

IN THE COURT OF THE SUBORDINATE JUDGE, IRINJALAKUDA

Present:- Rema R K, Principal Sub Judge

Wednesday, the 11th day of March, 2026/20th Phalgunam, 1947 SE

AS 105/2018

(OS No.3783/2015 of Munsiff Court, Irinjalakuda)

APPELLANT

James, aged 63, S/o Kidangath Chacko, Kodakara Village, desom,
Chalaky Taluk

By Adv. K S Sudhir Baby

RESPONDENT

Devassy, S/o Kuttikkadan Vareeth, Kodakara Village, desom,
Chalaky Taluk

By Adv. V P Lisan & P S Subeesh

This Appeal having come up before me for final hearing on 28/2/2026 in the presence of the counsel for both sides and stood over to this day for consideration the court delivered the following:

JUDGMENT

This is an appeal preferred against the judgment and decree in OS. 3783/2015 dated 28.03.2018 on the file of Munsiff Court, Irinjalakuda.

2. The plaint averments in brief are as follows:- The plaint schedule property belongs to the plaintiff by virtue of Sale Deed No. 2115/1987. The plaintiff is in possession and enjoyment of the said property and is cultivating coconut, plantain, arecanut, nutmeg and other crops therein. The plaintiff depends upon the income derived from the said property for his livelihood. The property lies within well-defined and clearly demarcated boundaries, and no one other than the plaintiff has any right, title or interest over the plaint schedule property. On the southern side of the plaint schedule property, the defendant owns 10½ cents of land which he had purchased from the plaintiff. The plaintiff is residing away from the plaint schedule property and, due to ailments associated with old age, he is unable to visit the property frequently. Taking advantage of this situation, the defendant attempted to obliterate

the southern boundary of the plaintiff schedule property and also caused damage to the cultivation therein. On 29.09.2015, when the plaintiff visited the property, he noticed that the southern boundary had been demolished to a certain extent. When the plaintiff questioned the defendant regarding the said act, the defendant temporarily desisted from his conduct. However, the plaintiff apprehends that there is every likelihood of the defendant again demolishing the boundary of the plaintiff schedule property and committing waste therein. Hence, the plaintiff filed the present suit seeking a decree of perpetual injunction restraining the defendant from trespassing into the plaintiff schedule property and from committing any waste therein.

3. The defendant filed a written statement denying all the averments in the plaint, except those specifically admitted. According to the defendant, on the southern side of the plaintiff schedule property there exists a pathway having a length of **56½ metres** and a width of **3.40 metres**, running in the east–west direction, through which the defendant and one Paul have a right of way. The defendant contends that the plaintiff has filed the present suit by suppressing the existence of the said

pathway. It is further stated that there is no other access available to reach the defendant's property. The defendant claims that he has an easement by implied grant over the said pathway and that, for this reason, the entrance to the pathway has been specifically mentioned in the assignment deed. The defendant denied the allegation that on **29.09.2015** he had destroyed the southern boundary of the plaintiff's property. According to the defendant, he had not visited his property for a considerable period. When he recently visited the property, he noticed that grass, plantain plants and other vegetation had grown on the said pathway. Therefore, he removed the same in order to clear the way. The defendant further contends that the suit has been filed on false and baseless allegations. The plaintiff, therefore, is not entitled to any equitable relief. According to the defendant, the suit has been instituted solely with the intention of preventing him from exercising his right of way by implied grant through the said pathway. It is also contended that the suit is devoid of any cause of action. Hence, the defendant prays that the suit be dismissed with costs.

4. Before the trial court, on the side of plaintiff PWs 1 and 2 were examined and on the side of defendants DWs 1 and 2 were examined. Ext.A1 and A2 documents were marked on the side of plaintiff and Ext.B1 to B4 documents were marked on the side of defendants. The commission report and rough sketch were marked as Ext.C1 and C1(a).The trial court, after analysing the evidence on record, decreed the suit. Aggrieved by the said judgment and decree, the appellant preferred this appeal raising the following contentions:

According to the appellant, the judgment and decree passed by the trial court are against law and evidence. It is contended that the trial court erred in completely disbelieving the oral as well as documentary evidence adduced on the side of the defendant while fully relying upon the evidence of the plaintiff. The appellant further contends that in Exts.B1 to B4 documents, the existence of the pathway is expressly mentioned, but the trial court erroneously held that no such way exists by relying solely upon the commission report and plan. It is also contended that the appellant had only removed the wild grass that had grown in the pathway and that the finding of the trial court that the appellant demolished the southern boundary of the plaintiff schedule

property is incorrect. The appellant further argues that the trial court erred in holding that, based on the evidence of the appellant and DW1 along with Exts.B1 to B4, it cannot be concluded that there exists an easement by implied grant. Another contention raised by the appellant is that the trial court failed to consider the fact that there is no other access to the defendant's property and that Ext.B1 specifically mentions the entrance to the pathway. According to the appellant, this aspect was not properly appreciated by the trial court. Though PW1 deposed that there exists a pathway through the western boundary belonging to Paul and Joby Paul, the appellant contends, the finding of the trial court that there is no such way through the western boundary of the plaintiff's property is incorrect. The appellant further submits that Exts.B1 to B4 deeds were executed by PW1 himself, and therefore he is estopped from contending that no pathway exists. It is argued that the trial court failed to properly consider this aspect. Though PW1 had admitted in evidence that he had assigned portions of his property as plots, the trial court erred in concluding that the appellant attempted to trespass into the plaintiff's property by demolishing the southern boundary of the plaintiff's property. The appellant also contends that the trial court failed

to find that it was the plaintiff who was attempting to obstruct the pathway used by the defendant and, therefore, the plaintiff was not entitled to any equitable relief. According to the appellant, the trial court placed undue reliance on Ext.C1 commission report while ignoring the recitals contained in Exts.B1 to B4 deeds executed by PW1. It is further contended that the trial court failed to consider the doctrine of easement by express grant. On these grounds, the appellant seeks interference with the judgment and decree passed by the trial court.

5. Based upon the above facts, the following points arose for consideration:

1. Is the respondent/plaintiff entitled to a perpetual injunction as prayed for?
2. Whether the finding of trial court needs any interference? If so, to what extent?
3. Relief and costs?

6. For the sake of convenience, the parties will be hereinafter referred to as per their rank before the trial Court.

7. **Point No.1:-** Before the trial court, the plaintiff himself was examined as PW1. He filed an affidavit in lieu of examination-in-chief in tune with the averments contained in the plaint. According to him, the plaint schedule property forms part of a larger extent of property purchased by him by virtue of Sale Deed No. 2115/1987 of SRO, Kallettumkara. Out of the said property, he had subsequently assigned certain portions to others, and the remaining extent constitutes the plaint schedule property. The plaintiff further deposed that he resides along with his family at a place away from the plaint schedule property. The property is a cultivating land containing coconut, arecanut, plantain, nutmeg and other crops. The plaintiff and his family depend upon the income derived from the said property for their livelihood. It is also his case that, on the southern side of the plaint schedule property, he had assigned an extent of 10½ cents of land to the defendant in the year 2008. According to the plaintiff, being an aged person, he was unable to visit the plaint schedule property on a daily basis. Taking advantage of this situation, the defendant allegedly attempted to demolish the southern boundary of the plaint schedule property and to appropriate the yield from the property. It is specifically alleged that on 29.09.2015 the

defendant demolished a portion of the southern boundary. In support of his case, the plaintiff produced Ext.A1, the certified copy of his title deed, and Ext.A2, the tax receipt relating to the plaintiff's property. In order to establish that the property is situated within well-defined boundaries, the plaintiff also sought the appointment of an Advocate Commissioner. Accordingly, the Advocate Commissioner inspected the property and filed a report along with a rough sketch, which are marked as Ext.C1 and Ext.C1(a). The Advocate Commissioner was examined before the court as PW2.

8. The specific case of the defendant is that he has an easement by implied grant over the pathway situated along the southern side of the plaintiff's property. The said pathway lies in an east-west direction and has a width of about 3.40 metres. The pathway originates from the Kodakara-Vazhiyambalam road and proceeds eastwards along the southern boundary of the defendant's property. It then passes through the western boundary of the properties belonging to Joby Paul and Paul and ultimately reaches the property of the defendant. According to the defendant, when he purchased the property from the plaintiff, the right of way through the said pathway was provided and assured by the plaintiff.

The existence of this pathway is clearly reflected in the assignment deed executed in favour of the defendant, as well as in the assignment deeds relating to the properties of Paul and Joby Paul. However, the plaintiff has instituted the present **suit** suppressing the existence of the said pathway. The defendant further contends that the right of way is specifically mentioned in his sale deed, and that the plaintiff had assigned the property after assuring the availability of the said access. Therefore, the allegation that the defendant trespassed into the plaintiff's property or demolished the boundary **is** categorically denied. It is also pointed out that the entrance to the pathway is clearly described in the defendant's sale deed. Hence, the defendant asserts that he is entitled to use the said pathway as a matter of right, including for the purpose of transportation, and that the plaintiff has no legal right to obstruct or interfere with the defendant's use of the said pathway. On the side of the defendant, Ext.B1 – his title deed – was produced in evidence. He also relied upon Ext.B2, the assignment deed executed by the plaintiff in favour of Joby Paul; Ext.B3, the certified copy of the assignment deed executed by the plaintiff in favour of Paul; and Ext.B4, the assignment deed executed by the plaintiff in favour of Devassy. To substantiate his

case, the defendant examined DW2, the real estate broker who mediated the transactions between the plaintiff and the defendant as well as between the plaintiff and the other assignees. DW2 deposed that at the time of assignment of the respective properties, the plaintiff had provided a way for access to the properties of the assignees. Relying on the said oral and documentary evidence, the defendant contended that the plaintiff had approached the court suppressing material facts and with unclean hands, and therefore was not entitled to the decree of injunction as prayed for.

9. Per contra, the learned counsel for the plaintiff vehemently argued that the Commission report clearly establishes that the plaintiff schedule property lies within well-defined and demarcated boundaries. In Ext.C1 plan, the alleged way claimed by the defendant is not noted. On the contrary, the Advocate Commissioner has reported that there are no signs of the said way being used and that it is overgrown with grass and small trees. According to the plaintiff, these findings demonstrate that no such right of way exists, and hence, he is entitled to protection of his property by way of injunction.

10. On the other hand, the defendant maintained that he is entitled to an easement by implied grant over the way situated on the southern side of the plaint schedule property. The entrance to the said way is specifically mentioned in his title deed. It is further contended that while assigning the adjacent properties, the plaintiff had assured the existence of the said right of way. Additionally, one Paul is also stated to be using the same way. According to the defendant, this fact stands corroborated by the evidence of DW2. Therefore, it is argued that the plaintiff is not entitled to the relief sought and that the suit is liable to be dismissed.

11. I have considered the rival contentions. In order to prove that the plaintiff is the owner and in possession of the plaint schedule property, he has produced Ext.A1, the certified copy of the title deed bearing No.2115/1986 of SRO, Kallettumkara, and Ext.A2, the tax receipt. To establish the lie and nature of the plaint schedule property, the plaintiff took out a commission, and the Advocate Commissioner submitted a report along with a rough plan, which are marked as Ext.C1 and C1(a). The Advocate Commissioner was examined as PW2. As per Ext.C1, the plaint schedule property is situated within clearly

demarcated boundaries. On the northern side of the plaintiff schedule property there is a compound wall; on the eastern side there is a granite retaining wall. On the southern side there is a compound wall to a certain extent and, for the remaining portion, there are boundary trees and concrete posts. On the western side also there are boundary trees and concrete posts. On the western boundary, at the southernmost end, there is an entrance having a width of **six feet** to the plaintiff schedule property. It is further reported that on the southern boundary, the boundary trees were uprooted to an extent of three meters, and the property of the defendant and the adjacent property of the plaintiff schedule property appear to have been ploughed. The definite case of the defendant is that he has an easement by implied grant through the southern side of the plaintiff schedule property and that the alleged way has a width of 3.40 meters running in an east–west direction. According to the defendant, the said way starts from the Kodakara–Vazhiyambalam Road, proceeds eastward, passes through the southern boundary of the defendant’s property, then continues east through the western side of the property of Joby Paul and Paul, thereafter turns south and ultimately reaches the property of the defendant. However, it is significant to note that in

Ext.C1 report the Advocate Commissioner has not reported the existence of any such way as alleged by the defendant. No such pathway is noted in the commissioner's report or the rough plan. PW2, the Advocate Commissioner, was extensively cross-examined by the defendant; however, nothing material was elicited to discredit the findings in Ext.C1 report regarding the absence of such a pathway.

12. According to the Advocate Commissioner, at the entrance of the plaint schedule property there were several plantain plants, arecanut trees and other vegetation. She further noticed that the entrance portion contained a large number of plantain plants. The Commissioner categorically deposed that there was no visible entrance leading to the property of the defendant through the plaint schedule property. She also stated that on the southern boundary of the plaintiff's property a portion of the land appeared to have been recently ploughed. However, she did not find any pathway leading to the property of the defendant.

13. At this juncture, it is worthwhile to refer to the decision in *Annapurna Dutta v. Santosh Kumar Sett and Others*, AIR 1937 Cal 661, wherein *B. K. Mukherjee, J.*, it is held that

“There could be no implied grant where the easements are not continuous and non-apparent. Now a right of way is neither continuous nor always an apparent easement, and hence would not ordinarily come under the rule. Exception is no doubt made in certain cases, where there is a ‘formed road’ existing over one part of the tenement for the apparent use of another portion or there is ‘some permanence in the adaptation of the tenement’ from which continuity may be inferred; but barring these exceptions, an ordinary right of way would not pass on severance unless language is used by the grantor to create a fresh easement.”

It is true that the Hon’ble High Court of Kerala in ***Sandhya T.P. v. M. Suresh Babu (2026 (1) KLT SN 48)*** held that the “mere absence of a recital regarding the right to use a pathway in the document would not, by itself, negate such a right. The Court further observed that even in the absence of specific pleadings, if the defendant is unable to establish that the plaintiff was using any alternative pathway, it would be difficult to reject the claim of easement.”

14. However, in the present case, the evidence of PW2 clearly shows that the defendant has failed to establish that the alleged easement

was continuous and apparent. As held in the decision cited above, an easement by implied grant cannot be inferred unless the easement is both continuous and apparent. The Advocate Commissioner has categorically deposed that the entrance portion of the plaintiff schedule property contained numerous plantain plants and other trees. This circumstance militates against the contention of the defendant that there existed a pathway through the property of the plaintiff which he was using as of right. On the other hand, the evidence on record establishes that the plaintiff has proved his case that the defendant trespassed into the plaintiff schedule property. The Advocate Commissioner has specifically stated that a portion of the southern side of the plaintiff's property appeared to have been ploughed. This supports the contention of the plaintiff that the defendant had encroached upon the property. Significantly, this aspect was not effectively challenged in the cross-examination of PW1. In such circumstances, the evidence adduced by the plaintiff remains unshaken. Therefore, it can safely be concluded that the plaintiff has succeeded in proving that the defendant trespassed into the plaintiff schedule property. Consequently, the plaintiff is entitled to the decree of injunction as prayed for.

15. **Point No.2:-** In view of my finding on point No. 1, the finding of the trial court doesn't warrant any interference and only to be confirmed and hence, I do so. Thus, point No.2 is answered accordingly.

16. **Point No.3:-** In the result, appeal dismissed. Parties shall bear their respective costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the Open Court, this the 11th day of March, 2026).

Sd/-
Rema R K
Principal Sub Judge

APPENDIX :NIL

Id/-
Principal Sub Judge

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