

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

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

Friday, the 10th day of April 2026.
20th day of Chaithra, 1948.

Appeal Suit No.76/2021

(O.S. No.7/2019 of Munsiff Court, Ettumanoor)

Appellant/Defendant:-

Baby.V.C, Aged 50 years, S/o. Chacko,
Veluthedathuparambil House,
Kaippuzha.P.O, Kaippuzha Village,
Kottayam Taluk, Kottayam District.

By Adv. C.J.Jose.

Respondents/Plaintiff:-

1. Kunjumol, Aged about 47 years, W/o. Late Kunjumon,
Veluthedathuparambil House,
Kaippuzha Village, Kottayam Taluk,
Kottayam District.
2. Thomas Joseph, Aged about 62 years,
S/o. Joseph, Pouwathil House, Kaippuzha P.O,
Kaippuzha Village, Kottayam Taluk,
Kottayam District.

R1 and R2 by Adv. Deepthi.G.Nair and Adv. K. Vinod Kumar.

This Appeal Suit having been finally heard on 16.03.2026
and the court on 10.04.2026 delivered the following :

J U D G M E N T

Plaintiff in O.S. No.7/2019 on the file of the Munsiff's Court, Ettumanoor, is the appellant herein. The parties are referred to in their original status in the trial court for convenience.

2. The brief facts leading to this appeal are as follows:

The above suit was instituted for permanent prohibitory as well as mandatory injunction. The plaintiff's case is that the plaint schedule item No.1 property belongs to the plaintiff by virtue of title deed No.2646/1/2016 of Ettumanoor Sub Registrar Office. Plaint schedule item No.2 is a pathway having 6 feet width and an approximate length of more than 100 mtr. It starts from the Sasthamkal - Holy family church panchayath road and it leads to plaint schedule item No.1 and then turn towards east. The said way lies in south-north direction. On the western side of the said pathway, property of the 1st defendant lies and the property of the 2nd defendant lies on the eastern side. The plaint schedule item No.2 way is the only way for ingress and egress to the properties of inhabitants of the locality. They have been using the said pathway for the last more than 50 years. The plaintiff used to ply his autorickshaw

along the plaint item No.2 property till October 2017. On 10.10.2017, the defendants reconstructed their boundary walls by reducing the width of item No.2 way. The 1st defendant reconstructed the wall in two layers and the 2nd defendant reconstructed the wall in three layers and hence the boundary walls bulged towards the pathway. It reduced the width of the bottom of the said way. The said boundary walls are in a sloped condition which prevents the plaintiff from driving his autorickshaw through the said way. On 11.10.2017, the plaintiff submitted a petition against the defendants before the village officer, Kaippuzha with respect to the above issue. The Village officer without inspecting the disputed area referred the petition to the Revenue Divisional Office, Kottayam. Since RDO also had not taken any action, the plaintiff preferred a complaint before the District Collector, Kottayam. On 19.05.2018, the District Collector forwarded the petition to RDO and directed him to take immediate action. However, without taking any action, RDO kept the file with him for about six months. On 02.01.2019, RDO closed the file and instructed the plaintiff to approach the civil court. Now, the defendants are making hasty preparations to demolish the boundary walls

for constructing another wall. The plaintiff reasonably apprehends that defendant would cut short the width of item No.2 way. In the circumstances, the plaintiff instituted the above suit for prohibitory injunction restraining the defendants from demolishing the compound walls on either sides of item No.2 way and from constructing new walls by reducing the width of item No.2 property, and for mandatory injunction directing the defendants to reset the plaint schedule item No.2 way by levelling the boundary walls of the defendants and to reinstate the said way in its original position.

3. Defendants entered appearance and filed written statement.

4. The 1st defendant filed written statement contending as follows:-

The above suit is not maintainable as the same was not properly verified and signed by the plaintiff as provided in CPC. The description of plaint schedule properties as shown in the plaint is false. The plaintiff is not the owner of plaint schedule item No.1. For a proper and effective decree to be passed, the properties of the defendants are to be scheduled, but the properties of the defendants are not scheduled in the plaint.

The property which lies on the western side of the way belongs to 1st defendant and several other persons. The institution of the above suit without impleading all the co-owners in the party array is bad for non-joinder of necessary parties. There is no provision in CPC or in any other law for filing a suit claiming resetting and levelling of the boundary wall or to make a boundary wall to its previous condition. The plaintiff has not produced any document to prove the alleged previous condition of the boundary wall. The allegation that item No.2 way has a width of 6 feet and length of 100 feet is false. The pathway in dispute has a width of less than 5 feet and same is being used by several people and the institution of the above suit without impleading all users in the party array also bad for non-joinder of necessary parties. The western one-half portion of the existing pathway belongs to the 1st defendant and several other persons and the eastern one-half portion of the pathway belongs to the 2nd defendant. The plaintiff is not having any right or ownership over the said way and he is using it with the permission of the defendants. The defendants have every right to withdraw the permission so granted. The plaintiff has no right to file a suit in his individual capacity with respect to a

public way. When the ownership of the land is vested with other persons it is the burden of the plaintiff to plead and prove alleged right over the same and without which he is not entitled to any of the reliefs. Item No.2 pathway is so narrow that only two-wheelers can be driven through it. There are different types of autorickshaw manufactured by different companies and the length and width of each brand varies. The allegation that the defendants reconstructed the boundary wall on 10.10.2017 by reducing the width of way is absolutely false. The plaintiff is in the habit of filing complaints one after the other against defendants without any bonafides before the forums available to him. The plaintiff requested the defendants to surrender the land for widening the disputed way to a width of 12 feet, but the 1st defendant has not agreed to the same. Aggrieved by that, he demolished a portion of the boundary wall of the property jointly owned by the 1st defendant and the same was reconstructed by the co-owners to protect it without reducing the width of the disputed way. The plaintiff has not pleaded his right over the plaintiff schedule item No.2 way. The 1st defendant as well as the co-owners of the property have the right to demolish the old boundary wall and to construct a new

one at any time. The relief claimed in the plaint are confusing, contradictory and against law. The plaintiff has approached the court with unclean hands. The property over which the 1st defendant was having co-ownership right is lying at a level higher than the disputed way. The boundary destroyed by the plaintiff has to be reconstructed to avoid falling down of the remaining portion of the boundary wall as well as to avoid land slide. The co-owners of land reconstructed the same in the same position and alignment as it stood prior to the filing of the suit. No prohibitory injunction can be passed against the 1st defendant restraining her from demolishing the boundary wall of the property over which she is having co-ownership right.

5. The 2nd defendant filed written statement contending as follows;

Plaint schedule item No.2 way has a width of 5 feet and a length of 180 feet. The averment in the plaint that the said way has a width of 6 feet and length of 100 mtr is false. The 2nd defendant constructed a compound wall on the western boundary of his property in 1989. At that time, as required by the father of the plaintiff, he surrendered a portion of his property having a width of 2.5 feet for the said pathway and

thereafter, he constructed the boundary wall. The said boundary wall has an age of 30 years. The 1st defendant also surrendered a portion of his land for the way and now, the said way has a width of 5 feet. The averment in the plaint that the said way has an age of 50 years is not correct. The said way had only 2 feet width. The plaintiff never driven autorickshaw through the said way. There is a level difference of 6 feet between his property and 2nd schedule way and hence the compound wall was constructed with a height of 7 feet. He never made any renovation work in the compound wall. He has no intention to reconstruct the compound wall or to reduce the width of plaint schedule item No.2 way. There is no cause of action for the suit.

6. Based on the above pleadings, the following issues were framed:-

1. Is the suit bad for non-joinder of necessary parties?
 2. Is the plaintiff entitled to get a decree of permanent prohibitory injunction as prayed for?
 3. Is the plaintiff entitled to get a decree of mandatory injunction against the defendants as prayed for?
 4. What is the order as to costs?
7. On the side of the plaintiff, PW1 to PW3 were examined,

and Exts.A1 and A2 were marked. The commission reports and rough sketches were marked as Exts.C1, C1(a) and C2. On the side of the defendants, DW1 and DW2 were examined. After trial, the learned Munsiff dismissed the suit as per the judgment and decree dated 30.07.2021. Aggrieved by the said decree and judgment, the plaintiff preferred this appeal.

8. Heard and perused records.

9. On consideration of the rival contentions and submissions made by both the learned counsels, the following points arise for determination in this appeal:-

1. Is the suit barred for non-joinder of necessary parties?
2. Is the plaintiff entitled to a permanent prohibitory injunction as prayed for?
3. Is the plaintiff entitled to a mandatory injunction as prayed for?
4. Whether the decree and judgment of the trial court in the suit in O.S. No.7/2019 warrant any interference by this court?
5. Reliefs and costs.

10. **Point Nos. 1 to 4**:- For the sake of convenience, brevity, and to avoid repetition, these four points are considered together. The case of the plaintiff is that plaintiff

schedule item No.1 property belongs to him as per the title deed No.2647/2016 of Ettumanoor SRO and the plaint schedule item No.2 is a pathway having a width of 6 feet and an approximate length of more than 100 mtr. The said pathway starts from the panchayath road named Shasthamkal - Holy Family Church road and it leads to plaint schedule item No.1 and then it turns towards east. According to the plaintiff, the plaintiff and other inhabitants in the locality have been using the said way for the last 50 years for ingress and egress to their properties from the panchayath road the said way is the only way for ingress and egress to the panchayath road, from his property and the properties of nearby residents. The plaintiff contended further that on 10.10.2017, the defendants reconstructed their boundary walls by reducing the width of item No.2 way. Further case of plaintiff is that the defendants are making hasty preparations to demolish the present boundary wall for constructing another and the plaintiff reasonably apprehends that the defendants will cut short the width of item No.2 way.

11. Admittedly, the property of 1st defendant lies on the western side of item No.2 way and the property of 2nd

defendant lies on the eastern side of the said way. The 1st defendant contended that the western one-half portion of the existing pathway belongs to the 1st defendant and several other persons and eastern one-half portion belongs to 2nd defendant. According to the 1st defendant, the plaintiff is using the said pathway with the permission of defendants and the defendants have every right to withdraw the permission at any time. The 1st defendant contended further that the property that lies on the western side of the said pathway belongs to the 1st defendant and other persons and the above suit was instituted without impleading all the co-owners, and hence, the suit is bad for non-joinder of necessary parties. The 2nd defendant contended that item No.2 way is having only 5 feet width and originally the said way had a width of 2 feet; when the 2nd defendant constructed compound wall in 1989, as per the request of the father of the plaintiff, he surrendered a portion of his property having a width of 2 ½ feet for the way and he constructed compound wall excluding the portion so surrendered for the way. According to the 1st defendant, the said compound wall has an age of 30 years, and the plaintiff never took the autorickshaw through the said pathway.

12. As the 1st defendant raised a contention that the suit is bad for non - joinder of necessary parties, the first aspect to be considered is whether the suit is bad for non - joinder of necessary parties. The plaintiff instituted the above suit for prohibitory injunction restraining the defendants from demolishing the compound walls on either sides of item No.2 way and from constructing new walls by reducing the width of item No.2 property, and for mandatory injunction directing the defendants to reset the plaint schedule item No.2 way by levelling the boundary walls of the defendants and to restore the said way to its original position. According to the plaintiff, the property of the 1st defendant lies on the western side of item No.2 way and the property of the 2nd defendant lies on the eastern side. The 1st defendant contended that the property on the western side of item No.2 way as well as the western ½ portion of item No. 2 way belong to him and other co-owners, and hence the other co-owners are necessary parties in the suit. A necessary party is one without whom, no effective decree can be passed. In this context, it is useful to refer to the judgment of the Hon'ble Apex Court in *Kanaklata Das And Others v. Naba Kumar Das And Others* (2018(2) SCC 352). In the said case,

the Hon'ble Apex Court observed as follows;

“The plaintiff, being a dominus litis, cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish, unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit.”

13. In the present case, the 1st defendant has admitted her ownership and possession over the property on the western side of item No.2 way. Even though the 1st defendant contended that some other persons also have a right over the property on the western side of the pathway, she has not specifically pleaded the details of such persons, the nature of their alleged rights or the manner in which they derived title. It is pertinent to note that the above suit was instituted for prohibitory injunction restraining the defendants from constructing boundary wall by reducing the width of the pathway and for mandatory injunction directing the defendants to restore the way to its original position. There is no material

before the court to show that the defendants or anybody else have title over item No.2 way. In the circumstances, the plaintiff cannot be compelled to implead other persons as parties to the suit. Therefore, it cannot be said that the suit is bad for the non-joinder of necessary parties.

14. The next aspect to be considered is whether the plaintiff is entitled to a decree for prohibitory as well as mandatory injunction as prayed for. When the suit was instituted, Adv. Smitha L.G. was appointed as commissioner. She visited the property on 29.01.2018 and submitted Ext.C1 report and Ext.C1(a) rough sketch. She again visited the plaintiff schedule property on 15.10.2020 and submitted Ext.C2 report. It is reported by the commissioner that the plaintiff schedule item No.2 way is a public way and it starts from Holy Family Church panchayath road and it terminates at the plaintiff schedule item No.1 property. According to the commissioner, the said way is being used by the plaintiff and other residents in the locality. It is reported further by the commissioner that the length of the said way up to plaintiff schedule item No.1 property is 183 feet, and the said way has varying width. As per Ext.C1 report, the said way has a width of 5 feet at its starting point, after 10

meter the width is 4 feet 11 inches, after 20 meters, the width is 5 feet, after 30 meters, the width is 5 feet, after 40 meters, the width, is 5 feet 1 inch, after 50 meters the width is 5 feet 2 inches and 6 feet width where it terminates at the plaintiff schedule item No.1 property. As per Ext.C1 report, the compound walls were seen without plastering. As per Ext.C2 report, the compound walls were seen plastered.

15. It is pertinent to note that, as per the case of the plaintiff, the plaintiff schedule item No.2 way has a width of 6 feet, and according to the plaintiff, on 10.10.2017, the defendants reconstructed their boundary walls by reducing the width of item No.2 way. The further case of the plaintiff is that the defendants are taking hasty steps to demolish the existing boundary walls and to construct new boundary walls by reducing the width of item No.2 way. Even though, as per the averment in the plaint, the width of the said way is 6 feet, as per the description in the plaintiff schedule item No.2, the width of the way is 5 feet. Plaintiff has not produced the title deed of the plaintiff schedule item No.1 property. According to him, the said title deed was mortgaged with Service Co-operative Bank and availed a loan. During cross-examination, he has

categorically admitted that the width of item No.2 way is stated in the said title deed, and as per the said title deed, the width of the said way is 5 feet. He testified further during cross-examination that there is no document to show that item No.2 way has a width of 6 feet. During cross-examination, he testified further that the boundary wall on the eastern boundary of the plaint schedule item No.2 was constructed in the year 1986 - 1988. He testified further during cross-examination that the said compound wall was constructed when he was aged 15 years, and it has been 34 years since the construction of the said compound wall. When the plaintiff was asked during cross examination that whether the entire compound wall was reconstructed in the meantime, he testified that only the damaged portion of the compound wall was reconstructed many times. As per Ext.C1 report, the width of the said way varies, with an average width of 5 feet. The said way has a width of 6 feet at the point where the way terminates at the plaint schedule item No.1 property and 4 feet 11 inches at a distance of 10 meters from the road. The title deed of the plaintiff is of the year 2016, and admittedly, as per the said title deed also, the way has a width of 5 feet. Considering the evidence of the

plaintiff and other materials on record, what is to be inferred that the plaint schedule item No.2 way has a width of about 5 feet and not 6 feet as alleged. Further, considering the evidence of PW1, it cannot be said that he has succeeded in establishing that the defendants reconstructed the boundary walls by reducing the width of the way.

16. Considering the facts and circumstances of the case and the materials on record, it is evident that the plaintiff has not approached the court with clean hands. Though the plaintiff contended that the plaint schedule item No.2 way has a width of 6 feet, the evidence on record would show that the said way has a width of about 5 feet. The plaintiff has also failed to establish the allegation that the defendants reconstructed the boundary walls by reducing the width of item No.2 way. Even though, as per Ext.C1 report, the commissioner reported some protrusion from the boundary walls to the way and obstruction in the way, Ext.C2 report does not disclose any such protrusion from the boundary wall or other obstructions in the said way. It is reported by the commissioner in Ext.C2 report that when she visited the plaint schedule properties on 29.01.2018, she noticed a granite piece protruding into item No.2 way from the

compound wall constructed on the western boundary of the said way, but when she visited the granite piece again, it was not there, and it was removed. It is further reported by the commissioner that during her first visit to the plaint schedule property, she noticed a bend on the boundary wall on the western side of the way, and now the boundary wall is seen levelled by plastering. In the circumstances, the plaintiff is not entitled to any of the reliefs sought in the plaint. Therefore, I don't find any reason to interfere with the findings of the learned Munsiff, and the above points are answered accordingly.

17. **Point No.5**:- 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 decree under challenge. Needless to say, the decree and judgment in O.S. No.7/2019 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 appeal is hereby dismissed. The decree and judgment rendered by the trial court in O.S. 7/2019 dated 30.07.2021 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 10th day of April, 2026.

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

APPENDIX:NIL

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

Copied by:
Compared by:

//True Copy//

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