

IN THE COURT OF MUNSIFF, WADAKANCHERY

Present:- Sri. Yahya. T. K., Munsiff

Wednesday, the 08th day of April, 2026/ 18th Chaithram 1948 SE

O.S. 781/2015

Plaintiff:

Subhadra, aged 55 years, D/o Madathil Kunjukuttiyamma,
Wadakanchery Village, Naduthara Desam, Talappilly Taluk.

By Adv. Jacob. C. Job.

Defendant:

Sathidevi, aged 59 years, D/o Madathil Kunjukuttiyamma,
Wadakanchery Village, Naduthara Desam, Talappilly Taluk., and
W/o Vijayan, 'Dwaraka Priyadarsini Housing Colony', Maradu Post,
Ernakulam.

By Adv. K. Sajith Kumar.

COUNTER CLAIM

Counter Claim Plaintiff:

Sathidevi, aged 60 years, D/o Madathil Kunjukutti Amma,
Wadakanchery Village, Naduthara Desam, Talappilly Taluk., and
W/o Vijayan, 'Dwaraka Priyadarsini Housing Colony', Maradu Post,
Ernakulam.

By Adv. By Adv. K. Sajith Kumar.

Counter Claim Defendant:

Subhadra, aged 55 years, D/o Madathil Kunjukuttiyamma,
Wadakanchery Village, Naduthara Desam, Talappilly Taluk.

By Adv. Jacob. C. Job.

This suit is coming on this day for hearing, the Court passed the following:

JUDGMENT

Suit as well as counter claim for mandatory and prohibitory injunctions.

2. **Plaint summary** ; Defendant is the sister of plaintiff. Plaintiff A schedule property obtained by plaintiff from her mother as per two documents. Plaintiff B schedule property also settled by the mother to defendant. Defendant had filed a suit against plaintiff and others as O.S.349/2003 before this court in which plaintiff herein had filed a counter claim. The suit was dismissed and the counter claim was decreed. So defendant took the matter before District Court in appeal as A.S.20/2009 in which a compromise was entered and a compromise decree was drawn. Even thereafter on 05.04.2015, the defendant has put up an iron sheet truss work in a manner obstructing flow of air and light to plaintiff A schedule property. The same is also violative of Panchayat Raj Act. Construction so made has been shown as plaintiff D and E schedule. Pathway shown in C schedule is a private pathway exclusively to plaintiff A schedule property. Defendant has no right over the same. But, defendant has made an entry to C schedule from E schedule and also has made ariel trespass by constructing sunshade to their house. The portion of sunshade protruding to C schedule causing ariel trespass has been shown as F schedule. Plaintiff

D, E and F schedule are liable to be demolished. Hence the suit.

3. **The defendant filed a written statement with counter claim.**

Summary of written statement is as follows ; The suit is not maintainable either in law or on facts. It is incorrect to say that defendant constructed D and E schedule truss work obstructing flow of air or light. Plaintiff cannot have right to horizontal air or light. Hence D and E schedules are not liable to be demolished. Plaintiff C schedule is not a private pathway as claimed by the plaintiff. The pathway belonged to mother of the parties. Consequent to death of the mother, defendant also got equal right over plaintiff E schedule. Hence plaintiff F schedule is not liable to be demolished. It is incorrect to say that there is ariel trespass to plaintiff C schedule property. All other allegations are denied. Hence it is prayed that the suit may be dismissed with costs.

4. The following issues framed in the suit ;

1. *Whether plaintiff has right of easement of air or light through eastern side of plaintiff A schedule property ?*
2. *If yes, whether such a right has been blocked by defendant by making any construction ?*
3. *Whether plaintiff D to F schedule properties are liable to be demolished / removed ?*
4. *What is the right of plaintiff over plaintiff C schedule property ?*
5. *Whether there is any ariel trespass as alleged ?*
6. *Whether the suit is barred by resjudicata ?*
7. *Relief and costs ?*

Counter claim for Mandatory Injunction

5. **Summary of the counter claim** ; Counter claimant is the defendant in the suit. She had filed the suit against plaintiff herein as O.S.349/2003 before this court and the same was dismissed. Then the matter was taken up in appeal before the District Court as A.S.20/2009. A compromise decree was drawn in that appeal. As per the compromise decree, plot shown as 'E' in the sketch appended to the decree was given to defendant herein. The compound wall situated on the western side of plot E was given to plaintiff herein. Now the plaintiff has made trespass upon plot E. Property of the counter claimant is shown as counter claim A schedule property. Portion of that property upon which trespass has been made is shown as counter claim B schedule property. Counter claim defendant trespassed upon counter claim A schedule property. Hence the counter claim.

6. **Counter claim defendant/plaintiff filed replication as follows** ; Counter claim is not maintainable either in law or on facts. It is incorrect to say that the counter claim defendant has trespassed upon counter claim A schedule property. No such trespass was ever made. Counter claim B schedule property not in existence. Counter claim plaintiff has no title over counter claim B schedule property. No relief can be granted in the counter claim. The counter claim is barred by limitation. Hence it is prayed that the counter claim may be dismissed with costs.

7. The following issues framed in the counter claim ;

1. *Whether counter claim B schedule property is liable to be demolished ?*
2. *Whether there is any building rule violation as alleged ?*
3. *Whether prayer for mandatory injunction is barred by limitation ?*
4. *Relief and costs ?*

8. I will call the plaintiff/counter claim defendant as “plaintiff” and defendant/counter claim plaintiff as “counter claimant”. On the side of plaintiff, the plaintiff was examined as PW1. Ext.A1 to A7 marked. On the side of counter claimant, DW1 to DW4 were examined and Ext.B1 to B17 marked. Ext.C1 to C3 series marked by the court.

9. Heard both sides.

10. **Issue No.4 in the suit** ; The first and foremost question to be decided in this suit is whether the suit is barred by resjudicata. It is an admitted fact that there was a previous litigation between plaintiff and counter claimant as O.S.349/2003. Ext.B7 to B11 and Ext.B14 to B16 show the same. That suit was filed by the counter claimant against the plaintiff in which a counter claim was laid by the plaintiff herein. The issue in that suit was whether plaintiff herein had made a trespass on the western side of property of counter claimant. Similarly, the issue in the counter claim was whether a trespass upon the property of plaintiff herein was made by the counter claimant on the same side, ie. eastern side of

plaintiff's property. It can be seen from Ext.A4, A5 and B12 that a compromise was entered into between the parties during appellate stage and plot E in Ext.B12 was given to the counter claimant. It can further be seen from those documents that right of the compound wall situated on the immediate western side of plot E in Ext.B12 was given to the plaintiff herein. Both parties are not disputing those aspects. Issue in this case is primarily related to easement for air and light and also regarding the right of rival parties upon a pathway shown as plaint C schedule. So the question in this suit is entirely different from the questions in O.S.349/2003. Therefore principle of resudicata will not apply. So this issue is found in favour of the plaintiff.

11. **Issue No.3 in the counter claim** ; The counter claim is mainly for demolition of a construction shown as counter claim B schedule. Learned counsel for plaintiff vehemently argued that the said prayer is barred by limitation because the construction has been made more than 3 years prior to the cause of action alleged in the counter claim. On the other hand, learned counsel for counter claimant vehemently argued that the construction was made on 11.04.2015 and therefore the suit is well within time.

12. I have perused the material on record in this regard. Article 113 of Limitation Act, is the relevant provision. It is a residuary article and gives a period of three years from the date of accrual of the cause of action. In

the present case, it has been specifically pleaded and deposed by PW1 that cause of action for the counter claim arose on 11.04.2015. Although a suggestion was put to DW1 stating that the construction in question was made by the plaintiff in January 2012, the same was denied by DW1. Therefore no such serious questions were put to DW1. Hence I find that testimony of DW1 in this regard is to be accepted. Hence the counter claim is not barred by limitation. This issue is found in favour of the counter claimant.

13. **Issue Nos.1 to 5 in the suit and issue Nos.1 and 2 in the counter claim** ; Parties are sisters. They are the daughters of Kunjukutty Amma. There is no dispute to the fact that plaint A schedule property belongs to the plaintiff under Ext.A1 and A2. Ext.A6, A7 and Ext.C1 to C3 series shows that the plaintiff is in exclusive possession of plaint A schedule property and is residing in a house situated therein. It is equally not a disputed fact that plaint B schedule property exclusively belongs to the counter claimant. Ext.B2, B5 and B6 series show the same. Both A and B schedule properties come from Ext.B1. Thus title and possession of the properties covered by Ext.A1, A2 and B2 are not under dispute.

14. What was disputed was the construction of truss work shows as D and E schedule in the plaint. It was argued by learned counsel for the plaintiff based on Ext.C1 that because of the construction made as D schedule, natural flow of air and light to plaint A schedule has been

obstructed. Learned counsel for the counter claimant on the other hand vehemently opposed that claim and argued that the plaintiff cannot have a right for horizontal air and light.

15. It is important to note that the plaintiff is raising a claim of easement. In such a scenario the plaintiff was expected to make specific pleadings as to which type of easement she is claiming. Easement is a precarious right. There must be specific pleadings and sufficient evidence to support such claims. A person is not entitled to make a casual claim regarding easement and simply sit back. Here, there is no specific plea in the plaint as to which type of easement the plaintiff is claiming. Also it can be seen from Ext.C1 that there would be some difficulty to get air and light from eastern side of plaint A schedule property, there is nothing in evidence to suggest that plaintiff is not getting air or light from other three directions of her house. Atleast, she must be receiving natural air and light in vertical direction.

16. Vertical light is natural light. The right to light and air that passes horizontally to a property can be claimed as a right through openings only if such a right is acquired by prescription or grant. In the present case no such evidence has been adduced. It appears to me that by construction of plaint D and E schedule truss work, the plaintiff might have faced some difficulty of visibility. But such a difficulty cannot be agitated before a civil court unless the plaintiff has acquired a right to remove such

difficulty. In the present case, the plaintiff simply pleaded that he got easement of air and light. What type of easement she got has not been specifically pleaded and proved. Hence no relief can be granted in respect of D or E schedule properties.

17. The other challenge made against D and E schedule properties is based on building rules violation. What was deposed by PW1 is that D schedule construction should have been made after leaving a distance of 1 metre from the eastern boundary of plaint A schedule property. I really failed to understand the said contention. Plaint D and E schedule constructions are temporary in nature. They do not abuts public streets either. Then the plaintiff cannot say that the counter claimant should have left 1 metre distance from her eastern boundary. It appears to me that attempt of the plaintiff is to get back the property handed over to counter claimant as per Ext.B11 decree. Such an attempt cannot be entertained. In that view of the matter also, relief in respect of plaint D and E schedule properties are not allowable.

18. The next contention raised by learned counsel for the plaintiff is regarding a pathway shown as C schedule. According to plaintiff, C schedule is a private pathway and defendant got no right over it. Plaintiff says that the counter claimant, while making a construction in her property has ariel trespassed upon plaint C schedule property. Plaint F schedule is the part of sunshade which is allegedly arielly trespassed into plaint C

schedule pathway. These contentions were countered by counter claimant saying that the C schedule pathway is not a private pathway. It was also claimed by the counter claimant that roof of his house including the disputed sunshade was made exactly at the place where the earlier tiled roof and its eave were situated.

19. In order to find out the exact nature of this dispute, it is necessary to assert whether the plaintiff has actually proved the fact that plaint C schedule is a private pathway. Several questions were put to PW1 regarding how she got ownership over plaint C schedule pathway. She replied as follows ;

“Ext.A1 ആധാരത്തിലെ കിഴക്ക് ഭാഗത്ത് പറഞ്ഞ ഒന്നരക്കോൽ വീതിയിലും അഞ്ചുമുക്കാൽ ദണ്ഡ് നീളത്തിലുമുള്ള വഴിയെക്കുറിച്ച് അമ്മ Ext. A1 ആധാരമല്ലാതെ വേറെ രേഖകളൊന്നും തയ്യാറാക്കിയിട്ടില്ല . അമ്മയുടെ മരണശേഷം ആ വഴിയിൽ പ്രതിക്കും കൂടി കൂട്ടവകാശം സിദ്ധിച്ചു എന്ന് പറഞ്ഞാൽ ശരിയല്ല. ആ വഴിയിൽ എനിക്ക് മാത്രമാണ് ഉടമസ്ഥാവകാശം ഉള്ളത് എന്ന് കാണിക്കാൻ Ext. A1 തന്നെയാണ് രേഖ, വേറെ രേഖയില്ല.”

20. Thus it can be seen that plaintiff is claiming title over C schedule pathway under Ext.A1. Measurements were carried out with the help of private Surveyor to identify the various schedule properties including A and C schedule properties. A schedule properties were identified by the Surveyor in Ext.C2(a) as Ext.B1 and B2. Plot B2 is the property covered by Ext.A1. It does not contain plot C which is plaint C schedule property. That means, claim of the plaintiff that C schedule was also transferred to her under Ext.A1 is incorrect. Then how the plaintiff is claiming C schedule to a private pathway is not not known.

21. Even if it is conceded for the sake of arguments that C schedule pathway should be treated as a private pathway by user, it will not ipso facto make prayer in respect of F schedule allowable. I have a specific reason to say this. It can be seen from the testimony of PW1 that C schedule pathway was set apart by the mother with the same condition as it was existed earlier. The only difference is that the tile roof of the house of counter claimant became a terrace in the place of old tile roofed house. The alleged ariel trespass was already existing during time of the mother itself. The same can be seen from the following testimony of PW1 ;

"പ്രതിയുടെ വസ്തുവിൽ പഴയ ഓടിട്ട വീടുണ്ടായിരുന്നു. അന്യായം C പട്ടിക വസ്തുവിനെ പ്രതിയുടെ വഹകളിൽ നിന്ന് വേർതിരിക്കാനായിട്ട് മുൻപുണ്ടായിരുന്നത് ആ പഴയ ഓടിട്ട വീടിന്റെ തെക്കേ ചുവരാണ്. ആ തെക്കേ ചുമർ ഇപ്പോഴും അവിടെയുണ്ട്. ഓട്മേൽക്കൂര ഉണ്ടായിരുന്ന സമയത്ത് അതിന്റെ ചായ്ച്ചിറക്ക് C പട്ടിക വസ്തുവിലേക്കായിരുന്നു. ഓട്മേൽക്കൂര ദ്രവിച്ചപ്പോൾ പ്രതി അത് ടെറസ്സാക്കി മാറ്റി."

22. So it can be seen that plaintiff is now estopped from raising any claim against F schedule property unless she is able to prove that there is any further extension of the eave than previously existed. No such evidence is forthcoming in this case. Hence prayer related to plaint F schedule is not allowable.

23. Coming to the prayers made in counter claim, it can be seen from Ext.C2 series as well as the testimony of DW3 and 4 that no such trespass as alleged in the counter claim B schedule property is proved. Specific case of the counter claimant is that the plaintiff has trespassed upon plot E

in Ext.B12. But no such trespass was pointed out in Ext.C2 series.

24. Much was argued by learned counsel for the counter claimant to assail Ext.C2 series saying that DW3 failed to identify the properties as per Ext.A4. The counter claimant say that modern techniques such as digital survey could have been used by the survey team for identifying the plots as per Ext.A4. True that certain difficulties were stated by the Surveyor. But there is one important aspect here. If the counter claimant get a case that the plaintiff has trespassed upon the property allotted to counter claim under Ext.A3 decree, her remedy is to file an execution petition ; no a separate suit. In that view of the matter, reliefs sought in the counter claim are not allowable. Also there is no finding in Ext.C2 series that any of the property of the counter claimant was trespassed upon. Hence none of the reliefs claimed in the counter claim are allowable. Result of the above discussion is that issue No.1 to 5 in the suit are found against the plaintiff and issue No.1 and 2 in the counter claim are found against the counter claimant.

25. **Issue No.7 in the suit and issue No.4 in the counter claim** ; In view of the finding under the above issues, no relief can be granted either to the plaintiff or to counter claimant. As regards the costs of the suit, it appears to me from the facts and circumstances mentioned above that the parties should be left to suffer their respective costs.

In the result,

Suit as well as the counter claim are dismissed. No costs.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 8th day of April, 2026)

Sd/-
YAHYA. T. K.,
MUNSIFF

APPENDIX

Plaintiff's Exhibits:

- A1 : 18.10.1985 Certified Copy of Their Deed bearing no.2995/1985 of SRO, Wadakanchery.
- A2 : 17.05.2002 Certified Copy of Their Deed bearing no.1344/2002 of SRO, Wadakanchery.
- A3 : 21.01.2012 Certified Copy of Decree in A.S. 20/2009 of 1st Addl. District Court, Thrissur.
- A4 : 21.01.2012 Certified Copy of Compromise Petition in A.S. 20/2009 of 1st Addl. District Court, Thrissur.
- A5 : Certified Copy of Survey Sketch in Sy. No. 622 of Wadakanchery Village.
- A6 : 27.05.2025 Land Tax Receipt bearing no. KL08025503194/2025 in Thandaper No. 2302 of Wadakanchery Village.
- A7 : 05.01.2002 Building Tax Receipt bearing No. IV/5 in Book No. 48914 in the year 2001-2002 for an amount of Rs. 18/- of Wadakanchery Panchayath.

Plaintiff's Witness:

PW1 : 19.01.2026 Subhadra. T. G.

Defendant's Exhibits:

- B1 : 17.11.1982 Certified copy of Their Deed bearing no. 2700/1980 of SRO, Wadakanchery.
- B2 : 17.05.2002 Certified copy of Settlement Deed bearing - no. 1343/2002 of SRO, Wadakanchery.
- B3 : 29.12.2008 Certified copy of Survey Sketch in Field No. 622 signed by Wadakanchery Village Officer.

- B4 : 13.07.2008 True copy of Survey Sketch in Field No. 622 of Superintendent of Survey and Land Records, Thrissur.
- B5 : 10.06.2002 Land Tax Receipt.
- B6 : Building Tax Receipts – 7 in nos.
series
- B7 : 10.07.2003 Certified copy of Plaint in O.S. 349/2003 of Munsiff's Court, Wadakanchery.
- B8 : 15.10.2003 Certified copy of Counter Claim and Written Statement in O.S. 349/2003 of Munsiff's Court, Wadakanchery.
- B9 : 29.11.2008 Certified copy of Decree in O.S. 349/2003 of Munsiff's Court, Wadakanchery.
- B10 : 29.11.2008 Certified copy of Judgment in O.S. 349/2003 of Munsiff's Court, Wadakanchery.
- B11 : 21.01.2019 Certified copy of Judgment in A.S. 20/2009 of 1st Addl. District Court, Thrissur.
- B12 : 07.01.2005 Certified copy of Survey Sketch.
- B13 : 21.01.2012 Certified copy of Judgment in A.S. 20/2009 of 1st Addl. District Court, Thrissur.
- B14 : 17.07.2003 Certified copy of Commission Report, Rough Plan prepared as per the order of Munsiff's Court, Wadakanchery., in O.S. 349/2003 in I.A. 1115/2008.
- B15 : 02.06.2005 Certified copy of Commission Report in O.S. 349/2003.
- B16 : 21.11.2008 Certified copy of Deposition in O.S. 349/2003 of plaintiff.
- B17 : 09.10.2023 Memo filed by Adv. M. S. Helna.

Defendant's Witness:

- DW1 : 28.01.2026 Sathidevi.
- DW2 : 07.02.2026 Adv. Salim. O. P.
- DW3 : 07.02.2026 Santhosh. P. S.
- DW4 : 16.02.2026 Adv. Helna. M. S.

Court Exhibits:

- C1 : 15.12.2015 Commission Report in I.A. 2635/2015.
- C1(a) : Rough Plan.

- C2 : 28.05.2024 Commission Report in I.A. 2575/2015.
- C2(a) : 23.03.2024 Survey Report.
- C2(b) : 23.03.2024 Survey Plan.
- C3 : 03.09.2019 Commission Report in I.A. 3025/2016.
- C3(a) : Survey Report.
- C3(b) : 29.08.2019 Survey Plan.

Id/-
MUNSIFF