

IN THE COURT OF THE MUNSIFF, KOTTAYAM.
Present:- Smt. Jyothi Babu R., Principal Munsiff

Saturday, 31st day of January 2026
11th day of Magha 1947

O.S No. 618/2022

Plaintiff :-

Jibu Mathew , aged 46, Kochupurackal House,
Pathamuttam Kara, Pathamuttam P.O.,
Panachikkadu Village, Kottayam Taluk, Kottayam District,
PIN 686532.

By Adv. Anil D Kartha

Defendant:-

Aliyamma Thomas, W/o George Philip @ Prasad,
aged about 60 years, residing at Kuzhiyadithara House,
Pariyaram Kara, Pariyaram P.O., Puthuppally Village,
Kottayam Taluk, Kottayam District, PIN 686021.

By Advs. Vinu Jacob Mathew, Alby Abraham,

Bibin Varghese

This suit having been finally heard on 23.01.2026 and the
court on 31.01.2026 delivered the following:

JUDGMENT

Suit for permanent prohibitory injunction.

2. The plaint averments in brief are as follows:- The plaint
schedule Item No.1 property belonged to Thomas Varghese by

virtue of Sale Deed No. 2686/1986. The defendant is having property on the eastern and northern sides of the plaint schedule Item No.1 property. The property that is situated on the northern side of the plaint schedule Item No. 1 property was scheduled as plaint schedule Item No. 2 property. The plaint schedules properties are lying at a lower level and very much prone to flooding during heavy rains. There was a canal on the eastern side of the plaint schedule Item No. 1 and No. 2 properties through which rain water got drained. The rain water that would get accumulated in the plaint schedule properties would gradually drain through the above said canal. The defendant intended to sell her property in plots and with that intention she started to dump soil in the plaint schedule Item No. 2 property in such a way as to obstruct the canal. If the property is reclaimed, it would cause obstruction in the canal and would ultimately cause flooding. On account of the protest of the local inhabitants, the defendants stopped the illegal dumping of soil in the plaint schedule Item No.2 property. On enquiry, it has come to the knowledge that the defendant had not obtained any permission from any authority for filling up her property with soil. On 29.10.2022, the defendant

attempted to bring soil to plaint schedule Item No. 2 property. When the same was questioned by the plaintiff, defendant and her men threatened the plaintiff that they would do anything in their property. In order to restrain the defendant from committing any illegal acts, the suit was necessitated.

3. The defendants filed a written statement raising the following contentions:- The plaintiff has no locus standi to file this suit on behalf of Thomas Varghese. The plaintiff has no right to represent the original owner without a proper authority. The plaint schedule Item No. 2 property belonged to the defendant and it was a wetland as per Thandaper records. Even though the said property was wetland, it was not included in the data bank prepared by the Government and the same was not used for paddy cultivation from the time immemorial. The plaint schedule Item No. 1 and 2 properties are lying at a higher level than the canal. It was true that there was a canal having a width of 1 meter passing through the eastern and western side of the plaint schedule Item No. 1 and 2 properties. As the plaint schedule Item No. 1 and 2 properties lie at a higher level, there was no chance of flooding during rainy season as alleged by the plaintiff. Allegation that the

intention of the defendant was to sell the plaint schedule Item No. 2 property in plots and with that intention the defendant dumped soil in the plaint schedule Item No. 2 property was false and hence denied. The defendant dumped soil in his property only to level the gaps in between the rubber trees planted in the plaint schedule Item No. 2 property. The defendant had every right to dump soil in his property for the protection and preservation of the above said rubber tree cultivation. The properties surrounding the plaint schedule properties were dry lands and were not cultivated with paddy for several years. The water flow from the said properties drain out through the said canal and the defendant never caused any obstruction to the free flow of water through the canal. All the other allegations raised by the plaintiffs were false and hence denied. The plaintiff, with malicious intention, closed the above mentioned canal and obstructed the free flow of water through his property. Hence the defendant prayed to dismiss the suit.

4. The issues arose for consideration are as follows:-

1. Is the plaintiff has any right over the plaint scheduled

item no.1 property?

2. Is the plaintiff entitled to a decree of permanent prohibitory injunction as prayed for?

3. Reliefs and costs?

5. From the side of the plaintiff, PW1 and PW2 were examined. Exhibit A1 and Exhibit A2 were marked. From the side of defendant DW1 was examined. Exhibit C1 series were marked as court exhibit.

6. Heard the learned counsel for the plaintiff and the defendant.

7. Issue no. 1 and 2:- For the sake of convenience and to avoid repetition of facts and evidence, these issues are considered together.

8. The case of the plaintiff is that the plaintiff is in possession and management of the plaint schedule Item No. 1 property which belonged to Thomas Varghese, who in turn obtained the said property by virtue of Sale Deed No. 2686/1986. The defendant was the owner and possession of plaint schedule Item No. 2 property which is lying on the northern side of the plaint schedule Item No. 1 property. There was a

canal on the eastern side of the plaint schedule Item No. 1 and 2 properties through which rain water got drained. The defendant, with the intention to sell her property into plots, had started to dump soil in the plaint schedule Item No. 2 property in such a way as to cause obstruction to the flow of the water in the canal. It has come to the notice that the defendant had not obtained any permission or consent from the authorities concerned for reclaiming in the plaint schedule Item No. 2 property and hence to restrain the defendants from causing any obstruction to the free flow of water through the canal and from illegally reclaiming Item No. 2 property, this suit was necessitated. The defendant denied the allegation and contented that she has no intention to sell her property and contented that the soil was dumped in her property for the protection and preservation of the rubber cultivation in the plaint schedule Item No. 1 and 2 property and hence prayed to dismiss the suit.

9. It is to be noted that the plaint schedule Item No.1 property belonged to one Thomas Varghese, who obtained the same by virtue of sale deed No. 2686/1986. Exhibit A1 is the certified copy of sale deed No. 2686/1986, which would go to show that said Thomas Varghese

obtained plaint schedule Item No. 1 property. Exhibit A2 is the tax receipt which would go to show that said Thomas Varghese was paying tax with respect to the plaint schedule Item No.1 property. It is to be noted that the plaintiff alleged that he was in possession and management of the plaint schedule Item No. 1 property. However no documents was produced by the plaintiff to show that he was in possession of the plaint schedule Item No.1 property. He failed to produce any power of attorney or any authorization letter to show that he was authorised by the said Thomas Varghese to conduct case on behalf of the said Thomas Varghese.

10. The plaintiff was examined as PW1. During cross-examination he deposed that he was not in possession of the plaint schedule Item No.1 property. The question reads “ഈ കേസിലെ അന്യായപട്ടിക ഒന്നാം നമ്പർ വസ്തു താങ്കളുടെ കൈവശത്തിലും ഉടമസ്ഥതയിലും ഇരിക്കുന്ന വസ്തുവല്ല. To which he answered which reads, “അല്ല”. PW1 admitted that no power of attorney was executed in favour of the plaintiff for conducting this case.

11. The specific allegation raised by the plaintiff is that the defendant who is the owner-in-possession of the plaint schedule Item No. 2 property which was lying on the northern side of the plaint schedule Item No. 1 property, was trying to reclaim the property by dumping soil in the plaint schedule Item No. 2 property. The specific contention raised against the said allegation by the defendant was that the soil was loaded in the plaint schedule item No. 2 property for the purpose of protecting the rubber trees standing in the plaint schedule item No. 2 property.

12. The plaintiff alleged that the plaint schedule Item No. 2 property was a paddy field. But during cross-examination he admitted that there was rubber cultivation in the plaint schedule Item No.2 property. PW1 further admitted that in the plaint schedule Item No. 1 also there was rubber cultivation.

13. Exhibit C1 series are the report and rough sketch prepared by the commissioner who had visited the property on 01.11.2022. The Commissioner has reported that the plaint schedule Item No. 1 and 2 properties are lying next to each other. He reported that there was a

canal lying on the eastern side of the plaint schedule Item No. 1 and 2 property and further reported that there was no water flowing through the canal at the time when he visited the property. The commissioner has reported that there was rubber cultivation in the plaint schedule Item No. 2 property and soil was seen dumped in the plaint schedule Item No. 2 property and it was further reported that there was accumulation of water at some places in the plaint schedule Item No. 2 property. The specific contention raised by the defendant was that in order to level the gap between the planted rubber trees he had dumped soil in his property. If not, the rain water would get accumulated in those gaps and that would cause decay to the bark of the said rubber trees. The commissioner has suggested that during rainy season there would be chance for flooding of water in the plaint schedule Item No. 1 and other neighbouring properties. It was further reported that there was a canal in the middle of the plaint schedule Item No. 1 property. From the available evidence it could be seen that in both plaint schedule item no.1 and 2 property there was rubber cultivation. Though the commissioner has reported that soil was seen dumped in the plaint schedule Item No. 2 property, it was not reported that the defendant was trying to reclaim the plaint schedule Item No. 2 property.

14. It is to be noted that already there was rubber cultivation in the plaint schedule Item No. 2 property. Though the plaintiff had alleged that the neighbouring property owners also had raised objection to the act of dumping of soil in the plaint schedule Item No. 2 property, the plaintiff had not taken any steps to examine any of the neighbouring property owners to substantiate his claim.

15. The defendant has every right to protect his property and the trees from getting damaged. She has undertaken that she has no intention to sell the property in plots. The plaintiff has alleged in such a manner that the defendant had the intention to sell the property into plots and he came to know about the same through the brokers. However, none of the brokers were examined by the plaintiff to prove the same. There is nothing before the court to come to a conclusion that the soil was deposited in the plaint schedule Item No. 2 property with an intention to reclaim the same. Even the commissioner has not reported regarding any indication of dividing the property into plots.

16. As the plaintiff could not establish that the defendant was trying to reclaim the property by depositing the soil, the reliefs claimed

by the plaintiff could not be allowed. However it is made clear that even if the defendant would intend to reclaim the plaint schedule property she has to follow the rules as contemplated in the statute. Issues found accordingly.

17. Issue no.3:- Considering the facts and circumstances of the case, the parties shall suffer their respective costs.

In the result, the suit dismissed.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in open court, on this the 31st day of January, 2026.

**Sd/-
Jyothi Babu R.
Principal Munsiff**

APPENDIX

Exhibits marked for the Plaintiff:

A1	10.09.1986	Certified copy of Sale Deed no. 2686/1986
A2	03.10.2024	Basic Tax receipt no. (KL05032309169/2024

Exhibit marked for the Defendant: Nil.

Court Exhibit:

C1	01.11.2022	Commission Report
C1(a)	-	Rough Sketch

Third Party Exhibits:-Nil

Witness examined for Plaintiff :-

PW1	09.10.2025	Jibu Mathew
PW2	12.11.2025	Adv. Jeevamol M Gopi

Witness examined for Defendants :- Nil.

DW1	28.11.2025 and 02.12.2025	Thomas Philip
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Id/-
Principal Munsiff

//True copy//

Copied by:
Compared by:

Sd/-
Jyothi Babu R.
Principal Munsiff

Prl. Munsiff's Court, Kottayam

Copy of Judgment in

O.S. No. 618/2022

Dated: 31.01.2026