

IN THE COURT OF THE MUNSIFF, CHALAKUDY

Present : Parvathy Vijayan, Munsiff, Chalakudy.

Wednesday, the 25th day of June, 2025/11th Ashada, 1947

I.A.2/2025 in O.S.181/2025

Petitioners:-

1. Viji, Aged 56, D/o Villarvattamveetil Late Velayudhan, Pindani Desom, Meloor P.O & Village, Chalakudy Taluk.
2. Reji, Aged 52, S/o Villarvattamveetil Late Velayudhan, Pindani Desom, Meloor P.O & Village, Chalakudy Taluk.
Rep.by her Sister Viji.

By Adv. Priyamol C.P

Respondents:-

1. Kerala Government rep.by Thrissur District Collector, 1st floor, Civil Station, Civil Line Road, Kalyan Nagar, Ayyanthole, Thrissur, Kerala -680003.
2. Assistant Engineer, Public Work Department(PWD) Road section Chalakudy, Civil Station, Pin – 680307.

Govt Pleader T.G. Ullaskumar

This Petition is having come up before me for hearing on this day the court passed the following:-

ORDER

This is a petition filed by the plaintiff under Order XXXIX Rule 1 of CPC.

2. The averments in the petition in brief are as follows: The petition is filed by the 1st plaintiff and the petition is filed on behalf of the 2nd plaintiff also. Petitioner's father, Velayudhan, obtained the properties after partition as per Will deed no.31/1956. Velayudhan died on 19.11.2020 and after his death the properties devolved on his legal heirs including the plaintiffs. The plaint A,B,C schedule properties are lying contiguously as a single plot. Thereafter the properties were partitioned as per deed no.1420/2022 of the Sub Registry Office, Chalakudy and the B schedule was allotted to the 2nd plaintiff and the C schedule was allotted to the plaintiff. Plaint D schedule is the road is the PWD road which is lying along the northern boundary of the plaint A,B,C

schedule proprietries for separating the properties from the road wall is maintained at a height of 7 feet above the road level and at a length of 74 meter which is constructed using granite and plastered. The said boundary wall is 40 years old. The western side of plaint schedule properties are projecting towards the road but they have not received any notice from the Government. The petitioners have received notice from the Assistant Engineer, Road Section directing them to remove the boundary wall within 7 days and is submitted that the plaint schedule property is lying as puramboke. The said notice is given without measuring the plaint schedule properties with the help of surveyor and village records. The respondents are trying to demolish the wall on the plaint A,B,C schedule properties. The respondents have no right to destroy the boundary of plaint A,B,C schedule properties and to trespass into the properties. Hence the petition.

3. The respondent appeared and filed counter contending as follows: The petition is not maintainable in law or on facts and liable to be dismissed. The respondent denies all the averments in the petition except those which are specifically admitted. The D schedule properties are PWD road as averred in the petition. The village authorities had taken digital measurement of the properties on 20.05.2022 as per title deeds and the averment that at that time the properties are having lesser extent than mentioned in the deed is false. The petitioners had encroached into the boundary plaint schedule property and possessed 0.0196 hectare comprised in survey no.1087 which is punishable as per Kerala Highway Protection Act and Kerala Land Conservancy Act. The boundary fixation of Meloor Pushpagiri road is completed partially and as per the same it was seen that the petitioners had encroached into the Government property and legal proceedings were taken against them. The office of the District Survey Superintendent had started fixing the boundary of the said road and after giving sketch showing the encroachments as per letter dated 10.10.2024, the Public Works Department came to know about the encroachments and notice dated 27.01.2025 was given as per Kerala Highway Protection Act 1999. As per the notice the petitioners were directed to remove the constructions in the

puramboke. Besides this the petitioners had not filed any objection to the survey proceedings conducted by the office of the District Survey Superintendent. Hence the averment that the direction was given without measuring the plaint schedule properties as per village and survey records is false. The petition is bad for lack of jurisdiction as the petitioners had encroached into the puramboke land. The petition is bad for non-jointer of necessary parties also. The petition without notice as per Section 80 of CPC is not maintainable. Hence prays for dismissal of the petition.

4. Heard both sides.

5. The only point that arise for consideration is:

Whether the petitioner is entitled to a temporary injunction as prayed for?

6. The point: The learned counsel of the petitioner had submitted that his father obtained the properties after partition as per Will no.31/1956. The plaint A,B and C schedule properties are lying together as one plot. The 2nd petitioner is abroad. As per partition deed no.1420/2022 dated 23.05.2022 of the Chalakudy Sub Registry Office, the plaint schedule property is in the title and possession of the 2nd plaintiff and C schedule is in the possession of the 1st plaintiff. The plaint C schedule property is acquired by the 2nd plaintiff as per deed no.4618/2014 of the Sub Registry Office Chalakudy. The learned counsel of the petitioner had submitted that the northern portion of plaint A,B and C schedule properties are PWD road and for separating the properties from the road wall is maintained at a height of 7 feet above the road level and at a length of 74 meter which is constructed using granite and plastered. The said boundary wall is 40 years old. The western side of plaint schedule proeprties are projecting towards the road but they have not received any notice from the Government. The learned counsel of the petitioner had submitted that plaintiffs have received notice to remove the boundary wall within 7 days and is submitted that the plaint schedule property is lying as puramboke. The learned counsel for the petitioner had submitted that they have not measured the property as per the survey records and so boundary wall should be protected till the disposal of the suit.

7. The learned counsel of the respondent had submitted that proper notice is served after measurement of the properties and is shown. The learned counsel for the respondent had submitted that the petitioner had encroached and possessed 0.0196 Hectares of land comprised in survey no.1087 on the boundary of the plaint schedule property. It is also submitted by the learned counsel of the respondent that. Notice dated 27.01.2025 is given to the petitioner demanding removal of constructions in the puramboke properties in possession of the petitioner. The petitioner had not raised any objection against the survey proceedings of the District Survey Superintendent.
8. On perusal of Ext.A5 notice served to the plaintiff, it is noted that the properties in survey no.1087/1 which is a puramboke land. The petitioner had received notice served by the Assistant Engineer, Road Section as part of Kerala Highway Protection Act. It is noted that the defendant had followed the proper procedure. It is also submitted by the learned counsel of the defendant that the properties are digitally surveyed and the properties are found to be in puramboke land. Ext A5 would prove that proper steps are taken and property is measured as per survey records and found to be puramboke land. There is no objection filed before the authorities by the petitioner against Ext A5 . Though there is apprehension on the part of the plaintiff that their properties are lying not in the puramboke land but that can only be considered after the conclusion of the suit. Hence in these circumstances there is no prima facie case and balance of convenience are in favour of the petitioner .Hence petition is dismissed . No costs.

In the result, Petition dismissed. No costs.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 25th day of June, 2025)

Parvathy Vijayan,
Munsiff

APPENDIX**Plaintiffs Exhibits:-**

- A1 - 25/05/22 - Copy of deed No.1420/22 of SRO Chalakudy
- A2 - 01/10/24 - Tax Receipt
- A3 - 14/10/14 - Copy of deed No.4618/14 of SRO Chalakudy
- A4 - 15/09/24 - Tax Receipt
- A5 - 27/01/25 - Notice

Munsiff