

**IN THE COURT OF THE IV ADDITIONAL DISTRICT JUDGE OF  
THRISSUR**

**Present:**

**Sri. ANIL T.P, IV ADDITIONAL DISTRICT JUDGE.**

Monday, the 6<sup>th</sup> day of April, 2026/16<sup>th</sup> Chaitram 1948 SE.

**A.S. 164/2014.**

(OS 2579/2011 of Principal Munsiff Court, Thrissur)

- Appellants/  
Plaintiffs:
1. Jeema Shaji, aged 41, W/o Shaji K V, Kandamkulathi House, Ollur Village, Cheerachi, Thrissur Taluk.
  2. Paul, aged 69, S/o Perinchery Antony, Kuriachira Desom, Ollur Village, Thrissur Taluk.
  3. Xavior, aged 46, S/o Inasu Pulikkottil, Kattoor Village, Karanchira Desom, Mukundapuram Taluk.

By Adv. Sunil Konnanath.

- Respondents/  
Defendants:
1. Kenni Pappu, aged 45, S/o Vadakkoottu Njarakkal Pappu, No. TC 8/678, Hill Garden, Ollur Village, Kuttanellur Desom.
  2. Jiby Peter, aged 46, S/o Peter Mattumel, 12/193 D, Thrikkakara Panchayath, Vazhakkala Village, Desom, Kanayannur Taluk.
  3. Shaji K V, aged 47, S/o Varghese Kandamkulathi, Kandamkulathi House, Ollur Village, Cheerachi, Thrissur Taluk.

R1 & R2 By Adv. Sivy Jose P.

R3 By Adv. Dhanya P K

This appeal having been finally heard on 16.03.2026, the Court delivered the following:

**JUDGMENT**

Appeal filed under Order XLI Rule 1 CPC.

2. Appellants are the plaintiffs No.2 to 4 in OS.2579/2011 on the

file of Principal Munsiff Court, Thrissur. Appeal is filed against the judgment and decree of the trial court dated 28.05.2014 by which suit was dismissed without costs. As per the same judgment and decree, counter claim filed by defendants 1 and 2 was also dismissed.

3. The plaint averments in brief, is as follows:- The plaint schedule property belongs to plaintiffs No. 1 and 2 as per document No. 2309/2007 of SRO, Kuttanellur. The defendants got property on the eastern side of plaint schedule property. The property of plaintiffs is situated in Thrissur Corporation, whereas the defendants' property is in Puthur Grama Panchayath. The defendants' property are lying 8 ½ feet higher than the plaint schedule property. The defendants are conducting catering services. Plaintiffs are residing 2 kilometer away from plaint schedule property. On 22.07.2011, when the plaintiffs came to the plaint schedule property, they found that eastern boundary was destroyed. The defendants have trespassed in that part and making some construction works. It is understood that they are constructing waste treatment plant in connection with catering business. The natural mud wall on the eastern side from south-north was seen demolished at the width of 4 feet and a length of 75 feet and a depth of 2 ½ meter. The position of the boundary stone was also changed by defendants. These constructions are doing without getting permission from Panchayath. If the construction work is completed a portion will be in the plaint schedule property, the plaintiffs had asked defendants to co-operate for measuring and fixing the eastern boundary. But they have not co-

operated and they have threatened that they will proceed with the construction work.

4. Plaintiff was amended by incorporating paragraph 7A and plaintiff B schedule property as per IA.13283/2013 dated 01.11.2013. The averments in paragraph 7A are as follows:- It is necessary to remove the construction made by the defendants in violation to the Panchayath Building Rules with respect to waste treatment plant. Since the plaintiff schedule property is situated in lower level if there is any damages caused to the waste treatment plant that will affect plaintiff schedule property. The construction made by defendants in the boundary of A schedule property is described as B schedule in the property. The defendants have no right to use this construction as a water tank. Hence the suit for permanent prohibitory injunction to restrain the defendants from proceeding with the construction of waste treatment plant and a mandatory injunction for removing the B schedule constructions.

5. The defendants filed written statement contending as follows:- The property of the defendants are in the possession as per documents No. 92/2010 and 93/2010. They are conducting a vegetarian catering unit with the permission of Puthur Grama Panchayath. All the works done in the property are with permission of Grama Panchayath and approved plan. These defendants never trespassed in the eastern boundary of plaintiff schedule property and not destroyed the boundary. It is not true that they are constructing waste treatment plant and the natural boundary wall was destroyed at a depth of 2 ½ meter. Soil was removed in the boundary for

putting up a compound wall. These defendants never applied for a waste treatment plant. The attempt of plaintiffs is to cause hardships to the business of these defendants and at the instigation of other catering business owners. These plaintiffs had made application to the Panchayath and Pollution Control Board in order to get the work in the property stopped. To a show cause notice from the authority, these defendants already replied that they are not constructing waste treatment plant, but water storing and rain water harvesting facility. The suit is filed without any bonafide and only to cause hardship to these defendants. Plaintiffs had not gone for equally efficacious remedy.

6. The plaintiffs have caused damages to the defendants by making petitions to the Panchayath with the help of owners of other catering services. There was a loss of Rs.25,000/- sustained to the defendants. Hence this counter claim for damages of Rs.25,000/- with interest.

7. Plaintiffs filed replication contending that the allegation that they want to cause hardship and they initiated this proceeding by receiving consideration from owners of other catering services are denied. These plaintiffs had taken action only against the illegal activity of defendants. So they are not liable to pay compensation as claimed in the counter claim.

8. After the amendment of the plaint, defendants filed additional written statement denying the allegations in para 7A of the plaint. There is no specific distance for rain water harvest in the Building Rules. The chambers of this

rain water harvest is safely constructed. So there is no chance of draining water from this tank to A schedule property. The prayer for mandatory injunction is not maintainable. Hence the suit may be dismissed.

9. From the above pleadings, trial court framed following issues for trial.

1. Whether the plaintiffs entitled to get a decree ascertaining and fixing the eastern boundary of the plaint schedule property?
2. Whether the plaintiffs entitled to get for permanent prohibitory injunction restraining the defendants from erecting a waste treatment plant ?
3. Whether plaintiff is entitled to get a mandatory injunction as prayed for?
4. Reliefs and costs?

10. **Issue in Counter Claim:-**

Whether defendants is entitled to get any amount as damages? If so, what is the quantum?

11. **Additional Issue:-**

Whether plaintiffs is entitled to get permanent prohibitory injunction as prayed for?

12. On the side of plaintiffs, PW1 and PW2 were examined and Exts.

A1 to A4 were marked. For the defendants, DW1 and DW2 were examined and Exts. B1 to B10 were marked. Advocate Commissioner was examined as CW1 and Ext. C1 was marked.

13. After hearing both sides, the trial court dismissed the suit without costs. Trial court dismissed the counter claim without costs.

14. Aggrieved by the judgment and decree of the trial court, plaintiffs No. 2 to 4 filed this appeal contending that the construction was illegal and against Panchayth Building Rules. For conducting a vegetarian catering unit, big concrete chambers for storing rain water is not necessary. The license for construction was not produced. Since the defendants have a case that they are not proposing to construct a waste treatment plant the prohibitory injunction should have been granted. The suit is not against Panchayath and there is no question of maintainability as well as going for equally efficacious remedy. The trial court went wrong in accepting the evidence of DW1 and DW2 and not considering Commission report and the evidence of PW1 and PW2. The trial court ought to have granted mandatory injunction. Hence this appeal.

15. The trial court records were called for and the same was received.

16. Both sides were heard.

17. Now the points that arise for consideration are:

1. Whether the trial court went wrong in not granting

decree of permanent prohibitory injunction against constructing of waste treatment plant ?

2. Whether the trial court went wrong in not granting mandatory injunction with respect to plaint B schedule construction ?
3. Whether the judgment and decree of the trial court is liable to be set aside?
4. Reliefs and Costs?

18. **Points No.1 & 2:** These points are interlinked and the evidence to be appreciated is one and the same. So these points are considering together. Plaintiff was originally instituted for a substantial relief of fixation of boundary on the eastern side of plaintiff schedule property with additional prayer for permanent prohibitory injunction from constructing a waste treatment plant in the defendants' property and encroaching in the plaintiff schedule property. There was no B schedule construction shown in the original plaintiff, but there was a prayer for decree for mandatory injunction for demolishing the construction done within the plaintiff schedule property which was originally scheduled in the plaintiff. Subsequently, by making an amendment as per IA.13283/2013 on 01.11.2013 the substantial relief of fixation of boundary was deleted, even though there was no amendment made in the court fee portion. Plaintiff B schedule property was added and the decree for mandatory

injunction was changed with respect to the plaint B schedule property instead of alleged constructions in the plaint A schedule property. The entire plaint is based upon the foundational pleadings of trespass made by defendants after demolishing the eastern boundary of plaint A schedule property. It is an admitted fact that plaint A schedule property was lying 8 ½ feet lower to that of defendants' property. Further it is an admitted fact that plaint A schedule property is situated in Thrissur Corporation, whereas the defendants' property is situated in Puthur Panchayath. There is specific pleadings in paragraph 4 that for making the waste treatment plant, from the western end of defendants' property at a width of 4 feet and at a length of 75 feet in south-north direction the defendants had removed soil at a depth of 2 ½ meters and as a part of it, the mud wall on the eastern side of plaint A schedule property was demolished and soil was dug at a depth of 2 ½ meter. This pleadings has not been changed by way of amendment. But B schedule was incorporated which is described as the concrete chamber constructed on the eastern boundary of A schedule property. The description of B schedule property is not clear as there is nothing pleaded whether this B schedule construction is in the plaint A schedule property or in the defendants' property. There is also no specific pleadings that any part of B schedule property is within the plaint A schedule property. The boundary description of B schedule property is also ambiguous. On going through the newly added pleadings, it is seen that instead of alleging trespass into the property of appellants/plaintiffs and making construction, there is a total twist in the case by stating that construction is

made against Building Rules. It is also understood that appellants/plaintiffs had given up the case of trespass into the plaint A schedule property as the amendment was made deleting the substantial prayer for fixation of boundary. The case of the appellants/plaintiffs is confined for equitable relief on the basis of violation of Building Rules in making the construction of chambers as shown in Ext.B3.

19. In spite of making amendment in the pleadings, in the proof affidavit, PW1 had repeated the entire pleadings in the plaint instead of giving evidence to prove the case of violation of Building Rules and construction of waste treatment plant. During cross-examination of PW1 in page 2 stated that near to the eastern boundary a construction with 15 chambers are found. So the case of trespass into the plaint A schedule property was completely given up by PW1 during cross-examination. In that circumstances, the trial court was right in confining to see whether this construction is for rain water harvesting or waste treatment plant.

20. The appellants/plaintiffs by examining PW1 and PW2, who are the 2<sup>nd</sup> and 4<sup>th</sup> plaintiffs had only asserted the construction was for waste treatment plant. There was no expert opinion regarding the construction to show that it was a waste treatment plant from the side of appellants. The appellants had no specific knowledge about the requirements for waste treatment plant, and apart from asserting that case, there is no materials brought in, to prove that the construction was for waste treatment plant. On the other side, R1 and R2 had examined DW2, who was an engineer and produced Ext.B3 blueprint of the construction. Even when DW2

was examined nothing was brought out by appellants to show that it was a waste treatment plant. During cross-examination, it was only stated that the water used for washing utensils and waste water can be recycled through this chambers. DW2 never stated that this is a waste treatment plant. He had denied the suggestion that it is a waste treatment plant. When PW1 was cross-examined basing upon Ext.B3 blueprint, she would say that there is objection even when constructing rain water harvesting as if the chambers got damaged, water will drain to the plaint A schedule property. There is no such case in the plaint and appellants are not expected to change their case according to the circumstances. In fact appellants failed in showing that there was any waste treatment plant constructed by respondents 1 and 2. Ext.B5 was a reply given to Puthur Grama Panchayath by DW1 wherein it was stated that the construction is meant only for rain water storage arrangement. This reply was seen given to Panchayath on 29.07.2011 to a notice issued by Secretary of the Panchayath. Appellants had already admitted that such a show cause notice was given to respondents. This suit was instituted on 26.07.2011. That is on the next day of Ext.B4 notice issued by the Panchayath. As found by the trial court there is no materials to show that any waste treatment plant was constructed by R1 and R2. It was only a rain water harvesting facility which can even be used for treatment of waste water which is constructed and not a waste treatment plant as alleged by appellants. In these circumstances, the trial court was right in denying the relief of permanent prohibitory injunction and also decree for mandatory injunction with

respect to B schedule property. It is clear from the pleadings and evidence that appellants approached the equitable court with unclean hands. Points No.1 & 2 answered against the appellants.

21. **Point No.3 & 4:** In view of my findings on points No.1 and 2, I find that the Appellants are not entitled for any reliefs. Appellant is liable to pay costs to the respondents 1 and 2.

In the result, Appeal is dismissed with Costs of R1 and R2.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court this the 6<sup>th</sup> day of April, 2026).

sd/-

K. KAMANEEES  
I ADDL. DISTRICT JUDGE  
THRISSUR.  
For ANIL T.P  
IV ADDL. DISTRICT JUDGE  
THRISSUR.

**APPENDIX**

NIL

sd/-

I ADDL. DISTRICT JUDGE  
THRISSUR.  
For  
IV ADDL. DISTRICT JUDGE  
THRISSUR.

/True Copy/

By Order

Copied by:at

Compared by: kr

Sheristadar

Judgment in  
AS.164/2014  
Dated: 06.04.2026.