

IN THE COURT OF THE MUNSIF, KODUNGALLUR.

Present:- Smt.Karthika.K., Munsiff.

Friday, the 10<sup>th</sup> day of April, 2026/ 20<sup>th</sup> Chaithram, 1948.

**O.S.66/2022**

**Plaintiffs:-**

1. Mohesh, Aged 51 years, S/o.Kumbalaparambil Veettil Balan, Edathiruthy Village and Desom, Kodungallur Taluk.
2. Anilkumar, Aged 58 years, S/o.Kumbalaparambil Veettil Balan, Edathiruthy Village and Desom, Kodungallur Taluk.

By Adv.K.Gopinathan & Remya.P.

**Defendants:-**

1. Sunilkumar, Aged 43 years, S/o.Naduvilpurakkal Veettil Subramanian, Edathiruthy Village and Desom, Kodungallur Taluk.
2. Suja Sajan, Aged 53 years, W/o.Menoth Parambil Sajan, Edathiruthy Village and Desom, Kodungallur Taluk.
3. Sajeesh Sathyan, Aged 35 years, S/o.Vembikkal Veettil Sathyan, Edathiruthy West Desom, Edathiruthy Village, Kodungallur Taluk.
4. Jaleel, Aged 54 years, S/o.Valiyakath Veettil Hamsa, Pazhuvil Desom, Kurumbilavu Village, Thrissur Taluk.

By Adv.T.M.Sabala

This suit having come up for final hearing before me on 23.03.2026 in the presence of the counsel for both sides and having stood over for consideration to this day the court on 10.04.2026 delivered the following:-

**JUDGMENT**

**Suit is one for permanent prohibitory injunction and damages.**

2. **The plaint averments is as follows:-** The plaint schedule property belonged to the plaintiffs mother Vidyulatha vide

sale deed No.1304/1971 of Thriprayar SRO. After their mother, Vidyulatha's death on 19.10.2019 the plaint schedule property jointly devolved upon the plaintiffs and their siblings named Anitha, Ajith and Shine. Since the other siblings are living far away they were not made a party to the suit, it is being filed for them also. The plaint schedule property is situated within clear four boundaries and other than the plaintiffs no one else has any right over it. There is a public pathway on the western side of plaint schedule property. On the northern side of the plaint schedule property is the property of one Sudheer Singh. There is a boundary wall through out the northern boundary of plaint schedule property to separate the property of Sudheer Singh and the plaint schedule property. Earlier on the northern boundary of the plaint schedule property was a paddy field and there was a paddy ridge on the northern side of that paddy field. A small aquaduct has formed on the immediate northern boundary of plaint schedule in the east west direction for draining the rain water. The width of that aquaduct is increased and now it has a width of 6-5 feet . At least for 7 months in an year water flows through the aquaduct or will remain in the aquaduct. This aquaduct is part of plaint schedule property and when water is dried aquaduct appear like a pathway. The owners of the plaint schedule property decided to divide the plaint schedule among them and installed four concrete posts on the southern side of the aquaduct in order to convert it as

a pathway the property of property owners on the eastern side of the plaintiff schedule property. The defendants are residing on the eastern side of the plaintiff schedule property . There is a pocket road on the western side of their property to enter into their property. The said pathway proceeds towards south and reaches up to Kurisupalli road. The defendants 1 and 2 are travelling through this pocket road for quite a long time. The defendants 1 to 3 had approached the plaintiff to convert the aquaduct on the northern side into a pathway for their usage. But since the plaintiff refused their need they became furious and threatened the plaintiff that they would convert the aquaduct into a pathway by reclaiming with soil. On 17.1.2022 the 4<sup>th</sup> defendant trespassed into the plaintiff schedule property at the instigation of defendants 1 to 3 and cut and removed some trees named Ayini tree, Coconut tree, Karisu, Karingotta, Payam, Arana tree, mango tree and cashew tree without the knowledge or consent of the plaintiffs and removed the same in a pick up van named Jaseela Mol with registration No.KI 46 L 3469 which is in the ownership of 4<sup>th</sup> defendant. Even though the plaintiffs tried to stop them the defendants threatened the plaintiffs and withdrawn from the scene. The plaintiffs preferred complaints before the Kaippamangalam police on 18.1.2022 and Thrissur District Police Superintendent on 22.1.2022. But the police did not take any steps in the said complaint. The plaintiff has sustained loss of Rs.30,000/-

by cutting and removing the trees from the plaint schedule property. Therefore there may be a decree restraining the defendants from further trespassing into the plaint schedule property and from committing any act of waste in the plaint schedule property. The plaintiffs shall be awarded damages of Rs.30,000/- for unauthorized cutting and removing of valuable trees from the plaint schedule property.

3. **The defendants filed written statement as follows:-**

All the co-owners of the plaint schedule property are not made parties to the suit. Therefore, the suit is bad for non-joinder of necessary parties. The four boundaries of the plaint schedule property is not shown correctly. It is not true that the northern boundary of the plaint schedule property is the property of Sudheer Singh. The northern side of plaint schedule property is a pathway. Even though it is shown that the eastern side of the plaint schedule property is a pocket road, it is actually Edathiruthi Panchayath road. The western side of the plaint schedule property is also Panchayath road. It is evident from the commission report that the plaint schedule property is not identifiable as per the description in the plaint. The northern side of the plaint schedule property is a walkable pathway. The concrete post installed on the southern side of the said aquaduct @ Road has an age of 40 years. The plaintiff has constructed boundary wall on the northern side of the concrete posts and on the

western side of the concrete posts. The pocket road on the northern side of the plaint schedule property goes to east and then proceeds to the Panchayath road on the east towards south and reaches in the Friends road on the east. The road on the eastern side of the plaint schedule property is marked in the assessment register of the Edathiruthi Panchayath. The plaintiff filed this suit by suppressing material facts. The defendants have easementary right through the said pathway. The road on the western side of the defendant's property goes towards south and reaches in the friends road. There is no aquaduct as averred in the plaint. That is lying as a pathway. The defendants have never trespassed into the plaintiffs property or did cut and remove the trees. Someone else had cut and removed the trees standing in the pathway. Nobody has cut and removed any trees within the plaint schedule. The plaintiffs did not state the value of each trees in the plaint. The plaintiffs are not entitled to get a decree since they have suppressed material facts and there is a bar u/s 41 (h) of the Specific Relief Act.

4. On the basis of the above pleadings the following issues were framed for trial:-

1. Is the suit bad for non-joinder of necessary parties?
2. Is the plaint schedule property properly identifiable?
3. Whether the plaintiffs are entitled to get a decree of permanent prohibitory injunction against the

defendants as prayed for?

4. Is the plaintiff entitled to get compensation of Rs.30,000/- from the defendants for cutting and removing the trees from the plaint schedule property?
5. Reliefs and costs ?

5. The 1st plaintiff in this case was examined as PW1. Exts.A1 to A5 documents were marked from the side of the plaintiffs. One witness was examined as PW2. 3rd defendant was examined as DW1. One witness was examined as DW2. Exts. B1 to B5 documents were marked from the side of the defendants. Advocate commissioner was examined as CW1. Exts. C1 & C1(a) documents were marked as court exhibits.

6. Heard both sides.

7. **Issue No.1:-** The first contention raised by the defendants is that the suit is bad for non-joinder of necessary parties. The contention of the defendants is that the plaintiffs themselves stated that the plaint schedule property is owned by plaintiffs 1 and 2 along with their sisters and brothers. But none of them were made parties to the suit. The plaintiffs alone cannot file suit. But in the second para of the plaint, the plaintiff has stated that, plaintiffs 1 and 2 are in possession of the plaint schedule property and they are managing the property on behalf of their brothers and sisters. After the death of

their mother, the plaint schedule property jointly devolved upon the plaintiffs and their siblings. Since the siblings are away from the plaint schedule property, they are filing the suit on behalf of them also. Moreover, this is not a suit for declaration. This is a suit for injunction. So whenever an obligation connected to an immovable property is about to be breached, anyone of the co-owner can file a suit to protect his right in the immovable property. Therefore, the contention of the defendants that the suit is bad for non-joinder of necessary parties will not lie. Therefore, this issue is answered in favour of the plaintiff.

8. **Issue No.2:-** The other contention raised by the defendants is that the plaint schedule property is not properly identifiable. The reason stated by them is that as per the schedule in the plaint, the eastern side is shown as Edavazhi, the northern side is shown as the property of Sudheer Singh. But actually the eastern side of the plaint schedule property is a panchayath road. The commissioner has also reported the same before this court. Moreover, it has come out in evidence that the northern side is a pathway. In the prior document of the plaintiffs, which is marked as Exhibit A1 document No. 1304/ 1971 of Thriprayar SRO, the northern side is shown as Vazhivarambu. Therefore, it is evident that the northern side of plaintiff's is not the property of Sudheer Singh but a pathway. But on going through the commission report, in the first paragraph of

the commission report, the commissioner has categorically stated that she recognized the plaint schedule property by reading the plaint and with the help of the plaintiffs counsel and plaintiffs. During the examination of the commissioner, she testified that the plaint schedule properties are properly Identifiable. CW1 deposed that the northern side of the plaint schedule property is lying as an aqueduct and it does not contain any water during the time of inspection. The defendants have no case that on the northern side the aqueduct is not the property of Sudheer Singh. They admitted that northern side of plaint schedule situates the property of Sudheer Singh. Therefore I don't find any contradiction among the four boundaries shown by the plaintiffs in the plaint. There is no evidence to challenge the identity of plaint schedule property. Therefore issue No.2 is answered in favour of the plaintiff.

9. **Issue Nos.3 & 4:-** The third issue to be decided is whether the plaintiffs are entitled to get a permanent prohibitory injunction against the defendants as prayed. It is the case of the plaintiffs that the defendants 1 and 2 along with defendant No.3 has trespassed into the plaint schedule property and under their instigation that 4<sup>th</sup> defendant has cut and removed the trees from the plaint schedule property and they are also trying to widen the aqueduct by depositing soil on the northern side of the plaint schedule property. The commissioner has categorically reported that

she could see the remnants of trees cut and removed from the plaint schedule property. The plaintiff has also filed a complaint before the Magistrate Court and by referring the complaint the police has registered a FIR against the 4<sup>th</sup> defendant and thereafter filed a charge sheet against the 4<sup>th</sup> defendant, 1<sup>st</sup> defendant and 3<sup>rd</sup> defendant. The FIR in this case was marked as Ext.A3. From the FIR it is evident that the plaintiff has filed a case before the JFCM, Court Kodungallur as CMP.1148/2022 f u/s 156(3) of Cr.PC and it was forwarded to Kodungallur police and after the receipt of the same on 19.3.2022 the police has registered a case against the defendant No.4 u/s 447,427,379,506(II) IPC . Ext.A5 is the certified copy of final report u/s 173 Cr.PC. From Ext.A5 it is evident that the defendant No.1,3 & 4 were arrayed as accused No. 1 to 3 in the above case.

10. Exts. A4 series are the photographs which shows that the trees were cut and removed from the plaint A schedule property and there was an attempt to remove the same from plaint schedule property in a pick up van. Even though the plaintiff produced these photographs he omitted to produce any CD or bill along with these photographs. Plaintiffs did not examine the photographer who took the photographs. But while the commissioner was examined these photographs were shown to the commissioner and the commissioner has identified two photographs among them. CW1 deposed that the place in the photographs was seen during her inspection and she

recollected the scene of occurrence during the time of cross examination. Therefore those photographs were admitted in evidence. Exts. A4 (a) and A4(b) are proved from the oral testimony of the advocate commissioner.

11. During cross examination CW1 stated that she was unable to state accurately regarding the northern boundary of the plaint schedule property. The soil was lying loose therefore she could not state with exact accuracy regarding the northern boundary of plaint schedule property. CW1 admitted the suggestion of defendants that in order to fix the northern boundary it is necessary to measure the plaint schedule property. CW1 further stated that for one person to understand where the trees were standing the plaint schedule property has to be measured with the help of a surveyor. CW1 expressed her view that she cannot state with accuracy that all the trees cut and removed were standing in the plaint schedule property.

12. There is no dispute regarding the fact that the commissioner has reported that some trees were cut and removed from the plaint schedule property during the time of inspection. In the chief examination the commissioner stated the fact that all the trees seen cut were standing within the plaint schedule property. In the re-examination it was further clarified that in Ext.C1 report CW1 has reported the existence of four concrete posts on the southern side of the portion lying as aquaduct. CW1 has marked the same in

Ext.C1(a) sketch. In Ext.C1(a) sketch all the remnants of trees which were cut and removed was shown standing within the northern boundary of plaintiff schedule property. Therefore it is evident that the trees which were cut and removed were standing within the plaintiff schedule property itself. The evidence of PW1 and PW2 stated that the trees were cut and removed from the plaintiff schedule property PW2 testified that the northern side of plaintiff schedule property is the property of Sudheer Singh and there is an aquaduct abutting the boundary wall on the northern side of plaintiff schedule property. No severe contradictions were brought out in the oral testimony of PW1 & PW2 during cross examination.

13. DW1 had admitted that the plaintiffs have title over 81.19 cents of property and plaintiffs have complete right over their property. That it self shows that the defendants have no dispute with respect to the right, interest or title of the plaintiffs in the entire plaintiff schedule property. The available evidence before this court shows that some trees were cut and removed from the plaintiff schedule property. PW2 has witnessed the incident. There is ample evidence that DW1 & D3 has interfered with the possession of plaintiffs with regard to plaintiff schedule property. The evidence adduced before the court shows that probability of involvement D1 to D4 in the incident of cutting trees from the plaintiff schedule property. But the plaintiffs did not adduce any evidence to show the actual value of the trees cut

and removed from the plaint schedule property. But from the evidence adduced before this court it is proved that there is a threat with respect to the possession of the plaintiffs and with respect to the plaint schedule property. If an injunction is not granted there are chances that defendants will further encroach into the plaintiffs property . Therefore it is necessary to grant a permanent prohibitory injunction against the defendants from trespassing into the plaint schedule property or from committing any act of waste therein. For the discussions made above issue No.3 is answered in favour of the plaintiff. Issue No.4 is answered against the plaintiffs..

14. **Issue No.5.**

**In the result, the suit is decreed in part is as follows:-**

**a) The defendants are hereby restrained by a decree of permanent prohibitory injunction from trespassing into the plaint schedule property or from committing any act of waste in the plaint schedule property.**

**b) The defendants shall pay costs of the suit to the plaintiffs.**

(Dictated to the Confdl.Asst., transcribed by her corrected by me and pronounced in open court on this the 10<sup>th</sup> day of April, 2026)

Sd/-  
KARTHIKA.K.,  
MUNSIFF.

APPENDIXPlaintiff's Exhibits:

- A1 - 23.12.1971 - Certified Copy of Deed No.1304/1971 of Thriprayar S.R.O.  
 A2 - 03.02.2026 - Tax Receipt  
 A3 - 19.03.2022 - Certified Copy of F.I.R  
 A4series- - Photographs (8Nos)  
 A5 - 19.03.2022 - Certified Copy of Charge

Defendant's Exhibits:

- B1 - 02.07.1996 - Certified Copy of Deed No.1245/1996 of Thriprayar S.R.O.  
 B2 - 23.12.1971 - Certified Copy of Deed No.1304/1971 of Thriprayar S.R.O.  
 B3 - 10.07.2025 - Sakshya Pathram of Edathiruthy Gramapanchayath  
 B4 - - Local Body Name by Edathiruthy Gramapanchayath (Subject to further proof)  
 B5 - - Local Body Name by Edathiruthy Gramapanchayath

Court Exhibits :

- C1 - 07.02.2022 - Commission Report  
 C1(a)- 07.02.2022 - Rough Plan

Plaintiff's Witness:

- PW1 - 11.02.2026 - Mohesh  
 PW2 - 18.02.2026 - Anil.V.A.

Court Witness:

- CW1 - 18.02.2026 - Sheeja.K.R.

Defendant's Witness:

- DW1 - 26.02.2026 - Sajeesh Sathyan  
 DW2 - 04.03.2026 - Saneesh.K.V.

Copied by: pn

Compared by:

/True Copy/

Id/-  
MUNSIFF.