

IN THE COURT OF THE MUNSIFF OF OTTAPALAM

Present:- Sri.M.R. Dileep, Munsiff, Ottapalam

Thursday, 09th day of October, 2025

17th day of Aswina, 1947. S.E

ORIGINAL SUIT NO.308/2013.

Suresh, aged 46 years, S/o.Krishnan @ Krishnamani Varior., residing at Venganulluru Vadakke Variyath, Mannampatta Amsom, Thottara Desom, Ottapalam Taluk.

} Plaintiff

-Vs-

Vasudevan Namboothiri, aged 66 years, S/o. Parameswaran Namboothiri, Narayananalluru Manakkal, Mannampatta Amsom, Thottara Desom, Ottapalam Taluk.

} Defendant

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This suit coming on this day for final hearing before me in the presence of Sri. K.R. Pradeep, Advocate for the plaintiff and the defendant is called; absent; set ex parte, and this court passed the following:-

JUDGMENT

This is a suit for mandatory and perpetual prohibitory injunctions.

2. The plaintiffs' case, in brief, is as follows:-

The plaint A schedule property was allotted to the plaintiff's father Krishnan , alias Krishnamani Varier , by partition deed no. 2472/1988 of the Kadampazhipuram sub registrar's office . The plaintiff's father assigned the property to the plaintiff by deed no. 3847/1997 of the Kadampazhipuram sub registrar's office . The plaintiff is the exclusive owner of the plaint schedule property and it is in his possession. The plaint B schedule way connects the plaint A schedule property to the public road. It is on the east side of the properties of Pachayil Variyath Anitha and Lakshmi, alias Kochammu Varasiar . Those properties are on the south side of the plaint A schedule property. The plaint B schedule way

is the way provided by the partition deed. The plaintiff and his predecessor-in-interest have been using the plaintiff B schedule way peaceably, without interruption and as of right.

3. The defendant bought the property of Lakshmi, alias Kochammu Varasiar, in 2010. The plaintiff B schedule way was not assigned to the defendant when he bought Kochammu Varasiar's property, so he only has a right to use the plaintiff B schedule way. The plaintiff has an easement by grant over the plaintiff B schedule way. On 28.7.2013, the defendant planted banana plants on the plaintiff B schedule way. The defendant has no right to obstruct the plaintiff B schedule way. The defendant has installed a gate at the entrance to the plaintiff B schedule way since the institution of the suit. He locks that gate with a padlock. The defendant should be ordered to remove the gate installed by him and the banana plants planted on the plaintiff B schedule way. If the court finds that the plaintiff is not entitled to get the gate removed, the defendant should be ordered not to lock it. The defendant should also be ordered not to obstruct or make alterations to the plaintiff B schedule way.

4. The defendant filed a written statement. His contentions are as follows :-

The statements in the plaintiff are false. The defendant has never used the so-called plaintiff B schedule way. A way answering the description in the plaintiff B schedule does not exist. The plaintiff is claiming a right of way across the defendant's property. He has instituted this suit at the instigation of Anitha and her husband Purushothamadas. The plaintiff and his predecessor have never used the so-called way. The defendant does not even know the plaintiff. The plaintiff does not have a cause of action against

the defendant. The plaintiff has suppressed material facts from the court . The suit should be dismissed with compensatory costs.

5. The following issues were framed for trial :

1. Whether the plaint B schedule property is in existence and identifiable?
 2. Whether the plaintiff acquired an easement by grant over the plaint B schedule way ?
 3. Whether the alleged cause of action is true ?
 4. Whether the plaintiff is entitled to the mandatory injunction sought?
 5. Whether the plaintiff is entitled to the perpetual prohibitory injunction sought ?
 6. Relief and cost ?
6. The defendant did not attend court on the day fixed for the trial of the case, so the court ordered that the suit be heard ex parte.

7. The plaintiff was examined as PW1 and the document submitted in evidence by the plaintiff was marked as Ext.A1 .The advocate commissioner's reports and plans were marked as Exts.C1 to C2(a).

8. Heard the plaintiff's counsel .

9. Issue nos.1to 5:- The plaintiff claimed in the plaint that the plaint B schedule way was the way provided by the partition deed. The only partition deed mentioned in the plaint is partition deed no.2472/1988 . Ext.A1 is a certified copy of the gift deed executed in the plaintiff's favour by his father . The plaintiff's father stated in Ext.A1 that the plaint A schedule property was allotted to him by partition deed no. 2472/1988. The implication of the plaintiff's pleadings is that the plaint B schedule way is the way provided by partition deed no. 2472/1988 . The commissioner stated in

Ext.C1 that the plaint B schedule way was the way provided by partition deed no. 1776/2001. That partition deed is not mentioned in the plaint. It appears that the predecessors of the plaintiff and defendant were not parties to the same partition deed. It is also pertinent to note that the plaintiff has not produced copies of the aforementioned partition deeds in court. The only document submitted in evidence by him is Ext.A1. The implication of the plaintiff's pleadings is that he was granted an easement by a partition deed. The defendant denied the plaintiff's claim that he had an easement by grant over the plaint B schedule way, so the burden was on the plaintiff to prove that he had an easement by grant. The plaintiff's failure to produce in court the partition deed which provided the way and granted his predecessor an easement over it warrants an adverse inference against him under illustration (g) to section 114 of the Indian Evidence Act . Moreover, the disputed strip is not in the survey subdivision mentioned in the plaint and Ext.A1. The disputed strip is in survey no. 51/10 according to the plaint, but the commissioner's reports say that the disputed strip is in survey no. 51/13. The plaintiff has miserably failed to prove his case. Therefore ,all these issues are answered in the negative.

10. Issue no.6 :- In view of the answers to the foregoing issues, the suit is dismissed without costs.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court, on this, the 9th day of October, 2025.

Munsiff.

APPENDIX:

Plaintiff's Witness Examined :

PW1 : K. Suresh.

Plaintiff's Exhibits Marked :

A1 : 21.11.1997 : Certified copy of settlement deed.no.3847/1997
of SRO, Ottapalam.

Defendant's Witness and Exhibits :NIL.

Court Witness Examined: NIL

Court Exhibits Marked:

C1 : 22.06.2023 : Commissioner's report submitted by Advocate
Commissioner M.T. Niyaz.

C1(a) : 22.06.2023 : Survey plan submitted by Advocate Commissioner
M.T. Niyaz.

C2 : 27.06.2025 : Commissioner's report submitted by Advocate
Commissioner M.T. Niyaz.

C2(a) : 27.06.2025 : Survey plan submitted by Advocate Commissioner
M.T. Niyaz.

Munsiff.