

**IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIFF
SATURDAY 17th JULY, 2024 / 26th ASHADA, 1946**

OS No.453/2018

Plaintiff:

Sathikumari, D/o Sreedharan, Benglavila Veedu, Mudapuram Desom,
Kizhuvilam Village, Chirayinkeezhu Taluk.

By Advocate: Sri. N. Anirudhan

Defendants:

1. Dileep, aged 46 years, S/o Sukumaran, Deepa Bhavan, Mudapuram Desom, Kizhuvilam Village, Chirayinkeezhu Taluk.
2. V.Reena, aged 39 years, W/o Dileep, Deepa Bhavan, Mudapuram Desom, Kizhuvilam Village, Chirayinkeezhu Taluk.
3. Radha, aged 70 years, W/o Sukumaran, Deepa Bhavan, Mudapuram Desom, Kizhuvilam Village, Chirayinkeezhu Taluk.
4. Pradeep, aged 48 years, S/o Sukumaran, Deepa Bhavan, Mudapuram Desom, Kizhuvilam Village, Chirayinkeezhu Taluk.
5. Sisupalan, aged 58 years, S/o Sankaran, Benglavil Veedu, Mudapuram Desom, Kizhuvilam Village, Chirayinkeezhu Taluk.

Set Exparte

This original suit having been finally heard on 08/07/2024 and the court on 17.07.2024 delivered the following:

JUDGMENT

The suit for fixation of boundary and permanent prohibitory injunction.

2. The averments in the plaint in brief:

Plaint schedule property originally belonged to the mother of plaintiff's husband and 4th defendant. She obtained the property by virtue of Sale deed No.11/1956 of Chirayinkeezhu SRO and she transferred it in favour of the plaintiff's husband and 5th defendant by virtue of Settlement deed No.2778/1981. The plaintiff's husband became the absolute owner in possession of C schedule property described in Deed No.2778/1981. Plaintiff's husband died in 1996. Plaintiff's daughters relinquished their 2/3 right over the property and hence plaintiff is now the absolute owner in possession of the whole property. From that, the plaintiff gifted 8.62 ares of property in favour of her son Aneesh. What is

remaining is 23.58 ares and the plaintiff is the absolute owner in possession of the same. It is described as the plaintiff's schedule. The defendants are the neighbouring property owners. The 1st defendant tried to widen the pathway on the northern side and hence the suit for injunction was filed as OS.443/2012 and the same was decreed. But still the appeal is pending. In OS.443/2012 injunction is only against the 1st defendant. Hence the 1st defendant trying to widen the 2 mtr pathway using his wife and other women in the locality. There is a way mentioned in the same deed on the eastern and northern side of the whole property deducting 50 cents. There is a pathway of 2 feet width on the north of plaintiff's schedule property. The defendants have the right to use that pathway. A new pathway of 3 mtr width was recently cut out starting from Mudapuram – Korani road towards the properties of 5th defendant, plaintiff's husband and other siblings towards other ancestral homes. The defendants 1 to 5 have no right over this pathway. Hence the suit is for permanent prohibitory injunction restraining the defendants 2 to 4 from trespassing into the plaintiff's schedule property and also from creating a new pathway and also from obstructing the defendants from widening the northern 2 feet pathway into the plaintiff's schedule property and also for fixation of western, southern and northern boundaries of plaintiff's schedule property.

3. In spite of several chances the defendants did not file a written statement. Hence the suit was heard *ex parte*.

4. From the side of the plaintiff Exts.A1 to A5 were marked. The commission report and plan were marked as Ext.C1 and C1(a).

5. Now the only point that arises for consideration is –

1. Can the prayers be allowed ?

2. Reliefs and costs ?

6. Heard the counsel for the plaintiff.

7. **The points:** The plaintiff was examined as PW1 who filed an affidavit in lieu of examination in chief. Ext.A1 is the certified copy of Settlement deed No.198/17 of Chirayinkeezhu SRO. Ext.A2 is the certified copy of Settlement deed No.1190/18 of Chirayinkeezhu SRO. Ext A3 is the certified copy of the Relinquishment deed No. 2157/11 of Chirayinkeezhu SRO. Exts. A4 and Ext A5 are the tax receipts dated 22.09.2018 and 06.08.2018. Ext C1 and C1(a) are the commission report and survey plan. The plaintiffs have filed an objection to the commission report stating that only the defendants 1 to 4 are using the plaint E schedule pathway and also that the plaint E schedule pathway is only the plot BCDEFHIJB having a width of 0.60 metre and length of 54.9 metre starting from the north eastern corner of plaint A Schedule property and ending at the north eastern corner of plaint B and C schedule properties. It is not correct that the plaint E schedule pathway extends towards the south of the plaint A schedule property after reaching the property of the defendants. The objection of the plaintiff is accepted and the commission report is accepted except the objection raised. From the affidavit and documents produced, the plaintiff's case stands proved.

In the absence of contra evidence it is hence proved that the plaintiff is entitled to get a decree as prayed for. In the result, the suit is decreed as follows:-

- i) A decree for fixation of boundary is passed and the western boundary of plaint A schedule property separating it from the plaint B and C schedule property is fixed through the line AB and southern boundary of plaint A schedule property separating it from the D schedule property is fixed through line AG and the northern boundary of plaint A schedule property separating it from the E

schedule pathway is fixed through line LH as reported by the Advocate Commissioner in his Ext.C1(a) plan.

- ii) The defendants 2 to 4 are hereby restrained from trespassing into the plaint schedule property and also from creating a new pathway and are also restrained from widening the northern 2 feet pathway into the plaint schedule property.
- iii) Ext. C1(a) plan shall form part of the decree.
- iv) The plaintiff is entitled to the costs of the suit.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 17th day of July, 2024.

Sd/-
SWATHI.R.KRISHNAN
MUNSIFF

Appendix:

Exhibits for the Plaintiff:

A1	28.02.2017	Certified Copy of Settlement Deed No.198/2017 of Chirayinkeezhu SRO
A2	08.08.2018	Certified Copy of Settlement Deed No.1190/2018 of Chirayinkeezhu SRO
A3	11.06.2024	Certified Copy of Relinquishment Deed No.2157/2011 of Chirayinkeezhu SRO
A4	22.09.2018	Tax Receipt
A5	06.08.2018	Tax Receipt

Exhibits for the Defendant:

Nil

Court Exhibits:

C1 & C1(a) - Commission Report and Survey Plan

Witness for the Plaintiff:

PW1 - K.S. Santhosh Kumar

Witness for the Defendant:

Nil

Id/-
MUNSIFF

//True Copy//

Typed by: Lasitha
Compared by: Sheena.K

MUNSIFF