

**IN THE COURT OF ADDL. DISTRICT JUDGE -1
KOTTAYAM**

Present:- Smt. Lilly K, Addl. District Judge-I

Thursday 23rd day of April, 2026
3rd Vaisakha, 1948

CMA No. 32/2024

Appellant
Plaintiff:

Roby Manuel @ Roby Vettoor,
aged 57, S/o. P.V Mani, Vettoor House,
Ettumanoor P.O., Kottayam Taluk,
Kottayam District represented by his
wife Magdalene Roby, aged 58,
Vettoor House, Ettumanoor P.O.,
Kottayam Taluk, Kottayam District.

***(By Adv. Joseph Abraham &
Adv. Arun.S Nair)***

Respondent/
Defendnat-

Suresh Babu Kurian, aged 58
years, S/o. Kurian, Vechurett House,
(Alphonsa Nagar), Ettumanoor P.O.,
Ettumanoor Village, Kottayam Taluk,
Kottayam District.

***(By Adv. C.L. Joseph &
Adv. James K Peter)***

**Civil Miscellaneous Appeal filed under Order XLIII of
the Code of Civil Procedure challenging the order in IA
No.3/2023 in O.S.230/2023 dated 19.03.2024 of the
Munsiff Court, Ettumanoor .**

Between

Petitioner/
Plaintiff :

Roby Manuel @ Roby Vettoor,
aged 57, S/o. P.V Mani, Vettoor
House, Ettumanoor P.O.,
Kottayam Taluk,

Kottayam District represented by his wife Magdalene Roby, aged 58, Vettoor House, Ettumanoor P.O., Kottayam Taluk, Kottayam District.

(By Adv. T.K. Suresh Kumar)

And:-

**Respondent/
Defendant:-**

Suresh Babu Kurian, aged 58 years, S/o. Kurian, Vechurett House, (Alphonsa Nagar), Ettumanoor P.O., Ettumanoor Village, Kottayam Taluk, Kottayam District.

By Adv. K. Vinodkumar

This Civil Miscellaneous Appeal having been finally heard on 23.04.2026 and the court on the same day delivered the following:-

JUDGMENT

Civil Miscellaneous Appeal filed under Order XLIII of CPC by the plaintiff, challenging order dated 19.03.2024 in IA No.3/2023 of Munsiff's Court, Ettumanoor in OS No.230/2023.

2. Plaintiff claimed to be the owner of Item No.1 property having an extent of 4.10 Ares and a lodge bearing Building No.VII/889/1-24, having 11 rooms. Item No.2 well situated on the southern side of Item No.1 property. Defendant is the owner of Item No.3 property, 3.66 Ares on the southern side.

It was alleged that defendant illegally constructed building in violation of Kerala Municipality Building Rules, without leaving required setback, on the northern side, described as Item No.5, within a distance of 70 cm from the southern boundary of Item No.1. A hotel is being conducted in the illegal building without license or permission from the Pollution Control Board. A latrine pit was constructed within a distance of 17 feet and the waste was flown to the pit, polluting the water in Item No.2 well. Plaintiff gave complaint and defendant kept item No.4 plastic tank in Item No.3 property for collection of waste water and latrine waste, within a distance of 7.5 meters from Item No.2 well, polluting the water. Waste water in Item No.4 plastic tank overflows. The waste from the latrine is also collected in Item No. 4. Plaintiff is not in a position to conduct the lodge, as 2000 litres of drinking water has to be purchased daily, causing loss of ₹2.5 lakh per month. The defendant has no authority to construct any cesspool within a distance of 15 meters from Item No.2 well and notice was issued by the plaintiff on 05.10.2023. No action was taken by the second defendant Municipality against the first defendant and hence the suit

was filed. Plaintiff sought temporary injunction restraining first defendant from conducting hotel business and from constructing cesspool within a distance of 15 meters from Item No.2 well or within a distance of 7.5 meter from Item No.1 property.

3. The first defendant filed objection contending that the properties are not identifiable. The building in Item No.1 was constructed in violation of the setback rules. The descriptions of Item No.2 and Item No.3 are not correct. Item No.2 well was constructed some months prior to the filing of the suit, after the construction of latrine pit in Item No.3. Water from the well was not used for any purpose. Several years old building in Item No.3, having the number 213/32 was let out to Bhupal Das who obtained licence for conducting a thattukada, on executing rent deed. There is also electricity connection. The allegation that latrine pit was constructed in violation of KMBR 104 and Travancore Cochin Public Health Act was denied. As item No.2 well was constructed after the construction of buildings in item No.3, plaintiff had no right to seek removal of the construction. The latrine in item No.3 was constructed 15 years ago. No wastewater was flown to the

property as alleged. Wife of the plaintiff and henchmen tried to demolish the latrine tank/septic tank in Item No.3 forcefully after the visit of the commissioner. No pollution was caused to the water in Item No.2 well. There are several latrines in the area and also within Item No.1 property and defendant is not responsible for the pollution of water, if any in Item No.2. The septic tank in Item No.3 is at a distance of more than 20 feet from Item No.2 well. The septic tank used by the defendant is not a cesspool. The allegation that Item No.4 plastic tank was kept in the property for flowing wastewater was denied. No consent from the Pollution Control Board is required for conducting hotel. Defendant sought for dismissal of the application.

4. Plaintiff filed IA No. 4/2023 directing the defendant to remove Item No. 5. Both parties produced documents which were provisionally marked as Exhibit A1 to Exhibit A5 and B1 to B3. Commissioner's report and sketch and photographs were marked as Exts.C1, C1(a) and C1(b) series. After hearing both sides, the learned Munsiff, as per comon order dated 19.03.2024, dismissed IA No.3/2023 and IA No.4/2023.

5. No appeal was filed challenging order in IA No.4/2023.

Aggrieved by the order in I.A.No.3/2023, plaintiff filed the appeal. It was contented that the findings based on the commissioner's reports in Exts.C1,C1(a) and C1(b) series, was erroneous. The finding that there was no violation of the Building Rules was erroneous. The observation that the well was constructed, one month before the filing of the suit is also not sustainable. The commissioner's report and Exhibit A2 report by KISCO established the nuisance caused by defendant. Plaintiff established prima facie case, balance of convenience and irreparable loss and injury. Appellant/plaintiff sought to set aside the impugned order in IA No.3/2023.

- 6.** Heard both sides and perused the records.
- 7.** Based on the contentions in the appeal memorandum, the following points arise for consideration:-
 1. Whether the plaintiff/appellant is entitled to get a temporary order of injunction in IA No.3/2023 as sought for?
 2. Whether there is any ground to interfere with the impugned order in IA No.3/2023?
 3. Relief and costs?

8. Point No.1 and 2:- According to the learned counsel for the appellant/plaintiff, the building in Item No.3 was illegally constructed without side setbacks. Plaintiff had produced Ext.A2 report, after testing the water in Item No. 2 well, which established the prima facie case in favour of the plaintiff. According to the learned counsel, the officials of the Pollution Control Board conducted site inspection on 12.09.2024. Water in the well cannot be used, due to the pollution caused by the defendant. Complaint was given to the Municipality on 07.09.2024 and 04.11.2024. But no action was taken. The distance between the Item No.2 well and the latrine in Item No.3 was below 6 meters. Plaintiff's building and well were constructed several years ago. The distance between the Item No.2 well to the septic tank in Item No.3 was 5.23 meters. According to the learned counsel, the use of the latrine pit and septic tank were continuing nuisance and there was no acquiescence by the plaintiff. The hotel was constructed without license. According to the learned counsel, a minimum distance of 7.5 meters had to be kept from the Item No.2 well to the septic tank in Item No.3. Exhibit A2

reveals the presence of E.coli bacteria in the water in Item No.2 well. Environmental Engineer of Pollution Control Board also visited the property. No permit was obtained by defendant for construction of building in Item No.3 and the building had no number. Learned counsel relied on the decisions in **Ram Baj Singh v. Babula** (1982 KHC 1125) and **M/s. Abhilash Textile and Others etc. v. Rajkot Municipal Corporation** (AIR 1988 Guj.57) in support of the argument that defendant has no right to carry on hotel business in Item No.3 causing health hazard, which is a public nuisance, as the plaintiff was conducting a lodge in the building. Learned counsel sought to set aside the impugned order in IA No.3/2023, by accepting the additional documents produced in appeal as per IA No.1/2025.

9. Learned counsel for respondent/defendant argued that both the buildings situated in commercial area, where several latrines exist. Defendant's tenant conducts hotel business on obtaining license on 04.07.2023 (Ext.B2). There was no violation of any Act or Rules. There was no pollution from the defendant's septic tank. The first suit filed by the plaintiff in 2019 was not prosecuted. Building number was 32/213 and

there was license upto 31.3.2024. There is no evidence to show that the pollution to the water in Item No.2 was caused due to the activities in the defendant's property. Learned counsel objected the additional documents produced by the plaintiff, stating that the 1st defendant was not a party to any of the additional documents produced. The plaintiff sought to restrain the 1st defendant from conducting business in Item No.3 property without impleading the tenant. Defendant's building was constructed 5 years ago. Exhibit A2 does not reveal that the water sample was taken from Item No.2. Additional documents were obtained by the plaintiff behind the back of the 1st defendant and learned counsel sought to dismiss IA No.1/2025. According to the learned counsel, there was no ground to interfere with the impugned order passed by the learned Munsiff.

10. Documents produced revealed that the building number in Item No.3 property was 32/213 and rent deed was executed with one Bhupal Das. Exhibit.B3 revealed that tenant conducted "Biryani Hut" in building No.32/213, situated in 1st defendant's property. According to the learned counsel for the plaintiff, the additional documents produced by the

plaintiff/ appellant would reveal that there was pollution to the water in Item No.2 well and the illegal constructions were done in Item No.3 property by the defendant and direction was given to the Municipality to take steps against the illegal constructions in Item No.3 and to abate the nuisance.

11. Additional documents produced by the plaintiff/appellant as per IA No.1/2025, include letter dated 15.10.2024, issued by Pollution Control Board to the manager of “Biryani Hut” to shift the septic tank and soak pit away from the well of the plaintiff. Copy was also issued to Municipality. Additional document produced reveal that complaint was given by the wife of plaintiff before the Minister for Local Self-Government Institutions, alleging pollution to the water in the well. As per the additional documents, the hotel had license issued on 01.06.2024 and the distance between the well in Item No.2 to the septic tank in Item No.3 was 3.10 meters and the septic tank was constructed illegally without leaving the required setbacks and direction was given to the Secretary of Municipality to take steps to shift the same by issuing direction to the 1st defendant. Plaintiff also produced copy of complaint given by plaintiff's power of attorney holder to the

Municipality on 07.09.2024 by producing documents. Reply obtained on 13.05.2024 under Right to Information Act, reveals that no building permit was obtained by the 1st defendant. IA No.1/2025 was allowed (VO).

12. The learned Munsiff found that there was nothing to show that water in Item No.2 well was tested by the plaintiff to obtain Exhibit A2 report. It was also found that the suit was filed without power of attorney and only an email was produced and the power of attorney was only subsequently filed. It was also found that after the enactment of Kerala Municipality Act, Travancore Cochin Public Health Act had no force. It was also found by the learned Munsiff that only 60 cm need be provided as side setback and 50 cm need be provided as rear setback, as per Rule 62 of Kerala Municipality Building Rules, 1999.

13. 60 cm of setback can be provided only if there are no windows, doors in the wall of the building in small plots in Chapter VIII of KMBR. When there are windows, doors or openings minimum rear and side set back have to be provided during construction. Rule 62 of KMBR 1999 is applicable only to buildings in small plots not exceeding 125 M². Item No.3

property has an extent of 3.66 Ares and it is not a small plot and hence Rule 62 is not applicable to the building in item No.3 which is a mercantile occupancy. The commissioner's report and the photographs reveal that the construction in Item No.3 was close to the compound wall on the southern side of Item No.1 property and the distance of 89cm was also reported by the commissioner. Ext.C1(a) rough sketch revealed that the hotel buildings such as cesspool, plastic tank, and latrine are close to the southern compound wall of Item No.1 property. The latrine and cesspool are within a distance of 7m from Item No.2. As a matter of fact, no building permit was produced by the 1st defendant in respect of the constructions in the property. Plaintiff produced additional documents to show that no building permit was obtained by first defendant.

14. Defendant No.1 also contended that Item No.2 well was constructed two months prior to the filing of the suit and plaintiff contended that the well was already in existence. A multi storey building is situated in Item No.1. There would be documents regarding construction of well in Item No.1 property. The age of the constructions in Item No.3 was

reported by the commissioner as less than 3 years. The additional documents produced would reveal that the Municipality was directed by the authorities to take steps for removal of the illegal constructions and to abate the nuisance in Item No.3 property; as the construction of the cesspool was close to the well in Item No.1 property.

15. As per Rule 104, of KMBR 1999 no leach pit, sock pit, or septic tank shall be constructed within a distance of 7.5 metre radius from any existing well, which is a drinking water source. The learned Munsiff had no opportunity to go through the additional documents produced by plaintiff. Both parties also did not produce documents evidencing period of construction of Item No.2 well, and the age of the constructions in Item No.3 including the latrine, septic tank/leach pit. No cesspool can be constructed within the prohibited distance from the well and southern boundary of Item No.1 as per the Building Rules. The learned Munsiff found that the presence of septic tank in Item No.1 was not reported in Exhibit C1 report. It was found that the distance between Item No.2 and the septic tank in Item No.1 was also not reported and hence the plaintiff cannot claim mandatory

or temporary prohibitory injunction without ascertaining those factors and the applications were dismissed.

16. Hotel can be conducted only after obtaining license. As the building is having building number, there would be documents evidencing the construction of toilet, building and septic tank in Item No.3. There would also be documents revealing the construction of Item No.2 well and latrines or septic tanks in Item No.1 property. Considering the facts and circumstances, additional documents produced and the commissioner's report which reveal that there are constructions in Item No.3 property close to the well in Item No.1 property, it is found that the impugned order has been passed, without properly considering the documents produced and commissioner's report. Hence it is found that opportunity has to be given to the plaintiff/appellant to establish the case; relying on the additional documents produced as per IA No.1/2025. Nobody has a right to conduct business in an illegally constructed building; to cause nuisance to the adjacent property owners or to cause pollution to the drinking water sources. In the said circumstances, it is found that the impugned order in IA No.3/2023 can be set aside in the interest of justice.

17. As the application for temporary mandatory injunction filed as IA No.4/2023 was dismissed, the claim for removal of building or tank can be agitated only in the suit. But the question whether the petitioner/appellant is entitled to temporary injunction to abate nuisance, due to flow of waste water which is continuous can be considered by the learned Munsiff afresh; on the basis of additional documents produced in IA No.1/2025; which would be transmitted to the trial court for fresh consideration of IA No.3/2023. Hence Point No.1 and 2 are found accordingly in favour of the plaintiff/appellant.

18. Point No.3:- in view of the findings in Point No.1 and 2, the appeal is partly allowed.

In the result, the appeal is partly allowed.

1. Order dated 19.03.2024 in IA No.3/2023 in O.S.No.230/2023 of Munsiff's Court, Ettumanoor stands set aside.
2. IA No.1/2025 is allowed. The additional documents produced shall be transmitted to the trial Court for fresh consideration of IA No.3/2023.
3. The learned Munsiff shall give opportunity of hearing to both sides and consider the

additional documents produced in IA No.1/2025 transmitted to the trial Court and shall dispose of IA No.3/2023 afresh, by giving preference, untrammelled by any of the observations in this judgment.

4. Both parties are at liberty to produce additional documents or evidence before the trial Court.
5. Considering the facts and circumstances, no order as to costs.
6. Both parties shall appear before the trial court on 18.05.2026.

Dictated to and typed by the Dictation Software, corrected and pronounced by me in open Court, on this the 23rd day of April, 2026.

Sd/-
Lilly K.
Addl. District Judge-I
Kottayam

APPENDIX- NIL

Id/-
Addl. District Judge-I

//True Copy//

Copied by:
Compared by:

Sd/-
Lilly K.
Addl. District Judge-I
Kottayam

