

IN THE COURT OF THE MUNSIF, THIRUVALLA.

Present: Sri. Aravind S.J, Munsiff

Thursday the 19th day of June, 2025.

29th day of Jyaishta, 1947 S.E.

OS.No.02/2019.

Between:-

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| <p>1) Baiju, aged 47 years,
S/o. Chandran, Karuvisseril Veedu,
Padinjarekkara muri, Nedumpram Village,
Thiruvalla Taluk, Pathanamthitta District.</p> <p>2) Saiju, aged 43 years, B/o. Baiju,
Karuvisseril Veedu, Padinjarekkara muri,
Nedumpram Village, Thiruvalla Taluk,
Pathanamthitta District.</p> <p>3) Resmi, aged 41 years, D/o. Chandran,
Karuvisseril Veedu, Padinjarekkara muri,
Nedumpram Village, Thiruvalla Taluk,
Pathanamthitta District.
(By Adv. V.R. Susheesh)</p> | <p>Plaintiffs</p> |
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And:-

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| <p>1) T.K. Somanadhan, aged 72 years, Thulamuttam Veedu,
Aattuvathala Muri, Nedumudi. P.O,
Chambakkulam Village, Kuttanad Taluk,
Alappuzha District.
(Exparte)</p> | <p>Defendant</p> |
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This Suit having been finally heard on 10-06-2025 and stood over for consideration on 19-06-2025 and on the same day the court delivered the following:

J U D G M E N T

Suit is for perpetual prohibitory injunction.

2. Plaintiff averments in brief are as follows:- The plaintiff schedule item No. 1 property originally belonged to the mother of the plaintiffs by virtue of sale deed No. 115/2000 of the Thiruvalla SRO. After the death of the parents, the plaintiffs are in possession of the plaintiff schedule item No.1 property and are residing therein. The plaintiffs have right over the property at the western side of the plaintiff schedule item no 1 property as well. The property of the defendant is situated at the western side of the property. The property of Attumalil family is situated at the south-eastern side of plaintiff schedule item No.1 property. The property of Poovakkattu family is situated at its western side. Thakazhi - Thiruvalla road is situated at its southern side in east-west direction. There is a pathway having a width of 12 feet and length of 22 feet from the aforesaid road towards north to the plaintiff schedule item No.1 property in between the property of Attumalil family and pookkattu family. The said pathway was purchased by the plaintiff and is their private property. The said pathway is scheduled as item No.2 and is used exclusively by the plaintiffs for access to item No.1 property. Matters being so, the defendant who is at loggerheads with the plaintiff is now attempting to trespass into the plaintiff schedule item No. 1 property and extent item No.2 towards the property of the defendant by cutting open a new pathway through plaintiff schedule item No.1 property. The defendants have no right or authority to do so. The plaintiff schedule item No.1 and 2 properties are in the absolute possession of the plaintiffs and the plaintiff schedule item No.2 was purchased for access to item No. 1 property. Hence the suit.

3. Summons was duly served on the defendant. The defendants entered appearance and filed written statement contending as follows: The suit is not maintainable either under law or on facts. The plaintiff is put to proof regarding their right over the plaint schedule item No. 1 property. The plaint schedule item No.1 property is not within well defined boundaries. It is false to allege that the property at the western side of plaint schedule item No.1 property belongs to the plaintiffs. The defendant has an extent of 5 cents situated at the western side of plaint schedule item No.1 property and the defendant is in absolute possession and enjoyment of the same. It is true that the property of Attumalil family, Pookkattu family and the plaint schedule item No.2 pathway is at the southern side of item No.1 property. It is false to allege that the plaintiff has purchased plaint schedule item No.2 pathway. It is false to allege that the plaintiff alone is using the plaint schedule item No.2 pathway. The plaintiff has no need to purchase the plaint schedule item No. 2 pathway and they do not have any title or possession over the same. No document is produced to show that they have purchased the plaint schedule item No.2 pathway. The plaint schedule item No.2 pathway is not exclusively for the plaintiffs for access to item No. 1 property. The said pathway is being used by the defendant also for access to his property. The plaint schedule properties and the property of the defendant were under a common tenement and the plaintiff has obtained easement right by necessity over the plaint schedule item No.2 pathway. The defendants are now attempting to cause obstruction to the user of the defendant over the plaint schedule item No.2

pathway and they have erected a gate in the plaint schedule item No.1 property so as to obstruct the user of the way by the defendant. The defendant has no intention to commit any acts of trespass into plaint schedule item No. 1 and 2 property. The defendant has every right to access the plaint schedule item No.2 pathway. Hence the suit is liable to be dismissed.

4. Based on the aforesaid pleadings and contentions put forth by the parties, the following issues were framed:-

1. Is the plaint schedule item No.1 property identifiable?

2. Does the defendant has any right over the plaint schedule item No.2 pathway?

3. Is the plaintiff entitled to a decree of perpetual prohibitory injunction as sought for?

4. Relief and costs?

5. With the aforesaid pleadings, the parties went to trial. On the day fixed for trial, the defendants were absent. The defendants filed I.A. 4/2025 for removing the case from the list. The said petition was dismissed and the defendants were placed exparte. The plaintiff examined PW1 and Exts. A1 to A3 were marked. Commission report and rough sketch were marked as Ext C1 and C1(a).

6. Heard the learned counsel for the plaintiff.

7. Issue No. 1 to 3: These issues are considered together for brevity and the sake of convenience. The case of the plaintiff is that the plaintiff schedule Item No. 1 property originally belonged to their mother and after her death, the same devolved upon the plaintiffs and that item No.2 is a private way which they had purchased for access to the plaintiff schedule item No.1 property from the southern road. The bone of the contention of the plaintiff is that the defendants are attempting to trespass into plaintiff schedule item No.1 property and cut open a new pathway through the same for accessing item No.2 pathway and the road. Per contra, the defendants contends that the plaintiff do not have any exclusive right over the plaintiff schedule item No.2 pathway and that he has obtained the easement right by necessity over the plaintiff schedule item No.2 pathway.

8. In order to substantiate his contentions, the power of attorney holder of the 1st plaintiff were examined as PW1. He filed affidavit in lieu of examination in chief reiterating the plaintiff averments. Ext. A3 is the power of attorney executed by the 1st plaintiff in favour of PW1. PW1 has deposed that the mother of the plaintiffs obtained the plaintiff schedule item No.1 property by virtue of sale deed No. 115/2000 of the Thiruvalla SRO. The said document was produced and marked as Ext A1. A perusal of Ext A1 would show that one Vijayamma has obtained title over 38 cents of property in Resy. No. 65/11. Ext. A2 is the tax receipt with respect to the plaintiff schedule property in favour of the above said Vijayamma. PW1 has deposed that she is no more and that

the plaintiffs are her only legal heirs. At present there is nothing to disbelieve the testimony of PW1. Therefore it is evident that the plaintiff has title and possession over the plaint schedule item No.1 property.

9. The Advocate commissioner appointed in the case filed Ext. C1 report and C1 (a) rough sketch. The Advocate commissioner has reported that there are boundary stones separating the plaint schedule item No.1 property with the remaining properties. Therefore it could be seen that the plaint schedule item No.1 property is identifiable. The Advocate commissioner has also identified the plaint schedule item No.2 pathway. It is said to have a width of 12 feet and is well demarcated from the adjacent properties. The Advocate commissioner has also reported that there is a small nadavazhi from plaint schedule item No.2 pathway for access to the property of the defendant towards west. It is also reported that there are physical boundary separating the aforesaid nadavazhi with the plaint schedule item No.1 property.

10. The plaintiff had pleaded that they have purchased the plaint schedule item No. 2 pathway for their exclusive use. However the plaintiffs have not produced any document to show that they had purchased the pathway. The pathway as reported by the Advocate commissioner has a width of 12 feet. Any transfer which has a value of more than Rs. 100 is compulsory registrable. The plaintiffs had not even stated the document by which they had purchased the plaint schedule item No.2 pathway. It is to be considered that the contention of the plaintiffs is that they had purchased the plaint

schedule item No. 2 pathway and not the right of way from the owner of the plaintiff schedule item No.2 pathway. More over, Ext. C1 and C1(a) would show that the said pathway further extends towards west at the southern side of the plaintiff schedule item No.1 property towards the property of the defendant and that the said portion of pathway and the plaintiff schedule item No.1 property are separated by boundary stones. It could thus be seen that the plaintiff schedule item no 1 property and the southern pathway are demarcated. Hence it cannot be said that the plaintiff schedule item No. 2 property is in the exclusive possession of the plaintiff.

11. It is true that the defendant had failed to prove their case of easement by necessity over the plaintiff schedule item No.2 pathway. However the fact remains that the plaintiff is bound to prove his right over the plaintiff schedule item No.2 pathway de hors the absence of any evidence from the part of the defendant. Therefore this court is of the opinion that the plaintiff is not entitled to any relief with respect to the plaintiff schedule item No.2 pathway except that the defendant should not cause any waste in the plaintiff schedule item No. 2 pathway for the reason that the defendants do not have any higher right than the plaintiffs over the pathway and the plaintiffs are also using item no 2 pathway. Thus this court is of the opinion that the plaintiffs are entitled to a decree of perpetual prohibitory injunction restraining the defendant from trespassing into the plaintiff schedule item No.1 property, from committing any acts of waste in plaintiff schedule item No.1 and 2 properties, from altering its lie and from cutting open any new pathway through the plaintiff schedule item

No.1 property and using the same as an access to the property of the defendant. Thus, Issue Nos. 1 to 3 are found accordingly.

12. Issue No. 4: Based on the discussions held above, the suit is liable to be decreed in part. The general rule is that costs shall follow the event. However considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

In the result, the suit is decreed in part as follows:-

- 1. The plaintiffs are entitled to a decree of perpetual prohibitory injunction restraining the defendant from trespassing into the plaint schedule item No.1 property, from committing any acts of waste in plaint schedule item No.1 and 2 property, from altering its lie and from cutting open any new pathway through the plaint schedule item No.1 property and using the same as an access to the property of the defendant.**
- 2. The parties are directed to bear their respective costs.**

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 19th day of June, 2025.

**SD/-
ARAVIND S.J,
MUNSIFF.**

APPENDIX

Exhibits marked for the Plaintiff:-

- A1 - Sale deed No.115/2000 dated 14.02.2000 of Kadapra SRO.
- A2 - Tax receipt No. KL03050900691/2018 dated 25.05.2018 of Nedumbram Village Office
- A3 - Power of attorney dated 12.09.2023 executed by Baiju. C.

Court Exhibits:-

- C1 : Commission report prepared and submitted by Advocate Commissioner Adv. P. Ramesh Kumar.
- C1(a): Rough Sketch prepared and submitted by Advocate Commissioner Adv. P. Ramesh Kumar.

Examined for the Plaintiff:

- PW1 - Rajesh Kumar. T.C.

**ID/-
MUNSIFF**

Typed by: Shineymole. B/Compared by: Jayapriya. P.

**Fair Copy of Judgment
in OS.No.02/2019.
Dated:19-06-2025.**