

IN THE COURT OF THE MUNSIFF OF CHAVAKKAD

PRESENT:- Dr. Aswathy Asok., Munsiff

Saturday, the 25th day of October, 2025/3rd Karthikam, 1947 SE

I.A 2/2024 in O.S 635/2024

Petitioner/Plaintiff:-

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

(By Adv. C.Rajagopalan, Adv. Parthasarathi Kurup & Adv.Premdas T.A)

Respondents/Defendants:-

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

(By Adv. Abdul Samad K.H)

This petition is coming 15.10..2025 for hearing, the court passed the
following:-

O R D E R

Petition filed under Order XXXIX Rule 1 of the Code of Civil Procedure,
1908.

2. Averments in the petitions, in brief, are as follows:- The petitioner is
the plaintiff in the suit. The petition schedule properties belong to the petitioner
as per Sale Deed Nos. 755/1/2015 and 756/1/2015 of the Vadanappally Sub
Registrar Office. The petition schedule properties are situated within well-
defined and identifiable boundaries, bounded on the east by a boundary wall, on

the north by a granite foundation, and on the remaining sides by concrete posts and boundary markers. An 8-foot-wide pathway exists on the northern side of the petition schedule properties. At the time of the petitioner's purchase, an iron fence was erected along the northern boundary, which continues to exist to date, and the petitioner is in peaceful possession and enjoyment of the petition schedule properties based on these boundaries. The petitioner has constructed protective structures along the northern boundary to safeguard the property. However, the respondents, with an intention to widen the existing 8-foot-wide pathway into a 4-metre-wide road, have started engaging in illegal acts and interferences, causing grave inconvenience to the petitioner. The respondents have no manner of right, title, or interest over the petition schedule properties, nor do they own any property adjoining the same. The attempt to widen the pathway is allegedly being made at the instance of certain residents situated to the north of the petitioner's property, under the leadership and instigation of the respondents. The petitioner has categorically objected to the proposed widening of the pathway by encroaching into his property and has informed the respondents accordingly. Notwithstanding this, on 10.09.2024, several local residents, led by the respondents, attempted to demolish the northern boundary foundation of the petition schedule properties, which was thwarted by the timely intervention of the petitioner. During the said incident, the respondents threatened the petitioner that they would return with more persons, trespass into the petition schedule properties, demolish the northern boundary foundation, and forcibly cut open a pathway through the property, thereby disturbing the petitioner's peaceful possession and enjoyment.

The respondents have no legal right or authority to undertake such acts. If the respondents are permitted to carry out their threats, it would result in irreparable injury and loss to the petitioner, which cannot be compensated in monetary terms. Hence the petition.

3. The respondents filed counter statements with the following contentions:- The petition is not maintainable either in law or on facts unfiled 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 petition 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 annual procession of the Eranezhath Bhagavathi Temple has been passing through this way from time immemorial. 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, repair, 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 petition 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. 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 petition schedule property is in the absolute possession of the petitioner?
2. Whether the petitioner is entitled to get an order of temporary injunction as prayed for?
3. Reliefs and costs.

5. On the side of the petitioner, Exts.A1 to A3 and Exts.C1 to C1(a) were marked. On the side of the respondents, Exts.B1 series was marked.

6. Heard both sides and perused the documents.

7. **Point nos. 1 and 2:-** To avoid repetition and for brevity, these points are considered together. The petitioner is the plaintiff in the suit, which is one filed for a decree of permanent prohibitory injunction. According to the petitioner, the petition schedule properties belong to him as per Exts.A1 and A2, Sale Deeds No.755/1/2015

and Sale Deed No.756/1/2015 of the Vadanappally S.R.O, respectively. The petitioner contended that the petition schedule properties are in his absolute ownership and possession, and are clearly demarcated by well-defined boundaries. It is specifically alleged that along the northern boundary of the petition schedule properties, there exists a foundation for a boundary wall, demarcating the petition schedule properties from the northern pathway. The grievance of the petitioner is that the respondents are attempting to trespass upon and encroach into the petition schedule properties for the purpose of widening the existing pathway on the northern side of the petition schedule property, which presently has a width of eight feet. According to the petitioner, such an act on the part of the respondents is wholly illegal and without authority, and is intended to cause obstruction to his peaceful possession and enjoyment of the petition schedule properties. Per contra, the respondents have specifically denied the contentions of the petitioner. It is their case that the pathway on the northern side of the petition schedule properties is, in fact, a public way having a width of twelve feet, which has been in existence for more than one hundred years. They further contended that the annual procession (Ulsavam) of the Eranezhath Bhagavathi Temple has been passing through this way from time immemorial, thereby establishing its public character. According to the respondents, the said way was dedicated for public use by the owners of the adjoining properties on either side, and it extends from the western side of the National Highway up to the Cherkara Garound, situated on the eastern side of Tipu Sultan Road. It is further contended by the respondents that, when the local residents and the Road Protection Committee,

under their leadership, had been taking steps to develop and convert the said way into a proper road, the petitioner demanded money for permitting the use of the portion of land adjoining his property. The respondents alleged that, thereafter, the petitioner attempted to encroach upon the existing public way by removing the iron fencing that had been in existence and constructing a foundation approximately one foot inside the public pathway, thereby obstructing public access and usage.

8. A perusal of Exts. A1 and A2 would clearly indicate that the petition schedule properties are owned by the petitioner. In order to substantiate his contentions and to establish the identity and boundaries of the petition schedule properties, the petitioner had taken out a commission, pursuant to which the Advocate Commissioner submitted the Ext. C1 report and the Ext. C1(a) sketch. On a careful perusal of Exts. C1 and C1(a), it is revealed that the northern boundary of the petition schedule properties consists of a granite foundation, the eastern boundary is demarcated by a slab wall, the southern boundary is marked by a cement wall, and on the western side lies the National Highway (NH) road. Thus, it is evident that the petition schedule properties are well-defined and exist within clearly demarcated boundaries. The Commissioner has further reported that there exists a pathway of approximately ten feet in width on the northern side of the petition schedule properties, running east–west, commencing from the western side of the National Highway and extending towards the eastern direction. It is noted that the northern side of this pathway is protected by iron fencing throughout, while its southern side is bounded by a granite foundation measuring about 1.5 feet in width in the east-west

direction. The Commissioner has also observed that, towards the eastern end of the northern boundary of the petition schedule properties, there exists an old concrete post, approximately three feet in height, situated at a distance of about twelve feet north of the existing granite foundation. A cumulative reading of Exts. C1 and C1(a) would, therefore, prima facie show that the petition schedule properties are situated within distinct and well-demarcated boundaries, thereby supporting the petitioner's claim of possession and boundary identification.

9. The dispute in the present case primarily pertains to the northern boundary of the petition schedule properties. According to the respondents, the petitioner has been attempting to trespass upon the northern side of the existing pathway and to construct a foundation by encroaching into the said pathway. However, on a careful examination of the Commissioner's report and sketch (Exts. C1 and C1(a)), it is specifically noted that the width of the pathway on the northern side of the petition schedule properties is 10 feet, which lends support to and substantiates the contention of the petitioner. Further, as borne out from Exts. C1 and C1(a), the petition schedule properties are situated within clearly identifiable and well-demarcated boundaries. The respondents, on the other hand, have contended that the width of the said pathway is 12 feet, on the alleged ground that portions of land were dedicated for that purpose by the property owners on both sides. However, there is no material or documentary evidence produced before this Court to substantiate such a contention. On the contrary, the Commissioner's report and sketch, supported by the petitioner's documentary evidence, establish a prima facie case in favour of the petitioner,

showing that the petition schedule properties lie within definite boundaries and that the pathway on the northern side measures only 10 feet in width. In such circumstances, I am of the opinion that the petitioner has succeeded in establishing a prima facie case. The balance of convenience is also found to be in favour of the petitioner, as any act of encroachment or interference by the respondents would cause irreparable injury to the petitioner, which cannot be adequately compensated in terms of money. Accordingly, the petitioner is entitled to the protection sought by way of injunction. Hence, the points are found in favour of the petitioner.

10. Point No.3:- In view of the findings in point nos. 1 and 2, the petition is to be allowed. In the facts and circumstances of the case, there shall be no order as to costs.

In the result, the petition is allowed as follows:-

- 1. The respondents and their men are hereby temporarily restrained from trespassing into the petition schedule properties, and from demolishing or in any manner altering the existing foundation situated along the northern boundary of the petition schedule properties. They are further restrained from committing any act of waste, damage, or destruction within the petition schedule properties, and from cutting open or attempting to create any new pathway through the said properties. The respondents are also restrained from in any manner interfering with the peaceful*

possession and enjoyment of the petition schedule properties by the petitioner, until the final disposal of the suit.

2. *There shall be no order as to costs.*

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court, on this the 25th day of October, 2025.)

Sd/-
Dr. Aswathy Asok
Munsiff, Chavakkad.

APPENDIX:

Petitioner's Exhibits:-

A1	30/04/2015	Copy of Deed No. 755/1/2015
A2	30/04/2015	Copy of Deed No. 756/1/2015
A3	15/07/2024	Copy of Tax Receipt

Respondent Exhibits

B1		
Series	Photographs(2)

Court Exhibits:-

C1 C1(a)	28/09/2024	Commission Report & Sketch filed by Adv.Harisankar
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///True Copy///

Id/
Munsiff, Chavakkad

