

IN THE COURT OF THE MUNSIF, KANJIRAPPALLY.

Present : Smt. Smitha Susan Mathew, Munsiff

Monday 23rd day of March 2026
2nd day of Chaithra 1948

O.S 154/2006 and O.S 132/2009

O.S 154/2006

Plaintiffs/Counter Claim Defendants:-

- 1) Sherly Thomas, Aged 49 Years, S/o P.T. Thomas,
Panamattathu House, Mundakayam Village,
Kanjirappally Taluk (Died).
- Addl. P2) Lincy Thomas, Aged 30 Years, W/o Sherly Thomas,
Panamattathu House, Mundakayam Kara,
Mundakayam Village, Kanjirappally Taluk.
- Addl. P3) Shellin Thomas, Aged 9 Years, S/o Sherly Thomas,
Panamattathu House, Mundakayam Kara,
Mundakayam Village, Kanjirappally Taluk (Minor).
- Addl. P4) Mary Thomas, Aged 6 Years, D/o Sherly Thomas,
Panamattathu House, Mundakayam Kara,
Mundakayam Village, Kanjirappally Taluk (Minor)

By Adv. K. Karjet.

(Additional P3 & P4 are minors, represented by next friend
Lincy Thomas)

(Additional P2 to P4 are impleaded as per order in I.A 382/08
dated 31.05.2008)

(Counter claim defendants 2 to 4 are impleaded and amended as
per order in I.A's 758/2008 & 759/2008 dated 31.05.2008).

Defendants/ Counter claim Plaintiffs:-:-

- 1) Stanly P. Thomas, Aged 58 Years, residing at
Soumya Bhavan House, Vattayal Church Road,
Alappuzha Kara, Alappuzha District.

- 2) Elizebeth Stanly, Aged 53 Years,
W/o Stanly P. Thomas, Soumya Bhavan House,
Vattayal Church Road, Alappuzha Kara, Alappuzha District.
 - 3) Joseph Antony, Aged about 45 Years, Cheruvil House,
Paingana Bhagam, Mundakayam Village,
Kanjirappally Taluk, (Counter Claim 1st plaintiff).
- Addl. 4) Lucykutty Joseph, Aged 49 Years, W/o Joseph Antony,
Cheruvil House, Edakkunnam Muri,
Mundakayam Village, Kanjirappally Taluk,
(Counter Claim 2nd plaintiff).

(Additional D4 impleaded as per order in I.A 921/2009
dated 31.07.2009).

By Adv. George Kurian.

O.S 132/2009

Plaintiffs:-

- 1) Joseph, Aged 49 Years, S/o Antony, Cheruvil House,
Edakkunnam Muri, Mundakayam Village,
Kanjirappally Taluk.
- 2) Lucykutty, Aged 47 Years, W/o Joseph,
Cheruvil House, Edakkunnam Muri, Mundakayam
Village, Kanjirappally Taluk.

By Adv. George Kurian.

Defendants:-

- 1) Lincy Thomas, Aged 31 Years, Panamattathu House, Paingana
Bhagam, Edakkunnam Muri, Mundakayam Village,
Kanjirappally Taluk.
- 2) Shellin Thomas (Minor), Aged 10 Years, S/o Lincy Thomas,
Panamattathu House, Paingana Bhagam, Edakkunnam Muri,
Mundakayam Village, Kanjirappally Taluk.
- 3) Mary Thomas (Minor), Aged 7 Years, D/o Lincy Thomas,
Panamattathu House, Paingana Bhagam, Edakkunnam Muri,
Mundakayam Village, Kanjirappally Taluk.

Addl. D4) Nazeer B Ismail, Aged 56 Years, S/o Ismail
Bangalowparambil (Badayil), Velanilam Kara,
Velanilam P.O., Pin 686 513, Mundakayam Village.

(Minor Defendants 2 & 3 are represented by next friend
Smt. Lincy Thomas).

(Additional D4 impleaded as per the order in I.A 596/2014 dated
11/04/2014).

D1 to D3 By Adv. K. Karjet
Addl. D4 By Adv. A.K. Kuriakose.

These suits and counter claim having been finally heard on 21.03.2026 and
the court on 23.03.2026 delivered the following:-

COMMON JUDGMENT

O.S 154/2006

Suit for permanent prohibitory injunction.

2. **The averments in the plaint, in brief, are as follows:-** The original plaintiff in O.S.154/06 died during the pendency of the suit and the legal heirs were impleaded as additional plaintiffs 2 to 4, of which plaintiffs 3 and 4 are minors. They are represented by additional 2nd plaintiff. The plaint was amended after the death of 1st plaintiff. 1st plaintiff and 1st defendant are brothers. 2nd plaintiff is the wife of 1st plaintiff and plaintiffs 3 and 4 are their children. 2nd defendant is one of the sisters of 1st plaintiff and 1st defendant. Defendants 3 and 4 are husband and wife. They purchased property belonged to 1st defendant. As per the amended plaint, 1st plaintiff obtained 33.60 ares of property from a total extent of 82.80 ares of property belonged to his father, comprised in resurvey No.149/5 (old survey No.235/1/78A), Block No.5 of Mundakkayam village, vide gift deed No.1874/1993 of the SRO, Kanjirappally.

Thereafter, a sub division plan was prepared for mutating the properties transferred from resurvey No.149/5. The property obtained by 1st plaintiff is shown in the sub division plan as 149/10 and 149/12. 1st plaintiff has 13.20 ares of property in 149/10 and 19.78 ares in 149/12 and 1st defendant has 17.60 ares in 149/13. But the details mentioned in sub division plan are different. It is mistakenly entered in revenue records as 10.25 ares in 149/10 and 23.64 ares in 149/13, instead of 13.20 ares in 149/10 and 19.78 ares in 149/12 and 17.60 ares in 149/13 of 1st defendant. A fabricated sub division plan was prepared without having any enquiry based on title deeds, revenue records, the lie of the property and without informing property owners. As the entries in the revenue records are wrong, plaintiff could pay tax only for 10.25 ares of property comprised in 149/10. As the learned counsel for the plaintiff prepared the plaint based on the land tax receipt, the extent of property comprised in 149/10 was shown as 10.25 ares instead of 13.20 ares. Out of the total extent of 19.78 ares of property comprised in resurvey 149/12, 1st plaintiff transferred 4.25 ares comprised in 149/12-5, 1.25 ares in 149/12-5, 2.02 ares in 149/12-3, 2.83 ares in 149/12-4 and 4.25 ares in 149/12-5. Thus plaintiff transferred a total extent of 14.36 ares comprised in resurvey No.149/12. The remaining extent in 149/12 is 5.42 ares. Thus 1st plaintiff was in possession of a total extent of 18.62 ares of property, including the above said 5.42 ares and 13.20 ares comprised in resurvey No.149/10 till his death. 13.20 ares comprised in resurvey No.149/10, a house therein and the road portion which leads to the house of 1st plaintiff is scheduled as item No.1 in plaint. 5.42 ares of property comprised in resurvey No.149/12 and portion of the mud road which lead to plaint schedule item No.1 is scheduled as item No.2 in the plaint.

After the death of 1st plaintiff, plaintiffs 2 to 4 are in the possession and enjoyment of plaintiff schedule item No.1 and 2 properties. 1st plaintiff died on 05.02.2008. Plaintiffs 2 to 4 are his legal heirs and they are in possession and enjoyment over the properties. Defendants have no right over item No.1 and 2 properties. Commissioner appointed in this case before amendment of the plaint prepared and submitted a report and plan as per the fabricated sub division plan and plaintiffs filed petition to set aside the same. As the petition was dismissed, plaintiffs filed WP (C) 32732/2007 before the Hon'ble High Court. The Hon'ble High Court ordered to prepare plan and report based on the objections raised by plaintiffs. By that time, 1st plaintiff filed an application before the District Survey Superintendent to cure the defects in the false sub division plan. But no action was taken. 2nd plaintiff filed an application before the District Collector, Kottayam. As no action was taken by the District Collector, 2nd plaintiff filed WP (C) 23333/08 before the Hon'ble High Court and the Court directed the District Collector to take appropriate action. Thereafter, District Survey Superintendent filed a report before the District Collector and found that the sub division plan is incorrect. On 07.03.2009, a revised sketch was prepared by the District Survey Superintendent based on the possession and title deeds. These proceedings were taken in presence of defendants 3 and 4. As per the revised sketch, revenue authorities established survey stones separating 13.20 ares comprised in resurvey No.149/10 and 5.42 ares comprised in resurvey No.149/12 in the name of plaintiffs, and the property comprised in resurvey No.149/13 which belongs to defendants 3 and 4. Some fencing stones and barbed wires were also put up between the survey stones on 07.03.2009. 1st plaintiff never got any property from his sister,

Sali P. Thomas. The sale deed Nos.3308/93 and 730/94 of the SRO, Kanjirappally, are forged. 1st plaintiff never signed or made thumb impressions in that deeds. There was some financial transaction between 1st defendant and 3rd defendant. Plaint schedule properties are lying with specific boundaries. 17.60 ares of property comprised in resurvey No.149/13, which belonged to 1st defendant lies on the South and East of plaint schedule item No.2. This property was purchased by defendants 3 and 4. Taking advantage of the absence of plaintiff in plaint schedule properties, defendants 1 to 3 trespassed on the properties, attempted to destroy the boundary kayyala, make new constructions therein, obstruct the peaceful possession and enjoyment of plaintiffs over the properties, obstruct the peaceful life of plaintiffs and committing waste therein. Hence the suit.

3. Defendants 3 and 4/Counterclaim plaintiffs filed written statement with counterclaim and the contentions in brief, are as follows:- The description of plaint schedule properties is incorrect. Counterclaim plaintiffs obtained 23.64 ares of property comprised in resurvey No.149/13, Block No.5 of the Mundakkayam Village by virtue of sale deed Nos.2758 and 2759 of 2006 of the SRO, Kanjirappally. Counterclaim plaintiffs have right to use the 10 feet road, a part of which includes in the 23.64 ares, which starts from the K. K. road. Plaint schedule property and the properties of defendants 3 and 4 originally belonged to the father of 1st plaintiff as per patta No.4861/1976 of the Special Munsiff, Land Tribunal, Kottayam. The 10 feet width road was constructed when the entire properties were with the father of 1st plaintiff and 1st defendant. The property obtained by defendants 3 and 4 is scheduled as counterclaim item No.1 property and the 10 feet road is scheduled as counterclaim

item No.2 property. During the period when the 10 feet road was lying with specific boundaries, the father executed settlement deed No.1874/1993, settling certain properties in favour of 1st plaintiff including right over half the extent of counterclaim item No.2 road. Similarly, a settlement deed No.1875/1993 was executed by the father conferring certain properties to 1st defendant including right over ½ the extent of the road. The 1st defendant is the prior owner of the properties belong to defendants 3 and 4. Thus the counterclaim plaintiffs obtained ownership over the eastern side of item No.2 and right of easement over its western side. The allegation that 3rd defendant with goondas trespassed on plaint schedule property and destroyed the boundary kayyala is false. While counterclaim plaintiffs doing maintenance work of the kayyala, plaintiff filed this suit to obstruct the work. Hence the counterclaim to declare the ownership of counterclaim plaintiffs over the eastern half of counterclaim item No.2 road, easement right over the western half of counterclaim item No.2 road and to restrain the counterclaim defendants from obstructing the use of counterclaim item No.2 by counterclaim plaintiffs. After the amendment of the plaint defendants 3 and 4 filed additional written statement. According to them, the claim of the plaintiffs that 1st defendant obtained only 17.60 ares in resurvey No.149/13 is wrong. The extent of property transferred by the father in favour of 1st defendant by executing settlement deed No.1875/1993 is 58 cents (23.64 ares). This property adjoins with K. K. Road on its northern boundary. 1st plaintiff was not in possession of 13.20 ares in resurvey No.149/10. 1st defendant transferred 20 cents of property to his sister, Sali P. Thomas out of the total extent of property, he obtained by virtue of settlement deed No.1874/1993. He exchanged this

property with 20 cents of property belonged to Sali P. Thomas by virtue of settlement deed No.12/1987, by executing exchange deed No.3308/1993. 1st plaintiff later transferred the 20 cents obtained from Sali Thomas to Sosamma Kurian and Gigi Malluthara House by executing sale deed No.730/1994. 1st plaintiff transferred a total extent of 55½ cents, including the properties they admitted in the plaint and the above 20 cents of land to others. Hence 1st plaintiff is entitled for only 27½ cents of property after the above transactions. The statement of plaintiffs that 1st plaintiff was in possession of 46 cents of property, ie; 13.20 ares, comprised in resurvey No.149/10 and 5.42 ares comprised in resurvey No.149/12, till his death is false. The entire property shown as plaint schedule item No.1 after the amendment of the plaint was not in possession of 1st plaintiff. The property shown as plaint schedule item No.2 includes the property on the northern side of the property comprised in resurvey No.149/13. Plaintiffs have no right over this property. A portion of the road which starts from K. K. Road is comprised in resurvey No.149/13 also. The contention that the subdivision plan is wrong is incorrect. Commissioner prepared plan based on the finalised resurvey sketch as per the Survey Boundary Rules. Counterclaim plaintiffs have no knowledge regarding the directions in WP (C) 32732/2007, the application filed by plaintiffs before the District Collector, the WP (C) 23333/2008 filed by the defendants before the High Court and the site inspection conducted by the Survey Superintendent. The 3rd defendant had informed the Collector about the pendency of this suit when the counterclaim 3rd plaintiff was called for enquiry before the Collector. The revised sketch prepared without considering the extent of property in sale deed Nos.2758/2006 and 2759/2006 is incorrect. The proceedings before the

Collector are vitiated by lis pendens. The possession of the properties of the plaintiffs and defendants cannot be decided based on the decisions taken in such proceedings. 2nd plaintiff trespassed on the properties belonged to defendants 3 and 4 and encroached 5.54 ares of property from the property belonged to 3rd defendant and 50 sq. feet of property from the property of 4th defendant. The right of counterclaim plaintiffs over these properties are to be declared and the plaintiffs are to be evicted from the property. OS 132/2009 is filed for this purpose before this court. The claim of the plaintiffs that 1st plaintiff had not transferred any property other than 2.02 ares of property in favour of Sali and the document No.3308/1993 and 730/1994 of the SRO, Kanjirappally are forged documents, are false. Plaint schedule item No.2 road does not entirely belong to plaintiffs.

4. Counterclaim defendant filed written statement to counterclaim and the contentions in brief are as follows; The counterclaim defendant denied all the allegations in the counterclaim and stated in the written statement in tune with the plaint averments. Plaint schedule item No.1 and 2 properties and the private road through it belong to counterclaim plaintiffs. The counterclaim schedule item No.1 property is unidentifiable. Counterclaim plaintiffs are attempting to encroach on the said private road by demolishing the western side kayyala of their property. They have no right to do such acts. Hence they seek for dismissal of counterclaim.

O.S 132/2009

Suit for declaration, recovery of possession and permanent prohibitory injunction.

5. **The averments in the plaint, in brief, are as follows:-** Plaintiff schedule item No.1 property belongs to Stanley P. Thomas who is the brother of 1st defendant's husband, by virtue of deed No.1875/1993 of the SRO, Kanjirappally. Out of that property, 12.15 ares of property on the east-western corner on the northern side of item No.1 purchased by 1st plaintiff by virtue of sale deed No.2758/2006 and 11.49 ares on the southern side by 2nd plaintiff. Sherly Thomas, the husband of 1st defendant is having property on the western side of Plaintiff Schedule item No.1. He filed OS 154/2006 against the 1st plaintiff and others for an injunction. Commissioner prepared and submitted report and plan as per the sub division plan in that case. Husband of 1st defendant filed petition to set aside the report and plan. As the petition was dismissed, he approached Hon'ble High Court and filed WP (C) 32732/2007. As per the order of Hon'ble High Court, the commission report and plan were remanded and posted the case for commission report. On 05.02.2008, husband of 1st defendant died. Additional plaintiffs are impleaded in that suit. 1st defendant filed WP (C) 23333/08 to direct the District Collector for curing the defects in resurvey proceedings. During summer vacation, on 15.05.2009 1st defendant and some people trespassed on plaintiff schedule item No.1 property and placed concrete pillars and fencing. 1st defendant encroached 5.54 ares of property from the property of 1st plaintiff and 50 sq. metres of property from the property of 2nd plaintiff. The encroached portion is scheduled as item No.2 in the plaint. 1st defendant, at the influence of police threatened the 1st plaintiff. When 1st plaintiff showed the deeds, tax receipts and resurvey plans before the Sub Inspector, Mundakkayam, he replied that there was a new survey plan prepared from the Survey Department. When 1st

plaintiff enquired about the same, he understood that 6.04 ares of property was removed from plaint schedule item No.1 property and incorporated a new subdivision as 149/12. The proceedings of the Survey Department is illegal and not subjected to S.13A of the Kerala Survey and Boundaries Act. Defendants have no right over item No.2 property. Husband of 1st defendant transferred his 55.50 cents of property by executing different deeds. Defendants are attempting to create new documents in respect of plaint schedule item No.2 property, alienate the property and changing its lie and nature. Hence the suit.

6. Defendants 1 and 3 filed written statement and the contentions in brief, are as follows:- They filed written statement denying all the allegations in the plaint and adopting all the allegations raised in the amended plaint in OS 154/2006. According to defendants, if the new survey boundaries prepared are illegal, the plaintiffs herein could have filed appeal and get it cancelled. According to them, the allegation that defendants encroached 5.54 ares of property belonged to 1st plaintiff and 50 sq. metres of property belonged to 2nd plaintiff is wrong. Property tax has been paid in the name of Sherly Thomas for the 5.42 ares of property comprised in resurvey No.149/12 for many years. The suit is bad for non-joinder of necessary parties as no steps are taken to set aside the decisions taken by the District Collector as per the direction of Hon'ble High Court. They filed additional written statement denying the identity of plaint schedule item No.2 property. The suit is filed without arraying the owner of the property comprised in resurvey No.149/12/4 as the disputed property is presently in his ownership. Father of the 1st defendant obtained 20 cents of property comprised in old survey No.235/78 as per the sale deed No.4599/1951 of

the SRO, Kanjirappally, executed by his siblings in favour of him. This property is in the possession of defendants 1 to 3. Hence they seek for dismissal of the suit.

7. 4th defendant filed written statement and the contentions in brief, are as follows; 4th defendant got knowledge about pendency of OS 154/2006 only when he received notice and summons from the court. 1st defendant told him that the property purchased by him was mortgaged in the bank and 1st defendant intends to sell that property. When he came to know that the submission was true, he purchased the property. When the proceedings to mutate the property in favour of 4th defendant was interrupted, 4th defendant filed WP (C) 25111/2014 and presently, the proceedings for mutation are going on as per the direction of the Hon'ble High Court. Plaintiffs have no right over the property. Plaintiffs are attempting to encroach the property taking advantage on false revenue subdivision records. Hence he seeks for dismissal of the suit.

8. The following are the issues settled for determination.

O.S. 154/2006

Issues in the Suit

1. Whether the plaintiff is having possession over the entire extent of the plaint schedule property ?
2. Whether the prayers for injunction are liable to be granted ?
3. Reliefs and costs.

Issues in Counterclaim

1. Whether the prayer for declaration of title is liable to be granted ?
2. Whether the defendants have acquired quasi-easement over the western half portion of counterclaim item No.2 property ?

3. Whether the prayer for declaration of quasi-easement is liable to be granted ?
4. Whether the prayer for injunction are liable to be granted ?
5. Reliefs and costs.

O.S 132/2009

Issues in the suit

1. Whether the suit is maintainable ?
2. Whether the suit is properly valued and proper court fee paid ?
3. Whether the suit bad for non-joinder of necessary parties ?
4. Whether the description of the plaint schedule properties are correct ?
5. Whether the prayer for declaration of right and eviction of the defendants from the plaint schedule item No.2 allowable ?
6. Whether the prayer for recovery of Rs.1,500/- per year from plaint schedule item No.2 as mesne profits is allowable ?
7. Whether the prayer for injunction is allowable ?
8. Reliefs and costs.

9. PW1 to PW3 were examined from the side of the plaintiffs and Exts.A1 to A11, C1, C1(a), C2, C2(a), C3, C3(a), C4, C5, C6 and C6(a) were marked. DW1 and DW2 were marked from the side of defendants, and Exts.B1 to B32 were marked. Exts. X1 to X10 were also marked. 1st Plaintiff and additional plaintiffs 2 to 4 in O.S 154/2006, who are the counterclaim defendants, will be referred to as plaintiff 1 and addl plaintiffs 2 to 4 hereinafter. Additional plaintiffs 2 to 4 in OS 154/2006 are the defendants 1 to 3 in O.S 132/2009. Hence they will be referred to as additional plaintiffs 2 to 4. Defendants 1 and 2 in OS 154/2006 will be referred to as defendants 1 and 2 hereinafter. Defendants 3 and 4 in OS 154/2006, the counterclaim plaintiffs 1

and 2 and the plaintiffs in OS 132/2009 will be referred to as defendants 3 and 4. Additional 4th defendant in OS 132/2009 will be the defendant No.5 hereinafter.

10. Issue No.1 and 2 in OS 154/2006 and issue No.1 to 4 in counterclaim in OS 154/2006 and issue No.4, 5 & 7 in OS No.132/2009:- 1st plaintiff and 1st defendant are siblings. Addl. 2nd plaintiff is the wife of 1st plaintiff. Additional plaintiffs 3 and 4 are their children. 2nd defendant is the wife of 1st defendant. 1st defendant and 2nd defendant transferred their properties to defendants 3 and 4. 1st plaintiff expired after filing of the suit. The original plaint was filed on 20.06.2006 claiming right over 19.77 ares of property. Later the plaint was amended on 14.09.2009 and as per the amended plaint, plaint schedule Item No.1 property in OS 154/2006 is having an extent of 13.20 ares comprised in resurvey No.149/10 (Old Survey No.235/1/78A) in Block No.5, Kanjirappally Taluk. Plaint schedule item No.2 is having an extent of 5.42 ares comprised in the above survey number. Plaintiffs aver that the father of 1st plaintiff and 1st defendant was in title and possession of 82.80 ares of property comprised in resurvey No.149/5 in Block No.5 Mundakkayam Village. As per the plaint, the old survey number of this property is 235/1/78A. Plaint averments would show that 1st plaintiff got title over 33.60 ares of property by virtue of the settlement deed No.1874/1993 executed by the father in favour of 1st plaintiff. Plaintiffs claim that the property transferred to 1st plaintiff was included in the resurvey numbers 149/10 and 149/12. They claim that 13.20 ares of property comprised in 149/10 and 19.78 ares of property comprised in 149/12 were transferred to him by executing Settlement Deed No.1874/1993, and 1st defendant got only 17.60 ares of property comprised in resurvey No.149/13. Plaintiffs allege that, facts being

so, a wrong subdivision plan was prepared by including 10.25 ares of property in resurvey No.149/10 and 23.64 ares of property in resurvey No.149/13. The plaint averments would show that 1st plaintiff has no allegations regarding a 19.78 ares of property comprised in 149/12. Defendants denied these allegations.

11. Defendants 3 and 4 filed written statement with counterclaim. Defendants 3 and 4 are the purchasers of the property, transferred to 1st defendant by his father P. T. Thomas by executing settlement deed No.1875/1993. This document was executed on the same date on execution of settlement deed No.1874/1993 in favour of 1st plaintiff. According to defendants, originally, the father of 1st plaintiff and 1st defendant obtained the property by patta No.4861/1976, granted by the Special Munsiff, Land Tribunal, Kottayam. Defendants 3 and 4, who are now in title and possession of the property transferred to 1st defendant, filed counterclaim, claiming right over a pathway allegedly passing through the properties of 1st defendant and plaintiff. They claim title over the eastern half of counterclaim item No.2 road, easement right over its western half.

12. During the pendency of the suit, 1st plaintiff filed an application before the District Survey Superintendent to cure the defects in the sub division plan, allegedly falsely prepared. But no action was taken by the authorities. Hence 2nd plaintiff filed another application before the District Collector, Kottayam. As the District Collector took no action, 2nd plaintiff filed WP (C) 23333/08 before the Hon'ble High Court and the Court directed the District Collector to take appropriate action. Ext.A3 is the certified copy of the order of the Hon'ble High Court dated 04.08.2008 in WP (C) 23333/08. Meanwhile, 3rd defendant filed a review petition in the above writ petition

alleging that Ext.A3 order was passed without his presence. Ext.A7 is the certified copy of the review petition filed by 3rd defendant. The review petition was dismissed and Ext.A4 is the certified copy of the order therein. As the District Collector froze the proceedings under Ext.A3 due to the pendency of Ext.A7, the Addl. 2nd plaintiff approached the Hon'ble High Court and the Hon'ble High Court set aside the order of the District Collector. Ext A5 is the certified copy of the order of Hon'ble High Court dated 08.02.2016 in WP (C) 30880/2015. Exts.X1 and X2 are the copies of applications filed by the 1st plaintiff before the District Collector and District Superintendent of Survey and Land Records, Kottayam, complaining of the alleged fabricated subdivision plan and demanding a new subdivision plan. In continuation of the above proceedings, District Superintendent of Survey and Land Records, Kottayam, passed an order No.C5-18187/2007 dated 05.05.2009. Only a photocopy of the document is available, marked as Ext.X5, subject to proof. The original order is not produced before the court. Anyhow, admittedly, the Survey Superintendent refixed the subdivisions, and a new survey sketch was drawn. Ext.A6 is the revised sketch of field No.149, Block No.5 of Mundakkayam Village. The allegations in OS 132/2009 would show that the survey authorities reduced 6.04 ares of property from the property in possession of defendants 3 and 4 and new survey subdivision No.149/12 was incorporated. The allegations before the court would show that the District Survey Superintendent refixed the boundaries on land on 07.03.2009 and new survey stones were established. Thereafter, Addl. plaintiffs 2 to 4 established fencing stones and barbed wire across the new boundary. According to defendants 3 and 4, the

District Survey Superintendent refixed the boundaries without perusing the title deeds, and is illegal.

13. The defendants 3 and 4, aggrieved by the acts of Addl. plaintiffs 2 to 4, filed OS 132/2009. Defendants 3 and 4 allege that the act of the Deputy Survey Superintendent is ultra vires the provisions of S.13A of the Kerala Survey and Boundaries Act. According to them, the order of refixation of survey boundary is to be passed by the District Collector and to be notified in the gazette. Plaintiffs could not produce the order of refixation passed by the District Collector or the corresponding notification. Defendants 3 and 4 also allege that as these proceedings were taken place during the pendency of OS 134/2009 and is vitiated by the rule of lis pendens. They filed OS 132/2009 to evict plaintiffs 2 to 4 from 6.04 ares comprised in new subdivision No.149/12. The correctness of revised survey sketch will be discussed later.

14. The entire claim and allegations raised in OS 154/2006, counterclaim raised therein and OS 132/2009 are based on the total extent of property belonged to the father of 1st plaintiff and 1st defendant named P. T. Thomas. The plaint in OS 154/2006 would show that P. T. Thomas was in possession of 82.80 ares of property. P. T. Thomas obtained the property by patta No.4861/1976 granted by the Special Munsiff, Land Tribunal, Kottayam. There is no dispute regarding this fact. But none of the parties produced original of this patta or its certified copy before the court to establish that P. T. Thomas obtained 82.80 ares of property by the above referred to patta. In this circumstance, the court can only rely on the documents executed by P. T. Thomas to find out the total extent of property he owned and possessed under the

patta. Ext.B21 is a settlement deed No.12/1987 executed by P. T. Thomas in favour of his daughter, Sali Thomas. As per the recitals in Ext. B21, he transferred 20 cents (8.09 ares) of property from his total extent of 1 acre 93 cents to Sali. It's old survey number is shown as 235/1/195/78A. As per the available records, this is the first transfer made by P. T. Thomas after he obtained patta in 1976. Ext. B21 executed by P. T. Thomas would show that he was in possession of 1.93 acres of property as per the pattayam he obtained. He had not stated possession of any larger extent of property in the property description shown in Ext. B21. The second transfer made by P. T. Thomas is the transfer of 4.05 ares of property (10 cents) comprised in old survey No.235/1/78A to one Ushakumari by executing Ext.B25 sale deed on 17.05.1993. Ext.B26 is the thandaper account of Ushakumari. The third, fourth and fifth transfers made by P. T. Thomas are on 18.05.1993 by executing Exts. A1, B11 and B23 settlement deeds in favour of 1st plaintiff, 1st defendant and one of his daughters named Elizabeth Mathew respectively. P. T. Thomas had not stated that he was in possession of 82.80 ares of property as per the patta anywhere in Ext.B21. The property description in Ext.B25 shows that P. T. Thomas was transferred 10 cents (4.05 ares) out of 1 acre 73 cents, which remains after transferring 20 cents from the total extent of 1 acre 93 cents he obtained as per patta. In this document also, he had not stated that he was in possession of 82.80 ares of property. This document is executed on 17.05.1993. The remaining property with P. T. Thomas is 1.63 acres. P. T. Thomas executed Ext.A1 on 18.05.1993, the very next day of execution of Ext. B25. The recitals therein would show that he was transferring 83 cents (33.60 ares) out of 1.63 acres remaining with him. On the same day, he executed Ext.B11 in

favour of 1st defendant by transferring 58 cents (23.47 ares) out of 1 acre 63 cents remaining with him. Again on the same day, he executed Ext.B23 by transferring 22 cents (8.90 ares) to Elizabeth. The total extent of property remaining with P. T. Thomas at the time of execution of Exts.A1, B11 and B23 was 1.63 acres. It can be seen from Exts.B21, B25, A1, B11 and B23 that P. T. Thomas transferred 193 cents of property ie; 1 acre 93 cents of property to others. The total extent of properties stated in ares in these documents is 78.11. When this is converted to cents it is 192.9317. This approximately 1 acre 93 cents. After execution of the above deeds, no landed property remained with P. T. Thomas. There are no revenue records or documents produced by the parties to show that P. T. Thomas effected transfer of properties other than those mentioned above. No documents would show that P. T. Thomas ever claimed possession of 82.80 ares of property. On the contrary, it can be seen from the above documents that he was in possession of 1.93 acres of property and he transferred the entire property.

15. Exts.C1, C1(a) and Exts. C2, C2(a) are prepared by the advocate commissioner and surveyor appointed by the court. Ext.A11 which is equivalent to Ext.B11 is the resurvey sketch of field No.149/5 which was prepared in 1994. The total extent of property sketched therein is 5 hectares. Ext.A6 is the revised sketch of field No.149 prepared by the District Survey Superintendent. This also shows 5 hectares of property. The total extent of property owned and possessed by P. T. Thomas is not identifiable from none of the above mentioned documents. When dispute regarding boundaries and extent of properties possessed by the parties arose, the total extent of property from which the subdivisions are formed should be

specifically demarcated. The plaintiffs or defendants ought to have taken steps to locate the total extent of property which was in possession of P. T. Thomas from where they derived their title. The credentials available in both commission reports, plans, resurvey sketch and revised sketch are insufficient to calculate the area and identity of the total extent of property possessed by P. T. Thomas. Plaintiffs or defendants failed to prove that the total extent of property possessed by the father was 82.80 ares before executing Exts.B11, B21, B23, B25 and A1 documents.

16. The only available *revenue document* before the court to inspect the total extent of property possessed by P. T. Thomas is Exhibit B9, the Thandaper account. The Thandaper account number of P. T. Thomas is shown as 1485. As per Exhibit B9, the total extent of property he possessed was 82.80 ares. The marking of this document was seen objected by the learned counsel for the plaintiff stating that this was issued under Right to Information Act and it cannot be marked without examining the issuing authority. This document is issued by the Village Officer, the custodian of the thandaper account. As the document was issued by the officer who is the custodian of thandaper account, there is no need of examining the Village Officer for marking Exhibit B9. The plaintiffs, defendants or the revenue authorities could not explain the reason for showing the extent of property in the name of P. T. Thomas as 82.80 ares which is equivalent to 204.517 cents in the thandaper account of P. T. Thomas. The thandaper account prepared during the time of receiving pattayam is not produced. Ext.B9 shows the entries with respect to transfer effected in 1987 and 1993 together. It can be seen from Ext.B9 that the entries with respect to the transfer of properties by P. T. Thomas, were not done chronologically by the revenue authorities.

The plaintiffs or defendants could not establish that P. T. Thomas was in possession or title of more extent of property than 1 acre 93 cents. Revenue records does not confer title or possession over a property to any person. No revenue records are available before the court which shows the circumstances lead to enter the extent of property of P. T. Thomas as 82.80 ares in the thandaper account while he obtained only 1 acre 93 cents as per the pattayam.

17. The first entry in Ext.B9 shows transfer of properties owned by P. T. Thomas to four different thandaper numbers. The date of transfer or the extent transferred is not shown in Ext.B9. It can also be seen that the proceedings of the Special Tahsildar was based on PV Nos.22, 23, 24, 21 of 1994 dated 27.05.1994. But P. T. Thomas transferred the entire properties in his title in 1993 itself. The first transfer as per Ext.B9 was to the thandaper account No.2067, vide PV No.22. This shows transfer of 38.12 ares in favour of 1st plaintiff. Ext.A10 is the thandaper account. A title deed which shows transfer of 38.12 ares of property in favour of 1st plaintiff is not produced before the court. Plaintiffs failed to produce possession certificate or land tax receipt which shows that 1st plaintiff was in possession of 38.12 ares of property. The second transfer as per Ext.B9 was to the thandaper account No.2068. Ext.B22 is the thandaper account. That shows transfer of 8.20 ares to Sali P. Thomas as per Ext.B21. The third transfer as per Ext.B9 was to the thandaper account No.2069. That thandaper account is not produced before the court. But Exts.B27 and B28 are the thandaper account in favour of defendants 3 and 4. This would show that 12.15 ares of property was transferred from thandaper account No.2069 to the thandaper account No.4908 which belongs to 3rd defendant. Similarly, Ext.B28 shows

transfer of 11.49 ares of property from the thandaper account No.2069 to thandaper account 4909 which belongs to 4th defendant. The total extent of property transferred from thandaper account No.2069 is 23.64 ares. This is the property transferred by P. T. Thomas to 1st defendant. The fourth transfer as per Ext.B9 was to the thandaper account No.2070 ie; transfer of 8.90 ares of property in favour of Elizabeth as per Ext.B23. Ext.B24 is the thandaper account. The fifth transfer was to the thandaper account No.2071 ie; transfer of 4.05 ares to Ushakumari as per Ext.B25. The thandaper account is Ext.B26. If the properties transferred to the thandaper Nos.2068, 2069, 2070 and 2071 are added the total extent of property is 44.79 ares. This is equivalent to 110.63 cents. P. T. Thomas was in possession of 193 cents. The remaining is 82.37 cents equivalent to 33.34 ares, not 38.12 ares as shown in thandaper account No.2069. Hence the revenue documents which shows the total extent of property as 82.80 ares and the property transferred to 1st plaintiff as 38.12 ares are wrong. It is interesting to note that plaintiffs claim only 32.98 ares as per the plaint.

18. When circumstances being so, the Survey Superintendent found that 1st plaintiff was in possession of 5.42 ares in 149/12 and 13.20 ares in 149/10 after effecting the following transfers. Ext.B2 shows that 1st plaintiff transferred 20 cents (8.09 ares) of property to one Sosamma and Gigi. As per Ext.B3, 1st plaintiff transferred 4.25 ares (10.50 cents) comprised in 149/5, as per Ext.B4, 1.25 ares (3 cents) in 149/5, as per Ext.B5, 2.02 ares (5 cents) in 149/3, as per Ext.B6, 2.83 ares (7 cents) in 149/4 and as per Ext.B7, 4.05 ares (10 cents) in 149/5. The properties transferred as per Exts.B2 to B7 were comprised in old survey No.235/1/78A. Thus,

1st defendant transferred 22.49 ares (55.50 cents) from this total extent of property obtained by Ext.A1. This shows that plaintiff is in possession of only 27.5 cents of property (11.13 ares) after the transfer of properties as detailed above. The recitals in Exts. B3 to B7 would show that he was transferring the above extent of properties out of the 83 cents belonged to him. 1st plaintiff had not mentioned anything regarding possession of larger extent of property in these documents. As per Ext.B2 (Ext.X10), 1st plaintiff transferred the property he obtained by exchanging his 20 cents of property out of 83 cents to Sali, as per Ext.B1 (Ext.X9). In effect, the entire transfer of properties was made by 1st plaintiff out of the total extent of property he obtained as per Ext.A1. The title deeds produced before the court would show that plaintiff is in possession of only 27½ cents of properties in his possession. The wrong entries in Exts. B9 and A11 will not confer any title to plaintiffs. As per Ext.B2, 1st defendant transferred the property he obtained from Sali on execution of Ext.B1 exchange deed.

19. After the preparation of a revised survey sketch by the District Survey Superintendent, plaintiffs produced Ext. A8, certified copy of a settlement deed having No.4591/1957, executed by the siblings of P. T. Thomas in his favour. The recitals would show that they transferred 20 cents of property in favour of P. T. Thomas. The plaintiffs avers that P. T. Thomas was in possession of 20 more cents of property other than the property obtained under the patta, and the plaintiffs are in possession of the said 20 cents presently. This is a departure from the pleadings. According to plaintiffs, the property description would show that the property was lying on the West of the property belonged to P. T. Thomas. This was executed in the year 1951. He obtained patta in 1976. It is clear that the property belonged to P. T.

Thomas and the property he received by Ext. A8 was lying contiguously. The evidence on records are insufficient to prove whether P. T. Thomas obtained patta for both the land together or he got separate patta for the 20 cents of property, or the 20 cents remains as a non-patta land. Plaintiffs ought to have taken steps to demarcate the 1.93 acres of property P. T. Thomas obtained as per patta No.4861/1976 and the 20 cents of property he had been in possession separately, while preparing Exts. C1, C1(a) or C2, C2(a). They failed to do so. There is no evidence before the court to conclude that P. T. Thomas was in possession of 20 cents in addition to 1.93 acres he received as per pattayam. It is also to be noted that plaintiffs are claiming only 83 cents of property ie; 32.98 ares. But as per Ext. A1, they are entitled for 33.60 ares. Though plaintiffs claim that they were in possession of 20 cents more than what is obtained as per Ext.A1, they had not amended the plaint to incorporate the right of 20 cents in addition to the 32.98 ares.

20. 1st plaintiff obtained 33.60 ares of property, ie; 83 cents as per Exhibit A1 settlement deed No.1874/1993. This property is comprised in old Survey No.235/1/78A. As per the plaint claim, now this property is comprised in resurvey No.149/10 and 149/12. But such a correlation statement is not produced before the court. As per the plaint and proof affidavit filed by addl. 2nd plaintiff when she was examined as PW1, the total extent of property possessed by 1st plaintiff was 83 cents as per Exhibit A1. Plaintiffs claim that as per revenue records the subdivision plan was prepared by including 10.25 ares in 149/10. According to PW1, this is wrong and the extent of property comprised in 149/10, owned by 1st plaintiff was 13.20 ares and 19.78 ares in 149/12. PW1 deposed that the extent of boundary descriptions of the

property transferred to her husband are correct. What the court can see from the plaint and proof affidavit is that plaintiffs seek right over a total extent of property having 32.98 ares, ie; 13.20 ares in 149/10 and 19.78 ares in 149/12. They are not claiming right over any property in any other revenue subdivisions. PW1 could not explain the grounds for claiming 13.20 ares in 149/10 and 19.78 ares in 149/12. It is already noted that no correlation statements are produced before the court. The details are not available from Exts.C1,C1(a), C2, C2(a) or the resurvey sketches, Ext.A6 and Ext.B8. Ext.A2 is the tax receipt dated 08.03.2006 produced by PW1. The tax receipt would show that 1st plaintiff was paying land tax for 10.25 ares of property comprised in resurvey No.149/10 and 9.47 ares of property comprised in resurvey No.149/12, ie; for a total extent of 19.72 ares. Plaintiff is silent about the transfer of properties he made from the property obtained as per Ext. A1. It can be seen from the documents, which are marked as Exts. B2 to B7, produced by the defendants that 1st plaintiff had made several transfers before 2006. These documents would show that the properties comprised in resurvey No.149/12 was transferred in different transactions. Hence, the total extent of property that remained on 08.03.2006 may be 19.72 ares. But the records available are insufficient to conclude so. It is pertinent to note that as per Ext. A2 also the property comprised in resurvey No.149/10 is 10.25 ares. The learned counsel for plaintiffs asked DW1, the 3rd defendant during cross-examination whether he could establish the old survey number of the property corresponding to resurvey No.149/13 by Ext.B8. The discussion in the previous paragraphs would show that none of the parties could prove the properties they owned and possessed with respect to the old survey numbers shown in their prior deeds.

21. The defendants alleged that 1st plaintiff and Sali P. Thomas executed an exchange deed, exchanging 20 cents out of the property obtained by 1st plaintiff as per Ext.A1 with 20 cents obtained by Sali as per Ext.B21. PW1 denied this allegation. According to her, 1st plaintiff never obtained any property from Sali Thomas, nor exchanged any property in her favour, nor transferred such property to anybody else. Defendants produced Ext. B1, an exchange deed No.3308/1993. This document would show that Sali transferred 8.09 ares of property (20 cents) comprised in old survey No.235/1/195/78A, obtained by her as per Ext.B21, in favour of 1st plaintiff while he transferred 20 cents out of the property comprised in old survey No.235/1/195/78A, he obtained as per Ext.A1. After execution of Ext.B1, the total extent of property in the name of 1st plaintiff remains without any change in extent ie; he owned 83 cents of property even after exchange. It is to be noted that after the exchange, the 83 cents of property belonged to 1st plaintiff was not lying contiguously. 63 cents was lying contiguously and 20 cents was on the south-eastern corner of the total extent of property of P. T. Thomas. Ext.B2 is a sale deed No.730/1994 executed by 1st plaintiff in favour of Sosamma Kurian and Gigi M. Kurian, transferring 20 cents of property comprised in old survey No.235/1/195/78A. This is executed on 17.02.1994. The recitals in the said sale deed would show that 1st plaintiff transferred the property he obtained from Sali P. Thomas by executing Ext.B1 exchange deed No.3308/1993. PW1 alleges that Ext.B1 and Ext.B2 are fraudulently executed by Sali Thomas with the help of her father. She categorically stated that 1st plaintiff never put signatures or affixed thumb impression on those documents. Plaintiffs sent those documents for examination before the Forensic

Science Laboratory and Fingerprint bureau, Thiruvananthapuram. Ext.C4 is the report of the fingerprint expert which shows that the questioned signatures are written by the person who wrote the admitted signatures. Ext.C5, the report from the Fingerprint bureau shows that the thumb impression on the questioned documents are identical with admitted thumb impressions. When PW1 was cross-examined to this effect she deposed that the signatures and thumb impressions on Exts.B1 and B2 belonged to 1st plaintiff as per the report. She added that she has objection regarding that report. But she had not filed any objection to Exts.C4 or C5 or took any steps for further examination. Plaintiffs failed to prove that Exts.B1 and B2 are forged documents.

22. Hence after execution of Ext.B2 sale deed, the 1st plaintiff is in possession of only 63 cents of property ie; when Ext.A10 thandaper account was prepared on 27.05.1994, the 1st plaintiff was in possession of only 63 cents of property. This is evident from the recitals in Exts.A1, B1 and B2. But as per Ext.A10, 1st plaintiff is in possession of 74.17 cents (30.03 ares) even after excluding 8.09 ares comprised in 149/15. This is false as it is seen from the discussion in the preceding paragraphs. The elukas of 20 cents of property given to Sali as per Ext.B21 is as follows. The property of Malloothara Ninan on the East, the properties of Bismillah, Rajan Madathil and a pathway on the South, the property belonged to P. T. Thomas on the West and the property belonged to P. T. Thomas on the North. The elukas of the property transferred as per Ext. B2 are the property of Malloothara family on the East, Nadappuvazhi on the South, property of Elizabeth Mathew on the West and the property of Stanley P. Thomas on the North. The first two elukas are same as that of stated in Ext.B21. The other two properties belonged to P. T. Thomas when Ext. B21

was executed. Later, in 1993 these properties were transferred to Elizabeth and Stanley. Ext.A11 which corresponds to Ext.B8 is the resurvey subdivision sketch of field No.149/5 in Block No.5 of Mundakkayam Village. The property description would show that this 20 cents of property belonged to Sali P. Thomas which was transferred to 1st plaintiff by executing Ext. B1 exchange deed and later, sold by 1st plaintiff is comprised in 149/15. The transfer of this 20 cents of property as per Ext.B2 is shown in Ext.A10 as the transfer from 149/15 as on the date 01.07.1996.

23. Ext. B12 is the possession certificate issued by the Village Officer, Mundakkayam in favour of 1st defendant. Ext. B13 is the land tax receipt in the name of 1st defendant. These both documents would show that he is in possession of 23.64 ares of property, though he was entitled to 23.47 ares as per Ext. B11. Anyhow, by the execution of Ext.B21, Ext. A1, Ext.B11, Ext. B23 and Ext.B25, as per Ext. B9, P. T. Thomas transferred the entire property he owned as per the pattayam. The thandaper details of 1st defendant would show that he was in possession of 23.64 ares of property. But as per Ext. B11, he shall be in possession and title of 23.47 ares only. As per the property transactions made by P. T. Thomas also, 1st defendant would be entitled to 23.47 ares only and not 23.64 ares. There are no documents available to prove the source of allotment of 23.64 ares to 1st defendant by the revenue authorities. 1st defendant or defendants 3 and 4 failed to prove that 1st defendant was in possession of 23.64 ares of property at the time of executing Exts.B14 and B15 sale deeds in favour of defendants 3 and 4.

24. 1st plaintiff obtained 33.60 ares of property on 18.05.1993 as per Ext. A1. His thandaper account number is 2067 (Ext.A10). This would show that he obtained

10.25 ares of property comprised in resurvey No.149/10, 19.78 ares comprised in resurvey No.149/12 and 8.09 ares from 149/15 from thandaper account No.1485 which belongs to P. T. Thomas. The total extent of property as per Ext. A10 is 38.12 ares. P. T. Thomas did not transfer 38.12 ares of property in favour of 1st plaintiff. If P. T. Thomas had transferred 38.12 ares of property to 1st plaintiff, he could not have transferred the properties as per Exts.B11, B23 and B25.

25. Next point to be discussed is the legality and correctness of Ext A6, the revised sketch produced by the plaintiffs which is prepared by the District Survey Superintendent in continuation to the direction by the Hon'ble High Court of Kerala. Ext.X5 subject to proof is the copy of the order passed by the District Survey Superintendent. The original of the order is not produced by the plaintiffs. Though the entire files of the revenue department relating to re-fixation of boundary with respect to plaint schedule properties is produced before the court, the original order or office copy of the order is not seen therein. As per S.13A of the Kerala Survey and Boundaries Act, 1961, the satisfaction of the District Collector is necessary for the modification or revision on resurvey subdivisions. The District Collector is authorised to pass orders regarding such modifications and revisions in resurvey subdivisions. It shall also be notified in the gazette. Plaintiff failed to produce order of the District Collector corresponding to the change in the resurvey subdivisions as per Ext. A6 and the corresponding gazette notifications.

26. Ext.X7 is a complaint filed by 4th defendant regarding the preparation of new resurvey sketch. Ext.X8 is the letter from the Survey Deputy Director to the Vigilance Deputy Collector, Southern Region regarding the revenue intelligence

enquiry based on Ext.X7. Ext B29 Vigilance enquiry report is also against the acts of the District Survey Superintendent. The observations in Ext.B29 would show that the total extent of property belonged to P. T. Thomas is 82.80 ares. But P. T. Thomas had only 1.93 acres as per the patta he obtained from the Special Munsiff, Land Tribunal, Kottayam. Plaintiffs, defendants or the Survey Superintendent could not establish that P. T. Thomas was in possession of 82.80 ares of property. The District Survey Superintendent could not locate this 82.80 ares of property while he prepared Ext.A6, the revised sketch. The vigilance enquiry is also based on the revenue records on 82.80 ares. The revenue records are not a proof of the title for the extent of property which belonged to one person. The total extent of property possessed by P. T. Thomas ie; 1.93 acres of property is not located in Exts.C1, C1(a), C2, C2(a) or Ext. A6. Thus, Ext.A6 is an unacceptable document. The total extent of property obtained by 1st plaintiff as per Ext.A1 is not located in Exts. C1, C1(a), C2(a) or Ext. A6. It is pertinent to note that plaintiffs did not take any steps to locate the total extent of property as per Ext.B9 and the total extent of property ie; 32.98 ares, they claimed in Ext.A6. Plaintiffs failed to prove that he was in possession of more extent of property than 83 cents he obtained as per Ext.A1. Ext.A10 (Ext.X4) would not confer any right to plaintiff over any property. The reliable resurvey subdivision sketch available before the court is Ext.B8 which corresponds to Ext.A11. Plaintiffs failed to produce order of the District Collector cancelling Ext.B8 and approving a new subdivision with respect to properties included in field No.149/5, Block No.5. The plaintiffs failed to prove that the 1st plaintiff was in possession and title of 13.20 ares of property comprised in 149/10 and now the plaintiffs possess 5.42 ares in 149/12. As per

Ext.A6, the District Survey Superintendent allotted only 17.60 ares in 149/13 to 1st defendant. The District Survey Superintendent or the plaintiffs could not explain what had happened to 23.47 ares of property allotted to 1st defendant by his father as per execution of Ext.B11 document. The District Survey Superintendent is not the authority to decide that 1st defendant has right over a reduced extent of property than what is stated in his title deed. Ext.X6 is the statement of subdivisions of Block No.5, resurvey No.149, made by the revenue authorities. The area of the property comprised in resurvey No.149/13 was 11.49 ares and in 149/13-1 was 12.15 ares. The District Survey Superintendent reduced 11.49 ares to 10.99 ares and 12.15 ares to 6.61 ares. The title deeds of defendants 3 and 4 shows that they have ownership over 12.15 ares and 11.49 ares respectively. The District Survey Superintendent has no authority to reduce the extent of property. This was done by the District Survey Superintendent during the pendency of the case. None of the parties, nor the revenue authorities took steps to identify the properties possessed by 1st plaintiff and 1st defendant as on the date of execution of Ext.A1 and Ext. B11 documents.

27. Ext.B21, Ext.B25, Ext.A1, Ext.B11 and Ext.B23 are the transfers of properties effected by P. T. Thomas. The boundary descriptions of the property in Ext.B21 would show that there is a road on the southern side. This is the property transferred to Sali, one of the daughters of P. T. Thomas. The western boundary of the property, transferred to another person who is not a member of the family of P. T. Thomas, described in Ext.B25 is a pathway. The northern boundary of the property allotted to 1st plaintiff, one of the sons of P. T. Thomas, as per Ext.A1 is K. K. road. The northern boundary of property allotted to 1st defendant, the other son of P. T.

Thomas, as per Ext.B11 is also K. K. road. The southern boundary of property allotted to Elizabeth, another daughter of P. T. Thomas, as per Ext.B23 is a pathway. This would show that as per the title deeds, every transferee got convenience of road accessibility. But as per Ext.A6, the 17.60 ares of property allotted to 1st defendant by the Survey Superintendent is a landlocked area. The contention of plaintiffs that 1st defendant had no road accessibility is unbelievable and it is against the title deed executed by P. T. Thomas. P. T. Thomas allotted properties lying near K. K. road to his both sons as per Ext. A1 and Ext. B11. Ext.B8 shows that the northern boundary of property allotted to 1st defendant is having an access from the K. K. road on the northern side.

28. Without locating 1.93 acres of property allotted to P. T. Thomas and the property transferred by him by executing different deeds, the properties transferred by 1st defendant by executing Exts. B2 to B7 documents, the identity of the property possessed by 1st plaintiff cannot be determined. Hence plaintiffs failed to prove their case. Hence OS 154/2006 is liable to be dismissed.

29. The claim of the counterclaim plaintiffs that they have title over half portion of the counterclaim item No.2 pathway and quasi easement right over the other half portion of the pathway could not be established before the court. Even the existence of counterclaim item No.2 pathway is not specifically marked in Exts. C1, C1(a) and C2, C2(a). Evidence of PW2, the surveyor also shows that he could not trace out counterclaim item No.2 pathway specifically in Exts.C1, C1(a). PW3 is the commissioner who prepared Exts.C1 and C2 reports. His evidence also would show that he could not report the elukas of the properties comparing the title deeds and lie

and nature of the properties on the land. Exts.C3, C3(a) and Exts.C6, C6(a) are the commission reports and sketches filed in OS 154/2006 and OS 132/2009 respectively. DW2 is the commissioner who prepared Ext.C6 and C6(a). These both reports show the existence of a kayyala in between the properties of plaintiffs and defendants. Defendants could not prove whether the kayyala is on the western boundary of the property or they have property beyond that kayyala. Though Exts. C1, C1(a) shows such an existence, without locating the extent of the property belonged to P. T. Thomas, no decision can be taken with respect to the boundaries of properties of plaintiffs and defendants. Existence of counterclaim item No.2 pathway is not mentioned in Ext.B11. Counterclaim plaintiffs failed to establish the existence of half portion of the counterclaim item No.2 pathway in the properties they purchased as per Exts. B14 and B15. 1st defendant was not in need of such a pathway as he has direct access from K. K. road. Defendants 3 and 4 purchased property of 1st defendant. The western boundary of property belonged to 1st defendant is the property of 1st plaintiff. No pathway is mentioned in Ext.B11 on the western side. Hence defendants 3 and 4 are not entitled to claim that a pathway which lies half in the 1st defendant's property and half in the 1st plaintiff's property was in existence when they purchased property. Defendants 3 and 4 are not entitled to claim any quasi easement right over unidentifiable counterclaim item No.2 property. Hence counterclaim is liable to be dismissed.

30. Plaint schedule item No.2 property in OS 132/2009 is the property allegedly encroached by plaintiffs. As per Ext.C2(a), the encroached area comes under the properties of defendants 3 and 4, the plaintiffs therein claim for recovery of

a total extent of 6.04 ares. The portion allegedly encroached from the properties belonged to defendants 3 and 4 are not separately stated in the plaint in OS 132/2009. The encroached portions as per Exts.C2, C2(a), are not lying contiguously. Plaintiffs in OS 132/2009 could not explain how 1st defendant would come into possession of 0.17 ares more than what is stated in Ext. B11. This is significant when the defendants 3 and 4 (plaintiffs in OS 132/2009) allege encroachment of 50 sq. metres in the property belonged to 4th defendant by the plaintiffs 2 to 4. The plaintiffs ought to have proved the specific boundaries of the properties they were in title and possession, as per title deeds and revenue records and the area of encroachment by plaintiffs in the properties of defendants 3 and 4 separately. Exts. C2, C2(a) are insufficient to calculate the area of encroachment in each properties. The encroached property is unidentifiable as the property of 1st defendant from where the plaintiffs in OS 132/2009 obtained property is not traced out and the commission reports are unreliable to locate plaint schedule item No.1 and 2 properties. Hence the suit is liable to be dismissed. The plaintiffs and defendants ought to have identified the property possessed by P. T. Thomas as per pattayam and larger extent of property, if any, in his possession and the properties transferred to 1st plaintiff and 1st defendant. Thereafter, they ought to have located the properties transferred by them by executing several sale deeds and settlement deeds. These properties can be located only after properly locating the property of P. T. Thomas and the properties transferred to his children and other persons. As these details could not be established by plaintiffs in both cases the suits and counterclaim are liable to be dismissed. The transfer of property by plaintiffs 2 to 4 to the Addl. 4th defendant in OS 132/2009 based on the new survey sketch

prepared by the District Survey Superintendent, during the pendency of the suit in which the rights over the extent of properties are in dispute, is illegal.

31. Issue No.1 to 3 in OS 132/2009:- The plaintiffs aver that OS 132/2009 is not maintainable. According to them, the plaint schedule item No.2 property in OS 132/2009 is in their possession and the new fencing was done based on the corrected resurvey sketch prepared by the District Survey Superintendent. It is already found that the act of the District Survey Superintendent is ultravires his jurisdiction. OS 132/2009 was filed for the declaration of right over plaint schedule item No.2 property for a decree of eviction therefrom and mesne profits. It can be seen that based on an unapproved resurvey sketch the District Survey Superintendent established survey stones in the plaint schedule property and the plaintiffs in OS 154/2006 placed fencing over it. Then the defendants have right to approach the civil court concerned, addressing the issue in dispute. As the suit with respect to the properties involved in OS 132/2009 is already pending before the court, the defendants have every right to file a suit with respect to new improvements happened in the property. Hence the suit is maintainable. The plaintiffs in OS 132/2009 impleaded Addl. 4th defendant to whom plaintiffs transferred property during the pendency of the case. Hence the suit is not bad for non-joinder of necessary parties. Though the defendants in OS 132/2009 alleged that the suit is not properly valued and court fee paid is insufficient, they failed to point out the reason for stating that the suit is not properly valued.

32. Issue No.6 in OS 132/2009:- The discussions in the preceding paragraphs would show that plaintiffs in OS 132/2009 failed to establish the identity of the

property based on prior deeds and revenue records. It is found that plaintiffs in OS 132/2009 failed to identify the plaint schedule item No.1 property in OS 132/2009. If the plaint schedule item No.1 property is unidentifiable, the encroachment happened therein cannot be located. There is no proof that plaint schedule item No.2 is in the title and possession of defendants 3 and 4. Hence the mesne profits prayed for by the plaintiffs is not allowable.

33. The learned counsel for the plaintiffs relied on a decision by the Hon'ble Supreme Court in **Union of India and Others v. Vasavi Co-operative Housing Society Ltd. and others (2014 KHC 4011)**, in which it is held that *plaintiff is a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not – even if the title is set up by the defendants is found against, in the absence of establishment of plaintiffs on title, plaintiff must be non-suited*. Here, plaintiffs and defendants produced their title deeds claiming more extent of properties than what is stated therein. They failed to prove the identity or extent of the properties held by them. The other decision relied on by the learned counsel for the plaintiffs is **Chandrakumar v. Narayanan Bahuleyan and Another (2011 (2) KHC 884)**, the Hon'ble High Court held that *when the description of boundaries is clear and within the four boundaries stated in the document more extent of land than that shown in the document is found to be in the possession of the plaintiffs, the mere fact that there is larger extent than shown in the document by itself would not deprive the plaintiffs to get title to the excess extent*. Here, in OS 154/2006, plaintiffs claim only 32.98 ares of

property which is a lesser extent than what is given by Ext.A1 title deed. The learned counsel for the plaintiffs relied on a number of precedents as mentioned in the argument note. The learned counsel for the defendants also cited several decisions during argument. All these decisions are produced based on the belief that P. T. Thomas had 82.80 ares of property in his title and possession. The properties claimed by plaintiffs and defendants could not be located. Hence the court does not find any purpose in discussing all the precedents relied on by both counsel.

34. Issue No.3 in OS 154/2006 and issue No.5 in counterclaim in O.S.154/2006 and Issue No.8 in O.S. 132/2009:-

In the result, O.S.154/2006, O.S.132/2009 and counterclaim in OS 154/2006 are dismissed.

Considering the facts and circumstances of the cases, the parties are directed to bear their respective costs.

Dictated to the Confidential Assistant, typed by him, corrected by me and pronounced in open court on this the 23rd day of March, 2026.

**Smitha Susan Mathew
Munsiff**

APPENDIX

Exhibits marked for the plaintiffs/Counter claim defendants:-

A1	18.05.1993	Gift deed No.1874/93.
A2	08.03.2006	Tax Receipt.
A3	04.08.2008	Certified copy of the order in WP(c) No. 23333 of 2008 (c) of the Hon'ble High Court.

A4	08.07.2014	Certified copy of the order in R.P No. 970 of 2009 (c) WP(c) No. 23333/08 of the Hon'ble High Court.
A5	08.02.2016	Certified copy of the Order in W.P.(c) No. 30880 of 2015 (H) of the Hon'ble High Court.
A6	26.03.2009	Revised sketch of field No. 149, Block No. 5 in Mundakayam Village, prepared & issued by District Superintendent of Survey & Land Records, Kottayam.
A7	25.09.2009	Certified copy of Review petition No. 970/2009 in WP© 23333 of 2008 filed before the Hon'ble High Court.
A8	15.09.1951	Certified copy of Deed No. 4591/1951
A9	11.09.1997	Marriage Agreement.
A10	19.04.2007	Certified copy of Thandaper Account No. 2067.
A11	24.08.2006	Certified copy of Re-Survey plan of 149/05, 149/10 to 149/15 from District Survey Superintendent of Survey and Land Records, Kottayam.

Exhibits marked for the defendants/Counter claim plaintiffs:-

B1	13.09.1993	Certified copy of Exchange Deed No.3308/93 of the SRO, Kanjirappally.
B2	17.02.1994	Certified copy of Sale Deed No.730/1994.
B3	02.02.1995	Certified copy of Sale Deed No.583/1995.
B4	21.08.1997	Certified copy of Sale Deed No.2978/1997
B5	26.05.1998	Certified copy of Sale Deed No.1503/1998
B6	15.05.1999	Certified copy of Sale Deed No.1844/1999
B7	10.03.2006	Certified copy of Sale Deed No.1121/2006
B8	24.08.2006	True copy of Re- Survey plan of 149/5, 149/10 to 149/15 from the District Survey Superintendent of Survey & Land Records, Kottayam.
B9	16.01.2018	Thandapper Account No.1485
B10	19.09.2009	Thandaper Account No.2486
B11	18.05.1993	Gift Deed No.1875/1993
B12	25.05.2006	Possession Certificate of Stanly P. Thomas issued from Village Office, Mundakayam.

B13	25.05.2006	Land Tax Receipt No.2924793 issued from Village Office, Mundakayam.
B14	20.06.2006	Sale Deed No.2758/2006
B15	20.06.2006	Sale Deed No.2759/2006
B16	11.06.2007	Land Tax Receipt No.3404314 issued from Village Office, Mundakayam.
B17	02.05.2009	Possession Certificate of Joseph Issued from Village Office, Mundakayam.
B18	02.05.2009	Possession Certificate of Lucikutty Joseph Issued from Village Office, Mundakayam.
B19	08.10.2009	Certified copy of the order in RP 970/2009 in WP(c) 23333/2008 (c) of the Hon'ble High Court, Ernakulam.
B20	15.03.2014	Certified copy of Sale Deed No.403/2014.
B21	01.01.1987	Certified copy of Settlement Deed No. 12/1987.
B22	07.12.2009	Thandapper Account No.2068.
B23	18.05.1993	Certified copy of Gift deed No.1876/1993.
B24	16.01.2018	Copy of Thandapper Account No.2070
B25	17.05.1993	Certified copy of Sale Deed No.1838/1993.
B26	16.01.2018	Copy of Thandapper Account No.2071.
B27	02.08.2013	Copy of Thandapper Account No.4908.
B28	02.08.2013	Copy of Thandapper Account No. 4909.
B29	01.05.2012	True copy of the report of Survey Vigilance Division, Survey Director Office, Thiruvananthapuram.
B30	16.06.2008	Land Tax Receipt No. 3184351 issued from Village Office, Mundakayam.
B31	11.06.2007	Land Tax Receipt No. 3404315 issued from Village Office, Mundakayam.
B32	16.06.2008	Land Tax Receipt No. 3184352 issued from Village Office, Mundakayam.

Court Exhibits:-

C1	26.02.2007	Survey plan of Survey No.149/5, 10,11,12,13, Block No. 5 in Mundakayam Village, prepared by T.P. Krishnan Nair, Surveyor Pensioner.
C1(a)	26.02.2007	Commission report prepared by Commissioner Advocate Raj Mohan.

C2	02.07.2009	Survey plan of survey No.149, Block No. 5 in Mundakaym Village, prepared by T.P Krishnn Nair, Surveyor Pensioner.
C2(a)	02.07.2009	Commission report prepared by Commissioner Advocate Raj Mohan.
C3	10.07.2006	Mahazar prepared by Commissioner Advocate Raj Mohan.
C3(a)	10.07.2006	Sketch prepared by Commissioner Advocate Raj Mohan.
C4	05.01.2013	Report No.CS-38/2012 of M.A. Latha Devi, Assistant Director FSL, Thiruvananthapuram.
C5	22.10.2013	Report No.X2-5630/FPB/2013 of Rajkumar S., Finger Print Expert, Finger Print Bureau.Thiruvananthapuram.
C6	01.07.2009	Mahazar prepared by Commissioner Advocate Prejisha Jose.
C6(a)	01.07.2009	Sketch prepared by Commissioner Advocate Prejisha Jose.

Third party Exhibits:-

X1	26.04.2007	Copy of application filed by the 1 st plaintiff before the District Collector, Kottayam.
X2	26.04.2007	Copy of application filed by the 1 st plaintiff before the District Superintendent of Survey and Land Records, Kottayam.
X3	31.10.2008	Copy of Basic Tax Register.
X4	31.10.2008	Thandaper Account No.2067 of the Mundakayam Village.
X5	05.05.2009	Order No.C5-18187/07 by District Superintendent of Survey and Land Records, Kottayam.
X6	05.05.2009	Statement of Sub divisions of block No.5, Resurvey No.149 of the Village Office, Mundakayam and approved by District Superintendent of Survey and Land Records, Kottayam.
X7	18.05.2009	Complaint filed by 4 th defendant before Survey Director, Thiruvananthapuram, regarding the preparation of new survey sketch.

X8	25.09.2019	Letter from the Survey Deputy Director to the Vigilance Deputy Collector, Southern Region, Thiruvananthapuram.
X9	13.09.1993	Copy of exchange deed No.3308/93 of the S.R.O, Kanjirappally.
X10	17.02.1994	Copy of Sale Deed No.730/94.

Witnesses examined for the Plaintiffs/Counter Claim Defendants:-

PW1	<u>11.12.2017</u> 03.01.2018	Lincy Thomas.
PW2	<u>12.03.2018</u> 09.02.2018	T.P. Krishnan Nair.
PW3	<u>26.09.2018</u> 17.07.2018	Raj Mohan.

Witnesses Examined for the Defendants/Counter Claim Plaintiffs:-

DW1	<u>05.07.2019</u> 19.02.2019	Joseph Antony.
DW2	18.07.2019	Adv. Prejisha Jose.

**Id/-
Munsiff**

Typed By :Jayamol. V.M.
Compd. By : Rajalakshmi T.P.

MUNSIFF