

IN THE COURT OF THE SUB JUDGE, CHERTHALA

Present: Ms. Lakshmy.S, Sub Judge

Thursday, the 13th November 2025/ 22nd Karthika 1947

IA.2/2025 in AS.45/2025
(Filed on 08.10.2025)

Petitioners/Appellants:

1. The State of Kerala, represented by District Collector, Collectorate, Alappuzha
2. The Tahsildar, Taluk office, Cherthala. P.O, Cherthala
3. The Village Officer, Ezhupunna Village Office, Eramallor.P.O, Cherthala
4. The Assistant Executive Engineer (NH) Division, PWD, Cherthala

By Addl.Govt.Pleader, Cherthala

Counter Petitioners/Respondents:

1. Hareendranath.G, aged 59, S/o R. Gopinatha Menon, Thalappallil House, Thrichattukulam P.O, Cherthala
2. National Highways Authority of India, Project Director, Project Implementation Unit Cochin, National Highways Authority.
3. The Secretary, Ezhupunna Grama Panchayat, Eramallor.P.O, Cherthala

**R1 By Adv.T.Jayakrishnan, R2 Exparte,
R3 By Adv.Ambili.P.Madhavan**

This petition coming on for hearing on 11.11.2025 and the court on 13.11.2025 passed the following:

ORDER

This petition is filed by the appellants under O.41 R.5 and S.151 CPC to stay the operation of judgment and decree in OS.296/2019 of the Additional Munsiff's Court, Cherthala till the disposal of the appeal.

2. The averments in the petition, in brief, are as follows: -

The said suit was instituted for mandatory and prohibitory injunction, to direct the defendants to remove item No.2 portion of the road constructed on plaintiff item No.1 property. The 1st respondent has filed E.P.No.158/2025 before the Munsiff's Court, Cherthala, to execute the decree by removing a portion of the National Highway, which is being used by the public at large. The said execution, if proceeded with, would cause serious prejudice and irreparable injury to the appellants and to the public as well. The appellants have a strong and bona fide case in appeal, and unless the execution proceedings are stayed during the pendency of the appeal, the very purpose of filing the appeal would be defeated and the appellants would be put to irreparable loss and hardship. Hence the petition.

3. The respondents appeared. They did not file any written objection, but submitted that the petitioners cannot be permitted to alter the status of the disputed property under the cover of stay order.

4. Heard and perused the records.

5. The following points arise for consideration: -

1. Is there any sufficient ground to stay the operation of judgment and decree in O.S.No.296/2019 of the Additional Munsiff's Court, Cherthala?
2. Is the petition allowable?
3. Order as to costs?

6. **Point Nos.1 and 2:** The suit is for mandatory and prohibitory injunction on the allegation that plaint item No.2 is part of item No.1 property which belongs to the plaintiff and the defendants tried to make construction of road through the same. The defendants appeared and filed written statement denying the right of plaintiff over plaint schedule item No.2 property. According to them the property is road puramboke and prayed for dismissal of the suit.

7. The trial court after appreciating the pleadings and evidence of both parties, decreed the suit against which the present appeal is filed. The trial court mainly relied upon the Commission Report which identified the properties based on the documents produced by the plaintiff. The main grounds raised by the appellants is with respect to the right of plaintiff over the disputed property. It is submitted that a proper appreciation of the documents would show that the plaintiff has no right over the property and that no sufficient opportunity was given to the defendants to substantiate their case.

8. The grounds raised by the appellants have got much significance to decide the appeal on merits as the disputed area is where the construction of National Highway is undertaken. The submission of the respondents to direct the

parties to maintain status quo would adversely affect the whole construction of National Highway. If the operation of decree and judgment is not stayed, the appellants would be put to irreparable hardships. The points are found in favour of the petitioners.

9. **Point No.3** : In view of findings on point no.1 and 2, the IA is to be allowed, without costs.

In the result, IA is allowed, without costs and the operation of judgment and decree in OS.296/2019 dt.21.11.2024 is stayed till the disposal of the appeal.

Dictated to the Confidential Assistant, typed by her directly to the Computer, corrected and pronounced by me in open court on this the 13th day of November, 2025.

Sd/-
LAKSHMY. S,
SUB JUDGE.

Appendix : Nil

Id/-
SUB JUDGE.