

**IN THE COURT OF THE MUNSIFF, IRINJALAKUDA**  
**Present: Sri. Eldos Mathew., Principal Munsiff**  
**Tuesday, 17<sup>th</sup> day of March 2026/26<sup>th</sup> Phalguna, 1947**

**O.S. 85/2023 and OS 61/2023**

**O.S. 85/2023**

**Plaintiffs:-**

1. Usha Josy, 58 years, W/o Kuttala Josy,  
Muriyad Village, desom, Mukundapuram Taluk.
2. Josy, 63 years, S/o Kuttala George and H/o 1<sup>st</sup> plaintiff,  
Muriyad Village, desom, Mukundapuram Taluk.  
By Advs. V. G. Subash Chandra Babu, O. L. Ajith  
& T. L. Sajith Kumar

**Defendants:-**

1. Baby, 61 years, D/o Padinjarethala Varghese,  
Muriyad Village, desom, Mukundapuram Taluk.
- Addl.2.Shaju, 49 years, S/o Puthukkattukaran Varghese,  
Muriyad Village, desom and P.O, Mukundapuram Taluk.  
Pin- 680 683.  
(Impleaded as per order in IA12/2024 dated 29.10.2024)  
D1 By Advs. Cletus Thottappilly &  
Theresa Michelle Pigarez  
D2 By Adv. Suma N

**OS 61/2023:-**

**Plaintiffs:-**

- Baby, 61 years, D/o Padinjarethala Varghese,  
Muriyad Village, desom and P.O, Mukundapuram Taluk.  
Pin- 680 683.  
By Advs. Cletus Thottappilly &  
Theresa Michelle Pigarez

**Defendants:-**

1. Usha Josy, 59 years, W/o Kuttala Josy,  
Muriyad Village, desom and P.O, Mukundapuram Taluk.  
Pin- 680 683.

2. Josy, 64 years, H/o 1<sup>st</sup> Defendant Usha Josy, Kuttala Veetil, Muriyad Village, desom, Mukundapuram Taluk. Pin- 680 683.

Addl.3.Shaju, 49 years, S/o Puthukkattukaran Varghese, Muriyad Village, desom and P.O, Mukundapuram Taluk. Pin- 680 683.

(Impleaded as per order in IA 8/2024 dated 29.10.2024)

D1 & D2 By Adv. V. G. Subash Chandra Babu & O. L. Ajith

D3 By Adv. Suma N

These suits coming on this day for hearing and the court delivered the following:-

### **COMMON JUDGMENT**

#### **O.S.85/2023**

Suit for declaration and mandatory injunction.

2. **Plaintiffs' case:** Plaintiffs are residing in plaint A schedule property obtained by virtue of Deed No.2810/2013 of Kallettumkara SRO. On its norther side, the defendants are residing in B schedule property. The toilet pipes and waste water pipes of defendants' house are connected with the septic tank and waste pit in the house of the plaintiffs. This facility was provided to the defendants on a condition that they would construct such facility in the plaint B schedule property within a short time. The 1<sup>st</sup>defendant has sufficient space on the western, eastern or northern side of his property to construct a septic tank and waste pit, without causing any likelihood of contamination to the common well on the eastern side by seepage of wastewater. When the flow of waste water to the septic tank of the plaintiffs was blocked due to solid waste and napkin, the waste water is flooded into the

bathroom of the plaintiffs and the situation got worsen. During the month of June 2019, such misfortune occurred which was repaired with the help of Plumber. Similarly, on 18.01.2021 also there was flooding of waste water in the bath room of the plaintiffs. This happens to the plaintiffs because their houses are 2 feet below to the defendants' house. In January, 2023 also the drainage water got blocked in the pipe causing flooding. The plaintiffs have requested the 1st defendant to remove the above connection, but he is not amenable. The 1st defendant has already filed O.S.61/2023 against the plaintiffs herein claiming right to drain their waste water to the septic tank of the plaintiffs by easement by grant. Plaintiffs have filed this suit seeking a decree for mandatory injunction to remove the drainage pipe connected to their septic tank and also for a decree of declaration.

3. **Defendants' case:** The 1<sup>st</sup> defendant filed detailed written statement denying the entire allegations stated in the plaint. According to her, the suit is a counterblast to the suit already filed by them as O.S.61/2023. Defendants purchased the plaint B schedule property in May, 2013. Subsequent thereto, the plaintiffs purchased the plaint A schedule property and both constructed a house in their respective property. The predecessors for both plaintiffs and defendants are same. When the defendants constructed their house, the septic tank and waste pit were constructed in the plaint A schedule property with the consent of their predecessor. Subsequently, that property was purchased by

the plaintiffs and the drainage pipes were connected to this waste pit and septic tank. Thus the defendants have been using this septic tank from 2013 onwards and it was set up in a convenient place away from the common well, with the consent of their predecessor. While so, the defendants embraced Roman Catholic religion by splitting from the religious community of the plaintiffs which may be the reason for encroachment of plaintiffs into their property on 26.1.2023. So, he filed O.S 61/2023 seeking an injunction order against the plaintiffs. In order to counter, this suit is filed with untenable contentions. So, it has to be dismissed.

4. The 2nd defendant filed separate written statement setting out more or less same contentions taken by the 1st defendant.

5. After considering the rival contentions of both parties, my learned predecessor-in-office framed the following issues for trial:

1. Whether plaintiff is entitled to get a decree of declaration as prayed for?
2. Whether plaintiff is entitled to get a decree of mandatory injunction as prayed for?
3. What shall be the order as to costs?

### **O.S.61/2023**

6. Suit for permanent prohibitory injunction.

7. **Plaintiff's case:** The plaintiff's property is shown as A schedule in the plaint. On the southern side resides the defendants in the B schedule

property. On the south eastern corner of the plaintiff A schedule property, there is a common well which has been used by the residents in that locality for drawing water. Plaintiff started residing in the plaintiff schedule property from May, 2013 onwards and after one year, adjacent B schedule property was purchased by defendants and started construction of a house therein. The common waste pit and septic tank of both houses are situated in B schedule property and both of them have been using this without any problem for the last 20 years. As the plaintiff herein constructed house first, she only constructed the septic tank and waste pit in the rest of the property of the predecessor with his oral consent obtained on 08.05.2013. This plot (B schedule) was later purchased by defendants and their drainage pipes are also connected to the existing septic tank. Thus when defendants purchased the property, the septic tank and waste pit were already there and knowing this fact, they purchased the property. So, according to plaintiff, she has obtained easement by grant to release sewage to the aforesaid septic tank and waste pit situated in the plaintiff B schedule property. During the passage of time, she left the Christian faith followed by the defendants herein and embraced Roman Catholic fellowship which triggered defendants to obstruct the draining of waste water to the waste pit and septic tank. So, the plaintiff has filed this suit seeking a permanent prohibitory injunction restraining the defendants from removing the drainage pipes connected to the waste pit and septic tank

situated in the plaint B schedule property.

8. **Defendants' case:** Defendants 1 and 2 entered appearance and filed written statement. According to them, plaintiffs have sufficient set back area at the northern and western side of the house in the plaint A schedule property to set up a modern septic tank. There is no merit in the contention of the plaintiff that her predecessor has given oral consent to construct such a septic tank in her property. The contention raised by the plaintiff that defendants purchased the plaint B schedule property fully knowing the existence of septic tank and waste pit in that property. In fact, they have requested many time to remove the drainage pipe connected to the tank due to the continuous blockage and flooding of waste water in their toilet. They have not acquired any easement by grant to drain out their waste water to the defendants' property. So, the suit is not maintainable and according to them, it has to be dismissed.

9. Third defendant has also filed written statement taking more or less same contentions of the 1st defendant.

10. After considering the rival contentions of both parties, my learned predecessor-in-office framed the following issues for trial:

1. Whether plaintiff is entitled to get a decree of permanent prohibitory injunction as prayed for?
2. What shall be the order as to costs?

11. During the pendency of suit, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in O.S.85/2023 and O.S.61/2023 respectively were impleaded as additional defendant no.2 in O.S.85/2023 and additional defendant no.3 in O.S.61/2023 as per order in I.A.12/2024 in O.S.85/2023 and I.A.8/2024 in O.S.61/2023 respectively.

12. As per the order in I.A.4/2023 in O.S.85/2023, joint trial of O.S.85/2023 and O.S.61/2023 was allowed. O.S.85/2023 is considered as the leading case and evidence is adduced in that case. The parties in O.S.85/2023 are referred to as plaintiffs and defendants in this judgment.

13. From the side of plaintiffs in O.S.85/2023, PW1 to PW3 were examined and Ext. A1 marked. From the side of defendants, DW1 to DW5 were examined and Exts.B1 to B3 were marked. In addition to, Exts.C1, C2 and C2(a) were also marked. Counsel for plaintiffs filed argued note.

14. Heard both side.

15. **Issue Nos.1-3 in O.S 85/2023 and issues 1 & 2 in O.S.61/2023:-**

The suit is filed by the plaintiffs seeking a decree of mandatory injunction directing the 1<sup>st</sup> defendant to remove the sewage pipes connected to the septic tank and waste pit constructed in their property. The 1<sup>st</sup> plaintiff's property is scheduled as plaint A schedule obtained by her vide Ext. A1 Deed No.2810/2013. The 1<sup>st</sup> defendant's property is scheduled as plaint B, the title of which is Ext.B1 having Sy. No.2013/2013. The 1<sup>st</sup> plaintiff-Usha Jossy purchased the property from Jose, S/o.Ouseph on 16.05.2013 whereas 1<sup>st</sup>

defendant-Baby purchased property jointly owned by above Jose and one Mathai on 06.05.2013. The Ext.C1 & C1(a) Commission Report and Sketch shows that above two plots are lying side by side and there is a common well in the defendants' property from which about 8 families draw water for domestic use.

16. According to 1<sup>st</sup> defendant (DW1), initially, she constructed a house in the B schedule property in the year 2013. The 1<sup>st</sup> plaintiff-Usha Jossy purchased the adjacent property one year thereafter, according to defendants. Yet, their title deeds Ext.A1 & B1 would show that they purchased respective properties in one week difference. Anyhow, going by the testimony of DW1, when she constructed her house in B schedule property, its soil pipe and drainage pipes were connected to the septic tank, she had constructed in the adjacent A schedule property. Her predecessor had given oral consent for the same. Subsequently, when first plaintiff purchased this plot, they were aware of this fact and from 2013 onwards, DW1 has been availing this facility without any interruption. Thus DW1 has allegedly acquired the right to use 1<sup>st</sup> plaintiff's septic tank by easement by grant obtained from 1<sup>st</sup> plaintiff's predecessor- Jose.

17. The first Plaintiff's husband, Jossy was examined as PW1. Refuting the contention of DW1, he contended that neither Plaintiffs nor their predecessor-Jose has given such a permission to connect sewage pipe to the A

schedule property. The indeterminate use of toilet resulted in blockage five times and it was got repaired by him.

18. Based on the rival contentions, I have perused the records. The hassle caused to the plaintiffs due to the intermittent blockage of waste pipe is evident in the testimony of PW1 and PW2- Plumber. PW2 stated to have rectified the block by removing the solid waste clogged in the waste pipe.

19. The sewage pipe is connected to 1<sup>st</sup> plaintiff's property as per the consent of Jose (DW5) - the predecessor of both parties. DW5 admitted to have given such a consent. As such, admitted fact need not be proved. But the nature of consent or time limit was not elicited during cross examination. It was neither included in the Ext.A1 deed when DW5 assigned the plaint A schedule to the 1<sup>st</sup> plaintiff. If the alleged easement was a permanent arrangement, it would normally be reflected in the assignment deed executed by DW5 in favour of the 1<sup>st</sup> plaintiff. The absence of any recital in Ext.A1 regarding the existence of a septic tank or right of drainage indicates that no permanent right was intended to be created. A right of easement by grant must arise from clear intention of the grantor and it is controlled by the terms of the contract. A vague oral consent without specification of extent, duration or conditions cannot be construed as a permanent easementary grant.

20. In the rival claim filed by the 1<sup>st</sup> defendant as OS No. 61/2023, the items upon which easement right is claimed are shown in the B schedule. It

includes 6.5 cents of property comprised in Sy No.370/1, 370/3 house of 1<sup>st</sup> plaintiff, septic tank, waste pit and pipe line. Such a whole some claim over the entire land and house is not reflected in the title deed of either party and not supported by the testimony of DW5. In effect, the right to which defendants put claim is not specific and unidentifiable.

21. For the time being, assume that, based on the consent of DW5, the 1st defendant Baby has constructed the septic tank. DW3, the plumber, has also stated that the amount for the construction of the septic tank was incurred by the 1st defendant. That may be the reason why the 1st defendant claims ownership over the septic tank constructed in the 1st plaintiff's property. However, the claim of ownership and the claim of easement are mutually exclusive, and both cannot stand together.

22. The case of 1<sup>st</sup> plaintiff-Usha Jossy is that she purchased plaint A schedule property on 16.05.2013 i.e., 10 days after the purchase of plaint B schedule by the 1<sup>st</sup> defendant-Baby. Both started house construction almost simultaneously. The septic tank, as revealed from the testimony of DW3, was constructed only at the final stage of the construction during September 2013. Therefore, it can only be inferred that the 1st defendant connected the waste pipe to the septic tank with the permission of the plaintiffs. The testimony of PW1 is also to the same effect. In such circumstances, the contention of the 1st defendant that the septic tank had pre-existed at the time when the 1st

plaintiff purchased the A schedule property cannot be sustained.

23. The next question that arises for consideration is whether such a permissive arrangement can be revoked at a later point of time. The learned counsel for the defendants contended, placing reliance on Section 60(b) of the Indian Easements Act, 1882, that the permission granted by the predecessor of the 1<sup>st</sup> plaintiff amounts to an irrevocable licence since the 1<sup>st</sup> defendant had executed certain works by constructing the septic tank and waste pit acting upon such permission.

24. However, it is significant to note that the defendants have not raised any such plea either in their written statement or during the course of evidence. Their entire case, both in the written statement as well as in O.S.61/2023, is founded on the assertion that they have acquired a right of easement by grant. The plea of irrevocable licence under Section 60(b) of the Indian Easements Act is a distinct and independent legal claim which requires specific pleadings and proof of the circumstances under which such licence became irrevocable.

25. In the absence of proper pleadings and evidence to establish the ingredients of Section 60(b), the defendants cannot be permitted to raise such a contention at the stage of arguments. It is a settled principle that parties are bound by their pleadings and no relief can be granted on a case not pleaded. Hence, the contention that the permission granted by the predecessor has

ripened into an irrevocable licence cannot be accepted.

26. In this connection relevant ruling in this filed may also be referred to. In **Thajudeen v. Mohammed Haneefa (2017 (2) KLT 63)** it was held that there is no right of Easement to discharge polluted water from the drain pipe of one's house or property to the canal passing through another person's land. The above view is supported by S.31 of the Act, which specifically prescribes that in case of excessive user of an Easement, the servient owner may, without prejudice to any other remedies to which he is entitled, obstruct the user; but only on the servient heritage. This Court is of the opinion that the discharge of polluted water causing nuisance or pollution to the servient heritage is an excessive user of an Easement and in that case the servient owner has the right to obstruct the same.

27. Further it was held: The illustrations and the Explanations (f), (g), (h), (i) and (j) to S.7 of the Act show that there is no right of Easement to discharge the dirty water from the drain of one's house or property to another person's land and it would cause nuisance or pollution on another person's land. The same view is taken by Allahabad High Court also in **Prabhu Narain Singh v. Ram Niranjana (1983 KHC 959)** which was relied on by the Hon'ble High Court of Kerala in **Mani T. M v P. S Reji (2016 (2) KLJ 459)**

28. In **Daveshwar Prasad Tiwari v. Kalyan Singh (deceased by LRs.) (2007 KHC 7810)** held that an easementary right can accrue for

flowing the rain water and the water used in the houses, but the same cannot be said for flowing sewage water as it would cause nuisance to the servient owner. Refusal to grant injunction in favour of servient owners restraining dominant owner from flowing sewage water through nali in plot owned by servient owners held erroneous'.

29. The next aspect is the possibility of construction of separate septic tank in plaint B schedule property. Expert Commission visited the property and filed Ext.C1 Report. As per this report, on the northern side of defendants' property there is sufficient space to construct Fiber septic tank, or readymade concrete tank and such shall be 11 meters away from the common well in that plot. The minimum distance prescribed in S.92(4) of Panchayath Building Rules is 7.5 Meter. Thus evidence on record would show that the defendants have sufficient space within their property to construct a separate septic tank. When a reasonable alternative exists, continuance of the drainage through plaintiff's property becomes unjustified.

30. The materials on record establish that the continued discharge of sewage through the 1<sup>st</sup> plaintiff's septic tank has resulted in repeated blockage and flooding of waste water into the 1<sup>st</sup> plaintiff's bathroom causing considerable inconvenience and nuisance. The Commissioner's Report also shows that the 1<sup>st</sup> defendant has sufficient space within their own property to construct a separate septic tank in conformity with the statutory requirements.

The defendant has not put forward a consistent case. In any event, the settled legal position, as reflected in the afore mentioned precedents, does not permit a person to drain waste water into the property of a neighbour. In such circumstances, the 1st defendant cannot be permitted to continue the drainage connection through the property of the 1st plaintiff. Consequently, the plaintiffs are entitled to the relief of declaration and mandatory injunction sought in O.S.85/2023. Correspondingly, the plaintiff in O.S.61/2023 has failed to establish any easementary right and is therefore, not entitled to the decree of prohibitory injunction prayed for. Thus issues are answered accordingly.

In the result, O.S.85/2023 is decreed as follows:

1. It is hereby declared that the defendants have no easementary right to drain sewage or waste water from the plaint B schedule property to the septic tank and waste pit situated in the plaint A schedule property belonging to the plaintiffs.
2. The first defendant is hereby directed by way of mandatory Injunction to disconnect and remove the sewage and waste water pipes from their house which are connected to the septic tank and waste pit situated in the plaint A schedule property of the plaintiffs.
3. The first defendant shall carry out the above removal and disconnection within a period of 60 days from the date of decree.
4. In default of compliance within the said period, the plaintiffs shall be at liberty to cause the removal of the said sewage connection through due process of court and recover the expenses incurred for the same from

the first defendant.

5. The plaintiffs are also entitled to costs of the suit from the defendants.

Consequently, O.S.61/2023 is dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open court on this the 17<sup>th</sup> day of March, 2026)

Sd/-  
**Eldos Mathew,**  
**Principal Munsiff**

**APPENDIX:-**

**Plaintiffs Witness:-**

PW1	19.05.2025	Josi George
PW2	18.06.2025	Ratheesh T. C
PW3	27.06.2025	Manoj M. S

**Plaintiffs Exhibits:-**

A1	16.05.2013	Certified copy of Document No. 2810/2013
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**Defendant Witness:-**

DW1	31.07.2025	Baby
DW2	25.09.2025	Sanil
DW3	14.10.2025	Shijo
DW4	17.11.2025	Mathai
DW5	15.12.2025	Jose

**Defendant Exhibits:-**

B1	06.05.2013	Certified copy of Document no. 2013/2013
B2	18.01.2023	Tax receipt
B3	18.01.2023	Tax receipt

**Court Exhibits:-**

C1	24.09.2024	Expert Report
C2	24.02.2023	Commission Report
C2(a)		Rough Sketch

Sd/-

**Principal Munsiff**

**//True copy//**

**Principal Munsiff**

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Common Judgment in OS.85.2023 &  
OS 61/2023  
Dated. 17.03.2026

