

IN THE COURT OF THE SUB JUDGE, CHERTHALA
Present:- Ms. Lakshmy.S. Sub Judge
Friday 12th day of September 2025 / 21th Bhadra 1947

IA.1/2025 in AS.8/2025
Filed on 17.02.2025

Applicants / Appellants :-

1. Satheesan, S/o Kumaran, aged 56 years, Perayil,
Varanam.P.O. Cherevaranam Muri,
Thannermukkom North Village, Cherthala
2. Sandhya U.D W/ Satheesan, aged 53 years, Perayil,
Varanam. P.O, Cheruvaranam Muri,
Thannermukkom North Village, Cherthala
3. Nandu P.S, So Satheesan, aged 29 years, Perayil,
Varanam.P.O. Cheruvaranam Muri,
Thannermukkom North Village, Cherthala
4. Nidhin P.S, S/o Satheesan, aged 26 years, Perayil,
Of-do-do--

By Adv. T. Jayakrishnan

Respondent/ Respondent :-

Shibu, S/o Kumaran, aged 50 years, Perayil,
Varanam.P.O, Cheruvaranam Muri,
Thannermukkom North Village, Cherthala.

By Adv. C.H. Chandrabanu

This IA coming on for final hearing on 09.09.2025 and the court on 12 .09. 2025 passed the following.

ORDER

The present petition is filed by the appellants under O XLI R.5 CPC to stay the operation and implementation of the judgment and decree in O.S.378/2019 of the Additional Munsiff's Court, Cherthala.

2. The contentions of the petitioners are as follows: - The appeal arises from the judgment by which the petitioners were directed to vacate from their house. The house where the petitioners reside was constructed by the first petitioner with his own funds. Recognizing the same, Settlement Deed was executed by the parents in the name of the respondent, excluding the building. The trial court has not considered the grievance of the petitioners. The petitioners have urged substantial points capable of reversing the impugned judgment. Hence the petition.

3. The respondent filed objection as follows:

The averments in the affidavit in support of the petition are neither correct nor sufficient for staying the operation of the judgment and decree appealed against. The house in question was neither constructed nor owned by the 1st petitioner/ 1stappellant and the same was not excluded from the Settlement Deed. After taking evidence and hearing both sides, the trial court

found that the respondent is the owner of the house, and the petitioner failed to prove that the petitioner constructed the house. There is no irregularity or illegality in the judgment and decree. There are no grounds for reversing the above decision. Hence the petition is to be dismissed with costs.

4. Heard both sides and perused the records.
5. The following points arise for consideration:
 1. Are the petitioners entitled to get an order staying the operation of the Judgment and decree dt.15.01.2025 in OS 378/2019 of the Additional Munsiff's Court, Cherthala?
 2. Order as to costs?

6. **Point No.1:**

The petitioners are the defendants in OS 378/2019 which is a suit for recovery of possession, mandatory and perpetual injunction. The prayer for mandatory and perpetual injunction was abandoned by the plaintiff and the suit was decreed in favour of the plaintiff whereby the petitioners/appellants were directed to vacate the premises of plaint item No.1 property, including the building situated therein, and to hand over possession of the same to the plaintiff within two months.

7. The petitioners have challenged the said judgment mainly on the ground that trial court has not appreciated their right over the house situated in the plaint schedule property. It is further contended that the building was constructed by the first petitioner with his own funds and the building was excluded in the Settlement Deed executed in favour of the respondent.

8. The learned counsel for the respondent argued that the trial court has rightly appreciated the evidence and contentions of both sides and came to a conclusion that the petitioners herein could not establish their right over the building situated in plaint schedule property. The learned counsel argued that the applicability of the doctrine “quic quid plantatur solo solo cedit” was rightly appreciated in this case by the learned Munsiff based on the decision of the Hon’ble High Court in **Gauri and others v. Xavier @ Benny and another reported in 2012(3) KHC 317**. The learned counsel further argued that no purpose would be served even if, the stay is granted as the petitioners cannot reserve possession of the building which was already transferred to the respondent.

9. The appellants have definitely challenged the finding of the trial court that they have not established any right over the house. However, this court has to appreciate whether the evidence of the petitioners was rightly considered by the trial court. The circumstances behind the execution of deed in favour of the respondent without mentioning existence of a building in the property are also to be considered to appreciate the correctness of the impugned judgment.

10. As the respondent has proceeded with the application to execute the decree, the petitioners are justified in seeking an order to stay the operation of the judgment under challenge. If the operation of decree and judgment is not

stayed, the appellants would be compelled to surrender the vacant possession in execution proceedings before the disposal of the appeal. The point is found in favour of the petitioners.

11. **Point No.2**:- In view of findings on point no.1, the IA is to be allowed, without costs.

In the result, IA is allowed, without costs and the operation of the judgment and decree dt.15.01.2025 in OS 378/2019 is stayed, till the disposal of the appeal.

Dictated to the Confidential Assistant, typed by her directly to laptop, corrected and pronounced by me in open court on this the 12th day of September, 2025.

Sd/-
LAKSHMY.S
SUB JUDGE

Appendix:-NIL

Id/-
SUB JUDGE