

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION) OTTAPALAM

Present:- Sri. Renjith Rajan; Civil Judge (Senior Division)

Friday, 27th day of March, 2026 (6th day of Chaithra, 1948 S.E.)

APPEAL SUITS No. 77/2024 AND 59/2025

(in O.S. No. 377/2018 dated 10/09/2024 of Munsiff Court, Ottapalam)

Between

Appellant/ 2nd Plaintiff

Radha, aged 61 years,

W/o Late Venugopal, Chakyavil House,

Manisseri Post, Ottapalam Taluk.

And

Respondent

Jayakumar, aged 44 years,

S/o Balakrishnan, Uthradam Veedu,

Kanniyampuram Post, Ottapalam Taluk.

Represented by Power of Attorney Holder

Sarala Balakrishnan, aged 69 years, W/o Late T. Balakrishnan,

residing at Uthradam Veettil, Kanniyampuram Amsom and Post,

Ottapalam Taluk.

(Appointed as per Order in IA 04/2025 dated 03/01/2026)

These Appeals are coming on 26th day of March, 2026 for final hearing before me in the presence of Sri. K.R. Santhoshkumar, Advocate for Appellant (in both Appeal Suits) and of Sri. P.N. Balagopalan, Advocate for Respondent (in both Appeal Suits) , and having stood over to this day for consideration, the Court delivered the following:-

COMMON JUDGMENT

Both of these appeals are preferred by 2nd plaintiff against the verdict in OS 377/18 in the file of Munsiff Court, Ottapalam dated 10.09.2024.

2. The case of the plaintiffs, in brief, is as follows :- The plaintiff A Schedule property belongs to the plaintiffs by virtue of Document No.2038/2018 of Ottapalam SRO. The plaintiff along with his family is residing in the house situated on the plaintiff A schedule property. The plaintiff B schedule way is a 9 feet wide way. It is situated on the southwest of the plaintiff A schedule property. The plaintiff A and B schedule properties were part of the property which was partitioned by way of Document No. 3013 /2008 of Ottapalam SRO. The predecessors in interest of the plaintiffs and defendant were given the right to use the plaintiff B schedule property by the above-said partition deed. They were using the same openly, peaceably and without interruption for a long time. The plaintiff B schedule way was formed at the time of execution of Document No. 3013/2008. The defendant is trying to grab the plaintiff B schedule way. The defendant is making false claim over the way. A gate is situated on the southern boundary wall of the plaintiff A schedule property. The property of the defendant and the plaintiff B schedule is separated by a barbed wire fencing. The Defendant is now preventing the plaintiffs from using the plaintiff B schedule way. That prompted the plaintiff to file the present suit.

3. Defendant filed written statement with counter claim :- The plaintiff B schedule is the exclusive property of the defendant. It is the way to the property described as J schedule in the partition deed No. 3013/2008. The other parties to the document have no manner of right over the B schedule way. The property mentioned in J schedule of the partition deed was purchased by the

defendant by way of Document No. 153 /2009 of Ottapalam SRO. This defendant purchased the western property having an extent of 14 cents. The defendant is working in the Indian Navy. This defendant noticed installation of a gate by the plaintiffs. Subsequently, the defendant came to know about the suit. The defendant was on duty when the plaintiffs installed the gate. The plaintiff's assigner Unnikrishnan was intending to buy the property on the southern side of the plaint B schedule way. Unnikrishnan was in inimical terms with this defendant after the defendant purchased the southern property. At the instigation of Unnikrishnan, the plaintiffs installed the gate. The other parties to the partition deed have no manner of right in the plaint B schedule way. Plaintiffs have given an incorrect description of the plaint B schedule way. The correct description of the B schedule way is made in the Counter claim schedule. B schedule way is in the exclusive possession of the defendant. It belongs exclusively to the defendant. So the defendant made prayer to direct the plaintiffs to remove the gate.

4 Plaintiff filed written statement to the counterclaim, contenting inter alia as follows :- Plaintiffs have a right to use the counter claim schedule property. The defendant made the counter claim with a view to grab plaint B schedule property. A barbed wire fence separates the defendant's property from the counter claim schedule way. Defendant admitted in the suit filed by first defendant's brother that the barbed wire fence was put up by him. The defendant is not entitled for the mandatory injunction as prayed for. Hence plaintiff made fervent plea to dismiss the counter claim.

5. Based on the above-said pleadings, the following issues were raised by the trial Court.

1. Are the plaintiffs entitled to a perpetual prohibitory injunction ?

2. Is the defendant entitled to a mandatory injunction?
3. Is the counter claim way identifiable?
4. Relief and cost ?

6. Regarding the evidence in this case, from the side of plaintiffs, PW1 to PW4 were examined and Exhibit A1 to Exhibit A5 were marked. From the side of defendant, Exhibit B1 to Exhibit B4 were marked. The commission report and sketch were marked as Exhibit C1 and Exhibit C1(a).

7. The trial Court held that B schedule belongs to the defendant. It was also held that plaintiffs have no manner of right over B schedule. It was held by the trial Court that B schedule belongs to the defendant. So the trial court dismissed the suit and decreed the counter claim. Aggrieved by the trial Court's verdict, the present appeals are filed. One appeal is preferred against the verdict dismissing the suit and the other one was preferred decreeing the counter claim.

8. Heard. Both sides.

9. The following points were raised for consideration ?

1. Whether trial court judgment, dismissing the suit, need any interference?
2. Whether the trial Court's judgment allowing the counter claim need any interference?
3. What is the judgment or order to be passed in these appeals ?
4. Relief and costs?

10. **Point number 1 to 3:** - In order to avoid repetition, these points are considered together. In this case, the moot point between the parties is with respect to B schedule way. Plaintiff claims right to use B Schedule way.

Defendant claims that it exclusively belongs to them. As per the plaint B schedule, is a nine foot wide way. B schedule came into existence by way of partition deed number 3013/2008. The width of the pathway as per Exhibit A4 partition deed is 3 feet. The existence of the gate is admitted in para 3 of the plaint. As per the partition deed Exhibit A4, the right to use the way is limited to the persons to whom the property in Schedule J of Exhibit A4 was allotted. Swarnakumari obtained right to the property by way of Document No. 3615/2011. From Swarnakumari, property was purchased by Unnikrishnan by way of Document No. 654/2013. Exhibit A3 is the document in favour of Swarnakumari. From Exhibit A3, it is evident that the right to use the way was not conveyed to Swarnakumari. The properties purchased by Swarnakumari are first and second properties in C schedule and second property in E schedule of the partition deed. Defendant purchased the property by way of Exhibit B1 and Exhibit B2. From Exhibit B1, it is evident that the J schedule mentioned in Exhibit A4 was purchased by the defendant. The property was purchased by the defendant from the persons who were allotted the J schedule in the partition deed. The property covered by Exhibit B2 is on the western side of the property covered by Exhibit B1. On a glance on the documents, it is evident that the way is also situated on the western side. In Exhibit A3, Document No. 3615/ 2011, the southern property is mentioned as the pathway and the J schedule property. In Document No.654/2013 Exhibit A2, the southern property is mentioned as the way. In Exhibit A1 also, the southern boundary is mentioned as pathway. Gopakumar is the brother of first plaintiff. Exhibit B3 is the certified copy of the plaint in OS No. 299/2019 a suit filed by the defendant against Gopakumar and his wife. The moot point in that suit is the present disputed way. Exhibit B4 is the certified copy of the compromise filed

in Court by the parties to that litigation. In Exhibit B4, Gopakumar admitted that the disputed way exclusively belongs to the defendant. PW3, one of the assignors of Swarnakumari, admitted in cross-examination that the right to use the disputed way exclusively belongs to the owner of the property described in Schedule J of Exhibit A4. So in the present case, the 2nd plaintiff/appellant failed to prove that they have got a right to use plaintiff B schedule way. The right to use the disputed way exclusively belongs to the defendant. The disputed way belongs to the defendant. It is an admitted fact that defendant is the subsequent purchaser of J schedule described in the partition deed. So plaintiffs have no manner of right to use the B schedule way. They have no right to install a gate in the southern boundary wall of their property. So the trial Court rightly dismissed the suit. The trial Court rightly allowed the counter claim. Points answered accordingly.

11. **Point No.4** :- In the light of the findings in Point No. 1 to 3, the appeals are liable to be dismissed.

12. In the result,

1. AS 77/2024 and AS 59/2025 stand dismissed without costs.

Dictated to the Confidential Assistant, typewritten by him and taken print out, corrected and pronounced by me in the open court on this Friday, the 27th day of March, 2026.

Civil Judge (Senior Division)

WITNESS EXAMINED AND EXHIBITS MARKED: NIL

Civil Judge (Senior Division)

Typed by: Siji.G
Compared by: Rosni

FAIR COMMON JUDGMENT

in AS.77/2024 & AS 59/2025

DATED: 27/03/2026