

IN THE COURT OF THE MUNSIF, KANJIRAPPALLY
Present : Smt. Smitha Susan Mathew, Munsiff

Tuesday 31st day of March 2026
10th day of Chaithra 1948

O.S. 102/2019

Plaintiff:-

Janaki, Aged 80 Years, D/o Kochupennu,
Kailasamandiram House, Vazhoor P.O.,
PIN: 686 504, Vazhoor Kara, Vazhoor Village,
Changanacherry Taluk.

By Adv. K.S. Ninan.

Defendants:-

1. Gopalakrishna Panicker, S/o Madhavan Nair,
F.R.A 23, Vipanchika House, Block Office Road,
Kuruppampadi P.O., PIN: 683545, Permbavoor Village,
Kunnathunadu Taluk, from Pullolil Kodungoor Kara,
Vazhoor Village, Changanacherry Taluk.
2. Reji, Aged 54 Years, S/o Joseph, Narikkattu House,
Chamampathal P.O., Chamampathal Kara,
Vazhoor Village, Changanacherry Taluk.

D1 - By Adv. C. Harindramohan Nair

D2 - Exparte.

This suit having been finally heard on 28.03.2026 and the Court on 31.03.2026 delivered the following:-

J U D G M E N T

Suit for permanent prohibitory injunction.

2. The plaint averments, in brief, are as, follows:- Plaint schedule item No.1 property having an extent of 17½ cents and house therein belongs to plaintiff by virtue of Sale deed No.19/1976 of the SRO, Pampady. Plaintiff has been in possession of the property

and mutated it in her favour. Defendant has property on the South of item No.1 property. It is scheduled as item No.2. There is an 8 feet wide pathway on the northern side of plaintiff schedule item No.2 property in the East-West direction. It has been in existence for more than 50 years. It was used by plaintiff and other inhabitants who were residing on the northern boundary of plaintiff schedule item No.2 property. Said pathway have been used for their ingress and egress including vehicular traffic. During the period of 2015-2016, 1st defendant entrusted the plaintiff schedule item No.2 property with 2nd defendant to sell it after making it into several plots. When 2nd defendant developed the plot by removing stones, cutting and removing trees therein, he orally agreed to widen the existing edathodu by annexing 4 feet of property from item No.2 to the said edathodu. He also promised that the said road would be tarred when the property was converted into plots. The said edathodu was widened into a 12 feet road and it has 199.8 metres of length and 3.10 metres of width presently and is scheduled as item No.3. Due to flood, soil filled for a length of 10-15 feet on the western boundary of item No.3. At that time, 2nd defendant allowed vehicular traffic through the road constructed through property in his possession. When things being so, there existed disputes between the defendants 1 and 2. 1st defendant re-possessed the property from 2nd defendant and obstructed the user of the pathway through plaintiff schedule item No.2. Defendants and other inhabitants

were instructed to use item No.3 road after removing the soil. Thus plaintiff and other inhabitants removed the soil on item No.3 which lies with specific boundaries and said road is the only access for plaintiff's transportation. 1st defendant is attempting to close down item No.3, obstruct the vehicular traffic through it alleging that his attempt to sell item No.2 property into plots was not supported by the plaintiff. Hence the suit.

3. 1st defendant filed written statement denying the allegations and the contentions in brief, are as, follows; The plaint schedule descriptions in plaint and plaint schedule are inconsistent with each other. 1st defendant is in title and possession of 64 ares of property comprised in resurvey No.30/9, 30/8-1 in Block No.25 by virtue of partition agreement No.3110/1961. The plaintiff is in possession of 7.10 ares of property comprised in survey No.30/7 in Block No.25 lying on the North of plaint schedule item No.2 property. As far as the knowledge of the plaintiff, this property is plaint schedule item No.2 and the property described earlier is plaint schedule item No.1. Plaint schedule item No.1 property is not on the immediate North of plaint schedule item No.2. This property is on the north-eastern side of property of 1st defendant. No road was in existence on the northern side of item No.2 property for the ingress and egress of plaintiff and other inhabitants. There was an agreement for sale with respect to the properties of 1st defendant and his sister with 2nd defendant. The 2nd

defendant cut and removed the trees therein. The purchaser of the timbers made temporary roads through the plaint schedule item No.2 property for the removal of the timbers from plaint schedule item No.2 property. Later, the 2nd defendant could not keep the promises in the agreement and he rescinded from the agreement. The plaintiff did not close those roads with intention to use those roads at the time of selling the property after making it into plots. By this time, Sabu Chakkiyanakuzhiyil, Shibu Karakkattu, Suresh, Raju and Thankamma Irumbukuthiyil, demolished the kayyala which separated the properties of 1st defendant and plaintiff and attempted to annex the temporary road with their properties. 1st defendant warned them against the use of vehicles through the said road. Hence 1st defendant closed the temporary roads from Kodungoor-Puliyannoor road. The 1st defendant filed OS 97/2019 and obtained an order of temporary prohibitory injunction against plaintiff. 2nd defendant has no right to promise the defendants that the existing edathondu would be developed into a road and it would be tarred as and when the property would be changed into plots. Defendant never allowed plaintiff to use plaint schedule item No.2 road for their ingress and egress including vehicular traffic. The period of performance of the agreement executed with 2nd defendant was one year. 2nd defendant could not comply with the terms of the agreement. Hence the agreement was rescinded by defendant himself. As the possession was not handed over to 2nd defendant, there is no

meaning in alleging that 1st defendant repossessed the property from 2nd defendant. Plaint schedule item No.3 road is not in existence on the land. There is a public road having a width of 4 feet which starts from Kodungoor-Puliyannoor road and passing through the northern side of the properties of the defendants in OS 97/2019 for their ingress and egress. This road is paved with stones by the panchayath. Hence 1st defendant seeks for dismissal of the suit. 2nd defendant remained exparte.

4. Heard both sides. Perused the case records.

5. **The issues are settled for determination as follows :-**

1. Is plaint schedule item No.2 is in existence ?

2. Has the plaintiff acquired any right over item No.2 ?

3. Is the plaintiff entitled to get a decree for permanent prohibitory injunction as prayed for ?

4. Reliefs and costs.

6. PW1 and PW2 were examined from the side of plaintiff and Exts. A1, A1(a) to A3 were marked. Ext.A1 marked subject to proof. DW1 was examined from the side of defendants. No documentary evidence adduced from their side. Exts. C1, C1(a), C2 and C2(a) were also marked.

7. Issue No.1 to 3:- Plaintiff is the title holder and is in possession of plaint schedule Item No.1 property having an extent of 17.5 cents by virtue of Sale deed No.19/1976 of the SRO, Pampady. Plaint schedule item No.2 property belongs to 1st defendant. Plaintiff is examined as PW1. He produced Exhibit A1(a), the certified copy of the said sale deed, and Exhibits A2 and A3 are the corresponding land tax receipts to establish her claim over the plaint schedule item No.1 property. Exhibit A1 is the photocopy of Exhibit A1(a). These documents are not disputed by 1st defendant. As per the plaint averments, plaint schedule Item No.2 property is lying on the southern side of plaint schedule item No.1 property. PW1 claims that an 8-foot-wide pathway was in existence for more than 50 years through the northern side of plaint schedule Item No.2 property, which had been used by plaintiff and 4 to 5 other inhabitants who are residing on the northern side of plaint schedule Item No.2 property. PW1 pleads that this pathway is the only motorable pathway which can be used by plaintiff and other neighbours for their day-to-day life.

8. 1st defendant filed written statement and he was examined as DW1. According to him, plaint schedule Item No.1 property is on the north-eastern side of plaint schedule item No.2 property and there is no common boundary between plaint schedule Item No.1 and 2 properties. His evidence shows that the property of his sister is lying on the eastern side of plaint schedule Item No.2 property. Exhibit C1, Exhibit C1(a) are the mahazar and sketch prepared by PW2, the commissioner, and Exhibit C2,

Exhibit C2(a) are Report and Plan prepared by the same commissioner with the help of a surveyor. It can be seen from Exhibit C2(a) that the plaintiff schedule Item No.1 property is on the north-eastern side of the plaintiff schedule Item No.2 property, as claimed by the defendant, and the said property is not sharing a boundary with the plaintiff schedule Item No.1 property.

9. PW1 pleads that an 8 feet wide edathondu was in existence on the northern side of plaintiff schedule Item No.2 property and it has been used by plaintiff and 4 or 5 inhabitants thereby for more than 50 years for their ingress and egress. According to her, she and other inhabitants had been using the said pathway as a motorable road to bring water during summer and also for the passage of pickup jeeps and other small vehicles. She further avers that, during 2015-2016, 1st defendant decided to sell plaintiff schedule Item No.2 property after making it into smaller plots. As per her proof affidavit DW1 handed over the possession of plaintiff schedule Item No.2 property to 2nd defendant and he developed the property into plots after removing the trees and stones thereby. PW1 stated that 2nd defendant agreed to surrender 4 feet wide property from plaintiff schedule Item No.2 property to make the idathondu into a road. She stated in the proof affidavit that 2nd defendant also agreed that the road would be tarred as soon as the plaintiff schedule Item No.2 property was converted into plots. According to her, the 8 feet wide idathondu was converted into a road by annexing the 4 feet wide property taken from plaintiff schedule item No.2 property. This is

the plaintiff schedule item No.3 road. Her affidavit shows that a dispute arose between defendants 1 and 2, and 1st defendant repossessed the property from 2nd defendant and obstructed the use of plaintiff schedule Item No.3 road by plaintiff and other inhabitants. According to her, 1st defendant has no right to obstruct the use of plaintiff schedule Item No.3 pathway by the plaintiff.

10. It can be seen from the plaintiff averments itself that plaintiff schedule Item No.3 road is allegedly formed by merging an idathondu having 8 feet wide which was in existence for more than 50 years and a 4 feet wide property annexed from the property of item No.2. Hence plaintiff is liable to prove existence of 8 feet idathondu first. None of the elukas of item No.1 property as per Ext. A1(a) is an idathondu. Plaintiff failed to bring any evidence to establish existence of an idathondu on the southern boundary of any of the inhabitants, who are allegedly the beneficiaries of item No.3 road, living on the northern side of plaintiff schedule Item No.2 property, including plaintiff. Existence of idathondu is not stated in Exhibit C1 and Exhibit C2. PW1 failed to bring any oral or documentary evidence for the existence of 8 feet wide idathondu and its use as a road for more than 50 years by plaintiff and others.

11. The next fact to be proved by plaintiff is the annexure of 4 feet wide property from item No.2 with the allegedly existing edathondu to make it as a 12 feet motorable road. According to PW1, DW1 handed over possession of plaintiff schedule item No.2 property to 2nd defendant, based

on an agreement for sale of that property to 2nd defendant. Her evidence shows that, as per the agreement, 2nd defendant would sell the property after developing it into smaller plots. DW1 admitted that he intended to sell plaintiff schedule Item No.2 property and executed an agreement with 2nd defendant to that effect. According to DW1, as per the agreement, 2nd defendant started developing the plot and made several roads through the plot to cut and remove the trees standing in the plot. The statement of DW1 would show that defendants decided to keep those roads for the use of the proposed plots in item No.2. His case is that plaintiff schedule item No.3 is one of those roads and plaintiff is using that road to go to her house taking the advantage of his absence from the plaintiff schedule property. As per the affidavit filed by DW1, 2nd defendant failed to comply with the terms of the agreement and he rescinded the agreement. DW1 deposed that he never handed over item No.2 property to 2nd defendant. Plaintiff could not produce any evidence to show that the agreement was a registered agreement and DW1 handed over the possession of item No.2 property to 2nd defendant as part performance of the contract. 2nd defendant did not appear before the court. He had not raised any claim over the plaintiff schedule property. It is clear from the evidence of DW1 that he had not handed over any right of transfer of any portion of plaintiff schedule property to second defendant. Hence, 2nd defendant has no right to permit plaintiff to get access to any portion of plaintiff schedule Item No.2 property. Moreover, proof affidavit of PW1 shows that 2nd defendant only gave an oral

agreement in 2015-2016 to annex 4 feet wide pathway to the idathondu. Oral agreement should be proved specifically. Plaintiff failed to bring any evidence to show existence of such an oral agreement.

12. Exhibit C2(a) plan would show that plaint schedule Item No.3 road is part and parcel of plaint schedule Item No.2 property. Plaintiff neither filed an objection to Exts.C2, C2(a), nor attempted to establish that Ext.C2(a) plan is false. Plaint schedule Item No.1 property is in a higher level than that of plaint schedule Item No.2 property and plaint schedule Item No.3 pathway. The commissioner reported the existence of steps to plaint schedule Item No.1 property in continuation to plaint schedule Item No.3 pathway. According to him, these steps are approximately 20 years old or more. But there is no evidence to establish that the steps have been in existence for more than 20 years and are used to get access to the item No.3 road. Moreover, the commissioner could not specifically state that the road has been in existence for more than 20 years. He deposed that plaint schedule item No.3 road is less than 20 years old only. Anyhow plaintiff had not raised any specific claim that she has been using plaint schedule item No.3 road for more than 20 years openly, continuously, without obstruction, and with the knowledge of the 1st defendant. DW1 contends that plaintiff has been using a 4 feet concrete road on the northern side of plaint schedule item No.1 property. Existence of a 4 feet wide concrete panchayath road on the northern side of plaint schedule Item No.1 property, which starts from the Kodungoor-Puliyannoor panchayath road, is

reported by the commissioner and is admitted by PW1 during cross-examination. It is clear from the evidence of DW1 and reports of the commissioner that western boundary of item No.2 property is the Palakodungoor PWD road and he has direct access to his property from that road.

13. It can be seen from the above discussion that plaintiff failed to prove existence of plaint schedule item No.3 pathway and its use for more than 20 years. Plaintiff could not establish any right over any portion of plaint schedule item No.2 property which exclusively belongs to 1st defendant. The evidence available before the court shows that item No.3 road is part and parcel of item No.2 property. Hence the issues are answered against the plaintiff and the suit is liable to be dismissed.

12. Issue No.4:-

In the result, the suit is dismissed with costs.

Dictated to the Confidential Assistant, typed by him corrected by me and pronounced in open court on this the 31st day of March, 2026.

**SMITHA SUSAN MATHEW
MUNSIFF**

APPENDIX

Exhibits marked for the plaintiff:-

A1	19.11.1976	Photo copy of Sale deed No. 2407/76 (Subject to proof).
A1(a)	19.11.1976	Certified copy of sale deed No. 2407/1976.

A2	19.11.2018	Tax Receipt Thandaper No.134 of the Village Office, Vazhoor.
A3	11.08.2025	Tax receipt Thandaper No.134 of the Village Office, Vazhoor.

Exhibits marked for the defendants:- Nil

Court Exhibits:-

C1	01.04.2019	Mahazar prepared by Commissioner Advocate Sijo Joseph.
C1(a)	01.04.2019	Sketch prepared by Commissioner Advocate Sijo Joseph.
C2	22.12.2023	Commission Report prepared by Commissioner Advocate Sijo Joseph.
C2(a)	15.07.2023	Survey plan of Re- survey No. 30/9, 30/8-1, Block No.25 in Vazhoor Village prepared by Basheer Hassan, Land Surveyor.

Third party Exhibits:- Nil

Witnesses examined for the plaintiff:-

PW1	08.12.2025	Janaki
PW2	06.02.2026	Sijo P. Joseph.

Witness examined for the defendants:-

DW1	13.02.2026	P.M. Gopalakrishna Panicker.
-----	------------	------------------------------

Id/-
MUNSIFF

Typed By : Raji S. Nair.
Compd. By : Jayamol. V.M.

MUNSIFF