

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.433/2022**

**Plaintiff:-**

Shani, Aged 44 years, W/o.Kudilingal Shainu,  
Kaipamangalam Beach Desom, Kaipamangalam Village,  
Kodungallur Taluk.

By Adv.T.M.Sabala

**Defendants:-**

1. Dasan.T.K., Aged 65 years, S/o.Tharayil Krishnan,  
Kaipamangalam Village and Desom, Kodungallur Taluk.
2. Gopinathan.P.S., Aged 68 years, S/o.Pallath Sankaran,  
Kaipamangalam Village and Desom, Kodungallur Taluk.
3. Kannan K Jayan, Aged 43 years, S/o.Kollamparambil Jayan,  
Kaipamangalam Village and Desom, Kodungallur Taluk.
4. Mallika Lohithakshan, Aged 61 years, W/o.Thandassery  
Lohithakshan, Kaipamangalam Village and Desom,  
Kodungallur Taluk.
5. T.S.Premkumar, Aged 69 years, S/o.Tharayil Sekharan,  
Kaipamangalam Village and Desom, Kodungallur Taluk.
6. Rajeevan.K.K., Aged 54 years, S/o.Kozhiparambil Kuttan,  
Kaipamangalam Village and Desom, Kodungallur Taluk.
7. Rajeevan.K.R., Aged 55 years, S/o.Kavungal Rajan,  
Kaipamangalam Village and Desom, Kodungallur Taluk.
8. Resmy, Aged 42 years, W/o.Kuttikkattu Radhakrishnan,  
Kaipamangalam Village and Desom, Kodungallur Taluk.
9. Reena.P., Aged 45 years, W/o.Kavungal Rajesh,  
Kaipamangalam Village and Desom, Kodungallur Taluk.

10. Salil.P.S., Aged 45 years, S/o.Pannattu Surendran, Kaipamangalam Village and Desom, Kodungallur Taluk.
11. Sijoy K Jayan, Aged 41 years, S/o.Kollam Parambil Jayan, Kaipamangalam Village and Desom, Kodungallur Taluk.
12. Sudhi.T.L., Aged 37 years, S/o.Thandassery Lohithakshan, Kaipamangalam Village and Desom, Kodungallur Taluk.
13. Sureshkumar.K.K., Aged 47 years,S/o.Kozhiparambil Kuttan, Kaipamangalam Village and Desom, Kodungallur Taluk.
14. Susheela, Aged 68 years, W/o.Tharayil Narayanankutty, Kaipamangalam Village and Desom, Kodungallur Taluk.
15. Dinil, Aged 36 years, S/o.Polassery Veettil Arumughan, Perinjanam Village and Desom, Kodungallur Taluk.
16. Dinesh K.K. Kannakath, Aged 42 years,S/o.Kochu Sankaran, Kaipamangalam Village and Desom, Kodungallur Taluk.
17. Faisal.M.A., Aged 35 years, S/o.Madathiparambil Abu, Kaipamangalam Village and Desom, Kodungallur Taluk.
18. Sivarajan, Aged 46 years, Darmapuram Veettil , Kaipamangalam Village and Desom, Kodungallur Taluk.
19. Sunilkumar.K.K., S/o.Kozhiparambil Kuttan, Kaipamangalam Village and Desom, Kodungallur Taluk.
20. Suresh.M.V., Aged 42 years, S/o.Madeni Velayudhan, Kaipamangalam Village and Desom, Kodungallur Taluk.
21. Hashif, Aged 30 years, S/o.Karukaparambil Hamsa, Pappinivattom Village and Desom, Kodungallur Taluk.

By Adv.Suresh Muraleedharan &  
Adv.V.G.Subhash Chandra Babu

This suit having come up for final hearing before me on 26.03.2026 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 .**

2. **The plaint averments in brief is as follows:-** The plaint A, B and C schedule properties and the adjacent properties were originally belonged to Kudilingal Kunjappu who is the grand father of plaintiff's husband. After the death of Kunjappu his entire properties have been partitioned by his legal heirs vide partition deed No.1596/2003 of Mathilakam SRO. The plaint A schedule property was purchased by the plaintiff and her husband from one Indira, D/o Kunjappu vide sale deed No.5/2007 of Mathilakam SRO. The plaintiff is residing along with her family in the house situated in the plaint schedule property. At the time of executing the partition deed No.1596/2003 a pathway was set out as F schedule to the entire properties covered by the partition deed. The plaintiff purchased the undivided share of Indira on the F schedule pathway as item No.2 of sale deed No.5/2007 of Mathilakam SRO. The said property is shown as plaint B schedule. The pathway lying in the east-west direction on the southern side of plaint A schedule goes towards east and then turns south and further turns east and reaches in the Devamangalam road on the eastern side which is lying north south. The plaint schedule starting from Devamangalam road has a width of 14 feet and the said width continues up to a length of 64 feet towards east west. Thereafter the width of plaint B schedule reduced to 10 feet till

it reaches upto plaint A schedule. On the southern side of 14 feet wide pathway where the width starts reducing to 10 feet another pathway at a width of 4 feet was assigned by the plaintiff's predecessor to Krishnan, father of 1st defendant, Kavungal Rajan, predecessor of defendants 7 & 9, Sekharan, father of 5th defendant, Premkumar, Surendran, father of 10th defendant Salil, Narayanankutty the predecessor in interest of defendants 8 & 14, Kuttan, the predecessor in interest of defendants 6 & 13 and Sukumaran is the father of Kozhiparambil Shajan vide sale deed No.1350/1994 to an extent of 3 1/8 cents. The property owner on the southern side of the said four feet wide pathway had already released 2 feet wide pathway towards south and constructed a boundary wall and the width of the pathway has been thus increased to 6 feet. This pathway reaches in the property of Narayanankutty, S/o Tharayil Sankaran who is the predecessor in interest of defendants 8 & 4. This 4 feet wide pathway was assigned to those people by Kunjappan vide sale deed No.1350/1994. Thereafter Shajan, S/o Kozhiparambil Sukumaran has purchased B schedule and a portion of C schedule along with a right through F schedule covered by partition deed 1596/2003 . The residential plot of Kozhiparambil Shajan is situated on the western boundary of the entire property of Kunjappu. The pathway covered by document No.1350/1994 was lying on the eastern boundary of said Shajan. Thereafter the said six feet wide

pathway was included on the western part of Shajan's property and shifted the 12 feet wide pathway to the eastern boundary of B schedule property covered by document 1596/2003. Thereafter the northern end of the said property has been extended by said Shajan up to the western side of B schedule. The defendants and said Shajan colluded together to create a motorable pathway by executing document No.1055/2022 of Mathilakam SRO. Through this document Shajan has assigned 1.05 Ares to defendants from 8.66 Ares purchased by him vide B schedule to document No.1596/2003 and a right of way through plaintiff B schedule was also provided to this 1.05 Ares of property. The said 1.05 Ares of property is shown as plaintiff C schedule. The residential properties of all the 21 defendants are situated on the southern and western side of plaintiff C schedule. Document No.1596/2003 has been created with an intention to create right of vehicular traffic through plaintiff B schedule to defendants properties. on 17.5.2022 the defendants threatened the plaintiff that they will start vehicular traffic through plaintiff B schedule from Devamangalam road on the eastern side to their properties on the western side. The defendants may be restrained from doing so by a decree of injunction.

3. **The written statement filed by the defendants in brief is as follows:-** The defendants admitted the partition deed No.1596/2003 of Mathilakam SRO. They admitted that the F schedule

in the said partition deed has been provided as a common pathway to all the properties in the partition deed. Since the plaintiff A schedule property was obtained by the plaintiff and her husband together the plaintiff is not entitled to file a suit alone. F schedule property as per the partition deed starts from Devamangalam road. On the western side of Devamangalam road around 100 people are residing. More than 100 persons are using the said F schedule. The residents of the locality has extended the F schedule road towards west south and north in the same nature and the joint owners of F schedule have permitted the public to construct pathways as an extension to F schedule to reach their property. Such a continuous pathway is in existence at the time when the plaintiff has purchased the property. The F schedule has become a public pathway. The entire owners of the F schedule has dedicated the F schedule to the public and it has become an irrevocable license. The F schedule road proceeds towards west and then turns south and has been divided into branches and many peoples are using the said road. Cable connection, water connection etc has been drawn through the said F schedule. The description of plaintiff B and C schedule properties are not correct. It is not possible to identify plaintiff B schedule. Since the people has made the F schedule as a public road the plaintiff has no right to block the defendants from using the pathway. The plaintiff has purchased plaintiff B schedule knowing well that it is being used by the public. Since

dedication to public is irrevocable license there is no legal defect for defendants for purchasing the share in F schedule pathway. It is not true that Shajan unauthorisedly shifted the pathway as per document No.1350/1994. The property being used by the public can be shifted for the conveyance of the public. The owners of F schedule has no objection in using the plaintiff B schedule pathway. The suit is filed on an experimental basis Therefore the plaintiff is not entitled to get an injunction as prayed for.

4. Based on the pleadings in this case the following issues were raised for trial:-

1. Is the plaintiff entitled to get a permanent prohibitory injunction decree against the defendants as prayed?
2. Reliefs and costs ?

5. In this case the plaintiff was examined as PW1. One witness was examined as PW2. Exts. A1 to A4 documents were marked from the side of the plaintiff. Ist defendant was examined as DW1. Ext.B1 was marked from the side of the defendants. The commissioner was examined as CW1 and Exts. C1 , C1(a), C2 & C2(a) were marked as court exhibits.

6. Heard both sides.

7. **Issue No.1:-** The plaintiff in this case is examined as PW1 and Exts. A1 to A4 documents were marked from the side of the plaintiff. Ext.A1 is the title deed of plaintiff dated 1.1.2007 bearing

No.5/2007. One Indira, D/o Kudilingal Kunjappu assigned four cents of property in survey 105/7 to the plaintiff. As per item No.2 the undivided share of Indira in F schedule to the partition deed in resurvey 105/7 was also given to the plaintiff in the year 2007. Ext.A2 is the prior document of Ext.A1 document which is a partition deed bearing No.1596/2003 dated 15.5.2003 whereby Indira, D/o Kunjappu obtained C schedule property which was later assigned by her to PW1. Ext.A2 partition deed has been executed by Subramanian, Viyayakumar, Indira , Rathi and said Krishnan's wife Devaki and vide C schedule to Ext.A2 document Indira obtained four cents of property vide document No.1596/2003 . It is evident from the property description that F schedule has been provided as a pathway to reach the entire property covered by document No.1596/2003.

8. Ext.A3 is a sale deed bearing No.1055/2022. Vide this document Shajan, S/o Kozhiparambil Sukumaran through his power of attorney had assigned right of conveyance over 0.50 Ares of property including the vehicular traffic through 1.05 Ares of property obtained by him vide sale deed No.3812/2003 in survey 105/7 to Dasan.T.K., Gopinaathan. P.S.,Kannan .K.Jayan, Mallika Lohithakshan, T.S.Premkumar, Rajeevan.K.K., Rajeevan.K.R., Resmi, Reena.P., Salil.P.S., Sijoy.K.Jayan, Sudha.T.L., Sureshkumar.K.K., Suseela, Dinil, Dinesh.K.K., Fisal.M.A., Sivarajan, Sunil Kumar.K.K., Suresh.M.V.,

Hashif.K.H., Ext.A4 is the tax receipt of plaintiff which shows that she is remitting tax for 1 Ares and 62 square meters of land in survey 105/7.

9. In this case the plaintiff was examined as PW1. The defendants took a contention that since the plaintiff and her husband are the joint owners of plaint A & B schedule properties the plaintiff alone could not maintain a suit with respect to plaint A & B schedule properties. But the plaintiff categorically stated during her cross examination her husband has authorised her to file a suit before this court. She is in possession of plaint A & B schedule properties. She being a co-owner is not prevented from maintaining a suit for injunction against the defendants. The suit is filed for and on behalf of her husband also.

10. PW2 is a witness examined from the side of the plaintiff. In his chief examination PW2 stated that he is well aware of the pathway starting from Devamangalam road on the eastern side which passes at a width of 14 feet and 64 feet towards west and from there it goes towards south at a width of 6 feet and from there it goes to the property of Dasan.PW2 testified that he witnessed the defendants threatening the plaintiff on 17.5.2022 stating that they will use 10 feet wide pathway owned by plaintiff,Shani to reach their property. PW2 testified that plaint B schedule pathway starts from

Devamangalam road and it is not a tarred road and made up of M-sand. According to PW2 the plaint B schedule is exclusively used by the plaintiff to her A schedule property. No serious contradictions were brought out in the cross examination of PW2 to shake his credit worthiness.

11. The 1st defendant was examined as DW1. DW1 filed proof affidavit in tune with the averments in the written statement filed by the defendants. During cross examination DW1 deposed that the defendants purchased 2 1/2 cents of property from Shajan. The said 2 1/2 cents is shown as plaint C schedule. According to DW1 the F schedule has become a public pathway in the year 2003 and also admitted that there is no need to purchase the right of way in a public pathway. But DW1 clarified that as per Ext.A3 they purchased the right over plaint B schedule to reach C schedule and after purchasing the right in B schedule pathway they extended the pathway to the western side of C schedule to reach their property. During cross examination DW1 denied the existence of a six feet wide pathway on the southern side of the plaint B schedule property. When he was asked that the commissioner has seen the pathway and reported in the commission report he stated that he is unaware of the said fact. PW1 deposed that B schedule pathway which was originally the F schedule in Ext.A2 document was partitioned by the children of

Kunjappu and they had dedicated the F schedule to the public to use as a public way. But no such evidence is produced by the defendants to show that the children of Kunjappu had dedicated this pathway to the usage of public. Even though DW1 denied that he was unaware of the six feet wide pathway on the northern side of plaint B schedule property at one point of time he once stated that some times he used to go through that 6 feet wide pathway. It has come out from the testimony of DW1 that the defendants started using plaint B schedule only after they had purchased plaint C schedule in the year 2022. According to DW1 they used to travel through the F schedule property before that. According to DW1 F schedule has been released to the public use after the year 2003 . But he could not remember the exact year in which it was surrendered by the children of Kujappu. None of the previous owners of plaint B schedule pathway (F schedule to partition deed No.1596/2003) is examined in this case from the side of defendants to show that they have dedicated this pathway to the use of the public.

12. DW2 testified that the plaint B schedule starting from Devamangalam road reaches in another road and the said fact was shown to the commissioner. But the commissioner did not report any such facts in her commission report. No objection was filed by the defendants in the commission report.

13. In **Rejendran Pillai .J.v.B.Bhasi and others reported in 2002 (1) KHC 711.** The Hon'ble High Court held that "*A co-owner can maintain a suit for injunction to protect his co-ownership right.*" Here the plaintiff is a co-owner of plaint A and B schedule property. Therefore when her possession or interest over the plaint A schedule and B schedule are challenged, she is entitled to maintain a suit to protect her right. This dictum is also well applicable to the contentions of the defendants that since the plaintiff is only a co-owner of plaint B schedule pathway and since the other co-owners did not raise any objection against the defendants from using the plaint B schedule PW1 alone cannot maintain a suit for injunction with respect to plaint B schedule without impleading the other co-owners.

14. The commissioner in this case was examined as CW1. CW1 deposed that she would properly identify the plaint B schedule as per the description of it in the plaint. According to CW1 she could not find the owner of plaint B schedule property and she was unable to testify whether she has understood the ownership of plaint B schedule. CW1 testified that in Ext.C1(a) plan she has marked six feet wide pathway on the southern side of plaint B schedule pathway. As answer to query No.9 CW1 reported that six feet wide pathway is starting from the southern side of plaint B schedule and it reaches up

to the house of the defendants. CW1 stated that six feet wide pathway proceeds towards west and reaches the 12 feet wide pathway on the western side and then the 12 feet wide pathway further proceeds towards north, then turns west and then reach up to the defendants residential plots. CW1 further deposed that on the northern side of 6 feet wide pathway there is a granite foundation at a width of one feet and on the southern side of six feet wide pathway she could see an age old wall through out in the east west direction. CW1 testified that the six feet wide pathway she saw was well identified with clear boundaries. CW1 also reported that the defendants can very well travel from their property through the six feet wide pathway passing through the eastern side of Kozhiparambil Shajan's property to the road on the eastern side and vice verse.

15. In Ext.C2 report CW1 stated that plaint B schedule is a public pathway, the house owners of the locality, the people of the locality and the people coming to the temple are seen using B schedule pathway. Therefore, CW1 reported that it is a public pathway. But CW1 admitted that she had never seen any document showing that the plaint B schedule is surrendered by its owners to the use of common people. In her cross examination CW1 stated that from B schedule one can enter into C schedule and plaint B schedule merges with the pathway on the eastern side of property of Shajan B

schedule pathway does not ended there. According to her one can reach plaint B schedule from Devamangalam road from B schedule to C schedule and in continuation they can also go to the western side.

16. The main argument put forward by the plaintiff is that the plaint B schedule is exclusively provided as a pathway to the properties covered by Ext.A2 partition deed to the properties mentioned in Ext.A2 partition deed. The plaintiff purchased the right over the plaint B schedule from Indira, D/o Kunjappu in the year 2007. The partition deed was executed by the children of said Kunjappu in the year 2003. The plaintiff and the defendants have no dispute with respect to the partition deed No.1596/2003 and that the F schedule is the property owned by the children of said Kunjappu. The plaintiff's claim is that the defendants have purchased the right of Kozhiparambil Shajan through the plaint B schedule to reach the property of Shajan purchased by them vide Ext.A3 document which is shown as C schedule . Admittedly the right of way is purchased only in the year 2022 vide Ext.A3 document. The said fact is also admitted by DW1 in his chief examination that they have extended the plaint C schedule way to their property after they have purchased the pathway from Shajan vide Ext.A3 document.

17. The plaintiff's argument is that the defendants can use plaint B schedule only to the extend of reaching plaint C schedule

because Shajan has purchased the property from the children of Kunjappu and the F schedule provided by the property owners of the partition deed only to reach their properties not to any other property. Plaintiff C schedule property was earlier purchased by Shajan from the property owners of Kunjappu. The properties of the defendants are not a part and parcel of the property covered by Ext.A2 document and without the concurrence of the other co-owners of plaintiff B schedule Shajan alone cannot give right of way to defendants to use the plaintiff B schedule to reach C schedule and from there extend the right of way to their residential plots.

18. In order to substantiate the arguments the plaintiff produced dictums by the Hon'ble High Court in **Jeevan Jose P.K. and Another v. Mariamma Chakkappan and others reported in 2015 (3) KHC 988**. It is held in the above case that "*The right of way is confined to that property alone for which the assignor has assigned rights to defendants. Said right of use of pathway cannot be stretched to other properties owned by defendants*".

19. In **K.Soundararajan v. Guruvammal and others reported in 1999 Supreme (Madras) 797**. The Hon'ble High Court of Madras held that "*A co-owner of a common pathway cannot change the mode of user of the pathway without the consent of other co-owners.*" Here Shajan is only a co-owner of plaintiff B schedule

which is actually F schedule to partition deed No.1596/2003. He can only give his right over plaint B schedule only to reach the property assigned by him to the defendants which is covered by Ext.A2 partition deed. If the defendants wanted to extend the right of easement into plaint C schedule to their properties they have to obtain the permission of other co-owners of plaint B schedule pathway (F schedule to partition deed No.1596/2003).

20. The defendants on the other side argued that the evidence adduced before this court shows that the plaint B schedule is lying as a public pathway. Around 21 house owners are using plaint B schedule pathway and the public coming to the temple are also using plaint B schedule pathway . Electric lines are drawn and electric posts are installed and water pipes are also drawn through plaint B schedule pathway. It is also reported by the commissioner in Ext.C2 commission report and the commissioner has testified the same before this court. Therefore it is evident that the plaint B schedule is a public pathway and the plaintiff did not object the same till 2022. The plaintiff did not protest the public from using the plaint B schedule for all these years. Further it has come out in evidence that the plaint B schedule is also modified by putting M sand and pebbles to which the plaintiff did not raise any objection. Therefore plaint B schedule has taken the nature of a public way. Therefore the plaintiff

has acquiesced her right of ownership over plaint B schedule and she is not entitled to maintain a suit with respect to plaint B schedule. But I don't agree with the arguments of the defendants. From DW1's evidence it is proved that they have extended plaint B schedule only in the year 2022. If plaint B schedule was a public way there was no need for the defendants to purchase a right over plaint B schedule from Shajan. No body purchases a right in the public pathway. Therefore it is evident that plaint B schedule is not a public way.

21. From the entire evidence adduced before this court it is evident that the plaint B schedule pathway is the pathway constituted to the property owners of plaint A to E schedule property obtained by document No.1596/2003. The F schedule was exclusively provided to A to E schedule properties covered by Ext.A2 document. It is proved that the plaintiff has purchased plaint A schedule property and 1/6 share of ownership over the plaint B schedule from one of the co-owners of Ext.A2 partition deed. The defendants also have no dispute that the plaint B schedule is the plaint F schedule covered by Ext.A2 document. Their claim is that since they have purchased plaint C schedule from Kozhiparambil Shajan who purchased the property from one of the property owners mentioned in Ext.A2 document they are entitled to use plaint B schedule to plaint C schedule. They further contends that they purchased plaint C schedule and widened the

pathway passing through the eastern side of Kozhiparambil Shajan so as to bring vehicles to their property on the western side of plaint C schedule. More over they stoutly denied the existence of six feet wide pathway through the eastern side of Shajan's property. It is settled position of law that when a pathway is specifically provided for usage of a particular property which is in the joint ownership of a number of persons one of the co-owners cannot give right of way through the said pathway without the consent of other co-owners to extend that easement to the property of 3rd parties. Here the defendants can use the plaint B schedule only to reach plaint C schedule. But they cannot extend the user of plaint B schedule further to their properties situated on the western side of plaint C schedule. Therefore plaintiff is entitled to get a decree of permanent prohibitory injunction as prayed for in the plaint. From the discussions made above issue No.1 is answered in favour of the plaintiff.

22. **Issue No.2:-**

In the result, the suit is decreed as follows:-

**a) The defendants are hereby restrained by a decree of permanent prohibitory injunction from plaint B schedule as a pathway to their properties situated on the western side of plaint C schedule.**

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

(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.

APPENDIX

Plaintiff's Exhibits:

- |    |   |            |   |  |
|----|---|------------|---|--|
| A1 | - | 01.01.2007 | - | Certified Copy of Sale Deed No.5/2007 of Mathilakam S.R.O.         |
| A2 | - | 15.05.2003 | - | Certified Copy of Partition Deed No.1596/2003 of Mathilakam S.R.O. |
| A3 | - | 17.01.2022 | - | Certified Copy of Sale Deed No.1055/2022 of Mathilakam S.R.O.      |
| A4 | - | 16.05.2022 | - | Tax Receipt  |

Defendant's Exhibits:

- |    |   |            |   |             |
|----|---|------------|---|-------------|
| B1 | - | 20.01.2026 | - | Tax Receipt |
|----|---|------------|---|-------------|

Court Exhibits :

- |       |   |            |   |                   |
|-------|---|------------|---|-------------------|
| C1    | - | 24.05.2022 | - | Commission Report |
| C1(a) | - | 24.05.2022 | - | Rough Plan        |
| C2    | - | 08.08.2022 | - | Commission Report |
| C2(a) | - | 08.08.2022 | - | Rough Sketch      |

Plaintiff's Witness:

- |     |   |            |   |         |
|-----|---|------------|---|---------|
| PW1 | - | 20.02.2026 | - | Shani   |
| PW2 | - | 23.02.2026 | - | Haridas |

Court Witness:

- |     |   |            |   |           |
|-----|---|------------|---|-----------|
| CW1 | - | 23.02.2026 | - | Rani Asok |
|-----|---|------------|---|-----------|

Defendant's Witness:

- |     |   |            |   |       |
|-----|---|------------|---|-------|
| DW1 | - | 02.03.2026 | - | Dasan |
|-----|---|------------|---|-------|

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Compared by:

/True Copy/

Id/-  
MUNSIFF.