

IN THE COURT OF THE MUNSIF, TIRUR
Present: Sri. SANU C., MUNSIF
Thursday, the 27th day of February, 2025
the 8th day of Phalguna, 1946
ORIGINAL SUIT No.314 OF 2022

Between:

Krishnankutty, 54 years,
S/o.Chattavan Velayudhan, Ozhur amsom,
Eranellur desom, Ozhur P.O., Tirur Taluk,
Pin – 676313.

Plaintiff

And:

The Secretary,
Ozhur Grama Panchayath, Ozhur P.O.,
Malappuram District, Pin – 676313.

Defendant

This suit having been finally heard on 14-02-2025 in the presence of Sri.Nandakumar and of Smt.Soumya.K.P, Advocates for the plaintiff and of Sri.K.V.Sabir and of Sri.Abdul Khader.P.P, Advocates for the defendant, defendant reported no instruction, called absent set exparte and the court on 27-02-2025 delivered the following;

J U D G M E N T

Suit for permanent prohibitory injunction restraining the defendant and his men from obstructing peaceful possession and enjoyment of plaint A and B schedule properties and from encroaching upon the plaint A schedule property and from constructing a road on the B schedule property for vehicular access and for mandatory injunction directing the defendant to restore the B schedule property.

2. **The plaint averments in brief, are as follows:** The plaint A schedule property belongs to the plaintiff by virtue of document No.3461/2009 of SRO,

Tirur. The eastern part of the plaintiff A schedule property is a 4 feet wide way known as Chathanpadi-Njaloar. The plaintiff is in possession of the property in plaintiff A schedule up to the said way. The plaintiff A schedule property is shown as different number in the deed but are located as one. On 28.02.2021, the defendant tried to widen the said way by raising up the soil from the area adjacent to the said 4 feet way. The area raised by soil is an area included in plaintiff A schedule property. The said portion is shown as plaintiff B schedule. B schedule property is part of plaintiff A schedule property. The northern side of the above said way is owned by Puliyeri Shekharan and the access to the property of Shekharan and others is through the said 4-feet wide road. The eastern part of the said way is owned by Thupayiparampil Cherutty. As part of the road widening, Cherutty has given a four-feet wide way from his property to the Panchayat with the consent of Cherutty. Accordingly, the defendant is trying to change the width of the way to 12 feet and make it suitable for vehicular traffic. The defendant did not obtain any permission or consent from the plaintiff to take the property from the property belonging to the plaintiff. On 16-01-2020 and 15-05-2020, the plaintiff filed applications before the Ozhur Grama Panchayat Secretary, stating that it was not permissible to construct a road on the property covered by plaintiff scheduled property or to sanction funds for road construction. However, due to the fact that the above applications were not accepted, the defendant proceeded with the construction of the road including plaintiff B schedule property. Subsequently, in the above circumstances, a complaint was filed before the Ozhur Grama Panchayat

Secretary on 25-01-2021 to get the illegal road construction work stopped. Later, the plaintiff filed an application under the Right to Information Act before the Right to Information Officer on 28-1-2021, but received a reply on 22-2-2021 stating that none of the information requested by the plaintiff was available for the said application. The plaintiff sent a legal notice to the defendant on 24-03-2021, but the defendant has sent a reply notice showing false information. The defendant intend to complete the road construction illegally by any means and convert the 4 feet wide road into a 12 feet wide road with vehicular traffic facilities. The defendant or anyone else has no right to use of the plaintiff schedule properties. The plaintiff alone owns the plaintiff B schedule property included in the plaintiff A schedule property. The plaintiff has not given permission to the defendant to attach the part of the property to the road. Hence the suit.

3. The learned counsel for the defendant reported no instruction. Defendant remained absent before court, his name was called and case against him was decided as *ex parte*.

4. Plaintiff filed affidavit in lieu of examination in chief and she was examined as PW1. Ext. A1 to A5, Ext.A6 series and Ext.A7 were marked on the side of the plaintiff and Ext.C1 and C2 were marked as court exhibit.

5. Heard the counsel for the plaintiff.

6. PW1 filed affidavit in lieu of examination in chief in tune with the averments in the plaint and the same remains unchallenged and unrebutted. Hence, affidavit was accepted. PW1 contended that the plaintiff A schedule property

belongs to the plaintiff by virtue of Ext.A1 document. The tax receipt is marked as Ext.A2. The eastern part of the plaintiff A schedule property is a 4 feet wide way known as Chathanpadi-Njaloor. The plaintiff is in possession of the property in plaintiff A schedule up to the said way. On 28.02.2021, the defendant tried to widen the said way by raising up the soil from the area adjacent to the said 4 feet way. The area raised by soil is an area included in plaintiff A schedule property. The said portion is shown as plaintiff B schedule. Accordingly, the defendant is trying to change the width of the said way to 12 feet and make it suitable for vehicular traffic. The defendant did not obtain any permission or consent from the plaintiff to take the property from the property belonging to the plaintiff. PW1 further contended that On 16-01-2020 and 15-05-2020, the plaintiff filed applications before the Ozhur Grama Panchayat Secretary, stating that it was not permissible to construct a road on the property covered by plaintiff scheduled property or to sanction funds for road construction. The said applications are marked as Ext.A3 and Ext.A4 respectively. Subsequently, Ext.A5 complaint was filed before the Ozhur Grama Panchayat Secretary on 25-01-2021 to get the illegal road construction work stopped. The plaintiff sent a lawyer notice to the defendant on 24-03-2021, but the defendant has sent a reply notice showing false information. The lawyer notice, postal receipt and acknowledgment card are marked as Ext.A6 series and reply notice of defendant is marked as Ext.A7. The Advocate Commissioner inspected the plaintiff schedule property and filed Exbt. C1 and C2 report and plan. Advocate commissioner reported that, in Ext.C2 plan, plaintiff A

schedule property is shown as 'ABCD' in Ext.C2 plan and plaint B schedule property is shown as 'PQRS'. It can be seen that Puliyeri Shekharan possessions are located to the north of the plaint A scheduled property, the 4 feet wide road is located to the east, and the Chathan Padam Njaloormana Road is located to the south. It can be also seen that defendant had raised the red stone and soil along the 4 feet wide road located to the east of the plaint B schedule, including the roads owned by the plaintiff and also the plaintiff's B schedule property was laid with granite. No contra evidence was tendered on the side of defendant. Affidavit along with the documentary evidence was tendered by PW1 to prove his case. Therefore, this Court is satisfied that the plaintiff has proved his case by adducing cogent and reliable evidence. Hence the plaintiff is entitled to a decree as prayed for.

In the result, suit is decreed as follows:-

- 1) Defendant is hereby directed by way of mandatory injunction to restore the plaint B schedule property.
- 2) Defendant is hereby restrained by permanent prohibitory injunction from obstructing peaceful possession and enjoyment of plaint A and B schedule properties and from encroaching upon the plaint A schedule property and from constructing a road on the B schedule property for vehicular access.
- 3) Defendant shall pay costs.

(Dictated to the Confidential Assistant, transcribed and typed by her,

corrected and pronounced by me in open court, this the 27th day of February, 2025)

MUNSIFF.

Appendix : Nil.

Plaintiff's witnesses :

PW1: Krishnankutty.

Defendant's Witnesses : Nil

Plaintiff's Exhibits :

A1 : 31-08-2009 : Jenmam Assignment Deed No.3461/2009

A2 : 26-05-2022 : Tax receipt.

A3 : 15-05-2020 : Photocopy of Application before Ozhur Grama Panchayath with receipt.

A4 : 16-01-2020 : Photocopy of Application before Ozhur Grama Panchayath with receipt.

A5 : 25-01-2021 : Photocopy of Complaint before Ozhur Grama Panchayath with receipt.

A6(a) : 24-03-2021: Registered lawyer notice.

A6(b) : 24-03-2021: Postal receipt.

A7 : 10-04-2021: Registered Reply notice.

Defendant's Exhibits : Nil.

Court Exhibits :

C1 : 23-12-2022: Commission report submitted by Adv.Asma.V.P.

C2 : 23-02-2022: Plan submitted by Adv.Asma.V.P.

MUNSIFF

Typed by : Krishnakumari V

Compared by :1. 2.

Fair Judgment in OS.314/2022
Dated. 27-02-2025
