

IN THE COURT OF THE SUB JUDGE, SULTHANBATHERY

Present: Smt. Sreeja Janardanan Nair, Sub Judge

Monday, the 30th day of March, 2026
9th day of Chaithra, 1948**APPEAL SUIT No.50/2023**

Aboobacker, Aged 54 years,
S/o Ammad, Swastham, Kuthini House,
Padinjarathara amsom desom,
Arambettakkunnu P.O., Vythiri Taluk,
Wayanad District.

}

Appellant
Plaintiff

V/s.

1. Usman, Aged about 50 years,
S/o Abdulla Haji, Kaniyankandi House,
Teacher Mukku, Peral,
Padinjarathara amsom desom,
Arambettakkunnu P.O., Vythiri Taluk.
2. Padinjarathara Grama Panchayath
Rep. by its Secretary, Padinjarathara P.O,
Vythiri Taluk.

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Respondents
Defendants

On Appeal against the Judgment and decree of Munsiff Magistrate Court,
Kalpetta in OS 185/2017 dated 25.08.2023.

Aboobacker, Aged 54 years,
S/o Ammad, Swastham, Kuthini House,
Padinjarathara amsom desom,
Arambettakkunnu, Vythiri Taluk,
Wayanad District.

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Plaintiff

V/s.

1. Usman, Aged about 50 years,
S/o Abdulla Haji, Kaniyankandi House,
Teacher Mukku, Peral,
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Arambettakkunnu, Vythiri Taluk.
2. Padinjarathara Grama Panchayath
Rep. by its Secretary, Padinjarathara P.O,
Vythiri Taluk.

Defendants

This Appeal Suit is coming on this day for hearing before me in the presence of Sri.T.M.Rasheed, Advocate for appellant and Sri.K.K.Sebastian, Advocate for Respondent No.1 and Sri.P.K.Dinesh Kumar, Advocate for Respondent No.2 and on the same day, the Court delivered the following:-

JUDGMENT

This is an appeal preferred by the plaintiff in OS 185/17 against the judgment and decree of Munsiff-Magistrate Court, Kalpetta dated 25.08.2023.

2. The suit is one for permanent prohibitory injunction and mandatory injunction.

3. **The plaint averments in brief are as follows:** - The plaint A schedule property belongs to the plaintiff by virtue of document No.1010/1996. There is a 3 feet width pathway on the eastern side of the item No.2 of the property in the said deed. The way was constructed by relinquishing the property of the plaintiff and has been used by the defendant for which the plaintiff has no objection. The 1st defendant has been attempting to widen the said pathway and try to make it as a road. The said pathway is shown as plaint B schedule. On 02.08.2017, the 1st defendant made an attempt to widen the plaint B schedule pathway which could

be prevented by the plaintiff due to his timely intervention. The 1st defendant has no right to widen the said pathway.

4. On the basis of the written statement of defendant No.1, the plaintiff has amended the plaint and impleaded the defendant No.2 as a party to the suit. He has not relinquished the plaint B schedule property to the 2nd defendant. It has been using by the plaintiff and his family to go to his paddy field. During the pendency of the suit, the 1st defendant and his men widened the 3 feet pathway by dumping soil on its either side. Now, the pathway has 3.10 meter width, 3 feet height and 1.1 meter length and the widened portion is shown as C schedule in the plaint. The 1st defendant is liable to remove the widened portion of the pathway. Hence, the suit.

5. Defendant No.1 filed written statement with following contentions:-

The way pleaded in the plaint is not a mere pathway, but a road known as Teachermukku-Chorakkandy road. The said road joints at Chorakkandy Kuttiyodi SC Colony road. The said road has more than 3 meter width and 450 meter length. The said road is a Panchayath road which is entered in the Panchayath register. The attempt of the plaintiff is to reduce the road into his possession. After obtaining temporary injunction order, the plaintiff has caused damages to the said road. The Padinjarathara Police registered a case against the plaintiff, his wife and son for destroying the Panchayath road. The plaintiff is not in possession of plaint B schedule property. The Panchayath road also is included in the plaint A schedule. The said road is a public road which has been using by the plaintiff and the local residents for the last several years. As the plaintiff caused damage to the road, he is liable to reinstate the same. Hence, the counter claim for a decree of mandatory injunction directing the plaintiff to reinstate the road.

6. As the plaintiff reduced the width of the road after obtaining temporary injunction, the Padinjarathara Grama Panchayth repaired the road. Plaint C schedule is a part of a public road over which the plaintiff has no right or possession.

7. The 2nd defendant filed written statement with following contentions:-

No statutory notice was sent to this defendant by the plaintiff before the institution of the suit. As per the entries in the asset/road register, item No.157 is Teachermukku-Chorakkandy road. At the time of formation of the said road, it was having a width of 3 meter and length of 450 meters. This defendant had spent ₹50,000/- for the road. As a portion of the road at a length of 16 meters was dug and destroyed partially by the plaintiff, his wife and son on 09.08.2017, this defendant had given complaint to the Padinjarathara Police and a crime was registered against them of the offences punishable under Section 427 IPC and under Section 3(2)(e) of PDPP Act.

8. On the basis of the rival contentions of the parties, the trial court has framed the following issues:-

1. Whether the plaint B schedule property is a nadavazhi or road?
2. Whether the plaintiff is in possession of the entire extent of plaint A schedule property?
3. Whether the counter claim property is a panchayath road as alleged?
4. Whether the plaintiff is entitled to a decree of prohibitory injunction, as prayed for?

5. Whether the defendant is entitled to a decree for mandatory injunction as prayed for?
6. Relief and costs?

9. Before the trial court, the plaintiff was examined as PW1 and the Advocate Commissioner was examined as PW2. Exts.A1 and A2 were marked on the side of plaintiff and the commissioner's report, sketch, and plan were marked as Exts.C1 to C4. The 1st defendant was examined as DW1 and Exts.B1 to B10 were marked.

10. After appreciating the evidence on record and after hearing the parties, the trial court has dismissed the suit. By aggrieved with the judgment and decree of the trial court, the appeal is being preferred by the plaintiff in the suit. The learned counsel for the appellant has vehemently argued that the trial court ought not had relied upon Ext.B1 document since, it has no relevancy in the particular case as the plaintiff has not relinquished B schedule property to the Panchayath and the Panchayath has not acquired the said portion. The learned counsel has further argued that the Teachermukku-Chorakkandy road in Ext.B1 is entirely different one and not passing through the plaint B schedule property. As the finding of the trial court is illegal and factually not sustainable, prays to set aside the judgment and the decree of the trial court and to allow the appeal.

11. Heard Both sides.

12. **On the basis of the pleadings of parties, the following points arose for consideration:-**

1. Whether the plaint B schedule property is a pathway or a road?
2. Whether the plaintiff is in possession of plaint B schedule property?
3. Whether the plaintiff is entitled to get a decree of prohibitory injunction as prayed for?
4. Whether the plaintiff is entitled to get a mandatory injunction as prayed for?
5. Is there any need to interfere with the judgment and decree of the trial court?
6. Relief and costs?

13. The parties are hereinafter referred as plaintiff and defendants as in the original suit.

14. **Points No.1 to 4:-** As these points are inter-connected, they can be considered together for the sake of convenience, brevity and to avoid repetition. The case of the plaintiff is that, plaint A schedule property belongs to him by virtue of jenmom assignment deed No.1010/1996. Ext.A1 is the certified copy of the said document and Ext.A2 is the original land tax receipt. According to the plaintiff, there is a 3 feet width pathway on the east of the item No.2 property in the said deed. According to the plaintiff, the plaint B schedule property is a part and parcel of plaint A schedule property. The said pathway has been using by the 1st defendant for which the plaintiff has no objection.

15. There are two schedules of property in the plaint. A schedule property having an extent of 0.04616 hectares (1 acre 14 cents) situate in R.S No.447/06. B schedule property is the 3 feet pathway situates on the eastern side of A schedule property starting from Teachermukku and ends Peral Mosque.

16. The specific allegation against the defendants is that defendant No.1 tried to widen the said pathway. According to the plaintiff, during the course of the proceedings, the 1st defendant had widened 3 feet pathway by dumping soil on either side. Hence, the plaintiff amended the plaint and incorporated the widened area as C schedule and sought the relief of mandatory injunction. Per contra, the specific case of the defendants is that the disputed pathway is not a pathway but a road known as Teachermukku - Chorakkandi road. According to the defendant, the said road is having more than 3 meter width and 450 meters length. The said road is a panchayath road which is entered in the panchayath register. According to the defendants, after obtaining temporary injunction order, the plaintiff has caused damage to the said road. The said road is a public road which has been using the plaintiff and local public for the last several years. According to defendant No.2, they had spent ₹50,000/- for the road. As the plaintiff, his wife and son destroyed the said road partially, they had given a complaint before Padinjarathara police and a crime was registered as crime No. 181/17 against the plaintiff, his son, wife of the offences punishable u/s 427 IPC and u/s 3(2)(e) of PDPP Act. Ext.B1 is the copy of relevant page of panchayath Asssets register, Ext.B2 is the certified copy of FIR in crime No. 181/17, Ext.B3 is the certified copy of scene mahazar in crime No.181/17, Ext.B4 is the certified copy of final report in the said crime , Exts.B5 and B6 are the true copies of resolutions of Padinjarathara Grama Panchayat, Ext.B7 is the estimate, Ext.B8 is the true copy of joint pass book, Ext.B9 is the copy of agreement, Ext.B10 is the true copy of measurement book.

17. Advocate Commissioner had inspected the property twice and filed Exts.C1 and C3 reports and Exts.C2 and C4 rough sketch and survey plan.

18. The main dispute to be determined in this case is the nature of plaint B schedule property. Whether the plaint B schedule property is a pathway or road? Admittedly, plaint B schedule property is the red shaded area in Ext.C4 survey plan and the same was reported in Ext.C3 report. As per Ext.C3 report, the said property is having 3.10 meter width and 15.1 meters length, though it was 2.5 feet width at the time of the first inspection of advocate commissioner.

19. To prove the case of plaintiff, he has adduced evidence in tune with plaint averments. According to the plaintiff, plaint B schedule property is a part of plaint A schedule property. According to the defendants, it is a panchayath road entered in the panchayath Assets register. As per Ext.C4 survey plan and Ext.C3 report “പ്രതിയുടെ വീടിന്റെ മുൻവശത്തു നിന്നുള്ള ചേരക്കണ്ടിക്കുന്ന് -പറമ്പൻപടി മണ്ണ് റോഡ് ചെന്നലോടിലേക്കു എത്തിച്ചേരുന്ന മൺറോഡിലേക്ക് അന്യായം ബി പട്ടിക വസ്തു കൂട്ടിച്ചേർത്ത് ടീച്ചർമുക്ക്-പേരാൽ കോളനി റോഡിലേക്ക് മുട്ടിച്ചിട്ടുള്ളതാണ്.” Chorakkandikunnu - Parambanpadi mud road and the house of defendant were clearly shown in Ext.C2 rough sketch. When the learned counsel put specific question with respect to Chorakkandikunnu-Parambanpadi road as shown in Ext.C2 rough sketch, PW1 has answered that he is not aware about the same. He does not know the width of Chorakkandikunnu-Parambanpadi road. Here it is pertinent to note that, it has come out in his evidence that Teachermukku-Peral road situate on the western side of his property and his house situates on the further western side of the road. His house is facing towards Teachermukku-Peral road. He has further deposed that Chorakandikunnu-Parambanpadi road starting from Padinjarathara-Kalpetta road and move firstly towards south then to west.

PW1 has admitted that the said road ends to the courtyard of the house of defendant No.1. That road was clearly shown in Ext.C2 rough sketch. Plaintiff B schedule property lies from there to Teachermukku-Peral colony road as clearly shown as the disputed red shaded area in Ext.C4 survey plan.

20. PW1 has admitted in evidence that a case was registered against him, his wife and son on the complaint of defendant No.2 with an allegation of destruction of public property. He has further deposed that the allegation in the said complaint is that they destroyed Teachermukku-Chorakkandi road. Teachermukku-Chorakkandy road starting from Teachermukku-Peral road to Chorakkandikunnu-Parambankadi road and then moves to Kalpetta-Padinjarathara road. It is the road as shown in Ext.C4 survey plan including the disputed area at the entrance. Teachermukku-Chorakandi road found a place in Ext.B1 document. Ext.B1 would shows in column No.2 that, it is a road having a length of 450 meters and a width of 3 meters. PW1 has admitted that he knows the contention of the defendants that, the disputed property is a panchayath road. He has denied the question of learned counsel for the defendant that, the road shown in Ext.B1 document is the plaintiff B schedule property. But he has not explained where the road shown in Ext.B1 document situates. He has not taken any step to show the road as shown in Ext.B1 document to the advocate commissioner and thereby to brought before the court. Though plaintiff has contented that, he has not relinquished any portion of land for road purpose, there is no explanation for the entry in Ext.B1 document. Exts.B2 to B4 documents would show an allegation against the plaintiff and his family that they had destroyed the mud road starting from Teachermukku - Chorakkandikunnu colony road. As per Exts.B2 to B4 documents, the date of destruction is on 05.08.2017. The plaintiff has moved the suit before the court on 03.08.2017. The Advocate Commissioner inspected the property at first on 07.08.2017. In this context, the case of defendant No.1 is that after filing the suit and before taking out the commission, the plaintiff has reduced

the width of the road by excavating soil from either side of the road. Though the suit was instituted on 03.08.2017, the plaintiff had taken out the Commission only on 07.08.2017. It is stated in Ext.C1 report that both sides of B schedule way were excavated. As per Ext.B2 FIR the accused persons destroyed Teachermukku-Chorakkandikunnu colony road on 05.08.2017. As per Ext.B3 scene mahazar “സംഭവസ്ഥലം മണ്ണ് റോഡ് സുമാർ 3 മീറ്റർ വീതിയിലും ആയത് ഇരുവശത്തേക്കും സുമാർ 30 cm കഴിച്ചുള്ള ബാക്കി ഭാഗങ്ങൾ 1 മീറ്റർ ആഴത്തിൽ കിളച്ച് മണ്ണ് വെട്ടിമാറ്റി കണ്ടും വെട്ടിയതായി കണ്ടു.” On appreciating Ext.C1 report along with Exts.B1 to B4 documents and the evidence on record, this court finds that, the available evidence would probabalize the contention of the defendant than the case of plaintiff.

21. Advocate Commissioner was examined as PW2 in this case. He has deposed during cross-examination that, he had inspected the Asthi register of defendant No.2 and had seen Teachermukku-Peral colony road in the Asthi register. But, such a road is not seen in Ext.B1 document. At the same time, PW2 has admitted that the 2nd entry in Ext.B1 document is the Teachermukku-Chorakkandi road. He has further admitted that there were two roads at the spot. First one is starting from Teachermukku to colony and 2nd one is Teachermukku to Chorakkandi. He could not say the disputed portion in Ext.C4 plan is a public way. As per Ext.C4 plan the total extent of the property situate in R.S No. 447/6 is 0.4616 hectare and the extent of disputed red shaded are is shown as 0.0050. As per the plaint, the extent of plaint A Schedule property is 0.4616 hectare. According to the plaintiff, plaint B schedule property is a part of plaint A schedule property. If the extent of plaint A & B schedule property as shown by the advocate commissioner in Ext.C4 plan is added together, the extent will be more that 0.4616 hectare. Further, it has come out in evidence that Chennalode road as shown in Ext.C4 plan and Chorakkandikunnu -Parambanpadi road are one and the same.

22. On appreciating the whole evidence before the court, it is seen that the disputed property is not a pathway as contented by plaintiff, but a public road starting from Teachermukku to Chorakkandikunnu-Parambanpadi road and it found a place in Ext.B1 road register. The available evidence would probabilise the case of defendant than the case of plaintiff. There is absolutely no convincing and satisfactory explanation for the entry in Ext.B1 document. Plaintiff has not succeeded in rebutting the evidence of defendants that the plaint B schedule property and the road shown in Ext.B1 document is one and the same. Further, the plaintiff has suppressed the registration of case against him and his family and with respect to Exts.B2 to B4 documents, in the plaint. The evidence on record would disprove the contention of plaintiff that the plaint B schedule property is a part of plaint A schedule property and it is in his possession. As the plaintiff failed to prove the same, he is not entitled to get an equitable relief of injunction.

23. The plaintiff by way of amendment pleaded that, defendant No.1 widened the pathway and the said widened area is incorporated as plaint C schedule and sought mandatory injunction on the said property. Surprisingly, PW1 during cross-examination has deposed that he doesn't remember plaint C schedule. The Advocate Commissioner has not shown plaint C schedule property in his report and plan. As there is no specific C schedule property before the court and as there is no evidence before the court to prove the allegation against defendants in respect of C schedule property, plaintiff is not entitled to get any relief on C schedule property also. In the light of the above discussed evidence, this court finds that the plaintiff has not succeeded in proving his case. Hence, these points are found against the plaintiff.

24. **Points No.5 and 6:-** In view of the findings on points No.1 to 5, this court finds that the trial court has correctly appreciated the evidence on record and

arrived at a correct finding. As there is no illegality or irregularity in the judgment and decree of the trial court, there is no need to interfere with the judgment and decree of the trial court. Hence, the appeal is liable to be dismissed.

In the result,

1. The appeal suit is hereby dismissed.
2. The judgment and decree of the trial court in OS 185/17 are hereby confirmed.
3. Both parties shall bear their respective costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 30th day of March, 2026)

SUB JUDGE

Appendix: Nil.

SUB JUDGE

Typed by : Mini S
Compared by : Preethi P.B

Fair Judgment in AS 50/2023
Dated 30.03.2026