

IN THE COURT OF THE MUNSIFF OF CHITTUR

Present :- Smt. Shiny.M.S, Munsiff, Chittur
 Tuesday the 31st day of March, 2026
 10th day of Chaithra, 1948 S.E.

ORIGINAL SUIT No. 79 of 2014

1. Mayilswamy Kounder (Died), aged 75 years, : Plaintiffs
 S/o.Pazhani Kounder, Kovilppara,
 Karumanda Koundannur,
 Kozhippathy Village Chittur Taluk
Supplemental Plaintiff No.2 to 5
2. Seethayammal, aged 70 years,
 W/o.Late.Mayilswamy Kounder,
 Kovilppara, Karumanda Koundannur,
 Kozhippathy Village Chittur Taluk
3. Santhi, aged 53 years,
 D/o.Late.Mayilswamy Kounder,
 Kovilppara, Karumanda Koundannur,
 Kozhippathy Village Chittur Taluk
4. Jayanthi, aged 50 years,
 D/o.Late.Mayilswamy Kounder,
 Kovilppara, Karumanda Koundannur,
 Kozhippathy Village Chittur Taluk
5. Sumathy, aged 48 years,
 D/o.Late.Mayilswamy Kounder,
 Kovilppara, Karumanda Koundannur,
 Kozhippathy Village Chittur Taluk
 (Supplemental Plaintiff No.2 to 5 Impleaded as per order
 in IA.361/2021 dated :20/02/2021
 Supplemental Plaintiff No.2 to 5 Amended as per order
 in IA.360/2021 dated:20/02/2021)

Vs.

1. Valliyammal, aged about 60 years, : Defendants
W/o.Krishnaswamy Kounder, Kovilppara,
Karumanda Koundannur, Kozhippathy Village,
Chittur Taluk
2. Sasikala, aged about 35 years, W/o.Ravi,
Kovilppara, Karumanda Koundannur,
Kozhippathy Village Chittur Taluk
3. Appuswamy Kounder, aged about 75 years,
S/o.Pullar Kounder, Kovilppara,
Karumanda Koundannur,
Kozhippathy Village Chittur Taluk.
Suppl.D4
4. Ravi, aged 45 years,
S/o.Krishnaswamy Kounder, Kovilppara,
Karumanda Koundannur,
Kozhippathy Village Chittur Taluk.
Impleaded as per order in IA 2326/2022 dated
05.11.2023.

This suit is coming on this day for hearing before me in the presence of Sri.M.Saseendran, Advocate for the 2nd to 5th plaintiffs and 1st Plaintiff reported no more and of Sri.M.Abuthair, Advocate for the 2nd and 4th Defendant and 1st and 3rd Defendant called absent and set exparte and the court delivered the following:-

J U D G M E N T

Suit is one for fixation of boundary, permanent prohibitory injunction and recovery of possession.

2. The plaint averments in brief are as follows:- The plaint schedule properties is set apart to the share of the plaintiff as per the partition deed 1310/1999, SRO Kozhinjampara which took place in the family of the plaintiff. Thereafter the

properties are in his absolute possession and he is paying tax to the properties. On the north east side of the plaint schedule properties lies the defendants' property. The plaintiffs and defendants are not in good terms for last few years. So the defendants raised boundary disputes and that were settled through the mediators. On 21.01.2014, the defendants tried to trespass into the north eastern portion of the plaint schedule properties. At that time, as the plaintiff was there and he interfered, they retreated. But there is chance of them raising disputes again. So the boundary has to be fixed. And till then there should be an order of injunction against trespass. The plaint schedule properties and the defendants' properties are lying adjacent to each other and their boundary is not fixed. The portion trespassed by the defendants, which is shown as the 'B' schedule, is to be recovered from the possession of the defendant from the plaintiff. Recovery of possession has been trespassed by the defendants and the plaintiff prays for recovery of possession on the strength of title.

3. Defendants No. 1 and 2 appeared and filed a written statement. The contentions in the written statement in brief are as follows:- The suit is not maintainable as per law and facts. It is filed on an experimental basis and it has to be dismissed with a cost. The defendant does not have any knowledge about the plaintiff's right over the property as per the partition deed. It has to be proved by the plaintiff. It is true that the defendant's properties are lying on the north eastern portion of the plaintiff's properties. But the averment that the defendants are creating boundary disputes over the property is incorrect. There is no basis for the prayer of fixation of boundary. There is varamba to separate the plaintiff's property from the

defendants' property and there is also level difference. Since there is clear boundaries to separate the plaintiff's property from the defendant's property and it can be clearly identified, there is no need for fixation of boundary. The suit is filed suppressing material facts. The plaintiff claims the private way in the A B schedule in Document No. 1229/2002 and since that was not allowed this suit is filed to cause difficulties to the plaintiff.

4. Defendant No.4 appeared and filed a separate written statement. His contentions in brief are as follows:- The suit is not maintainable. It is filed without any bonafides and on an experimental basis. There is no basis for fixing the boundary. There is varambu to separate their properties. Moreover, the properties are having level difference. Since there is clear boundaries to separate the properties and the properties are clearly identifiable, the suit is not maintainable. It is filed by suppressing material facts. It has to be dismissed.

5. Defendants No.2 and 4 filed additional written statement. The contentions in the additional written statement in brief are as follows:- The suit as amended is not maintainable. The 'B' schedule Item No. 2 is not in existence. The plaintiff is not having any right over the 'B' schedule Item No. 2 in Resurvey No. 493/3. The intention of the petitioner is somehow to grab the properties belonging to the defendants. So he is not entitled to any relief. 'B' schedule Item No. 2 is not included in the 'A' schedule. That itself would show that they have no right over the 'B' schedule. It is not stated when the 'B' schedule is trespassed by the defendant. So

there is no cause of action. The property belonging to the defendant No. 4 is shown as Item No. 2 of 'B' schedule. The suit is barred by limitation. The court fee paid is incorrect with respect to the suit for injurious possession based on title. Suit has to be dismissed.

6. The defendant No. 4 filed additional written statement. The contentions in the additional written statement in brief are as follows:- The 'B' schedule is not identifiable. It is not part of A schedule. Commissioner has not identified the boundary between the plaintiffs' and defendants' properties. There is no way as alleged. The property very east to the plaint schedule properties is the property belonging to defendant No. 1, Valliyammal as per partition deed 1229/2002 'A' schedule. The 'B' schedule as per the partition deed is allowed to the defendant No. 2. After the death of the defendant No. 1 the Defendant No. 2 settled the property in favour of defendant No. 4 and thus the property is now in his possession. 'B' schedule is not part of 'A' schedule. That itself would make it clear that the plaintiff has no right over it. There is no cause of action. The property sought to be recovered is the property absolutely belonging to the defendant. Thus the suit has to be dismissed.

7. From the above averments, the following issues arose for consideration.

- (1) Whether the plaintiff is entitled to fixation of eastern and northern boundaries of the plaint schedule properties as claimed for? If so, why?
If so, what is the correct eastern and northern boundary of the plaint schedule properties?

- (2) Whether the plaintiff is entitled to in possession of the plaint schedule properties as claimed for?
- (3) Whether the plaintiff is entitled to permanent prohibitory injunction as claimed for?
- (4) Relief and costs?

Additional issues:

- (5) Whether the plaint 'B' schedule Item No. 2 is identifiable?
- (6) Whether the plaintiff has got any right and possession over plaint 'B' schedule Item No. 2?
- (7) Whether the plaintiff is entitled to a decree of permanent prohibitory injunction against plaint 'B' schedule Item No. 2?
- (8) Whether the suit is barred by limitation with respect to plaint 'B' schedule?
- (9) Whether the plaintiff is entitled to recovery of possession of plaint schedule property as claimed for?

8. Evidence in this case consists of the oral evidence of PW1 and Exhibit A1 to A3 from the plaintiff's side and no oral evidence is adduced from the defendant's side. Exhibit B1 to B3 were marked. CW1 was examined. He is a commissioner and Exhibit C1 to C1(a) is marked.

9. **Issue Nos. 1 to 3 and additional issue Nos. 5 to 9:-** The plaintiff's definite contention in this case is that the defendant's property is lying on the north eastern portion of his property and there is nothing to separate their properties and due to that the defendants are raising unnecessary claims over their properties and so the

boundary has to be fixed and till the fixation of boundary an injunction also has to be granted. Later he amended the plaint and to add a prayer for recovery of possession stating that the Item No. 2 of the plaint 'B' schedule which is encroached by the defendants has to be recovered from them on the strength of their title.

10. On the other hand the defendants' contention is that there is clear varambu to separate their properties from the defendant's properties and there is also level difference. Both properties are clearly identifiable and there is no need of fixation of boundary. Another thing is that after the amendment they filed the additional written statement stating that the Item No. 2 of the plaint 'B' schedule property belonged to the defendant No. 4. As per document number 1764/2015 and they are having absolute right and title over the property and the relief cannot be granted.

11. PW1 is none other than the second plaintiff. The third to fifth plaintiffs are their children. The evidence is given on behalf of them also. She deposed in tune with her averments in the plaint. CW1 is the commissioner in this case. According to him, he identified the property and ABCD is shown as the boundary in the red line. The property lying as way is shown in the rose colour.

12. The learned counsel for the plaintiff argued that the oral and the documentary evidence adduced by the plaintiff would clearly prove their case and the plaintiff is entitled to a decree. On the other hand, the defence counsel argued that since there is already a boundary, there is no need for fixation of boundary.

13. Now, the most crucial document in this case is the commission report. But unfortunately, though there is specific averment in the written statement that there is varamba and level difference to separate the plaintiff's property from that of the defendants, commissioner has not inspected or these physical boundaries, if any are not noted by the commissioner in 2014, though along with suit a commission application was also filed. The commissioner had seen inspected the properties only in the year 2018 and the commissioner had identified the properties as per the document and the survey records and filed plan and report. There is no mention about the physical boundaries in the case. So regarding that aspect the commission report is of no use. But while PW1 was examined she clearly stated that to separate defendant's properties and plaintiff's properties there is clear level difference and varamba. So this can be treated as an admission from their side. Now the thing to be considered is regarding the identification of property. But it is not clear where this level difference is there, that whether it including the portion mentioned as way or excluding that. The commissioner had identified the plaint schedule properties as per the document and survey records. And it would clearly show that the item number 6 and 7 is shown as a cart track. This property is identified as a narrow strip of land lying across the eastern boundary of all along the plaint schedule properties. The measurements of these two items do tally with the measurements shown in the plaint schedule and also with the title deed i.e. Exhibit A1 partition deed, Document No. 1310/99, which is the title deed of the plaintiffs. Now, the defendant's claim is that it is included in their property and they have pointed out that the commissioner had

clearly noted that, the Item No. 1 which is having an extent of 0.1415 hectare was found only 0.1218 hectare and so there is a shortage of 4.8 cents area as per the document. She claims that the 4.69 which is Item No. 7 which lies adjacent, which is shown as the Item No. 7 of the plaint schedule property. When it is appended to this Item No. 1 of the defendant's property, the measurement would be tallied. So claims it as their property. Regarding that aspect, the plaintiff has produced his partition deed in the year 1999 and the defendants has produced a recent document that is 2015, i.e. Exhibit B1. The prior title deed of Exhibit B1 is not produced to show that what was the extent of their property as per earlier document. That is without that document it is not possible to identify the actual extent of their property. Moreover the property is identified as Item No. 6 of the plaint schedule properties, adjacent to that lies Item No. 1 of the property. Defendant has not produced any document to prove their exclusive possession over the property. But that property is identified as the plaintiff's property.

14. The suit as framed is for fixation of boundary and it has now been come out that the dispute is actually regarding a narrow strip of which cover almost about half along the east side of the petition schedule properties upon which the defendant is also claiming right as thereon. So, the suit is actually for the right over the disputed strip and recovery of possession and injunction. The defendant denies that that narrow strip of land is a pathway and they claims it as their own property. And they pointed out that there is a shortage of their extend about 4.64 links in defendants' holding. Now the partition deed Exhibit A1 can be looked into. It is stated clearly in

page Nos. 3 and 4 says that it is a common car to track to be used by himself and the other co-owner and that it need not be obstructed. It is true that it is not shown in the schedule of the plaintiff. But in the body of the document recital shows that the same is covered by plaintiff's document and plaintiff's co-owner also have right over it. That can be reproduced "B പട്ടികക്കാരന്റെ കൈവശമുള്ള വീട്ടുവളപ്പു വഹകളുടെ റീസർവ്വേ 494/2 നമ്പറിന്റെ വടക്കേ അരികിൽ കൂടെ പടിഞ്ഞാറുപോയി അവിടെ നിന്നും റീസർവ്വേ 494/3, 493/3 എന്നീ നമ്പറിന്റെ പടിഞ്ഞാറേ അരികിൽകൂടി വടക്കോട്ടു റീസർവ്വേ 493/1 ൽ B പട്ടികക്കാരന്റെ കൈവശത്തിലുള്ള പൊതു കിണർ പോയിവരുന്നതിനുള്ള നാല് മീറ്റർ വഴിയിലുള്ള വണ്ടിവഴിയിൽകൂടി A പട്ടികക്കാരനും കുടുംബാംഗങ്ങൾക്കും ഗതാഗതം ചെയ്യാൻ അവകാശം ഉള്ളതും ആയതിനെ തടസം ചെയ്യുവാനോ മുടക്കുവാനോ B പട്ടികക്കാരന് അധികാരാവകാശമില്ലാത്തതുമാണെന്നു നിശ്ചയിച്ചു സമ്മതിച്ചിരിക്കുന്നു". This shows plaintiff has either co-ownership or common pathway right. As per Exhibit A1 document it exclusively belongs to plaintiff and his co-owner. The common owner who has a right over the way is not a party to the suit. There is no allegation of obstruction against him. Now, for the defendant's case, the serious issue is that their prior title deed is not produced. Only a recent document is produced. To explain the shortage of extent, the prior document is very crucial. The disputed strip of land matches with the plaintiff's fifth item. It is identified as a separate strip. In this case the plaintiff has amended the plaint adding the relief for recovery of possession. But has not specified the exact date of trespass.

But however the cause of action is proved by the written statement that there is dispute over this property and it is continuing. So that is not crucial.

15. There is no document produced from the defendant's side to show that disputed portion is part of their property. Here the obstruction is sought only against the defendant. It is a common pathway between the plaintiff and his co-owner and the defendant has no document produced to show that defendant has any right over it. Regarding the northern boundary also no specific challenge is raised by defendants. So the Exhibits C1, C1(a) commission report and plan can be accepted to fix the northern and eastern boundary. So the fixation of boundary and injunction can be given. That narrow strip of land can be found that of plaintiff's property as per the document. Though plea of limitation is claimed there is no sufficient pleadings with respect to limitation. The boundary of the plaintiff can be fixed as ABCD in Exhibits C1, C1(a) commission report and plan.

15. **Issue No. 4** :- In answer to the above issues, the plaintiff is entitled for the relief claimed in the plaint. The plaintiff is also entitled to realize the costs of the suit from the defendant.

In the result, the suit is decreed with costs as follows:-

- (1) Exhibits C1, C1(a) commission report and plan is accepted and ABCD is fixed as the eastern and northern boundary of plaintiff's property.
- (2) The plaintiff is entitled to recover of plaintiff 'B' schedule which is shown as pink coloured portion in plan and Item Nos. 6 and 7 in area details in Exhibit C1(a) plan from the defendant.

- (3) The defendants and their men are hereby restrained by way of permanent prohibitory injunction from trespassing or causing any obstruction or disturbing the peaceful possession and enjoyment of the plaint schedule property by the plaintiff.
- (4) Exhibits C1, C1(a) commission report and plan do form part of the decree.
- (5) The plaintiff is entitled to realize the costs of the suit from the defendants.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 31th day of March, 2026.

Sd/-
Munsiff.

Plaintiffs Witness Examined:

PW 1 : Seethayammal

Plaintiffs Exhibits:

- | | | | |
|----|------------|---|---|
| A1 | 29-09-1999 | : | Certified copy of Partition deed No.1310/1999 of SRO Kozhinjampara executed by Chinnaswamy Kounder and others |
| A2 | 12-09-2013 | : | Possession Certificate issued by Village Officer Kozhippathy in the name of Mayilswamy Kounder |
| A3 | 22-07-2013 | : | Basic Tax receipt issued by Village Officer Kozhippathy in the name of Mayilswamy Kounder |

Defendants Witness: Nil

Defendants Exhibits:

- | | | | |
|----|------------|---|---|
| B1 | 12.10.2015 | : | Certified copy of Settlement Deed No.1764/2015 opf SRO Kozhinjampara. |
| B2 | 07.11.2025 | : | Possession Certificate issued from Kozhipathy Village Office in the name of Ravi. |
| B3 | 03.07.2025 | : | Basic Tax receipt issued from Kozhipathy Village Office in the name of Ravi. |

Court Witness Examined:

CW1 : R.Sivaraman

Court Exhibits:

C1 17-02-2021 : Commission Report submitted by Sri.R.Sivaraman
Advocate Commissioner

C1(a) 19-02-2021 : Survey Plan submitted by Sri.R.Sivaraman Advocate
Commissioner

Sd/-
Munsiff.

//True Copy//

Munsiff.

Typed by : Dhanya.P.V
Compared by : Dhanalakshmi

Fair / Copy of Judgment in
O.S. No.79/2014
Dated : 31.03.2026
