

IN THE COURT OF THE MUNSIFF OF CHAVAKKAD

PRESENT:- Dr. Aswathy Asok., Munsiff

Wednesday, the 11th day of March, 2026/ 20th Phalgunam, 1947 SEO.S.180/2014Plaintiff:-

Sulekha, Aged 63 Yrs, W/o Karumampara Bhaskaran, Mangad Village and Desom, Thalappilly Taluk.

(By Adv. K.I. Chacko)

Defendants:-

Geevar, Aged 50 Yrs, S/o Koladi Varghese, Kunnamkulam Village and Desom, Thalappilly Taluk.

(By Adv. T.B. Chandrababu)

This suit is coming on 03/03/2026 for hearing, the court delivered the following:-

J U D G M E N T

Suit for recovery of possession and mandatory injunction.

2. The plaint averments, in brief, are as follows:- The plaint A schedule property originally belonged to the plaintiff's husband, Bhaskaran, by virtue of Sale Deed No. 1755/1982 of Pazhanji S.R.O. Subsequently, the said property devolved upon the plaintiff as per Settlement Deed No. 983/1987 of Pazhanji S.R.O, and possession was also handed over to her thereunder. Accordingly, the plaint A schedule property is in the absolute ownership and possession of the plaintiff. After the plaint A schedule property became vested in the plaintiff, disputes arose between the plaintiff and her husband, Bhaskaran, and they began residing separately. When

Bhaskaran attempted to trespass into the properties, including the plaint schedule property, and tried to forcibly evict the plaintiff therefrom, she instituted O.S. No. 776/2003 seeking a decree of permanent prohibitory injunction. The said proceedings were subsequently transferred to the Family Court, Thrissur, and renumbered as O.P. No. 384/2004. The matter was ultimately decreed in favour of the plaintiff on 31.12.2004. Bhaskaran thereafter died on 05.06.2013. There exists a residential building in the plaint A schedule property wherein the plaintiff is residing with her family. On the western side of the plaint A schedule property, there is another small house, which has been let out on rent. After execution of Settlement Deed No. 983/1987, Bhaskaran retained ownership of $7\frac{3}{4}$ cents of property comprised in Re-survey No. 89/2, situated on the eastern side of the plaint schedule property, as per Sale Deed No. 750/2001 of Pazhanji S.R.O. The said property was subsequently acquired by the defendant. A boundary existed demarcating the plaint A schedule property from the said eastern property. After purchasing the property in the year 2008, the defendant encroached upon a portion of the plaint A schedule property on its eastern side, measuring 3 metres in width and 28 metres in length, amalgamated the same with his own property, and constructed a slab boundary wall thereon. The encroached portion is shown as the plaint B schedule property. The plaint B schedule property forms part of the plaint A schedule property and remained in the absolute ownership and possession of the plaintiff until the encroachment by the defendant. Therefore, the plaintiff is entitled for recovery of possession of the plaint B schedule property from the defendant, together with future mesne profits. The plaintiff is also

entitled to a mandatory injunction directing demolition of the slab boundary wall constructed by the defendant over the encroached portion. The defendant, on demand, initially agreed to remove the boundary wall but thereafter postponed compliance on one pretext or another. Consequently, the plaintiff sent a lawyer's notice dated 30.11.2013 to the defendant, which was deliberately not accepted by him. If cultivated, the plaint B schedule property would yield an income of Rs.100/- per year, and she is entitled to future mesne profits on that basis. Hence, the suit.

3. The defendant filed written statement with the following contentions:- The suit is not maintainable either in law or on facts and filed without bonafides. The defendant denied the plaintiff's claim that she obtained the plaint A schedule property under Settlement Deed No. 983/1987 of Pazhanji S.R.O and that she has been in lawful possession thereof pursuant to the said document. The defendant acquired title over his property by virtue of Sale Deed No. 3572/2008 of Kunnamkulam S.R.O, executed by Devaki, the wife of Bhaskaran. The defendant categorically denied the allegation that he has encroached upon any portion of the plaint A schedule property or that he has unlawfully annexed any land to his holding and constructed a boundary wall thereon. He further denied that the plaint B schedule property forms part of the plaint A schedule property. The property in possession and enjoyment of the defendant belongs exclusively to him and has remained so from the date of his purchase. The property described in the plaint as the plaint B schedule property is part of his own property and was never in the ownership or possession of the plaintiff. The description of the plaint B schedule property is wholly imaginary

and has been introduced only for the purpose of the present litigation. The plaintiff is not entitled to seek recovery of any portion of the defendant's property, nor is she entitled to a decree for mandatory injunction directing demolition of the slab boundary wall constructed by the defendant. The plaint schedule properties are not properly identifiable, and their boundaries, measurements, and descriptions are incorrect. There is no cause of action for the suit. Hence, according to the defendant, the suit is liable to be dismissed with costs.

4. The plaintiff filed replication to the written statement, with the following contentions:- The Sale Deed No. 3572/2008 of Pazhanji S.R.O is not legally sustainable and does not confer any valid right upon the defendant. The plaintiff continues to be in lawful possession of the property settled in her favour by her husband, Bhaskaran, and the said property absolutely belongs to her and remains in her exclusive ownership and enjoyment. Bhaskaran had no right to unilaterally cancel the settlement deed executed in her favour. The subsequent assignment in favour of Devaki includes the plaint schedule property, which had already been settled upon the plaintiff and, therefore, was no longer available for conveyance. As per the settlement deed, Bhaskaran had assigned property to Devaki, comprised in Re-survey No. 89/2 alone. However, in the subsequent conveyance executed by Devaki in favour of the defendant, the property description includes not only Re-survey No. 89/2 but also Re-survey No. 89/3. The defendant has no right, title, or interest over any portion of the property comprised in Re-survey No. 89/3, and the inclusion of the said survey number in the document executed in favour of the

defendant was done without authority and by misdescription. The extent and measurements shown in the defendant's title deed are incorrect.

5. From the above rival conventions, the following issues were framed for trial:-

1. Whether the plaintiff has got title over B schedule property?
2. Whether the alleged trespass is true?
3. Whether plaintiff is entitled to recover possession of plaint B schedule property on the strength of title?
4. What is the order as to cost?

6. **Additional issue:-**

Whether the plaintiff is entitled to get a decree of mandatory injunction as prayed for?

7. On the side of the plaintiff, PW1 was examined and Exts. A1 to A7 and to C1 and C1(a) were marked. On the side of the defendant, DW1 was examined, and Exts.B1 and B2 were marked.

8. Heard both sides and perused the documents.

9. **Issue No.1:-** According to the plaintiff, the plaint A schedule property is in her exclusive ownership and possession, as per Ext.A1, Settlement Deed No.983/1987 of Pazhanji S.R.O, which originally belonged to her husband, Bhaskaran, as per Ext.A7, Sale Deed No. 1755/1982 of Pazhanji S.R.O. The plaintiff contended that the property, which belonged to her husband under Ext.A5, Sale Deed No. 750/2001 of Pazhanji S.R.O, situated on the north-eastern side of the plaint A

schedule property, was subsequently acquired by the defendant. It is her specific allegation that in January, 2012, the defendant encroached upon a portion of the plaintiff A schedule property, amalgamated the encroached portion with his own property, and constructed a boundary wall enclosing the same, and the said encroached portion is shown as plaintiff B schedule property. According to the plaintiff, the plaintiff B schedule property forms part and parcel of the plaintiff A schedule property and, prior to the alleged encroachment, was in her absolute ownership and possession. Per contra, the defendant contended that he acquired his property under Ext. B2, Sale Deed No. 3572/2008 of Kunnankulam S.R.O, executed by Devaki, the wife of Bhaskaran. The defendant asserted that the property described as the plaintiff B schedule property is in fact part of the property validly conveyed to him under Ext. B2, and that the plaintiff has no manner of right, title, or possession over the same. In her replication, the plaintiff challenged the validity and extent of Ext.B2. According to her, Bhaskaran had assigned property to Devaki comprised only in Re-survey No. 89/2. However, a perusal of the document executed by Devaki in favour of the defendant reveals that the property conveyed therein is described as comprising Re-survey Nos. 89/2 and 89/3. On that basis, the plaintiff contended that the defendant has no lawful right over any portion of the property comprised in Re-survey No. 89/3, and that the inclusion of the said survey number in Ext. B2 is without authority and cannot affect her rights over the disputed property.

10. In order to substantiate her case, the plaintiff has got herself examined as PW1 and she filed proof affidavit in lieu of chief-examination, reiterating the

averments contained in the plaint. During cross-examination, the learned counsel for the defendant advanced a contention that Ext. A1, Settlement Deed No. 983/1987, had been cancelled by Bhaskaran by executing Ext. B1, Cancellation Deed No. 751/2001 of Akkikkavu S.R.O. A perusal of Ext. B1 indicates that Bhaskaran purported to cancel Ext. A1 on the ground that the plaintiff had allegedly failed to properly manage or take care of the property. However, a reading of Ext. A1 would clearly show that Bhaskaran had, at the time of execution of the settlement deed, transferred possession of the plaint schedule property to the plaintiff. The document further recites that the original title deeds relating to the property were handed over to her. These recitals unmistakably demonstrate that the settlement deed was acted upon and that the plaintiff was placed in possession in pursuance thereof. It is well settled that a unilateral cancellation of a duly executed and acted upon settlement deed is void and inoperative in law (*Saseendran N. P. v. N. P. Ponnamma, 2025 KHC 6264; Pavithran E.A. v. Erayi Arakkalath Neetha, 2023 KHC 704, Bhagyanathan Nadar v. Viswanathan Nadar, 2023KHC 9178, Suresh Babu S R and Others v. Beena and Others, 2022 (2) KHC 628*). In the present case, the recitals in Ext. A1 clearly establish that possession of the plaint schedule property was handed over to the plaintiff and that the document had been given effect to. Consequently, Ext. B1, Cancellation Deed No. 751/2001 of Akkikkavu S.R.O, executed unilaterally by Bhaskaran, is legally unsustainable and void. It does not divest the plaintiff of the rights already vested in her under Ext. A1. Therefore, the contention of the learned counsel for the defendant is not sustainable and without merits.

11. According to the plaintiff, the entire plaint A schedule property absolutely belongs to her by virtue of Ext. A1. It is her specific case that the plaint B schedule property forms part and parcel of the plaint A schedule property and that the defendant has unlawfully encroached upon the said portion and constructed a boundary wall by incorporating the plaint B schedule property into his own holding. The plaintiff further contended that, under Ext. B2, the defendant has no lawful right over any portion of the property comprised in Re-survey No. 89/3. It is pointed out that the predecessor-in-interest of the defendant, Devaki, derived title only to property comprised in Re-survey No. 89/2, as per Ext. A4, Sale Deed No. 2457/2003 of Pazhanji S.R.O, under which Bhaskaran assigned property to Devaki. According to the plaintiff, Ext. A4 shows that only property comprised in Re-survey No. 89/2 was conveyed to Devaki, and no portion of the property comprised in Re-survey No. 89/3 was included therein. Therefore, it is the contention of the plaintiff that Devaki had no right, title, or interest over the property in Re-survey No. 89/3 and, consequently, could not have conveyed any such right to the defendant under Ext. B2. On this premise, the plaintiff asserted in his replication that the defendant's claim over the disputed portion of property, insofar as it relates to Re-survey No. 89/3, is legally unsustainable. However, according to the defendant, the plaint B schedule property exclusively belongs to him as per Ext.B2.

12. Ext. A1 is the title deed relied upon by the plaintiff, whereas Ext. B2 is the title deed relied upon by the defendant. The common prior title deeds in respect of the properties covered by Ext. A1 are Ext. A6, Sale Deed No. 1112/1982 of Pazhanji

Sub Registrar Office, and Ext. A7, Sale Deed No. 1755/1982 of Pazhanji S.R.O, wherein the prior documents relating to Ext. A4 are Ext. A5, Sale Deed No. 750/2001 of Pazhanji S.R.O, and Exts. A6 and A7. Ext. A4 is of the year 2003, that is, subsequent to the execution and registration of Ext. A1 in the year 1987. It has already been found, on the basis of the evidence on record, that Ext. B1, Cancellation Deed No. 751/2001 of Akkikkavu S.R.O, executed unilaterally by Bhaskaran, is legally unsustainable and void. Consequently, the settlement effected under Ext. A1 continued to remain valid and operative. In that view of the matter, at the time of execution of Ext. A4 in the year 2003, Bhaskaran had no subsisting saleable interest in the property comprised in Exts. A6 and A7, as the same had already been settled in favour of the plaintiff under Ext. A1 and the said settlement had taken effect. Therefore, the assignment purportedly made by Bhaskaran under Ext. A4, insofar as it relates to the property covered by Exts. A6 and A7 are devoid of legal validity. If that be so, under Ext. A4, Devaki could have acquired only the property validly available for conveyance, namely, the 8 cents of property comprised in Survey No. 89/2, as covered by Ext. A5. However, under Ext. B2, the defendant lays claim to title and possession over the entire extent described therein. Since Devaki had lawfully obtained only the 8 cents of property comprised in Ext. A5, she could not have conveyed any larger extent or any property beyond what she herself possessed. Accordingly, under Ext. B2, the defendant could have acquired title only to the property comprised in Re-survey No. 89/2, as shown in Ext. A5. The remaining property, not validly conveyed under the chain of title relied upon by the defendant,

would necessarily continue to vest in the plaintiff. Thus, it is proved that the plaintiff has title over the plaint B schedule property. Thus, issue no. 1 is found in favour of the plaintiff.

13. Issues no.2, 3 & additional issue:- To avoid repetition and for brevity, these issues are considered together. It is the specific case of the plaintiff that the defendant has encroached upon the plaint B schedule property, unlawfully amalgamated the same with his own adjoining property, and thereafter constructed a slab boundary wall thereon. According to the plaintiff, such acts of the defendant amount to a wrongful encroachment and unauthorized occupation of the plaint B schedule property. On the basis of the above allegations, the plaintiff has sought recovery of possession of the plaint B schedule property from the defendant, together with a decree for mandatory injunction directing the defendant to demolish and remove the slab boundary wall allegedly constructed over the said property. Per contra, the defendant has stoutly resisted the claim of the plaintiff and has contended that he is in exclusive ownership and possession of the property described as the plaint B schedule property, asserting that the same forms an integral part of his own property. The defendant has thus categorically denied the title and possession claimed by the plaintiff over the plaint B schedule property. The defendant has also specifically disputed the identity, and measurement of the property described as plaint B schedule in the plaint. On these grounds, the defendant has denied the entitlement of the plaintiff to recover possession of the plaint B schedule property or to obtain a decree for mandatory injunction as prayed for.

14. Ext.A1 is the title deed relied on by the plaintiff. A perusal of Ext.A1 would reveal that the plaintiff has title over an extent of 50¾ cents of property. The said extent comprises 09.72 ares in Survey No. 222, 02.22 ares in Survey No. 225/10, 01.31 ares in Survey No. 226/1, and 06.88 ares in Survey No. 226/6. Thus, Ext.A1 evidences the plaintiff's title over the above properties as described therein. Ext.B2 is the title document relied on by the defendant. As per Ext.B2, the property covered under the said document has a total extent of 8 cents, which consists of 02.02 ares in Re-survey No. 89/2 and 01.21 ares in Re-survey No. 89/3, corresponding to old Survey Nos. 222, 225/2, and 226/1. However, the evidence on record would show that, under Ext.B2, the defendant could have acquired title only with respect to the property comprised in Re-survey No. 89/2. Consequently, it emerges from the evidence that the defendant has no manner of right, title, or interest over the extent of 3 cents of property comprised in Re-survey No. 89/3. Therefore, the claim set up by the defendant over the said extent cannot be sustained.

15. In order to substantiate his case, the plaintiff took out a commission for the purpose of measuring the plaint schedule properties with the assistance of a surveyor. Pursuant thereto, the Advocate Commissioner filed Ext.C1 report and Ext.C1(a) plan. As evident from Ext.C1(a), the properties were measured with reference to the respective title deeds of the parties, namely Ext.A1 and Ext.B2, and also with reference to the existing possession and the resurvey records. The Commissioner has reported that, as per Ext.A1, the properties covered thereunder are comprised in Old Survey Nos. 222, 225 and 226, corresponding to Re-survey Nos.

89/3, 89/2 and 89/4. It is further reported that, as per Ext.B2, the properties covered thereunder are situated in Re-survey Nos. 89/3 and 89/2. The Commissioner has also reported that the plaint A schedule property has a total extent of 52.700 cents, which includes 33.900 cents in Re-survey No. 89/3 marked as plot 'A' in Ext.C1(a), 0.500 cents in Re-survey No. 89/3 marked as plot 'B', 18.300 cents in Re-survey No. 89/2 marked as plot 'E', and 0.100 cents in Re-survey No. 89/4 marked as plot 'H' in the plan. The Commissioner has further reported that the defendant's property has a total extent of 7.95 cents, consisting of 1.400 cents in Re-survey No. 89/3 shown as plot 'D', 6.400 cents in Re-survey No. 89/2 shown as plot 'F', and 0.150 cents in Re-survey No. 88/16 shown as plot 'G' in Ext.C1(a). However, the Commissioner has specifically reported that the plaint B schedule property, alleged to be in the possession of the defendant, has only an extent of 0.600 cents, and the said portion alone is shown to be in the possession of the defendant in Re-survey No. 89/3. Thus, Exts.C1 and C1(a) would indicate that the defendant is in possession of only 0.600 cents of property in Re-survey No. 89/3, which, according to the plaintiff, forms part of his property covered under Ext.A1. Though the learned counsel for the plaintiff contended that the entire property in Re-survey No. 89/3 shown in the possession of the defendant under Ext.B2 actually belongs to the plaintiff, Exts.C1 and C1(a) do not support such a contention. On the contrary, the Commissioner's report would show that, as per Ext.B2, the defendant is in possession of only 1.400 cents in Re-survey No. 89/3, shown as plot 'D' in Ext.C1(a).

16. The specific case of the plaintiff is that the entire 3 cents of property shown in Ext.B3 belongs to him, and evidence has also been adduced in that regard. However, the measurements taken by the Commissioner reveal that the defendant is actually in possession of only 1.400 cents in Re-survey No. 89/3, and out of the said extent, only 0.600 cents is shown as being in the possession of the defendant in the manner alleged by the plaintiff. In such circumstances, it is evident that the plaintiff has not been able to properly identify and establish the exact identity and extent of the plaint B schedule property as claimed in the plaint. It is also relevant to note that the plaintiff had filed objections to Exts.C1 and C1(a) only on 29.09.2025, though the Commissioner's report had been filed as early as 30.06.2022, and that too at the fag end of the trial. Even in the said objection, the plaintiff has stated that the Commission report is correct. It is further significant that the plaintiff did not take any further effective steps to substantiate his contentions, nor was the Advocate Commissioner examined before the Court in order to clarify or challenge the findings contained in the report and plan. It is well settled that the burden of proving the case lies squarely on the plaintiff, and in the absence of cogent and satisfactory evidence, such burden cannot be said to have been discharged. Further, though the plaintiff has alleged that the defendant had encroached upon the plaint B schedule property, amalgamated the same with his own property, and constructed a slab boundary wall thereon, there is no convincing evidence on record to establish the existence of such a boundary wall as alleged. Exts.C1 and C1(a) do not indicate the existence of any such slab boundary wall or any structure corresponding to the allegations in the plaint. It is

also seen that the plan does not depict the existence of the alleged way. For granting the relief of mandatory injunction as sought for by the plaintiff, the structure alleged to have been unlawfully constructed, the slab boundary wall, must be properly identified and established by reliable evidence. In the absence of such identification and proof, the relief of mandatory injunction cannot be granted. Therefore, on an overall appreciation of the evidence on record, I am of the view that the plaintiff has failed to establish his entitlement to the relief of recovery of possession of the plaint B schedule property as well as the relief of mandatory injunction as prayed for in the suit. Consequently, the issues are found against the plaintiff.

17. Issue no. 4:- In view of the findings in the above issues, the suit is to be dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

In the result, the suit is dismissed. No costs.

(Dictated via Adalat AI, corrected and pronounced by me in open court, on this the 11th day of March, 2026)

Sd/-
Dr.Aswathy Asok
Munsiff,Chavakkad.

APPENDIX :-

Plaintiff's Witnesses:-

PW1 -07/08/2025 - Sulekha.P.K.
 -12/08/2025

Plaintiff's Exhibits:-

- | | | |
|----|-------------|---|
| A1 | -17/07/1987 | -Certified copy of partition deed no. 983/1987 of SRO Pazhanji |
| A2 | -31/12/2004 | - Certified copy of Order in O.P. 384/2004 of Family Court, Thrissur. |
| A3 | -15/01/2018 | - Certified copy of Judgment in O.S.1715/2013 of Munsiff court, Chavakkad |
| A4 | -27/12/2003 | -Certified copy of Deed no. 2457/2003 of Pazhanji SRO |
| A5 | -20/04/2001 | - Certified copy of Deed no. 750/2001 of SRO Pazhanji. |
| A6 | -01/08/1982 | - Certified Copy of Deed No. 1112/1982 of SRO Pazhanji. |
| A7 | -18/11/1982 | -Certified Copy of Deed No. 1755/1982 of SRO Pazhanji. |

Defendant's Witnesses:-

- | | | |
|-----|----------------------------|---------------|
| DW1 | -08/09/2025
-12/09/2025 | - K.V. Geever |
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Defendant's Exhibits:-

- | | | |
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| B1 | -20/04/2001 | -Certified copy of Cancellation deed no. 751/2001 of Akkikkavu SRO |
| B2 | -12/11/2008 | -Certified copy of Theer Deed No. 3572/2008 of Akkikkavu SRO |

Judgment No. 180/2014 dt. 11.3.2026

Court' Exhibits:-

C1, C1(a) -29/06/2022 - Commission report and Sketch in I.A.
1743/2015 filed by Adv. N.K. Arif

Other Witnesses and Exhibits:- NIL

Id/-
Munsiff, Chavakkad.

/// True copy ///

Munsiff, Chavakkad.

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