as prayed for?
11. Is the plaintiff entitled to get a decree for a mandatory injunction as prayed for?
12. What is the order as to costs?

12. O.S. No.333/12 tried jointly with O.S. No.366/12, and the evidence was adduced in O.S. No.366/12. The evidence of the plaintiff in O.S. No.366/2012 consists of the oral evidence of PW1 to PW3 and Ext.A1 to A6. The evidence of the plaintiff in O.S. No.333/2012 consists of the oral evidence of DW1 to DW4 and the documentary evidence marked as B1 to B3. Commissioners' reports, rough sketches and plan were marked as Ext.C1, C1(a), C2, C2(a), C3 and C3(a). After the trial, the learned Munsiff dismissed both the suits and counterclaim in OS.366/2012 as per the common judgment and decree dated 30.11.2019. Aggrieved by the decree and judgment in O.S.

No.333/12, the plaintiff preferred A.S. No.105/2020 and aggrieved by the decree and judgment in the counterclaim in O.S.366/12, the counter claimants have preferred A.S. No.102/2020.

13. Heard both sides and perused records. As both the appeals arise out of the common judgment, both the appeals were heard together.

14. The following points arise for determination in this appeal:-

1. Are the plaintiffs in O.S. 333/2012 entitled to a permanent prohibitory injunction as prayed for?
2. Are the plaintiffs in O.S. 333/2012 entitled to a mandatory injunction as prayed for?
3. Does the decree and judgment of the trial court in the suit in O.S. 333/2012 warrant any interference of this court?
4. Are the counterclaimants in the counterclaim in O.S. 366/2012 entitled to a permanent prohibitory injunction as prayed for?
5. Are the counterclaimants in the counterclaim in O.S. 366/2012 entitled to a mandatory injunction as prayed for?

6. Does the decree and judgment of the trial court in the counterclaim in O.S. 366/2012 warrant any interference of this court?
7. Reliefs and costs?

15. **Points Nos. 1 to 3**:- For the sake of convenience, brevity, and to avoid repetition, these three points are considered together. O.S.No.333/12 was instituted for permanent prohibitory injunction restraining the defendants from causing any obstructions to the right of way of the plaintiff through the plaint schedule item No.3 way and for mandatory injunction directing the defendants to reinstate the said way after removing item No.4 gate and its northern pillar installed by the defendants in the said way. According to the plaintiff, plaint schedule item No. 1 property originally belonged to her and her husband, and after the death of her husband, she is in the exclusive possession and enjoyment of the said property, and she is residing at the house situated in the said property. The said property is situated to the south of the plaint schedule item No. 3 way, which, as per the description in the plaint, is a way having a width of 10 meters and a length of 150 meters, and it starts from Kangazha - Paruthimoodu PWD road and

extends to the Karimala Colony. The further case of the plaintiff is that the plaint schedule item No.2 way, having a width of 4 feet and a length of 30 meters, connects plaint schedule item No 1 property and item No.3 way. According to the plaintiff, item No.3 way has been in existence for the last 150 years, and originally it had a width of 4 feet, and the said way was being used by the plaintiff, defendants and the residents in the Colony for travelling to the road; later, the said way was reconstructed by widening it by annexing the land lying adjacent to the channel lying on the southern side of the way and a portion of the channel and for the purpose of widening the said way, the defendants have also surrendered some portion of their property. According to the plaintiff, the way so reconstructed is being used by the public, the plaintiff and the defendants for ingress and egress to their properties from the western PWD road.

16. The case of the defendants is that there exists a way having a width of 4 meters and a length of 105 meters, which starts from the western PWD road and terminates at their property on the east, and a portion of the said way having a length of 55 meters belongs to 1<sup>st</sup> defendant as per the sale

deed No.1701/2001. Further case of the defendants is that after purchasing the said portion of land, the defendants installed a gate after erecting pillars on the southern and northern sides of the way in the year 2001. According to the defendants, item No 3 way is being used by the defendants and Gopivilasam Shivan; the plaintiff never used item No.3 way, and she has no right of way over item No.3. According to the defendants, there is no colony as alleged by the plaintiff. The further case of the defendants is that there exists a way on the southern side of the gate, and the plaintiff schedule item No.2 way is being used to access item No.1 property from the PWD road through the southern side of the said gate.

17. On the date of the institution of this suit, Adv.PJ Jyothy was appointed as commissioner. She visited the plaintiff schedule property on 29.10.2012 and submitted a report and rough sketch, which were marked as Ext.C2 and C2(a). When O.S. No.366/2012 was filed, Adv. Nikhil S Kumar was appointed as commissioner. He visited the plaintiff schedule properties on 17.11.2012, and submitted report and rough sketch, which were marked as Ext.C1 and C1(a) respectively. After the joint trial of the above cases was ordered, Adv. Kurian Jose was

appointed to measure out the plaint schedule properties with the assistance of a surveyor, and accordingly, he measured out the plaint schedule properties with the assistance of a surveyor and submitted the report and plan, which were marked as Ext. C3 and C3(a).

18. Ext.C1 report would show that there is a gate with two concrete pillars in the plaint schedule item No 3 way, and the said pillars and gate have an age of about 8 years. The said report would show further that the said gate was seen locked. It is further reported by the commissioner, as per Ext.C1 report, that the plaint schedule item No. 3 way is a private way which is being used by the defendants herein for ingress and egress to their property. Ext.C1 report and C1(a) sketch would show further that plaint schedule item No.3 way terminates at the property of the defendants. As per Ext.C2 report and C2(a) sketch, plaint schedule item No. 3 way terminates at the property of the defendants, but before it terminates at the property of the defendants, two ways start from it, one towards the north to the Karimala Colony and the other towards the south to the Karimala area. The commissioner who submitted Ext.C3 report and C3(a) plan was examined as DW3, and the

Surveyor who prepared Ext.C3(a) plan was examined as DW4.

19. The specific case of the defendants is that a portion of plaintiff schedule item No.3 way, having a length of 55 meters, was purchased by him as per sale deed No. 1701/ 2001, and after purchasing the said way portion, he installed a gate. Ext.A2 is the sale deed No.1701/2001. As per the said sale deed, the defendant purchased a way portion admeasuring 1.21 ares. In Ext.C3(a) plan, the said property is shown by using rose and green colours; the portion shown in rose colour is in the possession of the defendant and the portion shown in green colour is part of item No.3 way. In Ext.C3(a) plan, the plaintiff schedule item No 2 way is shown. As per the said plan, the said way starts from the plaintiff schedule item No.1 and it reaches item No.3. Item No.2 way passes across a channel, and the property of the defendant, which is shown in the plan in rose colour, and it ends at item No.3 way. According to the defendants, the plaintiff schedule item No.2 way is being used for travelling to item No.1 property from the PWD road through the southern side of the said gate. Ext.C1 report and C1(a) plan would show that there exists a way through the southern side of the gate and its southern pillar.

20. The plaintiff contended that, for vehicular access to her property, she and her family have been using item No. 3 way for years. According to the plaintiff, as the plaintiff refused to sell the plaint schedule item No. 1 Property to the 1<sup>st</sup> defendant, he caused difficulties to the plaintiff in many ways and he installed a gate across item No.3 way; even after the installation of the gate, the plaintiff travelled through it when it remained open. After this case was instituted, on 21.10.2012, the plaintiff locked the gate and thereby obstructed the right of way of the plaintiff through item No.3 way. Per contra, the case of the defendant is that after the purchase of 1.21 ares of property as per the sale deed No. 1701/2001, in the year 2001 itself, he constructed a gate across the said way.

21. PW2 and PW3 are the witnesses examined from the side of the defendants in the above suit. PW2 and PW3 testified before the court that the defendant purchased land for the way in 2001, and he installed a gate in the same year. During cross-examination, PW3 testified that it had been 10-12 years after the installation of the gate. It is pertinent to note that DW1, the plaintiff, admitted during cross-examination that the said gate was installed in 2001. She testified further that when the gate

was installed in 2001, she made a complaint to the Collector. She testified further during cross-examination that there is a pathway through the southern side of the gate. According to DW1, the gate was locked after the institution of the suit.

22. So, admittedly, the gate was installed in 2001, and according to the plaintiff, when the gate was installed, she made a complaint to the Collector. But there is no material before the court to show that she raised any complaint regarding the installation of the gate. Admittedly, the plaintiff's daughter instituted O.S. No.355/09 against the defendants and the 1<sup>st</sup> defendant instituted O.S. No.224/2009 against the plaintiff and her daughter, but the plaintiff has no case that she or her daughter had raised any contention regarding the installation of gate in the above suits. It is pertinent to note that the plaintiff admitted during cross-examination that there exists a pathway through the southern side of the gate. When it was suggested to the plaintiff during cross-examination that, as of now, there is no obstruction in going to Kangazha - Paruthimoodu road, she denied it, but she testified further that there is no obstruction at present and obstruction may occur in future. It is significant to note that as per Ext.C1 report and

C1(a) plan, there exists a way through the southern side of the gate and its southern pillar, and the said way has a width of 2 feet. Ext.C1 and C1(a) were prepared by the Commissioner appointed in O.S. No.366/2012 after visiting the properties on 17.11.2012. Even though, DW2, a witness examined from the side of the plaintiff, filed affidavit in lieu of examination in chief stating that he and the nearby residents are using the cartable way starting from the Paruthimood - Kangazha PWD road and leading towards Karimala Colony, he testified during cross-examination that he would go to his house through the way purchased by one Sivan.

23. The evidence on record would clearly show that item No.3 way starts from the western road and it terminates at the property of the defendants. There is no material before the court to show that there is Karimala Colony to the west of the said way, and the said way goes to the colony. It is evident that the said way starts from the western road and it terminates at the property of the defendants. In Ext, C3(a) plan, plaint schedule item No.2 way is shown, and as per the said plan, the said way reaches at the way portion purchased by the defendant as per Ext. A2 sale deed. The existence of a way

through the southern side of the gate and its southern pillar clearly indicates that the plaintiff is using the said way to access the western PWD road. Had she used item No.3 way through the gate portion, she would have sought for a relief against the installation of the gate soon after its installation or in the suit filed in 2009. Considering the facts and circumstances of the case and other materials on record, it cannot be said that the plaintiff has been using the item No.3 way through the gate portion for ingress and egress to the western PWD road from her property. However, from the materials on record what is to be inferred that she is using item No.2 way and the way through the southern side of the gate for ingress and egress to the western PWD road. In the circumstances, the plaintiff is not entitled to prohibitory as well as mandatory injunction as prayed for. This court find no reason to interfere in the judgment and decree in the above suit and the appeal is liable to be dismissed. The above points are answered accordingly.

24. **Point No.4 to 6**:-The plaintiff in O.S. No.366/2012, instituted the above suit seeking permanent prohibitory injunction restraining the defendants from constructing a

bridge across the channel on the southern side of item No.1 property, from demolishing the gate or its pillars installed in item No.1 property, and from cutting open a new cartable way through item No. 1 and 2 properties. The plaintiff also sought a mandatory injunction for a direction to remove the retaining walls constructed on the northern and southern boundary of the channel, the concrete slab placed over the said retaining walls and to reinstate the channel to its original position. In this suit, the plaintiff schedule item No. 1 is the property covered by Ext.A2 sale deed and item No.2 is the property covered by Ext. A4 settlement deed.

25. The plaintiff in O.S. No.333/2012 is the first defendant in this case, and her children are the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The defendants raised a counter claim seeking to measure the counterclaim item No.2 property, a mandatory injunction for a direction to the counterclaim defendant to remove the gate and concrete pillar constructed outside the counterclaim item No.2 property and for prohibitory injunction restraining the counterclaim defendant from causing any obstruction to the counterclaimants in using counterclaim item No.1 way. The

counter claim item No.2 is the property purchased by the plaintiff as per Ext.A2 sale deed. Counter claim item No.1 is the way starting from the western PWD road and going to the house of the counter claim defendants. Counter claim item No 3 is the gate and its pillar.

26. In Ext.C3(a) plan, the counterclaim item No.2 is shown by using rose and green colours. Ext.C3(a) plan would show further that the counter claim item No.2 is lying as a way contiguous with the way lying to the north of it. As already discussed, the counterclaimants have failed to establish their right of way through the gate in the counterclaim item No.1 way. In the circumstances, they are not entitled to a prohibitory as well as mandatory injunction as prayed for. Accordingly, the counterclaim is liable to be dismissed and the trial court correctly dismissed the counter claim. I don't find any reason to interfere with the findings of the learned Munsiff in this regard and the above points are answered accordingly.

27. **Point No.7:-** For the foregoing discussion, this court is of the considered opinion that there is absolutely no reason to interfere with the findings of the trial court in the above regard in the decrees under challenge. Needless to say, the decrees

and judgments in O.S. Nos.333/2012 and in the counterclaim in 366/2012 rendered by the trial Court are not liable to be reversed, altered, or modified. Considering the facts and circumstances of the case, I feel it proper to direct the parties to suffer their respective costs. The point is answered accordingly.

As a result, the above appeals are hereby dismissed. The decrees and judgments rendered by the trial court in in O.S. Nos.333/2012 and in the counterclaim in 366/2012 dated 30.11.2019 stand confirmed. There will be no order as to costs.

*Dictated to the Confidential Assistant, transcribed by her, revised and corrected by me and pronounced in Open Court on this, the 10<sup>th</sup> day of April, 2026.*

Sd/-  
Subash. S  
Addl. District Judge-II (Spl.),  
Kottayam.

APPENDIX: NIL

Id/-  
Addl. District Judge-II (Spl.),  
Kottayam.

//True Copy//

Copied by:  
Compared by:

Sd/-  
Subash. S  
Addl. District Judge-II (Spl.),  
Kottayam.