

IN THE COURT OF THE MUNSIFF, PUNALUR
 PRESENT :-Smt. Reshma R.S, Civil Judge, Junior Division
 Monday the 25th day of August 2025, 3rd day of Sravana 1947
IA 1/2025 in OS 220/2025

Between

Petitioners/ : 1. Deepa, aged 43 years, D/o. Kanakamallika residing at
Plaintiffs : 2. Kanakamallika, aged 70 years,
 D/o. Savithri kunjamma, residing at Neerottu Hills,
 Ayoor Muri, Edamulakkal Village, Punalur Taluk.
(By Adv. T.K.Feroze Khan for R1 and R2)

And

Respondents/ : 1. L.John, aged 75 years, S/o.Lukose, Shalom House,
Defendants : 2. Samson John, aged 43 years, S/o.L.John,
 Shalom House, Neeraicode, Ayoor, Punalur Taluk.
(By Adv. V.K.Thomas for D1)

This petition is coming on for hearing before me on 25.08.2025 and on the same day court passed the following.

ORDER

Application filed under Order XXXIX Rule 1 and 2 and section 151 of the Code of Civil Procedure Code, 1908.

2. **The application averments, in brief, are as follows:** - The applicants are the plaintiffs in this suit. The suit is filed for fixation of boundary, mandatory injunction, recovery of possession and other consequential reliefs. The 1st respondent is the father of the 2nd respondent and they are the neighbouring property owners. Plaint A schedule property belongs to the 1st applicant by virtue of a settlement deed No. 768/2015 of Chadayamangalam

SRO. The plaint A schedule property is cultivated with rubber. The properties of the respondents are scheduled as plaint B schedule property. The plaint A schedule property lies at a height of 1 - 2 meters from the B schedule property, with a mud wall separating the properties. The plaint A schedule property was well defined. There was barbed wire fencing on the western side on the mud wall and the poles of the wired fencing were fixed one meter inside the plaint A schedule property, leaving 100 cms of property on the west, beyond the poles. On 06/05/2025, the respondents excavated and removed earth from the eastern side of their B schedule property by encroaching upon the portions of plaint A schedule. The respondents encroached upon and annexed the western portion of plaint A schedule property at a length of approximately 57 meters from the south western corner of A schedule and 60 cms in width. The existing mud wall has been sliced at a width of 60 cms and the earth was removed and it is levelled with the B schedule. The respondents also excavated the boundary of B schedule at a depth to remove the lateral support of A schedule. The respondents uprooted the boundary stones fixed in between the A and B schedule properties. The encroached portion is scheduled as the plaint C schedule. The respondents excavated earth from the property to fill up their nearby paddy field. The applicants have filed complaints to geologist in this regard. The excavation done by the respondents resulted in the removal of lateral support of plaint A schedule property and it created a risk of collapse of A schedule property. The applicants have the right to lateral support from the

property of the respondents. The excavation destroyed the natural lateral support and hence the respondents have a legal obligation to provide artificial lateral support by constructing a retaining wall. Despite repeated requests, the respondents refused to vacate the encroached portion of A schedule property and to restore the original boundaries. The 1st applicant is residing at Trissur and the 2nd applicant is not in a position to prevent the illegal acts of the defendants. The applicants have a prima facie case and the balance of convenience is also in their favour. If this application is not allowed, it will cause irreparable injury and hardships to the applicants. Hence, this application.

3. The respondents filed objection contending the following: - The application is not maintainable either in law or on facts. The plaint A and B schedule properties are well defined. Survey stones were laid up separating plaint A and B schedule properties and wire fencing was erected separating the properties. The same is still in existence. No mud wall was in existence separating the plaint A and B schedule properties. It is false to state that the poles of the wire fencing were erected after leaving one meter distance from the original boundary. The respondents never destroyed any boundary wall. Plaint A and B schedule properties are cultivated with rubber. The rubber trees in the plaint B schedule property were cut and removed and the property was levelled for the purpose of replanting the rubber saplings. The respondents constructed platforms leaving a space of 1 meter from the boundary of plaint A

and B schedule properties. The lateral support was retained. No damage was caused to the plaintiff A schedule property. No boundary stones were uprooted. The respondents never encroached upon or annexed the portions of plaintiff A schedule property. The survey stones and wire fencing are still in existence. The respondents do not have any intention to excavate earth from their properties. The over grown rubber trees in the plaintiff A schedule property are leaning towards the B schedule. When the respondents demanded the applicants to cut remove those trees, they refused the same. The present suit and the application are filed due to that enmity. The respondents cannot be restrained. If the order of injunction is granted, the respondents would not be able to replant the rubber saplings in their property and that will cause irreparable injury and hardships to the respondents. Hence, this application is liable to be dismissed with costs.

4. From the side of the applicants, Exts. A1 to A7 documents were marked. Ext. C1 series was also marked. No documents were produced from the side of the respondents.

5. Heard both sides.

6. The points that arise for consideration in this application are:

- i. Do the applicants have a prima facie case in his favour?
- ii. Is the balance of convenience in favour of the applicants, and will the denial of the injunction cause irreparable injury and hardships to the applicants?

iii. Relief and costs?

7. **Point Nos. 1 to 3:** These points are considered together for brevity, convenience, and to avoid repetition of facts. The learned counsel for the applicants argued that the application is to be allowed in the interest of justice. According to the applicants, the respondents are excavating earth from the plaint B schedule property in such a manner to destroy the lateral support of plaint A schedule property. It was also contended that the respondents trespassed upon the plaint A schedule property and annexed plaint C schedule property with their property. Hence, prayed for restraining the respondents from trespassing upon the plaint A schedule property and from further excavating earth from the plaint schedule properties and from destroying the lateral support to the plaint A schedule property. On the other hand, the learned counsel for the respondents vehemently objected to the application on the ground that the respondents never excavated earth from their property and did not annex any portions of the plaint A schedule property. According to the respondents, they constructed platforms in their property to replant the rubber saplings, and they retained the lateral support to plaint A schedule property. Hence, the respondents prayed for the dismissal of the application.

8. At the time of hearing, the learned counsel for the respondents submitted that they would not excavate any earth from the plaint B schedule property in such a manner to destroy the lateral support of plaint A schedule property. It was also submitted that they have no objection to make the temporary

injunction order absolute, and they only need a clarification in the order to create platforms in their property to replant the rubber saplings. Both the respondents filed an undertaking to that effect before the court. Both respondents filed an undertaking to the effect that they would not excavate earth from the plaintiff B schedule property to destroy the lateral support to the plaintiff A schedule property, and that they would only construct platforms in their property to replant the rubber saplings. The undertaking filed by the respondents is accepted.

9. The advocate commissioner reported that there exists wire fencing separating the plaintiff A and B schedule properties at a length of 257 feet. The advocate commissioner identified the plaintiff C schedule property, the portion where the alleged encroachment took place. The advocate commissioner reported about slicing of mud wall of plaintiff A schedule property. Advocate commissioner further reported that "എന്നാൽ ടി ഭാഗത്ത് മുകളിൽ നിന്ന് താഴോട്ട് slope ആയാണ് അരിഞ്ഞിരിക്കുന്നത്. ആയത് ടി മൺതിടിൽ ഏത് സമയത്തും ഇടിയുന്ന തരത്തിലാണ് ഇടിച്ചിറക്കിയിരിക്കുന്നത്. പുതുതായി മണ്ണ് അരിഞ്ഞ് എടുത്തിരിക്കുന്നതിന് ഉദ്ദേശം 14 ദിവസത്തെ പഴക്കം ഉള്ളതായി ലക്ഷണങ്ങൾ കൊണ്ട് ബോധ്യപ്പെടുന്നു."

10. A perusal of the commission report makes it clear that the commission report substantiates the apprehension of the applicants. The advocate commissioner also noted down the height difference between the properties. From the materials on record and from the undertaking filed by the

respondents, it is evident that there is a prima facie case in favour of the applicants. The balance of convenience is also in their favour. If the temporary injunction order is not made absolute, that would cause irreparable injury and hardships to the applicants. But at the same time, the rights of the respondents to do cultivation in their property. Hence, based on the undertaking filed by the respondents and in light of the above discussion, this court is of the view that the temporary injunction order granted can be made absolute with a further clarification.

In the result: This application is allowed. The order of temporary injunction granted is made absolute with a clarification to the effect that the respondents shall not do any excavation work in the plaint B schedule property that would destroy the lateral support of the plaint A schedule property. It is further made clear that no manner of works or excavation should be carried out in the plaint B schedule property at a distance of 1.5 meters from the boundary line of the plaint A schedule property. This order would not prevent the respondents from making platforms in the plaint B schedule property to replant the rubber saplings leaving apart 1.5 meters width portion from the boundary line of plaint A schedule property. There shall be no order as to costs.

Pronounced in open court on this, the 25th day of August 2025.

Sd/-
Civil Judge (Junior Division)

Appendix:**Exhibits for the petitioners**

A1	21.03.2015	Certified copy of Sale deed No. 768/1/2015.
A2	04.04.2025	Certified copy of Tax receipt Vide no. KL02060802878/2025.
A3	---	Photograph
A4	06.05.2025	Certified copy of letter to the Panchayat Secretary, Edamulakkal Panchayat.
A5	11.05.2025	Certified copy of letter to The Village Officer, Edamulakkal Village.
A6	---	Certified copy of letter to Geologist.
A7	06.05.2025	Certified copy of Receipt of Acknowledgment No.15293007-2025-5-00072

Court Exhibits

C1	25.07.2025	Report prepared by Adv. Commissioner Sri.Muhammed Shafi.
C1(a)	10.06.2025	Mahazar prepared by Adv. Commissioner Sri.Muhammed Shafi.
C1(b)	10.06.2025	Rough sketch prepared by Adv. Commissioner Sri.Muhammed Shafi.

Id/-
Civil Judge (Junior Division)

//True Copy//

Typed by : Saranya V S

Compared by :

CIVIL JUDGE (Junior Division)