

IN THE COURT OF THE MUNSIFF, VAIKOM

Present: Kum. Abhinimol Rajendran, Munsiff.

Monday 13th day of January, 2025

23rd day of Pausha 1946

O.S. No. 267/2020

Plaintiff:-

Radha, aged 62 years, D/o Ayyappan,
Residing at Tharayil House, Enadi Kara,
K.S. Mangalam, Chempu Village, Vaikom Taluk.

By Adv. P.K. Muraleedharan.

Defendant:

Rajappan, Aged about 67 years, S/o Krishnan,
Reshmi Bhavan, Chembu Village, Enadi P.O.,
K.S. Mangalam, Vaikom Taluk.

By Adv. Suresh Babu

This suit having been finally heard on 08.01.2025 and the court
on 13.01.2025 delivered the following :-

JUDGMENT

Suit is for declaration, permanent prohibitory injunction,
mandatory injunction and other consequential reliefs.

2. Brief averments in the plaint were as follows:- Plaintiff
was the owner in occupation of 10 cents of land lying in survey
No. 109/6 with residential building therein and further extent of
16 cents lying on the southern side of the said 10 cents lying
together as single plot of land of 26 cents which is illustrated in
the suit as plaint schedule item No.1 property. 10 cents on
northern side of total 26 cents was obtained by the plaintiff by the

Gift deed executed by her father in 1994 vide deed No. 1902/1994. The rest of the property was purchased by the plaintiff vide deed No.921/1999 comprised in survey No.109/6 having an extent of 16 cents. The said 10 cents was originally obtained by the father of the plaintiff vide patta No. 1260/1971 issued by the Land Tribunal Vaikom in O.A No. 3747/1970. It was submitted that the family of the plaintiff was kudikidappukar in the said 10 cents property. The plaintiff and her predecessors were enjoying a pathway from plaintiff schedule item No.1 property towards north leading to the Panchayat road lying east west on the northern boundary of the property now belonged to the defendant. The immediate northern boundary of the property of the plaintiff's item No.1 property belonged to a different family other than the land lord of the plaintiff. It was through the mid of said property that the pathway was developed over use and were enjoyed by the plaintiff and her predecessors. The immediate northern property was subsequently purchased by the defendant and one Sukumaran and through the common boundary of the property of said Sukumaran and the defendant so fixed, the said pathway of having 3 feet width continued to exist and was in continuous use by the plaintiff and her predecessors. Even from the time of issue of the patta in the name of the father of the plaintiff Sankaran Ayyappan the further

northern boundary property of said Sukumaran and the defendant was subsequently purchased by the defendant himself and the husband of the plaintiff in their respective personal names without any hindrance or interference with the enjoyment of the pathway by the plaintiff. Accordingly the defendant laid down the boundary marks and boundary stones on the western boundary of his properties demarcating the same from the pathway enjoyed by the plaintiff from the Panchayat road to her property lying on the southern end, plaint schedule item No.1 property. The total property of the defendant is illustrated as plaint schedule item No.2 property in the suit. The defendant also erected boundary marks and boundary stones throughout the western boundary of his property purchased by two separate deeds, leaving apart the pathway having 3 feet width at the entry point of the plaintiff's property connecting to the 162 centimeter width pathway on the north-eastern corner of the property of said Sukumaran. The only pathway enjoyed by the plaintiff from her property towards north for ingress and egress to the Panchayat road is only having 3 feet width at the entry point of her property and so leading to the 162 centimetre width pathway on further northern portion of the said pathway linked to the Panchayat road. The defendant has residential building in item No.2 property wherein he resides with

family. The northern side property of the said Sukumaran and defendant was subsequently purchased by the husband of the plaintiff and the defendant which was lying on the road side. So the property of the plaintiff and the defendant were having clear cut and well defined boundaries on all its sides. The property in the name of the husband of the plaintiff on the northern side of the property of said Sukumkaran was also lying in well defined boundaries. In the property of said Sukumaran also there was a residential building and the family members of the defendant also used the said pathway for ingress and egress from early times. The Panchayat road side property, by deeds of 2004, was divided into two. About half portion on the western side was purchased by the husband of the plaintiff and the eastern portion was purchased by the defendant leaving apart the 162 centimeter pathway through the common boundary fixed and left free by the prior owner one Raghavan. The said pathway portion having an extent of 290 square links left free by the prior owner said Raghavan, and the rest portion given by Raveendran which was illustrated in the suit as plaint schedule item No.3 property. The defendant had no right or ownership over the said pathway lying on the entry point to the Panchayat road, linking to the 3 feet pathway lying on the common boundary of the property of said Sukumaran and the defendant.

On the western boundary of said pathway the properties of the husband of the plaintiff lies and the property belonged to said Sukumaran was finally purchased by the husband of the plaintiff in the year 2014. But even after the same, the said pathway remained continuously in use by the plaintiff as before without any obstruction. The pathway enjoyed by the plaintiff through the common boundary of the property of the defendant and of said Sukumaran was illustrated in the plaint as schedule item No.4 property. Now the defendant is making to close down the said pathway by encroaching into the same and putting up boundary stones so as to develop a compound wall on the western boundary of his total property lying together purchased by different deeds which was highly arbitrary and illegal. The plaintiff's husband had also constructed compound wall years back on the eastern side of his property demarcating the pathway and keeping the width of the said pathway item No.3 at 162 centimeter. The pathway enjoyed by the plaintiff from the panchayat road was of different width, at the entry point to the panchayat road it was 162 centimeters and at the north eastern corner of the property of Sukumaran 3 feet. The defendant and his men were so politically influential to do any harm to the pathway enjoyed by the plaintiff, on their muscle and money power. The lie of the pathway was also

mentioned in the title deed itself. All the items of properties were lying within well-defined boundaries on all its sides and thereby in a very well identifiable manner. There was no question of any boundary dispute or dispute over the said pathway enjoyed by the plaintiff and her predecessors even from the time of pattayam. The plaintiff's right of easement over the pathway enjoyed by them and her predecessors was without interruption for 20 years and more, peaceably, openly and as of right.

3. The defendant on 15.11.2020 deliberately removed the western boundary stones of his property and extended and annexed the boundary stones into the plaint schedule item No.3 and 4 pathway making partial encroachment into the same and causing obstruction and inconvenience against the peaceful and continuous enjoyment of the pathway by the plaintiff. The defendant continues to cause threat against the continuous use of the pathway by the plaintiff and had attempted to cause partial encroachment into the plaint schedule item No.3 and 4 pathway. The defendant was causing much apprehension to the plaintiff and threat against the use of the pathway which is the only way for ingress and egress to the panchayat road from the plaint schedule item No.1 property. On 15.11.2020 and on subsequent date the defendant made an attempt of encroachment into the pathway of

the plaintiff and further made threat of erecting compound wall or fencing encroaching into plaint item No.3 and 4 pathway. Immediately the plaintiff filed the complaint before the police, but without any result. The plaintiff was now helpless to resist such attempt made by the defendant. Hence, the suit.

4. Brief averments in the written statement filed by the defendant were as follows:- The suit was not maintainable either in law or on facts. He had denied all the averments made in the pleadings and contended that the plaintiff and defendant were on enimical terms since 2006 for 16 years. There was no property in the possession of the defendant as alleged by the plaintiff. Even if it was found that the property comprised in any of the survey numbers stated in the plaint was in the possession of the defendant he lost the right over it due to the adverse possession. Defendant had property more than that was stated in his title deed and it was enjoyed by the defendant openly. It was known to his neighbours also. The reliefs sought by the plaintiff was not sustainable. He had no cause of action against the defendant. Hence, he prayed for the dismissal of the suit.

5. From the rival contentions following issues were settled for trial:-

1. Has the plaintiff got right of easement by prescription over plaint schedule item Nos. 3 and 4 way for ingress and egress to plaint schedule item No.1 property from the Panchayat road as claimed?
2. Is the plaintiff entitled to get a decree for declaration as prayed for?
3. Is the plaintiff entitled to get a decree for permanent prohibitory injunction as prayed for?
4. Has the defendant made any encroachment into plaint schedule item No.3 and 4 way as alleged?
5. Is the plaintiff entitled to get a decree for mandatory injunction as prayed for?
6. Order as to costs?

6. From the side of plaintiff, PW1 and PW2 were examined and Ext. A1 to A5 documents were marked. No documentary evidence was adduced from the side of the defendants and no cross were recorded. The defendant was set exparte in the suit. The commission reports and plans were marked as Ext. C1, C2, C2(a) respectively.

7. Heard.

8. I have meticulously gone through the evidence adduced from the side of plaintiff. The plaintiff gave evidence as PW1. She filed proof affidavit in tune with the pleadings. In order to prove the case, plaintiff would also rely on Ext. A1 to A5 documents and Ext. C1, C2 and C2(a) commission reports and plans respectively. In the said commission report there were no encroachment

reported in item No.3 property, but encroachment was reported on item No.4. After the case was listed for evidence no instruction submitted by the counsel for the defendants. Hence they were set *exparte* and no cross was recorded. From the unchallenged evidence, it can be seen that plaintiff is entitled to get mandatory injunction as prayed for.

9. In the result, suit partly decreed with costs as follows:-

- a. It is hereby declared that the plaintiff has got right of easement by prescription over plaint schedule item No.3 and 4 property from the Panchayat road.
- b. The defendants and their men are restrained by an order of permanent prohibitory injunction from encroaching into the plaint schedule item No. 3 and 4 causing any obstruction therein and from altering the pathway or its boundaries and or committing any waste therein.
- c. The defendants are directed to remove the partial encroachment made in item No.4 pathway by removing construction made with granite stone on the eastern side of item No.4 along north-south direction.

Dictated to Confidential Asst., transcribed and typed by her, corrected and pronounced by me in the open Court on this the 13th day of January, 2025.

Sd/-
Abhinimol Rajendran
Munsiff.

APPENDIX

Exhibits marked for the plaintiff:-

A1	16.06.1994	Certified copy of Gift deed No.1902/1994 of Vaikom S.R.O.
A2	13.07.2023	Land Tax receipt No. KL05050105277/2023 issued from Chempu Village Office
A3	23.03.1999	Certified copy of Sale deed No.921/1999 of Vaikom S.R.O.
A4	13.07.2023	Land Tax receipt No. KL05050105278/2023 issued from Chempu Village Office
A5	12.05.1971	Certificate of purchase of Kudikidappu Pattayam No. 1260 reference No. OA 3747/70 issued from Land Tribunal, Vaikom.

Exhibits marked for the defendant:- Nil

Court Exhibits :

C1	07.01.2021	Urgent commission Report filed by Adv. Reenu K. Mathew
C2	26.02.2024	Survey commission report filed by Adv. Reenu K. Mathew
C2(a)	26.02.2024	Survey plan prepared by Surveyor Sabu K.D. is attached along with Commission Report

Witness examined for the plaintiff:-

PW1	10.06.2024	Radha
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Witness examined for the defendant:- Nil.

Id/-
Munsiff

// True Copy //

Copied by :
Compared By:

**Abhinimol Rajendran,
Munsiff**

Copy of Judgment in
O.S. 267/2020
Dated : 13.01.2025
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