

IN THE COURT OF THE MUNSIFF, ETTUMANOOR

Present:- Smt.Suja.K.M., B.Sc., LL.B., Munsiff

Thursday the 8th June 2017
18th Jyaishta 1939

O.S.No.176/2010

Plaintiff:- M.P.Gopakumar, aged 43 years,
S/o Purushothama Hegden, Krishna Theertham House,
Perumbaikkadu Village, Alumchuvadu Bhagom.
Now at Perumbaikkadu Village, Kottayam Taluk,
Kottayam District.

By Adv.K.Vinod Kumar

Defendants:- 1. Nandha Kumar, aged about 42 years,
S/o Radhakrishna Hegden, Thadappallil House,
Kizhakkumbhagom Kara, Ettumanoor Village,
Kottayam Taluk, Kottayam District.

2. Pushpa Shenoy, aged about 39 years,
W/o Vinod Kumar Hegden, Thadappallil House,
Kizhakkumbhagom Kara, Ettumanoor Village,
Kottayam Taluk, Kottayam District.

3. Gireesh Kumar, aged about 39 years,
S/o Radhakrishna Hegden, Thadappallil House,
Kizhakkumbhagom Kara, Ettumanoor Village,
Kottayam Taluk, Kottayam District.

4. M.C.Prakash, aged about 39 years,
S/o Lakshama Hegden, Thadappallil House,
Kizhakkumbhagom Kara, Ettumanoor Village,
Kottayam Taluk, Kottayam District.

5. Balakrishna Hegden, aged about 33 years.
S/o Radhakrishna Hegden, Thadappallil House,
Kizhakkumbhagom Kara, Ettumanoor Village,
Kottayam Taluk, Kottayam District.

D2 and D5 are exparte

D1, 3 and 4 by Adv.George.V.Thomas,

This suit coming up for hearing on 02.06.2017 and the court on 08.06.2017 delivered the following:-

JUDGMENT

The suit is for declaration, mandatory injunction, fixation of boundary and permanent prohibitory injunction.

2. The plaintiff's case in brief is as follows:- The plaint schedule item No.1 property belongs to the plaintiff by virtue of the sale deed No.219/2010 of the SRO, Ettumanoor. The property is in his exclusive possession and enjoyment. No other person has any right over this property. The plaintiff and the defendants are the members of Madappallil family. Joint family system was followed in the family. The plaint schedule item Nos.1 to 8 properties originally belonged to the Madappallil family. A sale deed was happened to be executed in the name of the 2nd defendant transferring the properties in her favour. Such a deed was executed for defeating the proceeding for recovering money from the family properties in respect of its financial liabilities. A panchayat road situates on the southern and the western sides of the plaint schedule properties. After discharging the family's financial liabilities, a decision was taken for constructing a way in 10 feet width through the plaint schedule properties starting from the southern panchayat road and ending on the western panchayat road for the common use of all the sharers and for apportioning the balance property on either side of the way among the

sharers. Since the sale deed executed in favour of the 2nd defendant was in force, a decision was taken to demarcate each shares and to execute sale deed in favour of each sharers. As per the decision, a way was constructed. The said way is the plaint schedule item No.2. The plot having extent of 12 cents situated on the south-western side of the plaint schedule item No.2 way was allotted in favour of the 1st defendant towards his share. The plot having extent of 18 cents situated on the immediate northern side of the said property was allotted in favour of the 2nd defendant towards her share. On the northern side of this property plot having extent of 18 cents situated on northern side of the plaint schedule item No.2 way. The said property was allotted in favour of the 3rd defendant towards his share. On the eastern side of this property plot having extent of 18 cents of land situates. This property was allotted in favour of the 4th defendant towards his share. On the southern side of this property plot having extent of 7.5 cents situates. This property was allotted in favour of Mr.Sreenivasa Hegdan who is none other than the brother of the plaintiff. On the southern side of this property another plot having extent of 7.5 cents situates. This was allotted in favour of the 5th defendant towards his share. On the immediate southern side of this property plot having extent of 7.5 cents lies. This was also allotted in favour of the 4th defendant. The 2nd defendant executed separate sale deeds in favour of each sharers. The plaint schedule item Nos.3, 4, 5 and 6 properties belong to the defendant Nos.1 to 4 respectively. The plaint schedule item No.7 property also belongs to the 4th defendant. The plaint schedule item No.8 property belongs to the 5th defendant. The plaint schedule item Nos.3 and 4 properties lie on the western side of the plaint schedule item No.2 way and the plaint schedule item No.5 situates on the northern side of the plaint

schedule item No.2 way. The plaintiff schedule item No.6 property situates on the north-eastern side of this way and the plaintiff schedule item Nos.1, 7 and 8 properties situate on the eastern side of the way. There is no other way except the plaintiff schedule item No.2 way for ingress to and egress from the plaintiff schedule item No.1 property. While so, the 1st defendant demanded the plaintiff to sell the plaintiff schedule item No.1 property in favour of the 1st defendant. The plaintiff refused to do so. The 1st defendant with the company of the defendant Nos.2 to 4 removed the boundary stones from the plaintiff schedule item No.1 property and installed a new gate on the southern side of the plaintiff schedule item No.2 way and an old gate on the western side of this way. They tried to obstruct the plaintiff from using the plaintiff schedule item No.2 way by locking the gates. The plaintiff schedule item No.1 property is now situated contiguously with other properties due to the acts of the defendants. So the plaintiff approached the Taluk office for fixing the boundary. On 04.06.2010 the officials reached the properties for surveying the properties. They could not do it due to the obstruction of the defendants. So the court has to fix the four boundaries of the plaintiff schedule item No.1 property. The plaintiff has right to use the plaintiff schedule item No.2 way. The plaintiff's right of easement over the plaintiff schedule item No.2 way was mentioned in his sale deed and its prior deed. Since the defendants, for obstructing the plaintiff from using the plaintiff schedule item No.2 way, installed gates on the southern and the western sides of the way, the plaintiff's right of easement over the way has to be declared and the defendants have to be directed to remove the gates from the southern and the western sides of the plaintiff schedule item No.2 way. If it is required the defendants can construct boundary wall around their each property and install gate for entering

the plaintiff schedule item No.2 way. They without doing it, installed gates across the way for the purpose of causing hardships to the plaintiff. As a permanent relief for the disputes between the parties, permanent structure has to be constructed on the boundary of the plaintiff schedule item No.1 property which may be fixed by the court. Otherwise it will lead multiplication of litigation. There is possibility for obstruction on the side of the defendants in constructing boundary wall. So they have to be restrained from making such obstruction. The defendants have no right to close or lock the gates situated across the plaintiff schedule item No.2 way. On 08.08.2010 the plaintiff while using the plaintiff schedule item No.2 way the defendant Nos.1 and 2 threatened the plaintiff and tried to close the gate and abused him. Hence the present suit was filed seeking decree declaring the plaintiff's joint right of easement over the plaintiff schedule item No.2 way, directing the defendants to remove the gates from the western and the southern ends of the plaintiff schedule item No.2 way, fixing the four boundaries of the plaintiff schedule item No.1 property and permanent prohibitory injunction restraining the defendants from obstructing the plaintiff from entering the plaintiff schedule item No.1 property, committing any waste therein, reducing the width of the plaintiff schedule item No.2 way, obstructing the plaintiff from enjoying the way, locking the gates on the southern and western ends of the plaintiff schedule item No.2 way or obstructing the plaintiff from constructing wall on the boundaries of the plaintiff schedule item No.1 property.

3. The defendant Nos.1 and 3 jointly filed written statement. Their contentions in brief are as follows:- It is not correct to say that the plaintiff schedule properties were transferred in the name of the 2nd defendant for the purpose of defeating the realization of debt of the Madappallil family. The 2nd defendant

purchased the properties after paying sale consideration. She obtained ownership, possession and enjoyment of the plaint schedule properties. A panchayat road passes through the southern side of the plaint schedule item No.3 and 7 properties and the western side of the plaint schedule item Nos.3, 4 and 5 properties. The plaint schedule item Nos.1, 6 and 8 properties do not have road frontage. It is not correct to say that the properties on both sides of the way were apportioned among the members of the family. No such decision was ever taken. There is no way as the plaint schedule item No.2 way. It is only an imagination of the plaintiff. The entire plaint schedule properties was a single holding. It belonged to the 2nd defendant. She sold certain extent of this property to different persons including the defendants executing separate sale deeds. She sold 7.29 ares of land in favour of the 4th defendant as per the sale deed No.3538/2001 of the SRO, Ettumanoor and 7.63 ares of property in favour of the 3rd defendant by virtue of the sale deed No.3539/2001 of the SRO, Ettumanoor. Those properties are the plaint schedule item Nos.5 and 6 respectively. At the time of the sale there was no way for ingress to and egress from those properties. So the 2nd defendant provided a way in 10 feet width starting from the western panchayat road towards those properties. Such a way was provided for the exclusive use of the defendant Nos. 3 and 4. The 2nd defendant sold 10.6 ares of land out of her remaining property in favour of the 1st defendant by virtue of the sale the deed No.4351/2001 of the SRO, Ettumanoor. The 4th defendant obtained property having extent of 4.05 ares out of the above property by virtue of the deed No.3818/2007 of the SRO, Ettumanoor. This is the plaint schedule item No.7. It situates on the side of the southern panchayat road. The 2nd defendant reserved right of easement over 10 feet width pathway starting

from the southern panchayat road, for herself, Mr. Sreenivasa Hegdan and the 5th defendant. If a pathway was provided before the sale of the plaint schedule item No.1 property it ought to have been described in the deed. The deed No.3818/2007 is an exchange deed. By virtue of the deed the 1st defendant exchanged the plaint schedule item No.7 property in favour of the 4th defendant. The prior owner of the plaintiff's property purchased it from the 2nd defendant on 22.12.2001. At that time, the property situated on the northern side of the plaint schedule item No.1 property belonged to the 4th defendant and the 2nd defendant had no right over the property. The pathway provided towards the property of the 4th defendant starts from the western panchayat road and ends on his property. This way does not link with the pathway that starts from the southern panchayat road. The 2nd defendant has no right to grant a pathway through the property over which she has no title. The pathway starts from the southern panchayat road ends on the plaint schedule item No.1 property and the pathway starts from the western panchayat road ends on the plaint schedule item No.6 property. These two are two different pathways. The attempt of the plaintiff is to encroach upon the properties of the defendant Nos.3 and 4 with an intention to disturb the exclusive enjoyment of the plaint schedule item Nos.5 and 6. The allegation that the 2nd defendant sold 7.5 cents of land in favour of the 4th defendant is not correct. The description, the ownership and the possession of the plaint schedule item No.6 as stated in the plaint are not correct. The plaint schedule item No.1, 3, 7 and 8 properties have pathway having width of 10 feet starts from the southern panchayat road. There is no pathway towards these properties starts from the western panchayat road. The plaint schedule item Nos.5 and 6 properties have pathway in 10 feet starts from the western panchayat road.

The 1st defendant has no intention to purchase the property of the plaintiff. All the boundary stones fixed on the boundaries of the plaintiff's property at the time of execution of the sale deed are still there in the same position. The plaintiff schedule item No.1 property is situated with physical boundaries on its three sides. The plaintiff schedule properties lie in different levels. The plaintiff schedule item No.1 property is situated at higher level than the plaintiff schedule item No.6. There is no building or structure in the plaintiff schedule item No.1 property. The 3rd defendant constructed a residential building in the plaintiff schedule item No.5 property in the year 2008. He brought building materials for the construction of his house through the pathway that starts from the southern panchayat road and also through the plaintiff schedule item No.1 property with permission of Mr.Sreenivasa Hegden, the brother of the plaintiff. A portion of the boundary wall situated in between the plaintiff schedule item Nos.1 and 6 properties was removed for bringing building materials in heavy vehicles to the plaintiff schedule item No.5 property. The plaintiff purchased the plaintiff schedule item No.1 property in January 2010. The demolished portion of the boundary wall was not re-constructed. Its remnants are still there. The plaintiff does not reside in the plaintiff schedule item No.1 property. The plaintiff told the 3rd defendant that the plaintiff is going to re-construct the boundary wall. The 3rd defendant agreed it. The allegation that the defendants recently constructed gates on the entrance of the pathway is not correct. The gate on the entrance of the southern panchayat road was constructed even before purchasing the property by the 2nd defendant. The gate is being kept closed from the very beginning but it is being kept unlocked. The old gate was dilapidated. So it was difficult to open and close the gate. Therefore the defendants replaced the gate by a sliding gate in the

year 2008. When the plaintiff purchased the plaint schedule item No.1 property the sliding gate was there. The gate situated on the entrance of the western panchayat road was constructed in the year 2008 when the 3rd defendant started building construction in the plaint schedule item No.5. The said gate and the pathway is for the exclusive use of the defendant Nos.1 to 4. The plaintiff and the others have no right over it. The allegation that the defendants obstructed the plaintiff from measuring the plaint schedule item No.1 property is not correct. The property situates in well demarcated boundaries. There is no dispute regarding the boundary. So this court need not fix the boundaries. The executant of the deed in favour of the plaintiff had no right over the property to transfer easement in his favour. The defendants are entitled to keep the gate on the western side closed for protecting their properties. The plaintiff has no right to interfere in it. The defendants had never objected construction of boundary structure on the boundary of the plaint schedule item No.1 property. The allegation that the defendants obstructed the plaintiff on 08.08.2010 is not correct. The occupiers of the premises used to open the southern gate whenever they wanted to use the way. There was no dispute for it. The plaintiff had never raised any objection till the filing of the suit. The plaintiff who is a close relative of the defendants was residing in his family house situated in this property. He left the place for 2 years back only. He knows that the Madappally family members were residing together in the property from the very beginning. The intention of the plaintiff is to disturb the customs and rituals followed by the Madappally family members due to enmity towards some of the family members including the 3rd defendant. The plaintiff filed many criminal cases against the 3rd defendant and threatened him on many times using political

influence. The petition filed before the police was found false. The present case was filed with ulterior motive of destroying the peaceful life and the privacy of the Madappally family members. There is no cause of action for the suit. Hence the defendant Nos.1 and 3 sought for the dismissal of the suit.

4. The 4th defendant filed written statement. His contentions in brief is as follows:-It is not correct to say that the plaint schedule properties were transferred in the name of the 2nd defendant for the purpose of defeating realization of debt of the Madappallil family. The 2nd defendant purchased the properties after paying sale consideration. She obtained ownership, possession and enjoyment of the plaint schedule properties. A panchayat road passes through the southern side of the plaint schedule item No.3 and 7 properties and the western side of the plaint schedule item Nos. 3, 4 and 5 properties. The plaint schedule item Nos 1, 6 and 8 properties do not have road frontage. It is not correct to say that the properties on both sides of the way were apportioned among the members of the family. No such decision was ever taken. There is no way as the plaint schedule item No.2 way. It is only an imagination of the plaintiff. The entire plaint schedule properties was a single holding. It belonged to the 2nd defendant. She sold certain extent of this property to different persons including the defendants executing separate sale deeds. She sold 7.29 ares of land in favour of the 4th defendant as per the sale deed No.3538/2001 of the SRO, Ettumanoor and 7.63 ares of property in favour of the 3rd defendant by virtue of the sale deed No.3539/2001 of the SRO, Ettumanoor. Those properties are the plaint schedule item Nos.5 and 6 respectively. At the time of the sale there was no way for ingress to and egress from those properties. So the 2nd defendant provided a pathway in 10 feet width starts from the western

panchayat road towards those properties. Such a way was provided for the exclusive use of the defendant Nos. 3 and 4. The 2nd defendant sold 10.6 ares of land out of her remaining property in favour of the 1st defendant by virtue of the sale deed No.4351/2001 of the SRO, Ettumanoor. The 4th defendant obtained property having extent of 4.05 ares out of the above property by virtue of the deed No.3818/2007 of the SRO, Ettumanoor. This is the plaint schedule item No.7. It situates on the side of the southern panchayat road. The 2nd defendant reserved right of easement over the pathway in 10 feet width starts from the southern panchayat road for herself, Mr. Sreenivasa Hegdan and the 5th defendant. If a pathway was provided before the sale of the plaint schedule item No.1 property it ought to have been described in the deed. The deed No.3818/2007 is an exchange deed. By virtue of the deed the 1st defendant exchanged the plaint schedule item No.7 property in favour of the 4th defendant. The prior owner of the plaintiff's property purchased it from the 2nd defendant on 22.12.2001. At that time, the property situated on the northern side of the plaint schedule item No.1 property belonged to the 4th defendant and the 2nd defendant had no right over the property. The pathway provided towards the property of the 4th defendant starts from the western panchayat road and ends on his property. This way does not link with the pathway that starts from the southern panchayat road. The 2nd defendant has no right to grant a pathway through the property over which she has no title. The pathway starts from the southern panchayat road ends on the plaint schedule item No.1 property and the pathway starts from the western panchayat road ends on the plaint schedule item No.6 property. These two pathways are two different pathways. The attempt of the plaintiff is to encroach upon the properties of the

defendant Nos.3 and 4 with an intention to disturb the exclusive use of the plaintiff schedule item Nos.5 and 6. The allegation that the 2nd defendant sold 7.5 cents of land in favour of the 4th defendant is not correct. The description, the ownership and the possession of the plaintiff schedule item No.6 as stated in the plaint are not correct. The plaintiff schedule item No.1, 3, 7 and 8 properties have pathway having width of 10 feet starts from the southern panchayat road. There is no pathway towards these properties starts from the western panchayat road. The plaintiff schedule item Nos. 5 and 6 properties have pathway in 10 feet width starts from the western panchayat road. All the boundary stones fixed on the boundaries of the plaintiff's property at the time of execution of the sale deed are still there in the same position. The plaintiff schedule item No.1 property is situated with physical boundaries on its three sides. The plaintiff schedule properties lie in different levels. The plaintiff schedule item No.1 property is situated at higher level than the plaintiff schedule item No.6. There is no building or structure in the plaintiff schedule item No.1 property. The 3rd defendant constructed a residential building in the plaintiff schedule item No.5 property in the year 2008. He brought building materials for the construction of his house through the pathway that starts from the southern panchayat road and also through the plaintiff schedule item No.1 property with permission of Mr.Sreenivasa Hegden, the brother of the plaintiff. A portion of the boundary wall situated in between the plaintiff schedule item Nos.1 and 6 properties was removed for bringing building materials in heavy vehicles to the plaintiff schedule item No.5 property. The plaintiff purchased the plaintiff schedule item No.1 property in January 2010. The demolished portion of the boundary wall was not reconstructed. Its remnants are still there. The plaintiff does not reside in the plaintiff

schedule item No.1 property. The allegation that the defendants recently constructed gates on the entrance of the pathway is not correct. The gate on the entrance of the southern panchayat road was constructed even before purchasing the property by the 2nd defendant. The gate is being kept closed from the very beginning but it is being kept unlocked. The old gate was dilapidated. So it was difficult to open and close the gate. Therefore the defendants replaced the gate by a sliding gate in the year 2008. When the plaintiff purchased the plaint schedule item No.1 property the sliding gate was there. The gate situated on the entrance of the western panchayat road was constructed in the year 2008 when the 3rd defendant started building construction in the plaint schedule item No.5. The said gate and the pathway is for the exclusive use of the defendant Nos.1 to 4. The plaintiff and the others have no right over it. The allegation that the defendants obstructed the plaintiff from measuring the plaint schedule item No.1 property is not correct. The property situates in well demarcated boundaries. There is no dispute regarding the boundary. So this court need not fix the boundaries. The executant of the deed in favour of the plaintiff had not right to transfer easement in his favour. The defendants are entitled to keep the gate on the western side closed for protecting their properties. The plaintiff has no right to interfere in it. The defendants had never objected the construction of boundary structure on the boundary of the plaint schedule item No.1 property. The allegation that the defendants obstructed the plaintiff on 08.08.2010 is not correct. The occupiers of the premises used to open the southern gate whenever they wanted to use the way. There was no dispute for it. The plaintiff had never raised any objection till the filing of the suit. The plaintiff who is a close relative of the defendants was residing in his family house

situated in this property. He left the place for 2 years back only. He knows that the Madappally family members were residing together in the property from the very beginning. The intention of the plaintiff is to disturb the customs and rituals followed by the Madappally family members due to enmity towards some of the family members including the 3rd defendant. The plaintiff filed many criminal cases against the 3rd defendant and threatened him on many times using political influence. The petition filed before the police was found false. The present case was filed with ulterior motive of destroying the peaceful life and the privacy of the Madappally family members. There is no cause of action for the suit. Hence the 4th defendant sought for the dismissal of the suit.

5. The defendant Nos.2 and 5 are exparte.

6. Based on the rival contentions my predecessor-in-office framed the following issues.

1. Whether the plaintiff has any right over the plaint schedule No.2 property?
2. Whether the plaintiff is entitled for a mandatory injunction as prayed for ?
3. Whether the boundaries of the plaint schedule property No.1 is to be fixed by court ?
4. Whether the plaintiff is entitled for an injunction as prayed for ?
5. Reliefs and costs?

7. The evidence of the plaintiff consists of the oral evidence of PW1 and 2 and the documentary evidence of Ext.A1 to A10, C1, C1(a), C2 and C2(a). The evidence of the defendants consists of the oral evidence of DW1 and the documentary evidence of Exts.B1 to B4.

8. **Issue No.1:-** The PW1 is the plaintiff. He filed proof affidavit in tune with his pleading. According to the plaintiff, the plaint schedule properties originally belonged to the Madappallil family. These properties were subsequently transferred in the name of the 2nd defendant with a view to defeat the proceeding for the recovery of debt of the family. Subsequently the liability was discharged. So the family decided to apportion the properties among the sharers. For the common use of each sharers as per the common decision the plaint schedule item No.2 way was constructed in the middle of the property and the property on either side of the way was apportioned and transferred in favour of the sharers through sale deeds. The plaintiff's brother Mr.Sreenivasa Hegden obtained the plaint schedule item No.1 property and the right of easement over the plaint schedule item No.2 way by virtue of the Ext.A10 deed. The plaintiff purchased this property by virtue of the Ext.A1 sale deed from Mr.Sreenivasa Hegden. So the plaintiff has right of easement over the plaint schedule item No.2 way and his right was mentioned in the title deed as well. The defendants installed gate on the southern and the western entrances of the way. Since the defendants tried to obstruct the way locking the gates, the plaintiff's right of easement over the way has to be declared.

9. According to the defendants there was no pathway as the plaint schedule item No.2. These are two pathways. One starts from the western panchayat road and it ends on the plaint schedule item No.6 and the other pathway starts from the sothern panchayat road and ends on the plaint schedule item No.1 property. The pathway starts from the western panchayat road is exclusively meant for the use of the plaint schedule item Nos.5 and 6. The pathway starts from the

southern panchayat road is meant for the use of the plaint schedule item Nos.1, 3, 7 and 8 properties. These are two separate pathways. Both pathways have no link at all. The person who executed the Ext.A10 deed had no right of easement over the pathway that starts from the western panchayath road. So by virtue of the Ext.A10 deed no right of easement was passed in favour of Mr.Sreenivasa Hegden. So he cannot transfer any right of easement in favour of the plaintiff. So according to the defendants the plaintiff has not right of easement over the plaint schedule item No.2 way.

10. The evidence on record shows that the 2nd defendant obtained the entire plaint schedule properties by virtue of the Ext.A3 to 5 deeds. These all are sale deeds. The sale consideration is seen passed from the purchaser to the vendors. The plaintiff who relied on these documents as their prior title deeds cannot approbate a portion of the deeds and reprobate a portion of the deeds for their convenience. So their contention that the entire properties were transferred in the name of the 2nd defendant without consideration with a view to defeat any proceeding cannot be believed at all.

11. It is seen from the evidence that by virtue of the Ext.A7 deed the 2nd defendant transferred 19 cents of land in favour of the 3rd defendant on 15.10.2001. By virtue of the same deed the 2nd defendant retained the right of easement in this property through its southern side. By virtue of the Ext.A8 deed the 2nd defendant transferred in favour of the 4th defendant the right of easement which the 2nd defendant retained in the property covered by the Ext.A7 deed. That means after executing the Ext.A8 deed the 2nd defendant had no right over the properties covered by the Ext.A7 and A8 deeds. On 22.12.2001 when executing the Ext.A10

deed the 2nd defendant had no right to transfer any right of easement in the properties covered by the Ext.A7 and A8 deeds. So the right of easement created by the 2nd defendant in the properties covered by the Ext.A7 and A8 deeds in favour of Mr.Sreenivasa Hegden will not take effect. So the right of easement transferred by Mr.Sreenivasa Hegden in the property covered by the Ext.A7 and A8 deeds, will not take effect and the plaintiff will not get any such right as well.

12. The commissioner's report shows that there exists a pathway as the plaint schedule item No.2 way. There is no evidence to show that when did the way create. The entire allegation regarding the right of easement of the plaintiff is based on the Ext.A1 and A10 deeds. As discussed earlier by creation of these deeds the transferee will not get any right of easement through the property covered by the Ext.A7 and A8 deeds. The evidence on record shows that by virtue of the Ext.A10 deed the 2nd defendant transferred right of easement through the pathway that starts from the southern panchayat road as well. The evidence on record shows that when executing the Ext.A10 deed the executant Smt.Pushpa Shenai had title over the balance properties. So the transfer of right of easement through the balance property is perfectly valid and this pathway starts from the southern panchayath road and ends on the plaint schedule item No.1 property. Mr.Sreenivasa Hegden got right of easement through the said properties by virtue of the Ext.A10 deed. So by the creation of the Ext.A1 deed the plaintiff got the same right. So I am of view that the plaintiff has right of easement through the way that starts from the southern panchayath way and ends on the side his own property. Though the way goes further and ends on the western panchayat road, the plaintiff did not get any right of easement through the said balance portion of the way. So he is not entitled to get a

declaration as he sought for. Hence this issue is found against the plaintiff.

13. **Issue No.2:-** Due to the reason mentioned while discussing the issue No.1 the plaintiff is not entitled to get a mandatory injunction directing the removal of the gate from the western entrance of the way.

14. As far as the gate on the entrance of the southern side is concerned, the plaintiff pleaded that the same was installed recently after the demand of the sale of the plaint schedule item No.1 property made by the 1st defendant. While the PW1 was in the witness box he deposed that the said gate was installed for about 30 years back. That means while purchasing the plaint schedule item No.1 property the southern gate was there. Knowing the existence of the gate the plaintiff purchased the plaint schedule item No.1 property. So his request at the removal of the gate cannot be granted. Hence this issue is also found against the plaintiff.

15. **Issue No.3:-** The plaintiff pleaded that the defendants removed stones from the four boundaries of the plaint schedule item No.1 property and the property now lies without boundaries. The PW1 deposed that boundary wall is situated on the eastern side of the plaint schedule item No.1 property. The plaintiff has no case that he has boundary dispute with the owner of the eastern property. The owner of the eastern property is not a party to the litigation as well. So the eastern boundary of the plaint schedule item No.1 need not be fixed. According to the defendants there is no need to fix the boundaries as it is situated in well demarcated boundaries except on the northern side. The commissioner who prepared the Ext.C1 and C1(a) reported that there is no physical boundary on the northern, western and southern sides of the plaint schedule item No.1 property. There is nothing on record to discard this matter reported by the commissioner. I am satisfied that the plaint

schedule item No.1 property lies without boundaries on the southern, western and northern sides. In order to fix the boundaries of the plaintiff schedule item No.1 property the plaintiff relied on the Ext.C1 and C1(a). The counsel for the plaintiff argued that the boundaries of the plaintiff schedule item No.1 has to be fixed in accordance the Ext.C1 and C1(a). The defendant submitted that the Ext.C1 and C1(a) cannot be relied on for granting any relief sought for in the suit. According to the plaintiff, the entire plaintiff schedule properties were belonged to the defendant No.2. She constructed the plaintiff schedule item No.2 way and transferred the property in plots on either sides of the way to various persons. That means the plaintiff schedule way was constructed in first and thereafter the properties were transferred in plots. It is seen that the commissioner altered the lie of the plaintiff schedule item No.2 way to a certain extent. He reported the present lie of the way and the altered lie as well. According to him, he so altered the lie of the way for the purpose of sufficing the extent of the each property. The plaintiff has no case that the lie of the way was changed at any point of time. The defendants also do not have any claim that the lie of the way was altered at any point of time. The description of the plaintiff schedule item No.1 property as per the Ext.A1 and A10 shows that plaintiff has property only on the eastern side of the way. If that being so, he has no property on the western side of the existing way. The commissioner who prepared the Ext.C1 and C1(a) was not examined before the court. So what prompted him to alter the lie of the existing way and to demarcate the plaintiff schedule item No.1 property encroaching upon the western side of the way is not revealed. So the Ext.C1(a) plan cannot be relied on for fixing the boundaries of the plaintiff schedule item No.1 property. There is no other evidence available on record

to fix the boundaries of the plaint schedule item No.1 property. So its boundaries cannot be fixed. Hence this issue is found against the plaintiff.

16. **Issue No.4:-** The plaintiff sought for injunction restraining the defendants from obstructing the plaintiff from entering the plaint schedule item No.1 property, committing any waste therein, reducing the width of the plaint schedule item No.2 way, obstructing the plaintiff from enjoying the way, locking the gates on the southern and western ends of the plaint schedule item No.2 way or obstructing the plaintiff from constructing wall on the boundaries of the plaint schedule item No.1 property. The plaint schedule item No.1 property lies without boundaries except on the eastern side. I already found that based on the available evidence the boundaries of the plaint schedule item No.1 property cannot be fixed. Without fixing its boundaries, a relief of injunction cannot be granted as well. I already found that the plaintiff has no right of easement over the entire plaint schedule item No.2 way. So he is not entitled to get a decree for injunction in respect of the plaint schedule item No.2 way as he pleaded. Hence this issue is also found against the plaintiff.

17. **Issue No.5:-** The normal rule is that costs follows the event. I find no reason to deviate from the normal rule. Hence this issue is also found against the plaintiff.

In the result the suit is dismissed with costs to the defendant Nos.1, 3 and 4.

Dictated to the confdl.asst. transcribed and typed by her corrected by me and pronounced in the open court on this the 08th day of June 2017.

Sd/-
Suja K.M.
Munsiff

APPENDIX**Exhibits marked for the Plaintiff:-**

- A1 - 19.01.2010 - Sale deed No.219/10 of the Sub Registrar Office, Ettumanoor.
- A2 - 28.02.2017 - Land tax receipt No.3917381 issued from Village Office, Ettumanoor.
- A3 - 28.03.2001 - Certified copy of the sale deed No.1214/2001 of the Sub Registrar Office, Ettumanoor.
- A4 - 27.03.2001 - Certified copy of the Sale deed No.1215/2001 of the Sub Registrar Office, Ettumanoor.
- A5 - 27.03.2001 - Certified copy of the sale deed No.1216/2001 of the Sub Registrar Office, Ettumanoor.
- A6 - 22.12.2001 - Certified copy of the Sale deed No.4353/2001 of the Sub Registrar Office, Ettumanoor.
- A7 - 15.10.2001 - Certified copy of the Sale deed No.3539/2001 of the Sub Registrar Office, Ettumanoor.
- A8 - 15.10.2001 - Certified copy of the Sale deed No.3538/2001 of the Sub Registrar Office, Ettumanoor.
- A9 - 22.12.2001 - Certified copy of the Sale deed No.4351/2001 of the Sub Registrar Office, Ettumanoor.
- A10 - 22.12.2001 - Certified copy of the Sale deed No.4352/2001 of the Sub Registrar Office, Ettumanoor.

Exhibits marked for the Defendants:-

- B1 - 07.04.2016 - Certified copy of the Land tax receipt No.3888151 issued from Village Office, Ettumanoor.
- B2 - 07.04.2016 - Certified copy of the land tax receipt No.3888152 issued from Village Office, Ettumanoor.
- B3 - 11.04.2016 - Certified copy of the land tax receipt No.3888186 issued from Village Office, Ettumanoor.
- B4 - 20.05.2007 - Certified copy of the deed No.3818/07 of the Sub Registrar Office, Ettumanoor.

Third party Exhibits:- Nil

Court Exhibits:-

C1 - 05.10.2016 - Commission report filed by Adv.T.G,Praveen

C1(a) - 05.10.2016 - Survey plan filed along with C1 report.

C2 - 16.09.2010 - Commission report filed by Adv.U.Girija.

C2(a) - 16.09.2010 - Rough sketch filed along with C2 report.

Witness examined for the Plaintiff:-

PW1 - 02.03.2017 - M.P.Gopakumar

PW2 - 17.03.2017 - U.Girija

Witness examined for the Defendants:-

DW1 - 21.03.2017 - Gireesh Kumar.

Typed by:

Compared by:

Id/-
Munsiff