

**IN THE COURT OF THE MUNSIFF, ETTUMANOOR**

**Present: Miss. Annu Mary Jose., Munsiff**

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

**OS.No.116/2018 and OS.No.84/2019**

**OS. 116/2018**

**Plaintiff:**

James Thomas, aged 53,  
S/o. T. C. Thomas, Njattuthottiyil House,  
Neendoor Kara, Onamthuruthu Village,  
Kottayam Taluk.

By Adv. Jose J. Cheruvil & Adv. K. Santhoshkumar.

**Defendants:**

1. Aniamma Varghese, aged 55,  
W/o. Varghese @ Wilson,  
Kunnappallil House, Kollamula Kara,  
Erumely Village, Kanjirappally Taluk,  
Kottayam District. Now residing at  
Happy Valley, Near Mampada  
Overbridge Left,  
Flat-No. A-23/Room No.702,  
Thane, Mumbai.
2. Mercy Saju, aged 52,  
W/o. Saju, Puthanparambil House,  
Vazhoor kara, Vazhoor Village,  
Changanacherry Taluk,  
Kottayam District. Now residing at  
Puthuparambil House,  
Kunnumbhagom Kara  
Kanjirappally West P. O.,  
Ponkunnam Village,  
Chirakkadavu Panchayath,  
Kanjirappally Taluk, Kottayam.

3. Anna @ Annamma Thomas, aged 75,  
W/o. T. C. Thomas, Njattuthottiyil House,  
Neendoor Kara, Onamthuruthu Village,  
Kottayam Taluk.

By Adv. Jolly James.

**OS. 84/2019**

**Plaintiffs:**

1. Anna, aged 75, W/o. T. C. Thomas,  
Njattuthottiyil House,  
Neendoor Kara, Onamthuruthu Village.
2. Aniyamma Wilson, aged 55,  
Happy Valley, Near Mambada Overbridge,  
Flat No.A23/Room.No.702,  
Thane, Mumbai.
3. Mercy Saju, aged 52,  
W/o Saju, Puthuparambil House,  
Kunnumbhagom Kara,  
Chirakkadavu Village,  
Kanjirappally Taluk.

(1<sup>st</sup> plaintiff is transposed as additional D5 as per order in IA. 10/25 dated 05.04.2025).

By Adv. Jolly James.

**Defendants:**

1. James Thomas, aged 52,  
S/o. T. C. Thomas,  
Njattuthottiyil House,  
Neendoor Kara,  
Onamthuruthu Village,
2. Mariyamma Joseph, aged 68,  
W/o. C. C. Joseph,  
Chamakkalayil House,  
Neendoor Kara,  
Onamthuruthu Village.

3. C. C. Joseph, aged 70,  
S/o. Chacko, Chamakkalayil House,  
Neendoor Kara,  
Onamthuruthu Village.
4. Jimmy Joseph, aged 37,  
S/o. C. C. Joseph,  
Chamakkalayil House,  
Neendoor Kara,  
Onamthuruthu Village.

Addl. D5. Anna, aged 75, W/o. T. C. Thomas,  
Njattuthottiyil House,  
Neendoor Kara,  
Onamthuruthu Village.

D1 by Adv. Jose J. Cheruvil.  
D2 & D3 by Adv. K. Santhoshkumar.  
D4 - Vakkalath not seen filed.  
Addl. D5. By Adv. K Satheesh.

These suits are finally heard on 27.03.2026 and the court on 31.03.2026 delivered the following :-

### **COMMON JUDGMENT**

O.S.116/2018 is filed for declaration of title, permanent prohibitory injunction and other consequential injunction. O.S.84/2019 is filed for fixation of boundary, declaration and permanent prohibitory injunction. The above cases were jointly tried as per order in I.A.3/2021 dated 15.12.2021 and O.S.116/2018 was taken as the leading case.

**2. The plaint averments in O.S.116/2018 in brief are as follows:-** The third defendant is the mother of the plaintiff,

the first and the second defendants. The father of the plaintiff, first and second defendants, T.C Thomas died on 19.05.1988. The plaintiff schedule properties originally belonged to Uthuppu Kochokkan. His elder daughter who is the third defendant was married to T.C Thomas. After the death of Uthuppu Kochokkan, all the legal heirs and T. C Thomas had executed a partition deed no.739/1966 of SRO Ettumanoor. A schedule property was allotted to the third defendant and her husband Thomas jointly. B schedule property was allotted to Mariyam, another daughter. The mother, Kochokkan Anna was given life interest in respect of 17 and 1/3 cents of property in item no.1 in A schedule on its southern portion and 15 cents of Nilam on the southern portion of item no.2 in A schedule. It was also stipulated that the portion of property on which life interest was given to Kochokkan Anna in A schedule will vest in her daughter Anna alone on her death and the remaining properties will vest on the third defendant and T. C Thomas jointly. On 20.11.1996 the third defendant had executed two sale deed nos.5798/96 and 5799/96 in favour of the first and the second defendants herein. The plaintiff schedule item no.1 property was transferred to the first defendant as per sale deed no.5798/1996. The third

defendant had transferred plaint schedule item no.2 property to the second defendant as per sale deed no. 5799/1996. It was the plaintiff who is possessing, enjoying and cultivating the entire property of 78 cents ever since the death of his father in the year 1988. The plaintiff did not allow his mother to enter the property and cultivate or take any yield from the plaint schedule properties. All defendants were aware that the plaintiff is possessing, enjoying and cultivating the properties hostile to their interest. The plaintiff did not allow any of the defendants to enter the plaint schedule properties since 27.12.1977. The first and the second defendants were not allowed to make boundary markings in the property. The third defendant had also transferred 12 cents of property to the plaintiff as per settlement deed no.2209/2017 of Ettumanoor SRO and a rectification deed was also executed since there occurred a mistake. These 12 cents of property form part of 17 and 1/3 cents of land absolutely belongs to the third defendant which she obtained as per partition deed no. 739/1966. The third defendant had also executed a settlement deed in favour of the defendants 1 and 2 whereby she had transferred the extent of 1.82 Ares to use it as a road to reach plaint schedule

item no.1 and 2 properties. The third defendant had executed settlement deed in favour of the plaintiff. The entire plaint schedule properties are under the exclusive possession of the plaintiff. Due to the hostile possession for the last 20 years, the defendants have lost their title and the plaintiff perfected title over the plaint schedule properties. Hence, it is prayed to declare that the plaintiff has acquired title over plaint schedule item nos. 1 and 2 properties by adverse possession and it is also prayed to pass a decree for permanent prohibitory injunction as prayed for.

**3. The defendants in O.S.116/2018 filed written statement contending as follows:-** The suit is not maintainable. T.C Thomas the father of the plaintiff and the second and third defendants had no right to be a party to the partition deed 739/1996. He had no right over the properties. He did not allow to execute a partition deed without making him a party. Hence, he was made a party to the partition deed. The plaintiff had changed the electricity connection, telephone connection of the house in his name. The same was done without the permission and consent of the third defendant. The third defendant had not filed any false complaint against the

plaintiff. The third defendant had executed a settlement deed in favour of the plaintiff due to his compulsion. The properties of the first and second defendants were demarcated and thereafter the plaintiff had demolished the boundary stone. The plaintiff has got no right over the plaint schedule properties. The description of plaint schedule properties is wrong. Hence it is prayed to dismiss the suit.

**4. The averments in the plaint in O.S.84/2019 in brief are as follows:-** The plaintiffs no. 2,3 and the first defendant are the children of the first plaintiff. The second defendant is the sister of the first plaintiff. The third and the fourth defendants are the husband and son of the second defendant. The plaint schedule item no.1 property belonged to the first plaintiff which she obtained as per A schedule of partition deed no.739/1966. Even though T.C Thomas is shown as a party to the partition deed, he had no right over the plaint schedule properties. T.C Thomas died on 19.05.1988. The plaintiff is residing in the dwelling house in plaint schedule property. The plaint schedule item no.2 property belongs to the second plaintiff which she obtained as per sale deed 5798/1996 of Ettumanoor SRO and rectification no. 261/2018. The plaint

schedule item no.3 property belongs to the third plaintiff which she obtained as per sale deed no. 5799/1996 of Ettumanoor SRO and rectification deed no. 2867/2017. The plaintiff item no.4 property belongs to the first defendant which he obtained as per settlement deed no.2209/2017 of Ettumanoor SRO. The first defendant had demolished the boundary stones separating the plaintiff schedule properties and thereafter he had filed O.S 116/2018 and 117/2018 before this court. The first defendant had objected the attempt of the plaintiffs to reconstruct the boundary stones. Hence the plaintiffs could not reinstall the boundary markings. A portion of property in triangular shape on the south-western corner at the time of execution of partition deed no.739/1966 happened to be in the property of the second defendant and a portion of property in the B schedule of the partition deed which was lying into plaintiff schedule item nos.1 to 4 properties on the south-eastern portion was given to the second plaintiff. The above property is scheduled as plaintiff schedule item no.5 property. Thereafter the above properties were exchanged on 31.01.1998 and boundary wall was constructed. The first plaintiff has been using plaintiff schedule item no.5 property openly and continuously as an

access to plaint item no.1 property and acquired the right of adverse possession over plaint schedule item no.5 property. Thereafter the first defendant had purchased plaint item no.5 property from the defendants 2 to 4 as per sale deed no. 139/2018 of Ettumanoor SRO. Hence, it is prayed to fix the boundaries of item no.1 to 5 properties. It is also prayed to declare the right of the plaintiffs over plaint schedule item nos. 1 to 3 and 5 properties. It is also prayed to pass a decree for permanent prohibitory injunction as prayed for.

5. The plaint in OS 84/2019 was amended and extent of plaint schedule properties were amended as per commission report and plan.

**6. The first defendant in O.S.84/2019 filed written statement contending as follows:** -The suit is not maintainable. The averment that the first plaintiff absolutely obtained the plaint schedule item no.1 property on the death of Kochokkan Anna is not correct and hence denied. The first defendant has got irrevocable license over the residential building and oodukooru right over the property. The averment that T.C Thomas, the father of the defendant had no right to be

a party to the partition deed 739/1996 is false. The deeds executed as 5798/1996, 5799/1996 were executed at the back of the first defendant. After the execution of the above deeds, the second and the third defendants attempted to measure out the properties. However, the first defendant had ousted the second and third defendant and he has been enjoying the properties hostile to their right. The defendant has perfected his title over the properties. None of the plaintiffs were allowed to enter the properties. He had also instituted OS.116/2019 before this court. All the plaint schedule properties are in the exclusive possession and enjoyment of this defendant and this defendant has irrecoverable license over the construction made in plaint schedule item no.3 property. There is no cause of action for the suit. Hence, it is prayed to dismiss the suit.

7. The defendants no. 2 to 4 did not file written statement within the statutory period. Hence, the suit was proceeded ex-parte as against them.

**8. The first plaintiff in O.S 84/2019 was transposed as additional fifth defendant as per order in 10/2025. She filed written statement contending as follows:-** The suit is

not maintainable. The averments in the plaint are false and hence denied. The first defendant is taking care of the additional fifth defendant. The averment that the husband of the fifth defendant had no right to be a party to partition deed no.739/1966 is false. The partition deed was executed giving right to T.C Thomas also. This defendant had conveyed plaint schedule item no.2 property to the second plaintiff as per deed no.5798/1996 and rectification deed no 261/2018 of Ettumanoor SRO. She had also conveyed plaint schedule item no.3 property to the third plaintiff as per sale deed 5799/96 and rectification no.2867/17 of Ettumanoor SRO. The above deeds were executed due to the compulsion of the second and the third defendants. The plaintiffs have not obtained any possession over the properties. The first defendant has not permitted the second and the third plaintiffs to enter the plaint schedule 2 and 3 properties. Even though they had brought surveyor to measure out the properties, he did not permit them to do so. The first defendant had constructed building in the property belonging to him. This defendant had conveyed the plaint schedule 4 property to the first defendant as per deed nos.2209/2017 and 2561/17. There is no cause of action for the

suit. Hence, it is prayed to dismiss the suit.

**9.** The following issues were framed for trial in OS 116/2018 by my learned predecessor:

1. Whether the plaintiff has acquired title over plaintiff schedule item nos. 1 and 2 properties by adverse possession as alleged?
2. Whether the plaintiff is entitled to get a decree for declaration as prayed for?
3. Whether the plaintiff is entitled to get a decree for permanent prohibitory injunction against the defendants as prayed for?
4. What is the order as to costs?

**10.** The following issues were framed for trial in OS 84/2019 by my learned predecessor:

1. Are the plaintiffs entitled to declare their right, title and possession upon plaintiff schedule item no.1 to 3 and plaintiff schedule item no.5 properties as prayed for?
2. Whether the plaintiff is entitled to fix the

boundaries separating plaint schedule item no.1 to 3 properties?

3. Are the plaintiffs entitled to measure the plaint item no. 1 to 5 properties and to fix the southern boundary for separating the plaint schedule item no.4 property as prayed for?
4. Are the plaintiffs entitled to get a decree for permanent prohibitory injunction as prayed for?
5. What is the order as to costs?

**11.** From the side of plaintiffs PW1 to PW3 were examined. Exts.A1 to A7, C1, C1(a), C2, C2(a), C3 and C3(a) were marked. DW1 to DW4 were examined and Exts.B1 to B6 were marked from the side of the defendants.

**12.** Heard the learned counsel for the plaintiffs and the learned counsel for the defendants. Perused the records in the above case.

**13. Issue nos.1 and 2 in O.S no.116/2018 and issue nos. 1 to 3 in O.S no.84/2019:** - These issues are considered together since the facts and evidence to be discussed are

interconnected and to avoid repetition. The plaintiff in OS 116/2018 is the brother of the first and second defendants and son of the third defendant. The first and the second defendants in OS116/2018 are the second and the third plaintiffs in OS 84/2019. The first plaintiff who is their mother was transposed as the additional fifth defendant in OS 84/2019. The plaintiff in OS 116/2018 is the first defendant in OS 84/2019. The defendant nos. 2 to 4 in OS 84/2019 are the sister of the additional fifth defendant and her family members. The relationship between the parties is admitted. The properties conveyed to the first and the second defendant by the third defendant as per sale deed no. 5798/1996 and sale deed no. 5799/1996 are scheduled as plaint item no.1 and 2 properties in OS 116/2018. The plaintiff claims title over the above properties on the strength of adverse possession. The properties of the second and the third plaintiffs which they obtained as per sale deed no. 5798/1996 and sale deed no. 5799/1996 are scheduled as plaint schedule item no. 2 and 3 properties in OS 84/2019. Their prayer is to declare their title over the plaint schedule properties.

**14.** So, firstly it has to be considered whether the

plaintiff in OS 116/2018 is entitled to the relief of declaration as prayed for. It is contended by the plaintiff that the third defendant had transferred plaint schedule item no.1 property to the first defendant as per deed no.5798/1966 of Ettumanoor SRO. It can be seen that thereafter rectification deed no. 261/2018 was also executed in favour of the first defendant. Ext.A4 is the copy of sale deed no. 5798/1996. Ext. B2 and Ext.B3 are the original sale deed and rectification deed. It is also stated that the third defendant had transferred the plaint schedule item no.2 property to the second defendant as per deed no.5799/1966 of Ettumanoor SRO. Thereafter rectification deed was also executed 2867/2017 in favour of the second defendant. Ext. A5 is the copy of sale deed no. 5799/1996. Ext.B4 and B5 are the original sale deed and rectification deed. It is the case of the plaintiff that even after the execution of the above deeds, he has been possessing, enjoying and cultivating the entire property of 78 cents of property including the plaint item no.1 and 2 properties in OS 116/2018 and by the long, open and uninterrupted and hostile possession of the plaint schedule properties for more than 12 years, he obtained title over the plaint schedule properties by prescription and adverse

possession. The learned counsel for the plaintiff submitted that the plea of acquisition of title by the adverse possession can be taken by the plaintiff under Article 65 of the Limitation Act. The counsel further contended that the classic requirements such as nec-vi, nec-clam, nec-precario exist in the case. The counsel relied on the decision of the Hon'ble Apex Court in **Ravinder Kaur Grewal & Ors v. Manjit Kaur (2019 (4) KHC 256), Muddasani Venkata Narsaiah v. Muddasani Sarojana (2016 ICO 1438)**. Per contra the learned counsel for the defendants submitted that the ingredients for the adverse possession are not proved in the above case. The counsel further contended that the plaintiff failed to prove that he possessed plaint schedule item nos. 1 and 2 properties with the animus and hostile intention. The counsel relied on the decision of Hon'ble High Court in **Bharathi T.K and others v. Janaki Amma (2020 (4) KHC 619)**.

15. It is well settled principle that adverse possession requires all the three classic requirements such as nec-vi, nec-clam and nec-precario. It must be adequate in continuity, adequate in publicity and adverse to a competitor, in denial of

title and his knowledge. The intention on the part of the plaintiff to possess the properties with the animus and hostile intention of treating the property as his own against the whole world must be evident. So, it is necessary to consider whether the ingredients of adverse possession are proved and pleaded in OS 116/2018. In the case on hand, the plaintiff claimed that he has been in possession of plaint schedule item nos.1 and 2 properties since 1988 and he had not permitted the defendants to enter the plaint schedule properties since 27.12.1997. It is also pleaded that when the defendants had brought one surveyor to measure the properties, he resisted them. The defendants had completely denied the fact that the plaintiff has been possessing 78 cents of property including plaint schedule item nos. 1 and 2 properties. In **P.T Munichikkanma Reddy v. Revamma (2007 6 SCC 59)**, it was held that *it follows the sound qualities of a typical adverse possession lie in it being open, continuous and hostile*. It is pertinent to note that even though the plaintiff pleaded that he has been in open, continuous and undisturbed possession, the plaintiff would itself show that the defendants had made many attempts to measure out the properties. There is nothing on record to show that the

plaintiff was allowed to possess the plaint schedule properties exclusively or he possessed the plaint schedule properties exclusively without any obstruction. The case of the plaintiff itself is that he had not permitted the defendants to enter the plaint schedule properties. It adds credibility to the case of the defendants that the plaintiff has not been in open, continuous and undisturbed possession.

**16.** The plaintiff was examined as PW1. It can be seen from the cross examination of PW1 that he deposed that the above suit was not filed for declaring his title over plaint schedule properties on the strength of adverse possession. It can be seen that the same was clarified during the time of reexamination by putting a specific question to him. However, a reading of evidence of PW1 would not show that plaint schedule properties have been in his open, continuous and undisturbed possession. PW2 is the neighbour of PW1. He was examined to prove that plaint schedule properties are in the possession of the plaintiff. The evidence of PW2 would reveal that the plaintiff stated to him about the dispute involved in the case. So, the evidence of PW2 would not go to improve the case of the plaintiff. PW3 is the Advocate Commissioner who filed Ext.C1

and C1(a). The evidence of PW3 and Ext.C1, C1(a) would go to show that the plaint schedule properties in OS 116/2018 are lying contiguously. Even then, it would not prove that the plaintiff obtained title over the plaint schedule properties on the strength of adverse possession. Even though, the plaintiff admitted the execution of Ext.B2 and B4 sale deeds, it is also contended that the third defendant had no absolute right over the properties conveyed to the other defendants since T.C Thomas, the husband of the third defendant had also right over the above properties. It is also stated that T. C Thomas died and all his legal heirs were not made parties to the above deeds. This contention will be considered by this court later. The evidence on record would show that the necessary ingredients of adverse possession are not pleaded and proved in this case. It is evident that the plaintiff failed to establish that he has been in open, continuous and uninterrupted possession of the plaint item no.1 and 2 properties with the animus and hostile intention. Hence, the plaintiff is not entitled to the relief of declaration of titled as sought for in OS 116/2018.

**17.** It can be seen that the first plaintiff in OS 84/2019 was transposed as additional fifth defendant in that case. The

prayer of the plaintiffs in OS 84/2019 is to declare their title over plaint item no. 1 to 3 and 5 properties, fixation of boundaries and other reliefs. It is contended by them that plaint schedule item nos. 2 property belonged to second plaintiff as per Ext. B2 sale deed no.5798/1996 and Ext.B3 rectification deed no.269/18 of Ettumanoor SRO. It is also stated that plaint item no.3 property belonged to the third defendant as per Ext. B4 sale deed no.5799/1996 and Ext.B5 rectification no. 2867/2017 of Ettumanoor SRO. The first defendant would contend that the plaint schedule properties were in the joint possession of the additional fifth defendant and her husband T.C Thomas and hence she could not alone transfer the plaint schedule properties to the second and the third plaintiffs. It is also significant to note that even though the plaintiff in OS 116/2018 admitted the execution of above deeds, it is pleaded that the properties were in the joint possession of the additional fifth defendant and T.C Thomas. It is admitted by all the parties that all the plaint schedule properties originally belonged to Uthuppu Kochokkan. It is averred in the plaint in OS 116/2018 that after the death of Uthuppu Kochokkan, all the legal heirs and T. C Thomas had executed a

partition deed no.739/1966 of SRO Ettumanoor. A schedule property was allotted to the third defendant and her husband Thomas jointly. It is also stated that the mother of the third defendant Kochokkan Anna was given life interest in respect of 17 and 1/3 cents of property in item no.1 in A schedule and 15 cents of Nilam on the southern portion of item no.2 in A schedule. It was stipulated that the portion of property on which life interest was given to Kochokkan Anna in A schedule will vest in her daughter Anna (third defendant) alone on her death and the remaining properties will vest on the third defendant and T. C Thomas jointly. It can be seen that the plaintiffs in OS 84/2019 contended that T.C Thomas had no right to be a part to the partition deed no. 739/1966 and he had no right over the properties. The additional fifth defendant would contend that T.C Thomas had right over the plaint schedule properties like her. It is also contended that Ext.B2 and Ext.B4 sale deeds were executed due to the compulsion of the second and the third plaintiffs. It is averred in the plaint in OS 84/2019 that plaint item no.1 property belongs to the first plaintiff. The plaintiffs have not filed application to amend the plaint even after transposition. However, since the first plaintiff

was transposed as additional fifth defendant, there is no need to consider whether she is entitled to the relief of declaration of title over plaint item no.1 property. So, it is to be considered whether the second and the third plaintiffs are entitled to the relief of declaration of title over plaint item no. 2,3 and 5 properties.

**18.** The Power of Attorney Holder of the first and second defendants in OS 116/2018 was examined as DW1. Ext.B1 is the Power of Attorney. He would depose that his father-in-law died in the year 1988 and thereafter the third defendant had conveyed properties to the first and second defendants. He admitted that the plaintiff, first defendant or his wife, second defendant are not parties to Ext.B2 and B4. He denied the suggestion that Ext.B2 and B4 are void ab initio. The second defendant in OS 84/2019 was examined as DW2. She would depose that T.C Thomas had no right over the plaint schedule properties. In this context, it is necessary to consider the recitals in Ext.B2 and Ext.B4 sale deeds. The recitals in Ext.B2 reads as follows: -

"അടിയിൽ വിവരം പറയുന്ന വസ്തു വകകൾ 1966-ൽ ഏറ്റുമാനൂർ രജിസ്റ്ററിൽ 1-ാം പുസ്തകം 339 -ാം വാല്യം 182 മുതൽ 186 വരെ വശങ്ങളിൽ 737-ാം നമ്പരായി രജിസ്റ്റർ ചെയ്തിട്ടുള്ള ഭാഗ ഉടമ്പടിപ്രകാരം എ പട്ടികയായി എനിക്കു എന്റെ ഭർത്താവ് പരേതനായ ചാക്കോ തോമസ് അവർകൾക്കും കൂടി സിദ്ധിച്ചതും അദ്ദഹത്തിന്റെ മരണാനന്തിം പിന്തുടർ ചാവകാശവഴി എനിക്കു സിദ്ധിച്ചതും ഉൾപ്പെടെ ഇതിൽ വിവരിക്കുന്ന വസ്തുവകകൾ എന്റെ കൈവശാനുഭവത്തിലും കരം തീരുവയിലും സർവ്വ സ്വാതന്ത്ര്യത്തിലും ഇരിക്കുന്നതും മേൽ നമ്പർ ഭാഗ ഉടമ്പടി വ്യവസ്ഥയനുസരിച്ച് എന്റെ മാതാവ് അന്നയ്ക്ക് പട്ടിക വസ്തുവിൽ ജീവനാംശവകാശമുള്ളതും 1537 -ാം നമ്പർ തണ്ടപ്പേർ പട്ടയത്തിൽ കൊണ്ടുമാകുന്നു".

**19. The recitals in Ext.B4 reads as follows: -**

"അടിയിൽ വിവരം പറയുന്ന വസ്തു വകകൾ 1966-ൽ ഏറ്റുമാനൂർ രജിസ്റ്ററിൽ 1-ാം പുസ്തകം 339 -ാം വാല്യം 182 മുതൽ 186 വരെ വശങ്ങളിൽ 737-ാം നമ്പരായി രജിസ്റ്റർ ചെയ്തിട്ടുള്ള ഭാഗ ഉടമ്പടിപ്രകാരം എ പട്ടികയായി എനിക്കു എന്റെ ഭർത്താവ് പരേതനായ ചാക്കോ തോമസ് അവർകൾക്കുംകൂടി സിദ്ധിച്ചതും അദ്ദഹത്തിന്റെ മരണാനന്തിം പിന്തുടർച്ചാവകാശവഴി എനിക്കു സിദ്ധിച്ചതും ഉൾപ്പെടെ ഇതിൽ വിവരിക്കുന്ന വസ്തുവകകൾ എന്റെ കൈവശാനുഭവത്തിലും കരം തീരുവയിലും സർവ്വ സ്വാതന്ത്ര്യത്തിലും ഇരിക്കുന്നതും മേൽ നമ്പർ ഭാഗ ഉടമ്പടി വ്യവസ്ഥയനുസരിച്ച് എന്റെ മാതാവ് അന്നയ്ക്ക് പട്ടിക വസ്തുവിൽ ജീവനാംശവകാശമുള്ളതും 1537 -ാം നമ്പർ തണ്ടപ്പേര് പട്ടയത്തിൽ കൊണ്ടുമാകുന്നു".

**20. It is seen that Ext.B3 and Ext.B5 rectification deeds were executed to correct the number of partition deed as 739. The above recitals in Ext.B2 and B4 would clearly reveal that the husband of the third defendant/additional fifth defendant in**

OS 84/2019 had also got right over the plaint schedule properties. Even though the plaintiffs in OS 84/2019 contended that T.C Thomas had got no right over the properties as per Ext.A1 partition deed, the above recitals would show that the above contention is liable to be rejected. Ext.A1 is the partition deed 739/1966. A reading of Ext.A1 would show that T.C Thomas, the husband of the third defendant had also got right over the plaint schedule properties. Ext.A1 is not fully legible. Even then it can be seen from Ext.B2 to B5 that T C Thomas had also got right over the plaint schedule properties. Admittedly, the mother of the third defendant in OS 116/2018 (Kochokkan Anna) had given life interest in respect of 17 and 1/3 cents of property in plaint schedule item 1 and 15 cents of property in item no.2 in A schedule and the above properties vested on the third defendant alone after the death of her mother. It is pertinent to note that Ext.B2 to B5 would not show that the third defendant had conveyed properties to first and second defendants from the properties exclusively belonging to her. In this context, it is also necessary to consider Ext.A6 copy of settlement deed. It was marked subject to proof. Even then, the parties have admitted the execution of settlement deed

3011/2022. Ext.A6 would show that the third defendant had conveyed property having an extent of 8 Ares 63 square meters to the plaintiff. A reading of Ext.A6 would show that third defendant had conveyed properties to the plaintiff from the property exclusively belonging to her whereas Ext.B2 and B4 would show that the property belonged to her and husband were conveyed to first and second defendants. It is also stated that the properties of her husband vested on her after his death. It is pertinent to note that the husband of the third defendant T.C Thomas was not alive during the time of execution of B2 and B4 sale deeds. It is to be noted all his legal heirs ought to have been impleaded as parties to the deeds. Since the plaintiff, the first and the second defendants were not parties to the deed, it cannot be said that the above deeds are valid in the eyes of law. It is also not stated in the above sale deeds that deeds were executed with the consent of other co-owners.

**21.** It is true that sale deed executed by a co-owner without the consent of others is valid only to the extent of seller's share. In **Gangubai Raghunath Ayare v. Gangaram Sakharam Dhuri and others (2025 KHC Online 6242)**, it

was observed that co-owners can only transfer their valid share of undivided property. In the case on hand, the third defendant had executed Ext.B2 sale deed in favour of the first defendant whereby she had transferred 6 Ares 7 square meters. She had executed Ext.B4 sale deed in favour of the third defendant and an extent of 10 Ares 11 square meters was transferred. It is also to be noted that she had executed settlement deed 3011/2022 in favour of the plaintiff in OS 116/2018 and an extent of 8 Ares 63 square meters was conveyed. She had also executed Ext.B6 settlement deed in favour of the first and the second defendants and extent of 1 Ares 82 square meters was conveyed. This would reveal that she had transferred more than her valid share of undivided property. It is also pleaded by third defendant/additional fifth defendant in her written statement that Ext.B2 and Ext.B4 were executed due to the compulsion and influence of the other defendants. It would show that the above deeds were executed not out of her free will. So, it is to concluded that the second and the third plaintiffs in OS 84/2019 have not obtained any title over the properties since the additional fifth defendant had no absolute title over the plaintiff schedule properties at the time of execution of above deeds. So,

they are not entitled to the relief of declaration of title over  
plaint item no.2 and 3 properties.

**22.** It is also contended by the plaintiffs is OS 84/2019 that they acquired the right of adverse possession over plaintiff item no.5 property and hence it is also prayed to declare their title over plaintiff item no.5 property. It is significant to note that the plaintiffs have not adduced any evidence to prove the same. Ext. A7 sale deed would show that the first defendants had purchased plaintiff item no.5 property from the defendants no. 2 to 4. So, the plaintiffs are not entitled to the relief of declaration of title over plaintiff item no.5 property.

**23.** DW3 is the Advocate Commissioner who filed Ext.C3 report and Ext.C3(a) plan. DW4 is the surveyor who prepared Ext.C3(a) plan. It is already observed that the plaintiffs in OS 84/2019 are not entitled to the relief of declaration as prayed for. Hence, they are not entitled to the relief of fixation of boundary as prayed for.

**24.** It has come out in evidence that the plaintiff in OS 116/2018 failed to prove that he obtained title over plaintiff item no.1 and 2 properties on the strength of adverse possession.

The evidence on record would show that the plaintiffs in OS 84/2019 failed to establish that they obtained title over the plaint item no.2 and 3 properties on the strength of Ext.B2 and Ext.4 sale deeds. They failed to show that they obtained title over plaint item no.5 property on the strength of adverse possession. Thus, above issues are found against the plaintiffs in OS 116/2018 and OS 84/2019.

**25. Issue nos.3 in O.S no.116/2018 and Issue no. 4 in O.S no.84/2019:-** Since the plaintiffs in both cases are not entitled to the relief of declaration as prayed for, they are not entitled to the relief of permanent prohibitory injunction as prayed for.

**26. Issue no.4 in OS 116/2018 and Issue no. 5 in O.S 84/2019:-** In the light of above discussion, OS 116/2018 and OS 84/2019 are liable to be dismissed. Considering the relationship between the parties, they are directed to suffer their respective costs.

**27.** In the result, O.S.116/2018 and O.S 84/2019 are dismissed. No order as to costs.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 31<sup>st</sup> day of March, 2026.)*

**Sd/-  
Annu Mary Jose  
Munsiff**

### **APPENDIX**

#### **Exhibits Marked for plaintiff :**

A1	02.03.1966	Partition deed No. 739/1966 of Ettumanoor SRO.
A2	01.09.1986	Certified copy of Sale deed No. 2513/1986 of Ettumanoor SRO.
A3	24.01.2019	Death certificate of Annamma Lukose.
A4	20.11.1996	Copy of Sale deed No. 5798/1996 of Ettumanoor SRO.
A5	20.11.1996	Copy of Sale deed No. 5799/1996 of Ettumanoor SRO.
A6	01.12.2022	Copy of settlement deed No.3011/2022 of Ettumanoor SRO.
A7	12.01.2018	Sale deed No. 139/1/2018 of Ettumanoor SRO.

#### **Exhibits marked for the Defendants:**

B1	09.08.2024	Power of Attorney executed by Aniyamma Wilson and Mercy Saju.
B2	20.11.1996	Sale deed No. 5798/1996 of Ettumanoor SRO.

B3	30.01.2018	Rectification deed No. 261/1/2018 of Ettumanoor SRO.
B4	20.11.1996	Sale deed No. 5799/1996 of Ettumanoor SRO.
B5	26.12.2017	Rectification deed No. 2867/1/2017 of Ettumanoor SRO.
B6	20.03.2018	Settlement deed No. 753/1/2018 of Ettumanoor SRO.

**Third Party Exhibits: Nil**

**Court Exhibits:**

C1	16.07.2018	Commission Report filed by Adv. Pranimol M. P.
C1(a)	16.07.2018	Rough Sketch filed along with C1 Report.
C2	24.01.2020	Commission Report filed by Adv. Sajitha G. Nair.
C2(a)	24.01.2020	Rough sketch filed along with C2 report.
C3	26.07.2023	Commission Report filed by Adv. K. B Kunjumon
C3(a)	26.07.2023	Survey plan prepared by Sreelekha K. V., Taluk Surveyor filed along with C3 Report.

**Witness examined for the Plaintiff:**

PW1	07.11.2024	James Thomas
PW2	14.11.2024	Jose Kurian
PW3	22.11.2024	Adv. Pranimol M. P

**Witness examined for the Defendants:**

DW1	05.12.2024	Adv. Varghese K. J
DW2	12.12.2024	Mariamamma Joseph
DW3	12.12.2024 05.12.2025	Adv. K. B. Kunjumon
DW4	24.02.2026 07.03.2026	Sreelekha K. V

**Court Witness : Nil**

**Id/-  
Annu Mary Jose  
Munsiff**

// True Copy //

Copied by : Anuja  
Compared by : Shandini

**Sd/-  
Annu Mary Jose  
Munsiff**