

**IN THE COURT OF THE MUNSIFF, PERUMBAVOOR**

**Present:- Smt. Sumey Chandran, Civil Judge (Junior Division)**

Wednesday, the 18<sup>th</sup> day of June, 2025/ 28<sup>th</sup> Jyaishta 1947

**I.A No.03/2025 in OS.75/2025**

**Petitioner:-**

Varghese, Aged 75 years, S/o. Ouseph, Edassery House,  
Okkal P O, Okkal Kara, Chelamattam Village,  
Kunnathunadu Taluk, Pin: 683 550.

By Adv. K M Alias & P V Shiji

**Respondents-**

- 1 State of Kerala, represented by Ernakulam District Collector,  
Civil Station, Kakkanadu, Kakkanadu P O, Ernakulam,  
Pin: - 682 021
- 2 Assistant Executive Engineer, PWD Roads Division, Near Mini  
Civil Station, Perumbavoor, Perumbavoor P O, Pin: 683 542.
- 3 Assistant Engineer, PWD Roads Division, Near Mini Civil  
Station, Perumbavoor, Perumbavoor P O, Pin: 683 542.

By Addl. Government Pleader

This petition having been finally heard before me on 18/06/2025 and the court on same day passed the following:-

**O R D E R**

1. This is an application filed under Order XXXIX Rule 1 of the Code of Civil Procedure. The petitioner, who is the plaintiff in the above suit, claims ownership and possession over the plaint schedule property by virtue of a registered sale deed. At the time of purchase, there was an old building situated in the property, which was later reconstructed by the petitioner. The said building is now let out on rent and tenants are residing therein. The petitioner resides approximately 18 kilometres away from the plaint schedule property.
2. The plaint schedule property is clearly demarcated with granite foundations on all four sides, and a compound wall measuring

approximately 3 to 4 feet in height stands above it. On the eastern side of the property, there exists a Panchayat road, which lies at a higher elevation, approximately 3.5 feet above the level of the plaint schedule property. The Panchayat had constructed a granite foundation between the property and the eastern side of the said road. After the purchase, the petitioner constructed a solid brick compound wall on this side, resting upon the existing granite foundation.

3. During construction of the wall, the petitioner left an opening on the northern side at the base, measuring about one foot in width, to allow for the free flow of rainwater from the road. Recently, the Public Works Department (PWD) commenced road-widening activities and initiated the construction of a culvert in front of the property. It is alleged that respondents, particularly the third respondent, are attempting to divert rainwater and wastewater from the northern and southern sides of the road, through the culvert and the existing opening, directly into the plaint schedule property.
4. The petitioner apprehends that if this diversion is permitted, it would lead to heavy accumulation of water and slush within the property, thereby causing damage to the cultivation and rendering the premises unfit for habitation. It is also pointed out that the property on the western side has been levelled by filling it with earth, making it impossible for the water to drain in that direction. Despite bringing the issue to the attention of the authorities, no remedial action was taken.
5. It is further alleged that the respondents had begun construction activity by breaking a portion of the road surface and creating a new passage, and that

they attempted to remove granite stones on the northern side of the compound wall. The petitioner was able to intervene and prevent further action. The apprehension remains that unless restrained, the respondents may forcibly channel water through the plaint schedule property, causing serious and irreversible consequences.

6. The respondents contend that the petition is not maintainable. They do not dispute the petitioner's title or possession over the plaint schedule property. However, they assert that the property is located adjacent to the public road known as Thamatachal–Malayidukku Road, which is under the jurisdiction and control of the Kerala Public Works Department.
7. It is submitted that the plaint schedule property lies at a lower elevation compared to the adjoining road and neighbouring properties. An opening previously existed at the north-eastern corner of the compound wall, situated at a level lower than the public road, to facilitate the natural flow of rainwater through a narrow granite gap. According to the respondents, this outlet had been in existence for decades and was never obstructed, until recently, when the petitioner closed the opening using tin sheets and cement blocks. This closure, they claim, has resulted in water logging on the road, adversely affecting pedestrians and road users.
8. The Commissioner's report corroborates that a concrete drain exists approximately 8 metres from the plaint schedule property and that water from the road continues to flow through the north-eastern corner via a narrow channel (chaal). The report also notes that the road was recently opened and a cross drain constructed by breaking the tarred surface.

9. The respondents argue that the closure of the outlet by the petitioner has blocked the natural outflow of water, causing water stagnation on the road. They further submit that on the northern side, the adjacent property lies 3 feet above the level of the plaint schedule property. A granite wall separates the two, and a 2-foot-wide *thodu* historically existed along the edge to carry water from west to south. They claim that this *thodu* has now been closed by the petitioner.
10. They assert that there is no artificial diversion of water; the flow is purely natural, and that the PWD constructed the cross-drain in accordance with Clause 209 of the Kerala PWD Manual to prevent accumulation of water on the public road. It is further contended that any drainage entering the plaint schedule property is consistent with long-standing usage, and that the petitioner has no right to obstruct the natural drainage path. The respondents conclude by praying that the petition be dismissed.
11. From the above rival contentions, the following points are settled for consideration:-
1. Have the petitioners made out a prima facie case?
  2. Is the balance of convenience in favour of the petitioners?
  3. Will the petitioners be put to irreparable loss and injuries in the event of not granting the interim prohibitory injunction order?
  4. Order as to costs?
12. Heard both sides. From the side of petitioner, Ext. A1 and A2 documents were marked. From the side of respondents, no oral or documentary evidence adduced. Ext. C1, C1(a) documents were also marked.

13. **Point Nos. 1 to 3:-** The petitioner claims ownership and possession over the plaint schedule property on the strength of a registered sale deed. He alleges that the property, which contains a residential building now let out to tenants, is bounded by a granite foundation and compound wall. The property lies adjacent to a Panchayath road on the eastern side, which is situated at a higher elevation than the petitioner's land. The grievance raised is that the respondents, as part of a road development project, are attempting to create or restore a culvert, which would result in rainwater and muddy water from the northern and southern sides of the road being diverted through the petitioner's land.
14. The petitioner alleges that such diversion would result in flooding and accumulation of water within the plaint schedule property, thereby rendering cultivation unviable and the premises uninhabitable. It is further contended that due to filling of the western neighbouring property and the lack of a natural outlet, any additional flow of water into the property would aggravate the problem. The respondents filed counter, contending that the plaint schedule property lies at a lower elevation and has customarily received water flow by natural gradient from the surrounding areas. It is stated that an opening previously existed at the north-eastern corner of the compound wall, and that the petitioner had unilaterally blocked this outlet using tin sheets and cement blocks, which led to stagnation of water on the public road. The respondents assert that the PWD road work is being carried out in accordance with engineering norms and deny any unlawful interference with the petitioner's property.

15. As per the report submitted by the Advocate Commissioner, it is observed that the adjacent properties situated on the northern and southern sides of the plaint schedule property are at a higher elevation. The Commissioner has specifically noted that, due to this gradient, the surface run-off and rainwater from the adjoining road and neighbouring plots tend to flow towards the plaint schedule property. The report further indicates that the drainage pattern, as it presently exists, is directed in such a manner that there is a real possibility of water accumulation within the petitioner's property, particularly in the absence of a proper outlet. These findings support the petitioner's apprehension that further diversion or concentration of water flow through any newly opened passage or culvert could result in damage to cultivation and peaceful enjoyment of the property. The contentions raised reveal a substantial dispute as to whether the flow of water into the petitioner's property is the result of natural gradient or is being artificially diverted by the respondents.
16. The Commissioner's report lends prima facie support to the plea that water flow is presently being directed towards the property and that unauthorised intervention in the drainage pattern may result in irreparable injury. The balance of convenience lies in preserving the present condition of the property and preventing any construction or modification that would result in lasting damage prior to adjudication.
17. However, the respondents have also expressed apprehension that the petitioner's construction has interfered with the existing drainage pattern. The Commissioner's report, on the other hand, reveals that the road was, in fact, opened and a cross drain was constructed by breaking and removing a

portion of the existing tarred surface, thereby altering the original layout and facilitating the directional flow of water towards the plaint schedule property.

18. Undertaking road development works as part of their official duties under the Kerala PWD Manual. However, such works must be executed in a manner that respects and does not infringe upon the lawful rights of neighbouring property holders. Any construction intended to prevent water stagnation on the public road must also ensure that it does not result in artificial diversion or undue discharge into private lands without a lawful basis or proper drainage provision.
19. **Point No. 4:-** Considering the facts and circumstances of the case, I am not inclined to allow the costs of the proceedings.
20. **In the result,** this petition is allowed as follows:-

The respondents, their agents or any person acting on their behalf, are hereby restrained until the disposal of the suit from creating any new opening, altering any portion of the compound wall, or otherwise modifying the boundary of the plaint schedule property so as to artificially divert or intensify the flow of water from the adjoining public road or properties into the plaint schedule property. This order shall not, however, prejudice any natural right of drainage through the plaint schedule property.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 18<sup>th</sup> day of June, 2025.

Sd/-

Sumey Chandran  
Civil Judge (Junior Division)

**Appendix:-**

**Plaintiff's Exhibits :-**

- A1 - 05/11/16 - Copy of Sale Deed No.5212/2016 of SRO,  
Puthencruz.
- A2 - 16/12/24 - Land Tax receipt of Tandaper No.8395 of  
Kizhakkambalam Village.

**Defendants' Exhibits :- Nil**

**Court Exhibits :-**

- C1, - 09/04/25 - Commission report and rough sketch submitted by  
C1(a) the Advocate Commissioner Vaishnav S.

**Plaintiff's Witnesses :-Nil**

**Defendants' Witnesses :- Nil**

**Court Witnesses:- Nil**

Id/-  
Civil Judge (Junior Division)  
( By Order )

// True copy //

Junior Superintendent

Typed by: jav  
Compd by :Prakash

Copy of Order in  
IA 03/2025 in OS 75/2025  
Dated : 18/06/2025