

IN THE COURT OF THE MUNSIF, THIRUVALLA.**Present: Sri. Aravind S.J, Munsiff****Tuesday the 31st day of March, 2026/ 10th day of Chaithram, 1948 S.E****OS. No.156/2018.****BETWEEN:**

Susan Thomas, aged 54 years,
W/o.Thomas.V.Koshy, Poothikkottu Veetil,
Mathilbhagom Muri, Thiruvalla Municipality,
Thiruvalla Village, Thiruvalla Taluk.
(By Adv.V.A.Joseph.)

} Plaintiff

AND:

1. State of Kerala represented by District Collector, Pathanamthitta.
 2. Tahsildar, Taluk Office, Thiruvalla.
 3. Village Officer, Village Office, Thiruvalla.
 4. Thiruvalla Municipality, represented by its Secretary.
 5. Bijoy Kurian Alexander, aged 43 years, Cherukattusseril Veetil, Karackal P.O, Peringara Village, Thiruvalla Taluk.
 6. Mohanan, aged 54 years, S/o.Damodharan, Kanjiramalil. Thiruvalla P.O, Mathilbhagom Muri, Thiruvalla Village, Thiruvalla Taluk. (Died)
- Addl.D7. Shylaja, aged 52 years, W/o.Mohanan, Kanjiramaliyi Veedu, Ambily Junction, Paliyekkara, Thiruvalla Village, Thiruvalla Taluk.
- Addl.D8. Mahesh.M, aged 32 years, S/o.Mohanan, Kanjiramaliyi Veedu, Ambily Junction, Paliyekkara, Thiruvalla Village, Thiruvalla Taluk.

} Defendants

(Additional D7 and D8 are impleaded as per order in IA.1/2022 dated 05-08-2023.)

(By Adv.G.Santhosh for D4 & Adv.D.Sreekumar for D5.)
(D6 Set exparte.) (No Vakalath is seen filed for D1 to D3 & D7 & D8.)

This Suit having been finally heard on 18-03-2026 and stood over for consideration on 31-03-2026 and on the same day the court delivered the following:

J U D G M E N T

The suit is for mandatory and perpetual prohibitory injunction.

2. The plaint averments in brief are as follows: The plaint schedule Item No. 1 property belonged to the parents of the plaintiff by virtue of Sale deed No. 1014/1984 of the Thiruvalla SRO. The said property was in their absolute possession and enjoyment and after their death, the plaintiff became the sole owner of the plaint schedule Item No. 1 property. The plaint schedule Item No. 1 property is situated within well defined boundaries in a triangle shape. The Thiruvalla-Kayamkulam PWD road is at the northern side of the plaint schedule Item No. 1 property. The Canal and canal purambokku is at the remaining sides of the plaint schedule Item No. 1 property. The plaint schedule Item No. 1 property is separately demarcated by a compound wall having a height of 5 feet from the adjacent properties. The said compound wall was constructed during 2013. The south western portion of the plaint schedule item no 1 property touches the PWD road at a point. The property adjacent to the said portion is thodu purambokku and the property of defendant no. 6. The said properties are in resurvey No. 137/13. The plaintiff has obtained reliable information that the Government had given the road purambokku in Res No. 137/14 for constructing homes for the homeless. The property in Res No. 137/13 and 137/14 were part of the same property and was situated at a lower level than the PWD road. The properties could be accessed directly from the PWD road. The 5th defendant is the contractor who had taken contract from the 4th defendant for constructing a road through the property in Resurvey No. 137/13 and 137/14. There are encroachments in Re-

survey No. 137/13 and 137/14 and thus there is reduction in its extent. The revenue officials and the Taluk surveyors are abetting the said encroachers. As part of the same, they are constructing a granite wall at the western side of the thodu situated at the eastern side of the property in resurvey No. 137/14 encroaching 3 metres of the said thodu. Boundary is constructed approximately 5 metre into the said thodu. The 4th and 5th defendants are attempting to enter into the plaint schedule Item No. 1 property and to construct a pathway through the same. The said defendants have no right or authority to do the same. The plaintiff having received such information had approached the RDO on 14.02.2018. However no action was taken by the RDO. Moreover a lorry bearing number KL 27B 4612 belonging to "Vettikattu construction" had demolished the boundary wall at the south western extremity of the plaint schedule Item No. 1 property at a length of 3 meters. The 5th defendant had promised that he would reinstate the compound wall within a week. However, he has not done the same. Moreover, he had also dumped soil at the triangular shaped portion of the plaint schedule Item No. 1 property wherein the compound wall was demolished having an extent of 0.028 ares. The intention of the defendants is to construct a road through the plaint schedule Item No. 1 property. The demolished portion of the compound wall is scheduled as Item No. 3 and the portion where the soil is dumped is scheduled as Item No. 4. The plaintiff had suffered a loss of ₹ 30,000 due to the demolition of the plaint schedule Item No. 3 compound wall. Defendant no. 4 and defendant no. 5 are liable to restore the plaint schedule Item No. 3 compound wall. The plaintiff is also entitled to a decree of perpetual prohibitory injunction restraining defendants no. 4 and no. 5 from cutting open any new pathway through the plaint schedule Item No. 1 property. The defendants no. 1 to no. 3 and the defendants are only arrayed as por

forma parties. No relief is required against them. Hence the suit.

3. Summons was duly served on the defendants. The defendants 1 to 3 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 his title over the plaintiff schedule Item No. 1 property. The plaintiff schedule Item No. 1 property is in a triangle shape and the western portion would end at a point. There is a way emanating from the PWD road at its western side and one Mohanan is residing at the western side of the said way. The said property is located in resurvey No. 137/13. The property at the southern side of the said property is in resurvey No. 137/15 and the said property is at the western side of a road. There is a way emanating from the PWD road at the western side of the property of the plaintiff towards the said property. The plaintiff could approach the revenue officials if there is any mistake in the Re-survey records. The plaintiff has no right to encroach into any portion of the thodu purambokku. The protection of the thodu purambokku is vested with the local authorities concerned. There is no cause of action against the defendants 1 to 3. Hence the suit is liable to be dismissed against defendants 1 to 3.

4. The 4th defendant filed written statement contending as follows: The suit is not maintainable either under law or on facts. The plaintiff is put to proof regarding his title over the plaintiff schedule Item No. 1 property. The plaintiff schedule Item No. 4 is not identifiable. The suit is instituted without issuance of registered notice against defendant no. 4 and thus the suit against defendant no. 4 is liable to be dismissed in limine. The plaintiff schedule Item No. 1 property decreases in width from east to west and ends at a point at its western end. The PWD road is situated at the northern and western side of the plaintiff schedule Item No. 1 property and Mulleli Thodu is at

the eastern and southern side of Item No. 1 property. The said Mulleli Thodu and purambokku vests with the 4th defendant. The plaintiff had annexed a portion of the purambokku property to Item No. 1 and had constructed a compound wall. The 4th defendant had deputed the 5th defendant to construct a new road for access to the 6th defendant and other persons from the PWD road after constructing a granite pitching separating the road with the thodu portion. The 4th defendant has not encroached into any portion of the plaint schedule Item No. 1 property. It is false to allege that the plaintiff had suffered loss to the tune of ₹ 30,000. The defendant no. 4 has not caused any damage to the plaintiff. The defendant no. 4 has not attempted to cut open any new pathway through the plaint schedule Item No. 1 property. No such decision was taken by the defendant no. 4 or its counsel. The plaintiff is not entitled to a decree of mandatory injunction and prohibitory injunction against the 4th defendant. Hence the suit is liable to be dismissed.

5. The 5th defendant filed written statement contending as follows: The suit is not maintainable either under law or on facts. The description of the plaint schedule Item No. 2 to 4 are ambiguous and imaginary. The plaintiff is put to proof regarding his title over the plaint schedule Item No. 1 property. To the information of defendant no. 5, the plaintiff had encroached a portion of the purambokku property and had constructed the plaint schedule Item No. 2 compound wall. The plaint schedule Item No. 1 is not identifiable. The western portion of the plaint schedule Item No. 1 property which ends at a point is part of Thodu Purambokku. The defendant no. 4 had taken decision to construct houses for homeless people in the property at the southern side of the plaint schedule Item No. 1. The 4th defendant had entered into a contract with the 5th defendant for constructing the road and to construct a retaining wall at the western

side of the thodu. The 5th defendant had done only the acts as authorized by the 4th defendant. The 5th defendant has not demolished any portion of the compound wall at a width of 3 metre as alleged nor has he dumped soil in the property having an extent of 0.28 ares. The way was constructed only through the Purambokku property as directed by defendant no. 4. The defendant no. 5 did not promise the plaintiff to reinstate the compound wall as alleged. The 5th defendant has not acted in a malicious manner. The 5th defendant had only carried out the contract work as directed by the 4th defendant. If the plaintiff has any complaint regarding the works done by the 5th defendant, they could approach the authorities concerned and redress their grievance. The plaintiff is not entitled to any relief with respect to plaint schedule Item No. 2 to 4, as the descriptions of the said properties are ambiguous and imaginary. Even if any portion of the compound wall of the plaintiff is demolished, the same would have been due to its age and due to the pressure caused due to frequent plying of heavy vehicles through the PWD road at its eastern side. The 5th defendant has no liability to reconstruct the compound wall. There is no cause of action to institute the suit. The relief of perpetual prohibitory injunction has become infructuous. None of the reliefs also can be allowed. Hence the suit is liable to be dismissed.

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

1. Does the plaintiff has any right over plaint schedule Item No. 4?
2. Has the defendants 4 and 5 demolished Item No. 3 compound wall?
3. Has the plaintiff constructed Item No. 2 compound wall encroaching into purambokku land?
4. Is the plaintiff entitled to a decree of Mandatory injunction

directing defendants no. 4 and defendant no. 5 to reinstate Item No. 5 compound wall?

5. Is the plaintiff in possession of the plaint schedule Item No. 1 property?
6. Is the plaintiff entitled to a decree of perpetual prohibitory injunction as sought for?
7. Relief and Costs

7. The 6th defendant died during the pendency of the suit and his legal representatives were impleaded as additional Defendant nos. 7 and 8 as per the order in IA No. 1/2022. The plaintiffs examined PW1 to PW4 and Ext A1 to A6 were marked. The defendants examined DW1 and DW2. No documents were produced by the defendants. Commission report and rough sketch were marked as Ext C1 and Ext C1(a). Commission report and survey plan were marked as Ext C2 and Ext C2(a).

8. **Issue Nos. 1, 3 and 5:** These issues are considered together for brevity and for the sake of convenience. The case of the plaintiff is that the plaint schedule Item No. 1 property belongs to him and Item No. 2 is the compound wall separating the plaint schedule Item No. 1 property with the northern PWD road and its south western portion. It is contended that the 5th defendant who was appointed as a contractor by the 4th defendant for constructing a new road at the western side of the plaint schedule Item No. 1 property had demolished a portion of the plaint schedule Item No. 2 compound wall at its western side at a length of 3 metres and the said demolished portion is scheduled as Item No. 3. It is also contended that the 4th and 5th defendants had dumped soil in 0.028 ares of property in triangle shape at the western side of the plaint schedule Item No. 1 property. The bone of the contention of the plaintiff is that

the Defendants 4 and 5 are liable to reinstate the plaint schedule Item No. 3 portion of the compound wall. Per contra, the defendants 4 and 5 had contended that the plaintiff had annexed a portion of the purambokku property and had constructed a compound wall and that they have not caused the demolition of any portion of the compound wall.

9. In order to substantiate his contentions, the Power of Attorney Holder of the plaintiff in the case was examined as PW1. He filed affidavit lieu of examination in chief reiterating the plaint averments. PW1 is the husband of the plaintiff. Ext A4 is the power of attorney executed by the plaintiff in favour of PW1. At the outset, it is to be considered that the plaintiff had not sought any relief against defendants 1 to 3 and 6th defendant. PW1 deposed that the parents of the plaintiff obtained the plaint schedule Item No. 1 property by virtue of Sale deed No. 1019/1984 of the Thiruvalla SRO. The said document was produced and marked as Ext A1. Ext A2 is the tax receipt with respect to the plaint schedule Item No. 1 property. Ext A1 would show that one Chacko and his wife Eliamma Chacko had obtained 4.86 ares of property along with excess land in old Survey No. 429/7. The plaint schedule Item No. 1 property is shown to have an extent of 7.65 ares. Ext A2 would also show that the plaintiff is paying tax for the property having an extent of 7.65 ares in resurvey No. 137/12.

10. The lie of the property is not in dispute. It is admitted that the plaint schedule property is in a triangle shape and the same converges at a point at the western side. The main contention raised by defendant nos. 4 and 5 is that the plaintiff had annexed a portion of the purambokku property. The defendant no. 5 had also contended that the portion wherein the Plaint schedule Item No. 1 property converges into a point was encroached upon by the plaintiff. The

defendants 1 to 3 had filed written statement contending that the plaint schedule Item No. 1 property is in a triangle shape and that its western portion converges at a single point. The 4th defendant had also stated the same in his written statement. Therefore there is no dispute regarding the shape of the plaint schedule Item No. 1 property. Ext A6 is the resurvey plan with respect to the field no. 137. Ext A6 would also show that the property in Re-survey No. 137/12 converges at a single point at its western side and the property is lying in the shape of an irregular triangle.

11. The Advocate commissioner deputed to identify the plaint schedule properties filed Ext C1 report and Ext C1(a) rough sketch. The Advocate commissioner was examined as PW3 and the surveyor was examined as PW4. The plaint schedule item no 1 property is shown within "ABLCDEFGHIJA" letters. The learned counsel for defendant no. 5 had argued that the Plaint Schedule Item No. 1 property shown in Ext C2(a) plan differs with the one shown in Ext A6. A comparative analysis of the plaint schedule Item No. 1 property shown in Ext C2(a) with Ext A6 would show that the side measurements stated therein are exactly the same. The shape cannot be said to be of such striking difference that it could be said that the advocate commissioner and surveyor had failed to properly identify the plaint schedule Item No. 1 property. It is reported in Ext C2 and C2(a) that there exists a boundary wall in FGHIJ line and there exists a boundary wall at KBL line also. Therefore, it cannot be said that the property shown in Ext C2(a) and Ext A6 are different.

12. The defendant no. 4 had filed IA No. 8/2025 to set aside the commission report and plan contending that the advocate commissioner and surveyor ought to have found that the western boundary of the plaint schedule Item No. 1 property is AKJ line. This Court is of the opinion that the said contention of defendant no. 4

cannot be accepted for the reason that the defendants 1 to 4 in their written statement had admitted that the western side of the plaint schedule Item No. 1 property converges at a single point and that the property is in a triangular shape. If that be so, the western boundary would only be a point and it cannot be JK line as contended now. True, Ext C2A does not contain any F-line and And G lane. However none of the defendants have filed any objection to the commission report stating that the commission report and plan are erroneous due to the absence of the the said lines. Ext C2(a) contains the necessary ladder for identifying the property.

13. The Hon'ble High Court of Kerala in **Sabu v. Sasi** (2022 (2) KHC 435) had held that *"An FM Sketch shall contain 'F - line', 'G - line', 'Check - line' and 'Offset' measurements. The 'G - line' measurements, 'Check - line' measurements and 'Offset' are entered in the 'Ladder' in the FM sheet. In addition, the direction of adjoining field boundaries and adjoining survey numbers are entered on the sides of the field. 'Ladder' is necessary to plot the field and verify the area of the field. It is impossible to plot and calculate the area or re-fix the field with the aid of boundary measurements (F - lines) only. To re - fix the field 'G - lines', 'Check - lines', 'F - lines' and 'Offsets' are required. A survey plan becomes complete and self explanatory only when it contains the requirements mentioned above."*

14. The dictum laid down in **Sabu v. Sasi** (supra) was discussed by the honourable High Court of Kerala in **Radhakrishnan M.R v. K. Ananthan Nambiar** (2023 KHC 860) and it was held that *"In this connection, it is pertinent to note that in the objection filed by defendants 1 and 2 to the commission report and survey sketch, no valid objections raised. There is no challenge on Ext.C2(a) plan on the ground that the same lacks 'F line', 'G line', 'Check - line' and 'Ladder'. Though it is held by this Court in Sabu's case (supra)*

regarding the requirements of a survey sketch, there is no reason to disbelieve or disown all survey plans produced before the Courts for want of the said essentials where the survey plan is otherwise acceptable. To be more explicit, when there is no challenge regarding absence of the ingredients dealt in Sabu's case (supra) in the objection filed, disputing the survey plans, there is no reason to disown the survey plan by way of remand or otherwise and the said survey plan can be acted upon to decide the matter in issue. Therefore, it is held that the decision in Sabu's case (supra) would apply while preparing survey plans after the decision, in relation to cases pending before the trial courts, and in so far as survey plans before the first appellate courts and second appellate court, the said decision would apply only when such specific challenges, as dealt in Sabu's case (supra), were raised in the objection filed by the parties. Otherwise, there is no reason to disbelieve or disown the survey sketch and plans following the ratio in Sabu v. Sasi's case (supra). Holding so, this challenge also must fail." There is no contention in the objection filed by the 4th defendant regarding the absence of the aforesaid requirements. Thus, it cannot be considered merely by relying upon the dictum in *Sabu v. Sasi* (supra) that Ext C2 and C2(a) cannot be relied upon. As already stated, the objection raised by the 4th and 5th defendant cannot be accepted and thus IA No. 8/2025 is also dismissed.

15. Ext C2 and C2(a) are prepared based on the resurvey plan. It is true that the plaint schedule Item No. 1 property as per Ext A1 is shown to have an extent of only 4.86 only. However it is also pertinent to note that there is mention of excess land within the boundaries stated. It is also evident from Ext A1 that the boundaries of the said property was well demarcated when the document was executed. The boundary description in Ext A1 would show that there

is thodu at eastern, southern and northern side of the property therein and the road is at the western and northern side of the property. However, the mere existence of a thodu which may belong to the local authority adjacent to the property would not mean that the plaintiff had annexed any portion of the said thodu.

16. The defendant no. 4 did not produce any document to show the extent of the said thodu or to show that the plaintiffs have annexed any portion of the thodu. The defendant no. 4 who is the custodian of the necessary records of water bodies could very well have produced the said documents. The very fact that there is mention of excess land in the property description in Ext A1 document does not mean that the plaintiff had annexed any portion of the thodu. The Advocate commissioner appointed for conducting lical investigation filed Ext C report and C1(a) rough sketch. He was examined as PW2. He had deposed that the property was in a triangular shape which converged at a point at the western side. It is also deposed that there exists boundary wall separating item no 1 property with the properties at the northern and western side. It is also reported that a portion of the wall is seen demolished. It could thus be seen that the plaint schedule item no 1 property was within well defined boundaries. The defendants have also not denied the existence of physical boundaries of item no 1 property.

17. Even if a person was found to be having more extent of land than that shown in his title deed, however, within the four boundaries shown in the title deed, his neighbour cannot aspire for getting that excess land, unless the latter has title to that excess extent. In the instant case, the 4th defendant failed to prove that they have any right over any portion of item no 1 property within the plaint schedule item no 2 wall. The fact that the Plaint schedule Item No. 1 property as identified in Ext C2 and Ext C2(a) tallies with Ext A6

resurvey plan and the fact that the plaint schedule Item No. 1 property is shown to have an extent of 7.65 ares in Ext A2 tax receipt would also show that the presumption regarding the conclusiveness of the boundaries identified in the resurvey plan can be applied to the facts of the present case.

18. The Learned counsel for the plaintiff had contended that the plaintiffs ought to have sued for declaration of title and in the absence of the relief of declaration of title, the plaintiff is not entitled to a decree of mandatory and prohibitory injunction. It is pertinent to consider that none of the defendants have contended that the plaint schedule Item No. 1 property is not within well defined boundaries. It is already found that the plaint schedule Item No. 1 property has an extent of 7.65 ares and that the said extent of property is within well defined boundaries. The mere contention of defendants 4 and 5 that the plaintiff has encroached into purambokku property without nothing more to substantiate the said contention cannot mean that there is cloud over the title of the plaintiff over the plaint schedule Item No. 1 property which would necessitate the plaintiff to sue for declaration of title. Moreover, defendant no. 4 had admitted that the plaint schedule Item No. 1 property converges at a point at its western side.

19. The 5th defendant in the case was examined as DW1. He filed affidavit in lieu of examination in chief. DW2 had deposed during the course of his cross-examination that that he has not seen the resurvey plan and that he is not aware of the boundaries of the property. Therefore, DW2 cannot raise any dispute regarding the title of the plaintiff over item no 1 which would show the existence of any cloud over the title of the plaintiff. The Secretary of the defendant no. 4 was examined as DW1. DW1 had also deposed that there was no decision by defendant no. 4 to annex any portion of the plaint

schedule Item No. 1 property to construct the road. When there is no cloud over the title of the plaintiff over the plaintiff schedule Item No. 1 property, the plaintiff is not required to institute the suit for declaration of title. Thus the said contention of the learned counsel for defendant no. 5 is also devoid of merits.

20. The learned counsel for defendant no. 4 had contended that the suit as against the 4th defendant is not maintainable for want of notice under Section 544 of the Municipality Act. In order to appreciate the said contention, it is pertinent to consider Section 544 of the Municipality Act and the same is reproduced hereunder. *"(1) No suit shall be instituted against a Municipality or any Municipal authority or any officer or other employee of a Municipality or against any person acting under the order or direction of a Municipal Authority or any officer or employee of a Municipality in respect of any act done or purported to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder until the expiration of two months after notice in writing to the Municipality and, in the case of such officer, employee or person, unless notice in writing has also been delivered to him in person or at his office or place of residence, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation, claimed and the name and place of residence of the intending plaintiff, and unless the plaint contains a statement that such notice has been so delivered. (2) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction which object would be defeated by the giving of the notice or the postponement of the institution of the suit."*

21. A careful perusal of s. 544 of the Municipality Act would show that the bar of institution of a suit against a Municipality or Municipal Authority or any of its officer would apply only in respect of

any act done or purported to have been done in pursuance of the said Act or any rule, regulation or by-law made thereunder. The instant case is filed by the plaintiff on the premise that the 4th and 5th defendants had demolished a portion of his compound wall. None of the provisions of the Municipality Act empowers the Municipality to demolish the boundary and to annex any portion of the same. Therefore, there is no need to issue notice under Section 544 of the Municipality Act before instituting the suit. Likewise, the suit also cannot be barred under Section 563 of the Kerala Municipality Act, 1994 for the reason that the bar would apply only to a suit challenging the legality or propriety of any action taken by or under the authority of the Secretary under any provisions comprised in Chapters XVII, XVIII and XIX or the Rules and Regulations, if any, made thereunder. The present suit would not come within the said ambit. Thus the said contention of the learned counsel for the 4th defendant is also devoid of merits.

22. The upshot of the above discussion is that the plaint schedule Item No. 1 property shown within "ABLCDEFGHIJA" letters having an extent of 7.65 ares belongs to the plaintiff and there is no evidence to show the existence of any purambokku property within the said extent of property. The plaint schedule Item No. 4 portion of the property is shown within "AKJA" letters and is shown to have an extent of 2.6 metres square. It is reported that the said portion is part of the plaint schedule Item No. 1 property. Thus the plaintiff has right over the said portion of the property also. Thus, these issues are found in favour of the plaintiff.

23. **Issue no. 2, 4 and 6.** These issues are considered together for brevity and for the sake of convenience. The plaintiff had contended that the plaint schedule Item No. 3 portion of item no 2 compound was demolished by defendant no. 5 with the connivance of

defendant no. 4 who had employed defendant no. 5. It is pertinent to consider that defendants no. 4 and defendant no. 5 have not denied the fact that there existed compound wall separating the plaint schedule Item No. 1 property with the adjacent properties. PW2 had deposed that there exist compound wall separating the plaint schedule Item No. 1 property with the northern property. It is also reported that the said wall has a height of 4.5 feet. It is also reported that a portion of the compound wall at a length of 1 metre at the western side of the plaint schedule property is seen demolished. It is also reported that soil is dumped at the said portion thereby increasing its height from the remaining extent of the plaint schedule Item No. 1 property. It is also deposed that there exists a compound wall at a length of 13 metres at the southern side of the plaint schedule Item No. 1 property. The oral evidence of PW2 coupled with Ext C1 and C1(a) would show that the wall having a length of approximately 1 metre was demolished.

24. Ext C2 and C2(a) would show that the demolished portion of the compound wall has a length of 3 metre. The said portion is shown within "AJ" letters and "AK" letters in Ext C2 and C2(a). Ext C2 and C2(a) were prepared after measurement of the property. PW1 during the course of his cross examination had deposed that the compound wall was constructed during 2013. As already stated, the defendants 4 and 5 have not denied the fact that there existed compound wall separating at the said portion. The 5th defendant in his written statement had contented that the compound wall may have been demolished due to its age or due to the plying of heavy vehicles. DW2 during the course of his cross examination had deposed that "താങ്കൾ വാദിയുടെ വസ്തുവിന്റെ പടിഞ്ഞാറ് അതിരിൽ തെക്കും വടക്കും വശങ്ങളിലുള്ള 3 മീറ്റർ ഭാഗം മതിൽ ഇടിച്ച് അനധികൃതമായി റോഡ് നിർമ്മാണം നടത്തിയെന്ന് പറയുന്നു. ? തെറ്റാണ്. ഞാനും എന്റെ ജോലിക്കാരെയും ആ മതിലിൽ തൊട്ടിട്ടില്ല. (A) പണി

നടക്കുന്ന സമയത്ത് മതിൽ ഇടിഞ്ഞോ എന്ന് എന്റെ ശ്രദ്ധയിൽ പെട്ടിട്ടില്ല. " The aforesaid deposition would itself mean that there existed a wall at the western side of the plaint schedule Item No. 1 property at its northern and southern side and the DW2 had feigned ignorance regarding the demolition of the wall during the period when he was doing the construction work.

25. DW1 had deposed that there was no direction given to the defendant no. 5 to demolish any compound wall. DW2 had also deposed that there was no proposal to demolish any portion of the boundary of the plaintiff. As already stated, PW1 had deposed that the wall was constructed during 2013. This fact is not controverted by the defendants in their written statement. Therefore it cannot be said that the wall was aged so that it could fall due to natural causes. The very purpose of construction of wall is to protect the property. It would not stand to reason that the wall would fall due to the plying of vehicles at the western side through the road as there is no evidence to show the same. The only probable reason for the demolition of the plaint schedule Item No. 3 compound wall would be due to the acts of defendant no. 5. Defendant no. 5 has also not denied the fact that there was construction work undergoing at the western side of the plaint schedule Item No. 1 property during the relevant period. True, defendant no. 4 did not authorise defendant no. 5 to demolish any wall. Defendant no. 4 did not produce the agreement between defendant no. 4 and the defendant no. 5 to show that the 4th defendant could not be held liable for any mischief or negligence caused by the 5th defendant. The 5th defendant had done the construction work at the instance of the 4th defendant and thus the 4th defendant also has a legal duty to conduct the work in a proper manner without causing any damage to private parties. Therefore the 4th and 5th defendants are liable to reinstate the plaint schedule Item

No. 3 wall shown in "AJ" line and "AK" line in Ext C2(a) plan.

26. The plaintiffs had also sought for a decree of perpetual prohibitory injunction restraining defendants 4 and 5 from trespassing into plaintiff schedule Item No. 1 property, committing acts of waste therein, causing any damage to the compound wall and from annexing any portion of the plaintiff schedule Item No. 1 to the pathway. PW1 has deposed that the plaintiff schedule Item No. 4 portion of the plaintiff schedule Item No. 1 property is in his possession. None of the defendants have any case that the pathway is constructed through the plaintiff schedule Item No. 1 property. The materials on record would show that the plaintiff schedule Item No. 4 is situated at a higher level than the remaining extent of Item No. 1 property. The plaintiff had contended that the same occurred due to the dumping of soil by defendant no. 4 and defendant no. 5. However the same would not mean that the plaintiff has lost his possession over the said extent of property.

27. Defendant no. 5 had contended that the construction work is now over and thus the relief has become fruituous. However it is well settled that the rights of parties would crystallize on the date of institution of the suit. The apprehension was in existence on the date of institution of the suit. It is equally well settled that the court can take cognizance of events and developments subsequent to the institution of the suit. If the dispute has lost its relevance due to passage of time and subsequent events which makes the suit or proceedings infructuous, it is the duty of the court to take such action as is necessary in the interest of justice. (see **J M Biswas v. N K Bhattacharjee (2002) 4 SCC 68**).

28. It is thus to be seen that the subsequent event is of such a nature that the court has to spring into action and deny the relief to

the plaintiff. It is true that the construction of the proposed road was completed after the institution of the suit. It cannot be said that the apprehension has completely obliterated particularly when defendants 4 and 5 have denied the right of the plaintiff over the plaint schedule Item No. 1 property. Therefore this Court is of the opinion that the plaintiff is entitled to a decree of perpetual prohibitory injunction as sought for. Thus these issues are found accordingly.

29. **Issue No 7:** Based on the discussion made above, the suit is liable to be decreed. The general rule is that the costs shall follow the event. This Court finds no reason to deviate from the said rule. The relief is sought only against defendants no. 4 and no. 5 and the cause of action is only claimed against them. Hence defendants no. 4 and no. 5 are liable to pay the costs of the suit to the plaintiff.

In the result, the suit is decreed as follows.

- 1. The defendants 4 and 5 are directed by a decree of mandatory injunction to reinstate the plaint schedule Item No. 3 compound wall shown within "AJ" letters and "AK" letters in Ext C1 and C2(a) plan. If the defendants fail to do so, the plaintiff is entitled to execute the decree through process of court and to realize the said amount from defendants 4 and 5.**
- 2. The defendants 4 and 5 are restrained by a decree of perpetual prohibitory injunction from trespassing into any portion of the plaint schedule Item No. 1 property shown within "ABLCDEFGHIJA" letters in Ext C2(a) plan, committing acts of waste therein, causing any damage to the compound wall, and from annexing any portion of the plaint schedule Item No. 1 to the pathway.**

3. **Ext C2(a) shall form part of the decree.**
4. **The plaintiff is entitled to the costs of the suit from defendants no. 4 and defendant no. 5.**

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

Sd/-
ARAVIND S.J.,
MUNSIFF

APPENDIX

Exhibits marked for the Plaintiff:

- | | | | |
|----|--------|------------|---|
| 1. | Ext.A1 | 11-04-1984 | Original Sale deed No.1019/1984 of Sub Registrar Office, Thiruvalla. |
| 2. | Ext.A2 | 04-04-2018 | Original Tax receipt No.7573033 of Thiruvalla Village. |
| 3. | Ext.A3 | --- | Copy of Survey Plan of Field No.137/12 of Thiruvalla Village. |
| 4. | Ext.A4 | 29-09-2025 | General Power of Attorney executed by Plaintiff. |
| 5. | Ext.A5 | --- | True copy of Survey Plan of Field No.137/13 & 147/16 of Thiruvalla Village. |
| 6. | Ext.A6 | --- | True copy of Resurvey Plan of Field No.137 issued by Survey and Land Records, Thiruvananthapuram. |

Exhibits marked for the Defendants: NIL

Court Exhibits:

- | | | | |
|----|-----------|------------|---|
| 1. | Ext.C1 | 13-04-2018 | Commission report prepared and submitted by the Advocate Commissioner Adv.Bijo Thomas George. |
| 2. | Ext.C1(a) | 13-04-2018 | Rough sketch prepared and submitted by the Advocate Commissioner Adv.Bijo Thomas George. |

3. Ext.C2 29-03-2025 Commission report prepared and submitted by the Advocate Commissioner Adv.Pradeep Kumar.V.
4. Ext.C2(a) 29-03-2025 Survey plan prepared by K.Vijayakumar, District Survey Superintendent (Rtd.) and submitted by the Advocate Commissioner Adv.Pradeep Kumar.V.

Witnesses Examined for Plaintiff:

PW1 - Thomas.V.Koshy

PW2 - Adv.Bijo Thomas George

PW3 - Adv.Pradeep.Kumar

PW4 - Vijayakumar

Witnesses Examined for the Defendants:

DW1 - Deepesh.R.K

DW2 - Bijoy Kurian Alexander

Id/-
MUNSIFF

Copied by:Ajith.G
Compared by:

Copy of Judgment in
OS. No.156/2018.
Dated 31-03-2026.