

**IN THE COURT OF MUNSIF, WADAKANCHERY**

Present:- Sri. Yahya. T. K., Munsiff

Thursday, the 26<sup>th</sup> day of March, 2026/ 05<sup>th</sup> Chaithram 1947 SEI.A. 02/2026 IN O.S. 67/2026**Petitioner/ Plaintiff:**

Manikandan, aged 58 years, S/o Vadakkeveetil Velleppan Chettiyar,  
Wadakanchery Village, Post and Desam, Pin Code: 680 582,  
Talappilly Taluk, Thrissur District.

By Adv. Biju Joseph Edakkalathur.

**Respondent/ 1<sup>st</sup> Defendant:**

Badarudheen, aged 59 years, S/o Karikkil Veetil Muhammedkutty,  
Wadakanchery Village, Post and Desam, Pin Code: 680 582,  
Talappilly Taluk, Thrissur District.

By Adv. K. Sajith Kumar., & Amibili. S.

This petition is coming on this day for hearing, the Court passed the following:

**ORDER**

This is an application filed by plaintiff in the above suit under Order 39 Rule 1 C.P.C seeking temporary injunction. Parties are referred to as their status in the plaint.

2. **Summary of the application** ; Plaintiff A schedule property absolutely belongs to the plaintiff. He is residing in a house situated therein along with his family. Plaintiff B schedule property belongs to D1. The said property is situated on the southern side of plaintiff A schedule property at a higher level of 3 metres than plaintiff A schedule property. Plaintiff C schedule property (കല്ലു കയ്യാല) is an old retaining wall made of mud and stones which serves as a

lateral support between plaint A & B schedule properties. Due to its oldness, plaint C schedule property has already become feeble and weak. D1 started to construct a house in B schedule property in August 2025. Since C schedule property was already become feeble, plaintiff had requested D1 to construct a concrete retaining wall and D1 had agreed to do so. Both properties are situated on the valley of a fragile hilly area where there is potential threat of land slide. Land slide had occurred in the nearby places also. But D1 did not construct retaining wall as agreed. Although several complaints were given to D2 to D6, they have not acted in accordance with law. Now C schedule wall has protruded at some part due to the heavy constructions made in B schedule property. The plaintiff is apprehending threat to his property as well as life. Hence the suit is filed. It is prayed, during pendency of the suit, that the further construction in plaint B schedule property may be restricted by way of a temporary injunction.

3. **The respondent/D1 filed counter statement as follows** ; The petition is not maintainable either in law or on facts. All allegations in the plaint are denied. It is incorrect to say that the properties are constructed on a fragile hilly area. It is also incorrect to say that there is potential threat of land sliding in the locality. There are other co-owners also to B schedule property. They are not made parties to the suit. There was already a tharawad house in B schedule property. The present house is being constructed in the same place

where the tharawad house is constructed. It is incorrect to say that the present retaining wall (കല്ലു കയ്യാല) has become feeble. It is also incorrect to say that D1 had promised to construct a concrete retaining wall in the place of C schedule property. Plaintiff is simply harassing D1. It is incorrect to say that some part of C schedule property has protruded into A schedule property. All other allegations in the petition are denied. The plaintiff has not come with clean hands. House of the plaintiff is being constructed with the financial help of local people. If construction is stopped, D1 will face great problems. Therefore it is prayed that the application may be dismissed with costs.

4. On the side of plaintiff, Ext.A1 to A6 series marked. On the side of respondent/D1, Ext.B1 to B4 marked. Ext.C1 series and C2 series marked by the court.

5. The following point arose for consideration :

- i *Whether a prima facie case has been made out in favour of the plaintiff ?*
- ii *Whether balance of convenience and principles of irreparable injury favours the plaintiff ?*
- iii *Whether the plaintiff is entitled to get temporary injunction as prayed for ?*
- iv *Relief and costs ?*

6. Heard both sides.

7. **All Points** : A schedule belongs to plaintiff. B schedule belongs to D1. Title, ownership and possession of plaint A or B schedule properties is

not under dispute. Ext.A1, C1 and C2 series shows that plaintiff and D1 are respectively in ownership and possession of A and B schedule properties. The dispute is about an age old mud retaining wall constructed by stones. It is commonly known as 'കല്ലു കയ്യാല'. The same has been shown as plaint C schedule property. It serves as the present retaining wall between A and B schedule properties. Admittedly B schedule property is situated at a higher level of 3 metres than A schedule property.

8. Specific case of the plaintiff is that when D1 started to construct a house in B schedule property, he had promised to construct a pacca concrete retaining wall in the place of C schedule property in order to rule out possibility of land sliding because of the construction in B schedule. The plaintiff alleges that D1 failed to perform that promise and continued with the construction of house in B schedule property. According to the plaintiff, several complaints were given to D2 to D6. But the authorities are not taking action as per law. Ext.A2 and A3 were brought into my notice in this regard. The plaintiff also invited my attention to the photographs produced as Ext.A6 series and the observations made in Ext.C1 to contend that plaint C schedule property has become feeble and protruded into A schedule property because of its age and also because of the heavy constructions made in B schedule property. The plaintiff further relied upon Ext.A4 and A5 to contend that the locality where the properties are situated is a fragile hilly area where land

sliding often occurs. Based on these materials, learned counsel for the plaintiff argued that a prima facie case of threat to the life and property of plaintiff has been made out.

9. Learned counsel for D1 on the other hand relied upon Ext.B1 and B2 to say that construction in B schedule was carried out as per the plan and permit issued by Municipality (D6). He also invited my attention to Ext.B3 series to say that there is no such threat as projected in the plaint. It was further argued by learned counsel for D1 that another neighbour of plaintiff has already obtained an injunction against D1 prohibiting removal of plaintiff C schedule wall. Ext.B4 has been brought into my attention in this regard. I have carefully analysed the material on record. What is important for the court for the time being is a prima facie case. Admittedly, B schedule property is situated at higher level of 3 metres than A schedule property. It is also an admitted fact that plaintiff C schedule property which is the present retaining wall is an age old കല്ല് കയ്യാല made up of mud and stones. The question is whether construction made in B schedule property as effected strength of C schedule property and posed a potential threat of land sliding. In this regard the following observations in Ext.C1 is worth reproducing :

“അന്യായം A, B പട്ടിക വഹകളുടെ അതിർത്തിയാണ് അന്യായം C പട്ടികയായി കാണിച്ചിരിക്കുന്ന കല്ല് കയ്യാല. അന്യായം B പട്ടിക വഹകളെ വേർതിരിക്കുന്ന ഭാഗത്ത് കാണപ്പെടുന്ന കല്ല് കയ്യാല ബലക്ഷയം വന്നതും കല്ലുകൾ തട്ടുതട്ടുകളായി അടുക്കിവെച്ച സ്ഥിതിയിലും ആണ് കാണപ്പെട്ടത് . അന്യായം എ പട്ടിക വഹകളിൽ നിന്ന് B പട്ടിക വഹകളുടെ ഉയരം വരെ ഇപ്രകാരത്തിൽ കല്ലുകൾ അടുക്കി വെച്ചിരിക്കുന്നു. ആയതിൽ C പട്ടികയായി കാണിച്ച കല്ല് കയ്യാലയിൽ നിന്ന് കല്ലുകൾ ഇളകി വീണ് കൂടിക്കിടക്കുന്നതും മണ്ണ്

ഒലിച്ചിറങ്ങുന്ന സ്ഥിതിയിലുമാണ് കാണപ്പെട്ടത്. കല്ല് കയ്യാലയുടെ ഏതാനും ഭാഗം അന്യായം എ പട്ടിക വഹകളിലേക്ക് തള്ളി നിൽക്കുന്നതും കാണപ്പെട്ടു”.

10. The above extracted finding of the Advocate Commission in Ext.C1 prima facie makes out a clear threat of land sliding. So, the photographs produced by D1 as Ext.B3 series will not help the situation. Also Ext.A4 and A5 series clearly indicate that the properties are situated in a fragile hilly area where there is constant threat of land sliding. So the material on record clearly makes out a prima facie case in favour of the plaintiff.

11. At this point, learned counsel for the plaintiff argue that the plaintiff has suppressed the fact that construction work of the house of D1 has already completed in plaint A schedule property. I am unable to accept that contention of D1. There is nothing in the plaint which mislead the Court as to the present stage of construction. Moreover, Ext. A2 & A3 show that plaintiff had already approached authorities concerned to take action in this regard, but no result obtained. Therefore it cannot be said that the plaintiff suppressed any material fact. Further Ext.C2 prima facie shows that D1 went on with the construction activity despite receipt of an order prohibiting further construction. The same prima facie indicates that D1 has no regard to the rule of law. Coming to the interim order in Ext. B4 proceedings, it is apparent that the part of retaining wall involved in Ext. B4 is quite different from petition C schedule property. Hence contentions based on Ext. B4 also cannot be accepted.

12. I have carefully analysed and balanced the principle of convenience in the given set of facts. D1 would argue that stalling the construction in B schedule would put him in trouble because the house is being constructed in the aid of local people. But it is more important to note that if something happened in the upcoming rainy season, plaintiff and his family may put to greater sufferings or even loss of life. Exts. A4 & A5 indicate that land sliding had occurred in the nearby locality in rainy seasons of yester years and people were re-located. So balance of convenience favours the plaintiff. Principle of irreparable injury, in the same lines, also favours the plaintiff. Having considered all these aspects, I am of the view that the plaintiff is entitled to get an order of temporary injunction as prayed for. These points are found in favour of the plaintiff.

*In the result,*

***D1 is restricted by way of a temporary injunction from continuing with any type of construction activity in B schedule property until disposal of the suit or until a pacca retaining wall is constructed in the place of C schedule property to the reasonable satisfaction of plaintiff, which ever event occurs first.***

*(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 26<sup>th</sup> day of March, 2026)*

YAHYA. T. K.,  
MUNSIFF

APPENDIX

<u>Petitioner's Exhibits:</u>		
A1	: 19.12.1997	Copy of Theer Deed bearing no. 4029/1997 of SRO, Wadakanchery.
A2	: 06.02.2026	Copy of Application submitted before Secretary, Wadakanchery Municipality.
A3	: 02.02.2026	Copy of petition submitted before District Collector, Thrissur.
A4	: 20.12.2024	True Copy of letter bearing No. DCTSR/ 4992/2004-K1 issued by District Collector, Thrissur to Tahsildar, Thrissur / Kunnamkulam / Talappilly / Chavakkad / Mukundapuram / Kodungallur / Chalakudy., received as per RTI Act.
A5	: 20.12.2024	True copy of details of District Disaster Management Authority Inspection Report, received as per RTI Act.
A6 series	: A6 to A6(a to d)	Photos – 4 in nos.
<u>Petitioner's Witness:</u> Nil.		
<u>Respondent's Exhibits:</u>		
B1	: 02.08.2025	Acknowledgment Receipt from Wadakanchery Municipality.
B2 series	: 02.08.2025	Self Certified Building Permit (12 pages).
B3 series	:	Photos – 9 in nos., (B3 to B3 (a to h)).
B4	: 19.08.2025	Certified copy of I.A. 2/2025 petition.
<u>Respondent's Witness:</u> Nil		
<u>Court Exhibits:</u>		
C1	: 10.03.2026	Commission Report in I.A. 03/2026.

C1(a)	: 10.03.2026	Rough Sketch.
C2	: 10.03.2026	Commission Report in I.A. 06/2026.
C2(a)	: 10.03.2026	Rough Sketch.

MUNSIFF