

IN THE COURT OF THE ADDL. DISTRICT JUDGE - III,

THIRUVANANTHAPURAM

PRESENT : SRI. JOSE N CYRIL, ADDL. DISTRICT JUDGE – III

On Wednesday, 18th day of March, 2026/ 27th Phalguna, 1947.

CMA. No. 333/2022

(IA No. 1/2022 in OS No. 460/2022 on the file of the
Principal Munsiff Court , Thiruvananthapuram)

Appellants:-

1. Jithesh Sreedharan, aged 42 years, S/o K Sreedharan,
Ji Highland Villa, Manvila, Attipra Village,
Thiruvananthapuram Taluk.
2. Jilu Jithesh, aged 35 years, W/o Jithesh,
Ji Highland Villa, Manvila, Attipra Village,
Thiruvananthapuram Taluk.

By Adv. G R Bilahari

Respondents:-

1. Preetha Anil, aged 54 years, W/o Anil, Karthika,
Gandhipuram, GRAK 54A, Pangappara Village,
Sreekaryam PO, Thiruvananthapuram.
2. Anil S, aged 55 years, Karthika, Gandhipuram,
GRAK 54A, Pangappara Village, Sreekaryam PO,
Thiruvananthapuram.

By Adv. K S Vinod

This appeal having been finally heard on 26-02-2026 and the Court on 18-03-2026 passed the following :-

ORDER

This Civil Miscellaneous Application has been preferred by the appellants, aggrieved by the order dated 21.06.2022 in IA No. 1/2022 in OS No. 460/2022 of the learned Principal Munsiff, Thiruvananthapuram dismissing the interim prayer for injunction restraining the defendants/respondents in this CMA from further excavation near the plaint schedule property till the disposal of the suit.

2. The suit was preferred by the plaintiffs/appellants praying for a decree allowing them to realise. ₹ 5,14,000/- from the defendants, which is the consolidated amount required for the reconstruction of the plaint schedule property and the damaged portion of the building and the rent provided by the plaintiffs when they availed a rental house for residence as the building available in the plaint schedule property was not suitable for residing, for a permanent prohibitory injunction restraining the defendants from further excavation near the plaint schedule property among other reliefs.

3. The case of the plaintiffs in the suit briefly stated are as follows:-

The petitioners/plaintiffs/appellants purchased the petition schedule property which was purchased by their seller from the defendants/respondents from their larger extent of property and they constructed a residential house in the property. The said property had been enjoying lateral support of the property of the first defendant which is very essential for the existence of the property of the plaintiffs. The defendants subsequently reduced the height of their property on the northern side up to 50 feet by using heavy equipments, thereby the property of the plaintiffs lost its lateral support and the northern yard of the plaintiff schedule property got completely collapsed which resulted in damage of the building. Therefore, the plaintiffs demanded the defendants to construct a concrete masonry to support the property and they did it in the month of October 2021. The collapsed portion of the plaintiff's property and the building were not reconstructed. The compound wall, which separates the properties of the plaintiffs and defendants, was collapsed and the ground adjacent to the northern side of the plaintiff's building has subsided considerably making it impossible to enter into the building through that side. While excavating the property, the defendants did not leave even 2 metres distance and in order to

prevent further soil erosion and damages to the plaint schedule property, it is necessary to repair the entry steps and interlocking of bricks and hence an amount of ₹ 4.5 lakhs is to be realised from the defendants for that purpose and the plaintiffs also prayed for a prohibitory injunction.

4. The respondents filed counter affidavit contending that injunction is seen sought with respect to a property that is not scheduled. Moreover, the prayer for injunction is ambiguous and not definite. The property lying on the immediate north of the plaint schedule property having an extent of 24.29 Ares comprised in survey No. 429/4-1, belongs to the second respondent. An extent of 50cents on the immediate south of that 24.29 Ares originally belonged to the first respondent who divided the same into different plots with motorable access from south to north. The plaint schedule property is on the northern extremity of the said 50 cents and it abuts the 24.29 ares of the second respondent. The northern boundary of the plaint schedule property has a length of 14.7 meters only. Before constructing the building therein, the plaintiffs levelled the plaint schedule property and new soil has been put on the northern extremity. A feeble basement was also constructed which was not strong enough to protect new

soil. The property of the second respondent is slanting from south to north and it is lying below the level of the plaintiff schedule property. Because of the height difference, the second defendant decided not to make use of the pathway provided on the eastern side of the plaintiff schedule for vehicular access to the 24.29 Ares mentioned above. The defendants started to level the property into different plots and pathways were provided as well. One such residential plot was developed close to the northern boundary of the plaintiff schedule property and the level difference of both is nearly 5 meters. Even though the soil is hard and filled with laterite, due to the newly put soil, it was likely that portions of the upper lying land may collapse and therefore the defendants started works of constructing RC wall with iron rod covering the northern extremity of the entire high lying area inclusive of the plaintiff schedule. The length of the RC wall, which abuts the plaintiff schedule, is 14.7 meters only. The entire properties of the defendants form part of a hillock. Since the plaintiffs have altered the lie and nature of their property and also have made constructions covering the entire area of the plaintiff schedule property, substantial load and pressure has been added to the plaintiff schedule property and as such they cannot claim lateral support. There was a

strip of land lying in between the northern compound wall of the plaint schedule and the newly constructed RC wall. The plaintiff, with an ulterior motive to reduce the said strip of land to their possession, have put solid waste materials in the said area soon after the construction of the wall without any consent and notice whereby a portion of the RC wall which abuts the plaint schedule property was collapsed and fell down. Still, the defendant promised the plaintiffs to re-erect the collapsed portions without delay. The plaintiffs demanded that the said construction work has to be carried out only in accordance with the specification to be provided by the technical expert of their choice and they brought a person who is technically qualified and conversant with the construction activities and reconstruction work was carried out in his presence. It is denied that the plaintiffs are residing in a rented building. The plaintiffs are residing in the plaint schedule building itself. The first defendant never undertook to re-construct any portion of the plaint schedule building since no portion of the plaint schedule building was collapsed. All that is collapsed is the northern compound wall of the plaint schedule property and a portion of exterior pavements and two footsteps, which extends beyond the wall level. The compound wall was a feeble

construction without any foundation resulting which that was also collapsed simultaneously. The compound wall constructed on the edge of a high lying area should have a foundation of sufficient strength to sustain. The defendants have not done activities in the property which resulted in the collapse of the RC wall which the first defendant constructed. The estimated cost is not true. The plaintiffs are not entitled to recover any amount from the defendants and that the defendants are not legally bound to pay anything as damages to the plaintiff and prayed to dismiss the petition with costs.

5. After hearing both sides, the learned Munsiff dismissed the application.

6. Aggrieved, the petitioners in the IA who are the plaintiffs are in appeal. I have heard both sides. The trial court records were called for and perused.

7. The points that arise for consideration in this case are:-

1. Whether the prayer for injunction restraining the respondents from further excavation near the plaint schedule property is allowable?
2. Whether the order of the learned Munsiff dated 21.06.2022 in

IA No. 1/2022 calls for any interference as prayed for by the appellants.

3. Reliefs and costs if any?

Point nos. 1 and 2:-

8. Both the above points can be considered together conveniently as those are closely related and for the sake of brevity.

9. The undisputed facts of the case are the following: -

The respondents are man and wife who owned a larger extent of property which were divided by them and sold to different persons in plots for the purpose of developing and constructing houses. The property on the immediate north of the property of the plaintiffs/appellants having an extent of 24.29 Ares belongs to the second respondent husband and on the immediate south an extend of 50 cents of land belonged to the first respondent wife and they divided the same into different plots with motorable access from south to north for the purpose of selling for constructing houses. The plaintiffs/appellant purchased the said property the extent of which is 1.62 Ares, levelled the same by putting new soil, constructed basement and the property of the second respondent slanting

from south to north is lying below the level of the plaintiffs' property. The defendants/respondents also levelled the properties which were divided into different plots after providing pathway for the purpose of sale which had to be purchased by different persons and construct houses in the same. The level difference between the property of the appellants and those divided by the respondents in to plots was about 5 meters. According to the respondents it is more likely that the upper lying land is likely to collapse and therefore the respondents constructed a 40.7 meters RC wall. It is alleged by the respondents that the plaintiffs altered the lie and nature of their property and have made constructions, that substantial load and pressure has been added to the plaint schedule property and therefore they are not entitled to claim lateral support. It is also alleged by the respondents that the plaintiffs have put solid waste materials in the area immediately after construction of the wall and therefore the RC wall was collapsed and fell down. On the basis of the demand by the appellants, the respondents claim that they had carried out re-erection of the collapsed portions as demanded by the appellants on the supervision of the technically qualified person suggested by the appellants. The respondents

admit that the compound wall of the appellants' property was collapsed, and according to them it collapsed since it was a feeble construction without any foundation, and the compound wall constructed on the edge of a high lying area should have a foundation of sufficient strength to sustain.

10. The respondents are husband and wife and the second respondent husband purchased one acre of property which abuts the public road on the southern side. The husband transferred 24.29 Ares of property in favour of his wife the first respondent on the northern side. The husband developed the 50 cents of land, constructed a road in the middle of the said property, divided it and sold to different persons. On the northern side of the said property, 4.5 cents were purchased by the appellants/plaintiffs and they constructed a double storied building and are residing there. It is the specific contention of the respondents that natural lie of the property was altered by constructing a double storied building and that the property belonging to the second respondent is on the immediate northern side, which is in lower level. The length of the property which abuts the property of the respondents is only 14.5 meters. There was an old boundary wall which collapsed due to extra pressure exerted from the

plaint schedule property that the respondent took up the responsibility and constructed a concrete wall and it was thereafter that the appellants preferred the suit.

11. It is argued by the learned counsel for the respondents that the suit is ripe for trial, written statement filed and issue is raised. It is argued that the respondents cannot stop construction on the northern side of the petition scheduled property and they have to dig for constructing house. It is further argued that servient tenement has not been scheduled, that natural lie of the property was altered by the appellants and that it is necessary for the respondents to excavate their property to construct a house.

12. From the above it is clear that the respondents had a larger extent of property which was divided by them into small plots after providing motorable way to each property. They also developed the properties by putting soil in the said properties and development of the land work is being carried out by the respondents. It is alleged by the respondents that, since the appellants made improvements in the land by constructing a two storied building, they are not entitled to the right of lateral support since

artificial pressure was caused in the property. It is argued that therefore they are not entitled to natural right for the increased pressure. It is clear from the records that the entire property belonged to the respondents and they sold the properties to different persons in small plots after developing the same. The purchasers of the small plots purchased the same solely for the purpose of constructing houses. The appellants also purchased a small piece of land and they constructed a two storied house in the said property. In the above circumstances only because the appellant constructed a two storied house in their small plot of land, it cannot be said that they are not entitled the right of lateral support. Hence considering the facts and circumstances of the case I am satisfied that if the respondents carry out further excavation in the property, adjacent to the property of the appellants and are permitted to alter the lie and nature of the land adjacent to the building of the appellant, irreparable loss and damages would be caused to the appellants and hence the appellants are entitled to the relief of injunction as prayed for. Hence I am satisfied that the order of the learned Munsiff dated 21/06/2022 in IA No.1/2022 requires interference and the appellants are entitled to an order for injunction restraining the

respondents from further excavation on the northern side of petition schedule property. Points answered accordingly.

Point No.3

11. In the result the CMA is allowed and a temporary injunction is passed restraining the respondents from further excavating the land five meters adjacent to the northern side of the petition schedule property comprised in resurvey number 429/5-6 of Attipra Village till the disposal of the suit

12. Considering the fact that the suit is of the year 2022, the learned Munsiff is directed to dispose of the suit as early as possible.

Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open Court, on the 18th day of March, 2026.

Sd/-
JOSE N CYRIL
Addl. District Judge -III

APPENDIX : NIL

Id/-
Addl. District Judge – III

(Copies : 3) (True Copy)
Typed by : Rifa
Compared by : Soumya FCS :

By Order

SHERISTADAR

Copy of Order in
CMA No. 333/2022
Dated: 18/03/2026
