

IN THE COURT OF THE MUNSIFF OF ALATHUR
Present:- Sri.Binu.P., Munsiff, Alathur

Friday 10th day of April, 2026
(20th day of Chaithra, 1948 S.E)

.....
ORIGINAL SUIT No. 49/2018

Abdulrahiman, aged 47 years, S/o Badar Rawther,
residing at Chembukadu, Kuthanur amsam,
Alathur Taluk, Palakkad District. } Plaintiff

Vs.

1. Gangadharan, aged about 60 years, residing at Chembukadu, Kuthanur amsam , Alathur Taluk, Palakkad District.
2. Bharathi Amma, (Died), aged 79 years, D/o Madhavi Amma, residing at Nachan Veedu, Thekkemuri, Ariyoor, Ottapalam, Palakkad District.

Supplemental

3. Balagopalan, aged 62 years, Lawyer, S/o late Bharathi Amma, residing at Nachan Veedu, Thekkemuri, Ariyoor, Ottapalam, Palakkad District.
4. Malini, aged 64 years, Swastham, D/o Bharathi Amma, residing at Nachan Veedu, Thekkemuri, Ariyoor, Ottapalam, Palakkad District.
5. Ravunni, aged 58 years, Agriculture, S/o Bharathi Amma, residing at Nachan Veedu, Thekkemuri, Ariyoor, Ottapalam, Palakkad District.
6. Padmanabhan, aged 51 years, S/o Bharathi Amma, residing at Nachan Veedu, Thekkemuri, Ariyoor, Ottapalam, Palakkad District.

Defendants/
Supplemental
Defendants

(Supple. Defendants 3 to 6 are impleaded and amended as per order in IA 2/22 (1482/22) and IA. 1/22 (1481/22) dated 1/3/2023)

This suit is coming on 30th day of March, 2026 for final hearing before me in the presence of Sri. N.R. Venkittanarayanan and Sri.C. Balakrishnan., Advocate for plaintiff and 1st defendant was called absent set exparte 2nd defendant was no more, and of Sri. P.N. Balagopalan and Sri. A.K. Balasubramanian., Advocates for supplemental defendants 3 to 6 and having stood over to this day for consideration and this Court delivered the following.

J U D G M E N T

The suit is for the fixation of the eastern and northern boundaries of the plaint schedule property and for permanent prohibitory injunction.

2. The plaint averments, in short, are as follows :

The plaintiff is the owner in possession of the plaint schedule property by virtue of Deed No. 633/1992 of SRO Kuzhalmannam. The plain schedule property is a paddy field. The plaintiff's property originally belonged to the assigner, Sankarankutty Menon, who got the property allotted to him along with certain other properties mentioned in the schedule to the partition deed bearing No.3097/1964 of SRO Palakkad. It is submitted that the plaintiff was abroad. There was some litigation pending between the plaintiff's family and the defendant no. 2 with regard to some property alleged to have been in possession of the defendant no. 2 and her children as OS No. 143/1993 before this court. The said litigation ended by delivery of the disputed property to those defendants through the process of this court. The second defendant got the properties by virtue of the above-said partition deed No. 3097/1964, and she along with her children is the allottee of the properties mentioned in 'J' schedule to the said deed. The first defendant, who is a neighbouring cultivator, owns property on the east and north of the plaint schedule property. Similarly, the property of the second defendant also lies to the east of the plaint schedule property. The defendant no. 1 claims that he is also managing the property of defendant no. 2 on

her behalf. Recently, the defendant no. 1 started creating problems after the delivery of the property in the earlier suit, saying that a portion of the plaint schedule property is part of his property as well as that of defendant no. 2. And thus made several attempts to destroy the paddy cultivation raised in the plaint schedule property by the plaintiff. In order to avoid further disputes, the plaintiff has suggested that the intervening boundary between the plaint schedule property and the property of the defendants could be fixed through the survey authorities to avoid any dispute in future. But the first defendant is not cooperating with the fixation of the boundary at the instance of the survey authorities. The property allotted to the plaintiff's assignee's share and the property allotted to the second defendant in her family partition referred to above are entirely different properties and lie in different survey numbers. In view of the attitude of the defendant no. 1, who also claims to be the manager of the property belonging to defendant no. 2, the plaintiff has no other option but to file this suit for fixation of the eastern and northern boundary of the plaint schedule property and also for consequential permanent prohibitory injunction against defendants. Hence the suit.

3. The second defendant filed written statement contending as follows:-

The suit is not maintainable. It lacks bona fides. It is purely experimental, false and frivolous. The same is filed by willfully suppressing material facts. It is contented that the address of defendant no. 2 shown in the plaint is not correct. The children of this defendant are also necessary parties to the suit. So the plaintiff has to include them in the suit. Otherwise, the suit will be bad for non joinder of necessary parties. The plaintiff, along with his father, Badar Rawther trespassed into the properties of this defendant and her children and so a suit for recovery of possession was filed before the Honourable Sub-Court, Palakkad, as O.S No. 143/1993, The plaintiff herein was the second defendant and his father, Badar Rawther was the first defendant in the said suit. Sangharankutty Menon

was the fourth defendant, and another brother of this defendant, Kochumadavu Menon, was the third defendant. The suit was decreed by the trial Court allowing the plaintiff to recover the plaint B schedule properties from the defendantz no. 1 and 2. The decree was challenged in appeal by defendants no. 1 and 2 before the Hon'ble District Court. But the same was dismissed by confirming the decree of the trial Court. Thereafter, 'B' schedule properties were delivered to plaintiffs in O.S. No.147/1993 Sub Court, Palakkad by Court Amin with police aid and on 27.08.2014 and delivery was recorded. Now the plaintiff, who is bound by the decree and the other delivery proceedings, is pretending ignorance about the same. To demarcate the plaint B schedule property from the rest of the properties lying on its west, a ridge was put in the presence of Amin, the plaintiff and others while effecting delivery. The said ridge is in existence even now. So there is no boundary dispute at all. Moreover, the plaintiff did not object to the delivery proceedings. The plaintiff who is bound by the decree and the related delivery proceedings cannot now turn round and contend otherwise. The present suit is barred by the principles of res judicata, so the suit is not legally maintainable. Hence, the maintainability of the suit may kindly be considered as a Preliminary issue. There is a clear boundary to demarcate the 'B' schedule property in OS No.147/1993. This defendant got delivery through the process of court and the rest of the properties are lying to its west. There is no boundary dispute. There is no necessity for the fixation of the boundary. The defendant no. 1 is an unnecessary party. The averment that the first defendant claims to be managing the properties of this defendant on her behalf is falsely made for the purpose of this suit and to make him also a party. The plaintiff has no valid cause of action for the suit. The cause of action alleged in the suit is false. Hence, the suit may be dismissed with a compensatory costs.

4. The defendants 3 to 6 have filed written statement stating that they are adopting the contentions raised by the second defendant. And also filed additional written statement stating that the suit is barred under Section 47 of the Code of Civil Procedure whereby this court has no jurisdiction to try and dispose of the suit.

5 The issue that arise for consideration are :

1. Whether suit is barred by resjudicata?
2. Whether suit is barred for non-joinder of necessary parties?
3. Whether plaintiff is entitled to get a decree for fixation of eastern and northern boundary of plaint schedule property?
4. Whether the plaintiff is entitled to get a decree for permanent prohibitory injunction as prayed for ?
5. Relief and costs ?

6. It has been decided to consider issue No. 1 as preliminary issue. Exhibit A1 is marked from the side of the plaintiff. Exhibits B1 to B6 are marked from the side of the second defendant.

7. The first defendant in this case was called absent and set ex parte. The original second defendant reported no more, and her legal heirs are implemented as supplemental defendants No.3 to 6.

8. Heard both sides.

9. Issue No.1 :- Upon consideration of rival arguments from both sides, the question is to be considered whether the suit is barred by resjudicata.

10. It is not in disputed that there existed an earlier suit between the very same parties, wherein the present second defendant, as plaintiff therein, sought recovery of possession of a specific property from the present plaintiff. The said suit culminated in a decree in favour of the present second defendant, which has admittedly attained finality. What assumes significance is not merely the

existence of the prior decree, but, the nature and scope of adjudication and its execution.

11. The plaint schedule property is having extent of 64 Cents comprised in re-survey No.177/4.

12. Eastern boundary of the plaint schedule property is the property of Gangadharan and Parvathy Amma. North is the property of Gangadharan and Prabhakaran.

13. Exhibit B1 is the certified copy of the decree in O.S. No.147/1993 of the Honourable Sub Court, Palakkad. Exhibit B2 is the judgment in the above said case. Exhibit B3 is the Commission Report and plan submitted in O.S. No.147/1993. Exhibit B4 is the common judgment in O.S. No.65/2003 and O.S. No.71/2003. Exhibit B5 is the copy of execution petition No.27/2000 filed before the Honourable Sub Court, Palakkad. Exhibit B6 is the delivery warrant and delivery report.

14. Going by exhibit B1, it is seen that a decree was passed, the plaintiff in thatcase was given a decree for the recovery of possession of the plaint 'B' schedule property. On the strength of the title and the defendant does surrender possession of the plaint 'B' schedule property to the plaintiff. The western boundary of the decree schedule property is the nilam property of the defendant. Exhibit B1 decree was passed and Exhibit B6 delivery was effected through the process of the court. Now the plaintiff filed the present suit alleging encroachment and disputing the plaintiff's eastern boundary which is the western boundary of the second defendant's property.

15. In such a circumstances, it cannot be contended that the question of identification or fixation of boundaries of the very same property remains open or adjudicated. The process of delivery necessarily involves the identification of the property in accordance with the decree. Therefore, the issue as to the identity,

17. Issue No.2 to 5 :- Based on the above discussions these issues found against the petitioner.

Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court this the 10th day of April, 2026.

APPENDIX :-NIL

Plaintiff's Witness Examined:- Nil

Plaintiff's Exhibits Marked:-

Respondent's Witness Examined:- Nil

Respondent's Exhibits Marked :-

B1 17.10.2002 : Certified copy of decree in OS. 147/1993. of the Hon'ble Sub Court, Palakkad.

- B2 17.10.2002 : Certified copy of judgment in OS. 147/1993. of the Hon'ble Sub Court, Palakkad
- B3 30.05.1996 : Report and survey plan submitted by advocate Commissioner Sri. V.Jayadevan in OS. 147/1993.of the Hon'ble Sub Court Palakkad
- B4 31.05.2006 : Certified copy of common judgment in AS. 65/2003and 71/2003 of the Hon'ble District Court Palakkad
- B5 29.10.2010 : Copy of execution petition No.271/2010 filed before the Hon'ble Sub Court, Palakkad
- B6 21.08.2014 : Delivery report and warrant.

Court Witness & Exhibits:- NIL

Munsiff

Fair/Copy of Judgment

in O.S.49/2018

Dated : 10.04.2026