

IN THE COURT OF THE SUB JUDGE, NEDUMANGAD

Present : Smt. Rajasree. C.R, Civil Judge (Senior Division)

On Monday 23rd March 2026/ 2nd Chaithram 1948

I.A 1/2026 in AS 8/2026

Petitioners/ Appellants

1. Anil Kumar. K.G, S/o. Gopala Pillai, aged 62 years, PRA 125 B, Anaswara, Behind SNDP Hall Puravoorkonam, Vazhayila, Karakulam. P.O., Thiruvananthapuram.
2. Anitha Devi, W/o. Anil Kumar, aged 56, PRA 125 B, Anaswara, Behind SNDP Hall, Puravoorkonam, Vazhayila, Karakulam. P.O., Thiruvananthapuram.
3. Dinesh. V, S/o. Viswanathan, aged 66, Muralika, Behind SNDP Hall, Puravoorkonam, Vazhayila, Karakulam P.O., Thiruvananthapuram.
4. Pushpalatha, W/o. Dinesh, aged 61, Muralika, Behind SNDP Hall, Puravoorkonam, Vazhayila, Karakulam P.O., Thiruvananthapuram.

(By Adv. Sri.S. Vikraman, Adv. Govind. V, Adv. Sunod. V.K, Adv. Nitin.A, Adv. Lekshmi Santhosh. S)

**Counter Petitioner/
Respondent**

Rajendran. K, S/o. Kunjukrishnan, aged 72 years, T.C. 16/784-3, Indrajayam, Opposite to Krishnan Kovil, Jagathy, Thycaud Village, Thiruvananthapuram-14.

(By Adv. M.R. Chithralal, Adv. Karthika. S.R, Adv. Aswathy. P.S and Adv. Krishna. S)

This petition having been finally heard on 16/03/2026 and the court on 23/03/2026 passed the following:-

ORDER

This application is filed under XLI Rule 5 of the Code of Civil Procedure, 1908 to stay the operation of the judgment and decree in OS.195/2020 dated 16.12.2025 (by way of a common judgment) of the court of Principal Munsiff, Nedumangad till the disposal of the appeal.

2. Petition averments, in brief are, stated as follows: The petitioners are the appellants in this appeal. The appeal is preferred against the judgment and decree passed in OS.195/2020 dated 16.12.2025 (by way of a common judgment) of the court of Principal Munsiff, Nedumangad. The decree was passed directing the appellants herein by way of mandatory injunction to remove plaint D schedule construction within 30 days and for a permanent prohibitory injunction restraining the appellants from obstructing the respondent from using the common pathway or from demolishing the gate in the common wall. After filing caveat from 03.03.2020, the respondent has demolished the eastern compound wall and installed a gate claiming that he has easement right of implied grant over the plaint C schedule pathway. The Trial Court without any basis or evidence had found that the respondent has easement right of implied grant. The evidence was not properly appreciated by the Trial Court. The respondent is taking steps to execute the

decree before the expiration of the appeal period and preferred EP.33/2026 on 24.03.2026. Thus, this application is filed to stay the operation of the decree and judgment.

3. Respondent opposed the application and filed a written objection contenting as follows:- The decree passed by the trial Court is proper. The appeal preferred is devolved of any merits. The dispute involved in the present case is limited in nature relating to the removal of temporary obstruction from the pathway leading to the property of this respondent. The respondent is aged 77 years and is suffering from various serious medical ailments including cardiac disease, spinal surgery, prostate cancer surgery etc. The only intention of the appellants is to deny the respondent the fruits of the decree. If the matter is stayed, much hardship will be caused to the respondent. The suit was disposed of on a time-bound basis as per the direction issued by the Hon'ble High Court of Kerala. No substantial loss or irreparable injury will be caused to the appellants if the petition is denied. The power to grant stay is a discretionary and equitable relief. The entire materials and evidences required for deciding the appeal are already in the case records. This petitioner has also filed an application to call for the trial court records (TCR) at the earliest and to decide the appeal without delay. The intention of the appellants is to delay the consideration of the appeal and to deny the respondent an opportunity to enjoy the fruits of the decree. Thus, this application is only to be dismissed with costs.

4. Heard both sides.

5. Points that arose for consideration are:

1. Is it a fit case to stay the operation of the judgment and decree in OS No. 195/2020 of the Court of Principal Munsiff Nedumangad?

2. What is the order as to costs?

6. Point no.1: This application is filed under Order XLI Rule 5 of the Code of Civil Procedure, 1908. The petition averments would go to show that the petitioners have preferred this appeal stating that the decree and judgment passed is not proper. It is further averred that the respondent is taking efforts to get the decree executed by preferring an execution petition as EP No. 33/2016. The execution petition was preferred even before the expiry of the time stipulated for preferring the appeal. As per the judgment and decree, the Trial Court has directed the petitioners to remove the plaint B schedule construction within 30 days and also passed prohibitory injunction against the appellants from obstructing the respondent from using the common pathway or from demolishing the gate and compound wall. On the contrary, the respondent opposed the application stating that the suit was disposed of after obtaining an order from the Hon'ble High Court to dispose it within a time frame. The only intention of the petitioners is to deny the respondent the opportunity to enjoy the fruits of the decree.

7. The affidavit filed would disclose that the respondent within the period of appeal has preferred EP before the Munsiff Court and the execution petition was

filed on 24.06.2026 as EP.33/2026. It is pertinent to note that in an application of this nature, the primary question for consideration is whether there is any delay in preferring this application and whether any substantial injustice will be caused to the petitioner if the application is not allowed.

8. At this juncture, let me consider Order XLI Rule 5 of the Code of Civil Procedure, 1908. It reads as follows :*Stay by Appellate Court. - (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree. Explanation. - An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.(2) Stay by Court which passed the decree. - Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed. (3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied - (a) that substantial loss may result to the party applying for stay of execution unless the order is made;(b) that the application has been made without unreasonable delay; and (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.(4) Subject to the provision of sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the*

application. (5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of R.1, the Court shall not make an order staying the execution of the decree.

9. Reading Order XLI R.5(1), it is evident that preferring an appeal shall not operate as a stay of proceedings under a decree or order appealed from except for sufficient cause appellate court may order stay of execution of such decree. It has been provided under Order XLI R.5(3) that no order of stay of execution shall be made under sub-rule (1) unless the court passing such an order satisfies that (a) that substantial loss may result to the party applying for stay of execution unless the order is made; (b) that the application has been made without unreasonable delay; and (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him. In this case, the respondent has preferred an execution petition as EP 33/2026 and is proceeding with the same. So, if the decree is executed prior to the consideration of this appeal much hardship will be caused to the petitioners. Further, this application is filed along with the appeal without any unreasonable delay. Considering the fact that the respondent is proceeding with the execution petition filed before the execution court, I am of the view that the operation of the decree could be stayed till the disposal of the appeal. The objection raised by the respondent would show that he is aged 77 years suffering from various ailments. The objection raised by the respondent can be taken into account and the trial court records can be called for in

this case for the adjudication of the appeal at the earliest. As the petitioners have shown that substantial injustice would be caused to them if the execution of the decree is done prior to the consideration of the appeal, I am of the view that this is a fit case to stay the operation of the judgment and decree in OS 195/2020. In the light of these discussions, I am inclined to allow this application. Thus, this point is found in favour of the petitioners.

10. Point no.2: As this is only an interlocutory application, parties are directed to bear their respective costs.

In the result, this application is allowed. The operation of the judgment and decree in OS.195/2020 of the Court of Principal Munsiff, Nedumangad is stayed till the disposal of the appeal.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 23rd day of March, 2026)

RAJASREE.C.R,
Civil Judge(Senior Division).

Appendix: NIL

Civil Judge, Senior Division

Typed by :BR

Compd by: RPN