

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), OTTAPALAM

Present:- Sri. Renjith Rajan; Civil Judge (Senior Division)

Tuesday, 7th day of April, 2026 (17th day of Chaithra, 1948 S.E.)

CIVIL MISCELLANEOUS APPEAL No. 05/2026

(in IA 02/2025 in O.S. No. 625/2025 dated 03/02/2026 of Munsiff Court, Ottapalam)

Between

Appellant/ Petitioner/Plaintiff

Appukunha Gupthan @ AppukunhaMoothan, aged 90 years,
S/o Ramankutty Gupthan, residing at Mannathamkulangara
Manikkandath Theyyam Veedu, Pullundassery Amsom &
Desom, Kadampazhipuram Post, Ottapalam Taluk.

And

Respondent/ Defendant

Kunju Gupthan, aged 75 years,
S/o Ramankutty Gupthan, residing at
Mannathamkulangara Manikkandath Theyyam Veedu,
Pullundassery Amsom & Desom, Kadampazhipuram Post,
Ottapalam Taluk.

This Civil Miscellaneous Appeal coming on 6th day of April, 2026 for final hearing before me in the presence of Sri. P. Ullas, Advocate for Appellant and of Sri. P. N. Balagopalan, Advocate for Respondent, and having stood over to this day for consideration, the Court delivered the following:-

JUDGMENT

This is an appeal preferred against the order in IA No. 2/25 in OS 625/25 dated 03.02.2026 in the file of Munsiff Court, Ottapalam. IA No. 2 /25 is a petition under Order XXXIX Rule 1 CPC which was dismissed by the Munsiff Court. Plaintiff is the appellant before this Court.

2. The case of the plaintiff is as follows : The defendant is the brother of the plaintiff. The plaint schedule property is the property covered by final decree in OS 182 / 1993. The second property in Schedule A of the final decree is the plaint schedule property herein. That properties were allotted to the plaintiff. The second property in Schedule D of the final decree in the aforementioned suit lies on the northern side of the plaint schedule property. Which was allotted to the defendant. The defendant was interested in purchasing the plaint schedule property. The plaintiff was not amenable for the same. On 10.12 2025 the defendant demolished the old house on his property and dumped earth on the plaint schedule property. The defendant pulled out the fence posts. He moved them a few feet south. Hence the injunction petition to restrain the defendant from interfering with the plaintiff's possession of the plaint schedule property by erecting any structures.

3. Defendant filed counter contending inter alia as follows :- The averments in the petition are not correct. After the passing of the final decree, both parties exchanged portions of their properties. The property of the plaintiff is comparatively bigger than the property of the defendant. After exchange, fence posts were put on the new boundary line. The said fence posts are still there. The house situated in the property of the defendant was a

dilapidated one. So he demolished the house and started constructing a new one. The present petition is to torpedo the construction of the house. So the petition is bereft of any merits and liable to be dismissed.

4. The following point was raised by the trial Court.

1. Is the petitioner entitled to the temporary prohibitory injunction sought?

5. The trial Court dismissed the injunction petition on merits. Aggrieved the plaintiff preferred the present appeal.

6. Heard both sides.

7. The point that arise for consideration is :

1. Whether the trial Court order, dismissing the petition need any interference ?

2. Relief and costs ?

8. **Point No. 1:-** In this case, the injunction sought for was turned down by the trial Court. The plaintiff relied upon the final decree in OS 182 /1993. He heavily relied on the commissioner's Report. Both these documents are discussed in the trial Court Order. But these documents were not seen marked. So this court is of the opinion that the trial Court must be directed to decide the petition afresh after affording opportunity to both sides to mark documents. Hence petition stands remanded back to the trial Court. Point answered accordingly.

9 **Point No.2:** In the light of the finding in point number 1, petition remanded back to the trial Court for fresh consideration. The trial Court shall afford opportunity to both sides to mark documents. parties directed to bear their own costs.

In the result, appeal allowed in part without cost.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this Tuesday, the 7th day of April, 2026).

Civil Judge (Senior Division)

WITNESS EXAMINED AND EXHIBITS MARKED : NIL

Civil Judge (Senior Division)

FAIR JUDGMENT

in CMA.05/2026

DATED:07/04/2026