

IN THE COURT OF THE MUNSIFF OF CHAVAKKAD

PRESENT:- Dr. Aswathy Asok., Munsiff

Friday, the 7<sup>th</sup> day of November, 2025/16<sup>th</sup> Karthikam, 1947 SE

I.A 5/2025 in O.S 635/2024

Petitioner/Plaintiff:-

Pramod, Aged 52 years, S/o. Manangath Krishnakutty, Thalikulam  
Village Desom, Chavakkad Taluk.

(By Adv. C.Rajagopalan)

Respondents/Defendants:-

1. Sylesh, Aged 45 years, S/o. Puliparambil Divakaran, Thalikulam  
Village Desom, Chavakkad Taluk, PIN 680 569
2. Shiji, Aged 35 years, W/o. Puliparambil Sreejith, Thalikulam  
Village Desom, Chavakkad Taluk, PIN 680 569

(By Adv. Abdul Samad K.H)

This petition is coming 25.10.2025 for hearing, the court passed the  
following:-

O R D E R

Petition filed to allow the petitioner to construct boundary wall.

**2. Averments in the petitions, in brief, are as follows:-** The petitioner is the plaintiff in the suit. The suit is one for a permanent prohibitory injunction restraining the defendants from trespassing or encroaching on the plaintiff's schedule property or demolishing the northern side foundation, or cutting open a new way through the plaintiff's schedule property or obstructing the peaceful enjoyment of the plaintiff's schedule property by the plaintiff/petitioner. The commissioner had reported that the northern boundary has a foundation, and also reported the existence of an old concrete post. The commissioner had also

reported the 10 feet width way on the northern side of the plaint schedule property. The plaint schedule property is adjacent to the NH-66. As there is road works going on and as the portion is on a lower level, there are chances that there are chances for accidents to the passengers. Further, as the plaint schedule is open, it is dangerous to the safety and security of the property. The respondents/defendants have no right over the northern side foundation or boundary. Therefore, it is necessary to construct a boundary wall upon the existing foundation on the northern side. Hence, the petition.

**3. The respondents filed counter statements with the following contentions:-** The petition is not maintainable either in law or on facts unfilled without bonafides. The respondents have specifically denied all the allegations and contentions raised by the petitioner. Respondent No. 1 is a social worker, and Respondent No. 2 is the elected ward member of the Thalikulam Grama Panchayat, within whose jurisdiction the plaint schedule properties are situated. According to the respondents, a public pathway having a width of approximately 12 feet has been in existence for more than 100 years on the northern side of the petition schedule properties. This pathway extends from the western side of the National Highway up to Cherkara Ground, situated on the eastern side of Tipu Sultan Road. The said way came into existence when the owners of the adjoining properties on either side had dedicated portions of their land for public use. The users of the said pathway, including the respondents themselves, are legally entitled to maintain and protect the said public way. A Road Protection Committee, constituted under the leadership of

the respondents, has been taking necessary steps to improve and convert the pathway into a proper road for public benefit. The petitioner had demanded money for permitting the use of the portion of land adjoining the plaint schedule property, and thereafter attempted to construct a boundary foundation encroaching upon the existing public way. Consequently, the respondents had lodged a complaint before the Thalikulam Grama Panchayat against the said act of encroachment. The present petition has been instituted with false and frivolous allegations, solely as a counterblast to the complaint filed before the Panchayat. Allowing the petitioner to construct boundary wall would cause irreparable injury to the respondents and the other users of the northern side public way. The petitioner has no prima facie case warranting the grant of any relief under law. Hence, according to the respondents, the petition is liable to be dismissed with costs.

4. From the above rival contentions, the following points arise for consideration:-

1. Whether the permission can be granted to the petitioner to construct a boundary wall on the northern boundary of the plaint schedule property?
2. Reliefs and costs.

5. Heard both sides and perused the documents.

**6. Point no. 1**:- The petitioner is the plaintiff in the suit, which is suit is one for permanent prohibitory injunction restraining the defendants from trespassing or encroaching into the plaint schedule property or demolishing the northern side

foundation, or cut open a new way through the plaintiff schedule property or obstruct with the peaceful enjoyment of the plaintiff schedule property by the plaintiff/petitioner. According to the petitioner, the commissioner had reported that the existence of foundation on the northern boundary and an old concrete post. Further, it was also reported the 10 feet width way on the northern side of the plaintiff schedule property. The contention of the petitioner is that as the plaintiff schedule property is adjacent to the NH-66, and as the portion is on a lower level, it is necessary to construct the boundary wall on the northern boundary of the plaintiff schedule property, upon the existing foundation, for the safety of the passengers, travelling through the NH-66 and also for the safety and security of the plaintiff schedule property. Per contra, the respondents alleged the existence of a 12-foot public pathway on the northern side of the plaintiff schedule property, for more than 100 years on the northern side of the plaintiff schedule properties. The said way came into existence when the owners of the adjoining properties on either side had dedicated portions of their land for public use. According to them the petitioner had attempted to construct a boundary foundation encroaching upon the existing public way, when the respondents denied the demand for money by the petitioner for permitting the use of the portion of land adjoining the plaintiff schedule property, by the Road Protection Committee, constituted under the leadership of the respondents.

7. The dispute in the present case pertains to the alleged exclusive possession of the plaintiff schedule property, the alleged encroachment and construction of the northern boundary foundation by the petitioner, and the existence of a 12-foot-wide

pathway on the northern side of the plaint schedule property. This Court had earlier granted a temporary injunction in favour of the petitioner. By the present petition, the petitioner seeks permission of this Court to construct a boundary wall along the northern boundary of the plaint schedule property, as reported by the Advocate Commissioner. It is pertinent to note that the very subject matter of dispute in the suit relates to the width of the pathway on the northern side of the plaint schedule property and the question of the petitioner's exclusive possession over the plaint schedule property. The respondents have specifically contended that there exists a 12 foot wide public pathway on the northern side of the plaint schedule property, which has been in existence for more than a hundred years by virtue of a dedication made by the owners of the adjoining properties on either side of the pathway. These are issues that go to the root of the matter and can be finally determined only after a full-fledged trial and appreciation of evidence, and not at this interlocutory stage. The Commissioner's report indicates the existence of a foundation along the northern boundary of the plaint schedule property, which prima facie suggests possession by the petitioner. However, granting permission to construct a boundary wall at this stage would virtually amount to granting the final relief sought in the suit itself, which, in my opinion, is impermissible at this stage of the proceedings. In such circumstances, I am not inclined to allow the present petition. Hence, the point is found against the petitioner.

**8. Point No.2**:- In view of the findings in point no. 1, the petition is to be dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

In the result, the petition is dismissed.

*(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court, on this the 07<sup>th</sup> day of November, 2025.)*

Sd/-

Dr. Aswathy Asok  
Munsiff, Chavakkad.

APPENDIX:-NIL

Id/

Munsiff, Chavakkad

///True Copy///

Munsiff, Chavakkad

kvp