

**IN THE COURT OF THE SUB JUDGE, NEDUMANGAD****Present : Smt.Rajasree C.R, Civil Judge (Senior Division)****On Thursday 23<sup>rd</sup> October 2025/ 1<sup>st</sup> Karthika 1947****CMA 32/2022**

(On appeal against the order in IA 1/2022 in O.S. No. 629/2022 dated 18/10/2022 of Principal Munsiff Court, Nedumangad)

**Appellant/ Plaintiff**

T.G. Ramachandran Nair, S/o. K. Gopala Pillai, aged 61 years, Puthen Kannette, Niranman, Pathanamthitta. Now residing at RC Bhavan, Kundayathu Nada, Neduveli, Konchira P.O., Vembayam Village, Nedumangad, Pin- 695615.

(By Adv.Sri. N. Satheesh Kumar and Adv. P. Sindhu)

**Respondent/ Defendant**

Hashir. A, aged about 52 years, Arafa Manzil, Kaithayil, Vembayam Village, Konchira. P.O, Pin- 695615 having business namely A.K. Stores & Books, Kanyakulangara.

( By Adv. Sri. M. Shajahan)

This CMA having been heard on 23/10/2025 and the court on the same day passed the following:-

## **ORDER**

This Civil Miscellaneous Appeal is preferred by the plaintiff in OS 629/2022 of the Court of Principal Munsiff Nedumangad, challenging the Order in IA No. 1/2022 dated 18.10.2022 ( application seeking temporary injunction), The parties will be referred to in as “ the plaintiff” and as “ the defendant”, as they are shown in the suit.

2. The statement of facts narrated in the appeal memorandum, in brief are stated as follows. The appellant is a plaintiff in OS 629/2022 of the Court of Munsiff, Nedumangadu. The case of the plaintiff is that he is the owner in possession of the plaint schedule property and has constructed building therein by excavating earth in the plaint schedule property. Plaint B schedule property belongs to the defendant/respondent. The respondent is constructing a multi-storied building in the plaint B schedule property close to the plaint A schedule imposing additional burden in his property. The defendant had raised the height of the compound wall, which caused more threat to the residents in the plaint A schedule property. He had dumped earth up to the compound wall to fill up the area to a height of about 6 feet without taking any precautionary measures. He is proceeding with the construction in an unscientific way and the appellant apprehends collapse of the compound wall into the

A schedule property. Thus, an application was filed as IA No. 1/2022 seeking injunction restraining the defendant from proceeding with the construction in the plaint B schedule till the disposal of the suit.

3. The grounds stated in the appeal memorandum are as follows: The order is arbitrary and perverse. The court below ought to have allowed the application as the plaintiff has got a prima facie case and balance of convenience is in his favour. The dismissal of the application caused injustice to the plaintiff. The finding of the trial Court that the plaintiff failed to establish a prima facie case is absolutely false and wrong. The trial Court misunderstood the law relating to the lateral support and did not apply the same in its right perspective. The observation of the trial Court that the property lying at a lower level imposed additional burden to destroy lateral support is absurd. Trial Court has misread the pleadings in the petition regarding the leveling of the A schedule after providing lateral support to the B schedule. Defendant has no dispute regarding the sufficiency of lateral support available from the A schedule. This fact is uncared of by the trial court. The construction in the B schedule was done in the most unscientific way, which caused damage to the A schedule property. The report filed by the commissioner is not appreciated. The casualty that is likely to cause due to the imposition of additional burden was not taken care of by the trial Court. The trial Court wrongly followed the

report submitted from the defendant. Report from a qualified person appointed by the court was necessary and this aspect was lost sight of by the trial Court. Permission was granted by the panchayath to construct a building, but the defendant constructed the separating wall unauthorisedly, which was objected by the plaintiff. There was sufficient lateral support to plaintiff A schedule property and that was not taken care of by the trial Court. The trial Court has found fault with the plaintiff. The compound wall between the plaintiff A and B schedule properties is a common party wall. Without the permission of the plaintiff, the defendant had raised its height and imposed additional burden arbitrarily. Thus, this appeal is preferred against the order, dismissing the application.

4. The respondent/defendant filed objection to the application contending that the building is constructed 4 to 5 metres away from the plaintiff A schedule property, after obtaining permit from the local body and earth is dumped only up to a height of 2 feet. The plaintiff had constructed building in the plaintiff A schedule property by excavating earth in the plaintiff A schedule property. The balance of convenience is not in favour of the plaintiff.

5. On the side of the plaintiff, Ext. A1 to Ext. A3, C1 and C1(a) were marked. On the side of the defendant, Ext. B1 to B4 were marked. The learned Civil Judge, after considering the application filed by the plaintiff, the

objection and after considering the documents produced has dismissed the application.

6. When this appeal was taken up for consideration, the respondent/defendant failed to appear for hearing. Heard the learned counsel for the appellant/plaintiff.

7. Hearing the learned counsel for the plaintiff/ appellant and after considering the grounds stated in the appeal memorandum, the following points were formulated for consideration.

1. Whether the decision taken by the trial Court requires any interference and if so on what grounds?

2. What is the order as to costs?

8. **Point no.1** :- The specific case of being plaintiff is that he is in possession and enjoyment of the plaint schedule property that was obtained by him by virtue of Ext.A1 Sale deed 617/2013 . After purchasing the property he had effected mutation and has been paying land tax. The property which he has purchased is lying in a single compact plot with well defined boundaries. There is a building situated in the plaint A schedule property and the plaintiff along with his family is residing in the said building. The plaint B schedule is the property of the defendant that lies on the southern side of the plaint A schedule property. There is a compound wall separating the two properties.

According to the plaintiff, 1 meter portion from the plaintiff A schedule was provided as lateral support to the plaintiff B schedule property and the remaining portion of the plaintiff A schedule is 6 meters lower in level than the plaintiff B schedule property. Now the defendant is trying to construct a multi storied building in his property close to the plaintiff A schedule imposing additional burden to the plaintiff B schedule property. Even though the plaintiff has asked the defendant to leave some portion of the property as lateral support he was not ready for the same. The defendant had constructed a basement and has constructed superstructure over the same and had dumped soil for filling the basement constructed, having a height of 4 meters. The intention of the defendant is to construct a building in the plaintiff B schedule and to purchase the plaintiff A schedule property on a throwaway price. Thus his application is filed seeking temporary injunction.

9. The respondent entered appearance and objected the application on the ground that the plaintiff A and B schedule properties were at the same level and the plaintiff has excavated and removed the soil from the plaintiff A schedule property at the depth of 6 feet after leaving 1 metre space. Even though the plaintiff has assured that he would protect the lateral support to the plaintiff B schedule property, it was not done. This suit is filed only to harass the defendant. It is not correct that the respondent has done soil to the height of

about 4 to 6 metres. There is no prima facie case in favour of plaintiff and the balance of convenience is also not in his favour .

10. There is absolutely no dispute regarding the petition schedule properties . It is also an admitted fact that the plaintiff had excavated soil and removed soil from the plaint A schedule property to a depth of about 6 feet after retaining 1 metre portion of land. At this juncture, let me consider Ext.C1 report filed by the commissioner who inspected the property. The commissioner has visited the property on 25.08.2022 at 04.00 p.m. At the time of inspection, the appellant/plaintiff was present in the spot. The commissioner has noted that the plaint A schedule property is about 20 feet lower in level than the plaint B schedule property. 1 meter-width portion was retained in the plaint A schedule property as lateral support to the plaint B schedule property. There is a hollow bricks boundary in between the plaint A and B schedule property, having a height of 1.5 feet and a length of 15 metres. The commissioner has noted the filling of soil in the plaint B schedule property to the level of the concrete belt. There is a boundary wall on the northern side is a plaint B schedule property and above the boundary wall there is a concrete belt and up to the concrete belt, soil has been dumped. It is further reported that by dumping soil, additional pressure is imposed in the plaint B schedule property. Placing reliance on the matters reported by the commissioner, the

learned counsel for the argue that no construction can be permitted in the plaint B schedule property.

11. At this juncture, let me consider Ext. B1, which is the permit given by the panchayath to the defendant for the construction of the building. In the plan, the setbacks that the defendant has to adhere for the construction of the building is specifically mentioned. Ext. B2 is the photograph showing the present stage of the property and Ext. B3 is a construction report by a supervisor Engineer dated 31.08.2022, regarding the filling of soil and the construction made in the plaint B schedule property. Ext. B4 letter from the panchayath would disclose that a complaint was filed before the panchayath authorities to restrain the defendant from making any construction and the panchayath had permitted him to continue with the construction of the building as per Ext. B1 and specifically directed the defendant not to make any construction with respect to the boundary in between the plaint A and the plaint B schedule property. From Ext. B1 and Ext. B4, one thing is evident that the construction of the building was done by the defendant in accordance with rules after obtaining permission from the panchayath authorities. The only dispute is regarding the dumping of soil and construction of compound wall above the existing wall.

12. With respect to the same, the report filed as Ext. B3 would show that the construction will not cause any danger or apprehension to the property that lies at a lower level, especially the plaint A schedule property. The averments in the plaint itself would go to show that the plaint A schedule property was lying in the same level as that of the plaint B schedule property that lies on the southern side of the plaint A schedule property. Subsequently after retaining 1 metre space from the plaint A schedule boundary, so as to provide lateral support to the plaint B schedule, the remaining portion of the plaint A schedule was lowered. The apprehension of the plaintiff regarding the construction and dumping of soil is prima facie established from Ext.C1 report filed by the advocate commissioner . As the panchayath authorities had granted permit for the construction of the building, I do not find any reason to interfere with the same. But with respect to the construction of compound wall, there is no permit obtained from the panchayath and even the panchayath had prevented the defendant from making any construction. The report filed by the advocate commissioner would show that the plaint B schedule property is much higher in level than the plaint A schedule property and there is no specific compound wall separating the same as soil has been dumped up to the concrete construction on the boundary shown in the B schedule property. If any further construction is made in the boundary , it would definitely add additional burden to the already existing concrete wall. Moreover if com-

pound wall is demolished definitely It would affect the property that is on the lower level and an irreparable injury is more likely to be caused in favour of the plaintiff. In the case at hand, the plaintiff is able to establish a prima facie case in his favour. As the balance of convenience is also in favour of the plaintiff and irreparable injury is more likely to be caused to the plaintiff, I am of the view that an order of temporary injunction can be granted in part restraining the respondent from making any further permanent construction in the boundary demarcating the plaintiff A schedule property and the plaintiff B schedule property till the disposal of the suit. In the light of these discussions, this point is found in part in favour of the appellant/plaintiff.

13. Point no:- 2: There is no order as to costs in appeal.

**In the result, this CMA is allowed in part as follows:**

- a)The order in IA 1/2022 in OS 629/2022 of the Court of Principal Munsiff Nedumangad dated 18.10.2022 is set aside.
- b)The defendant, his men or agents are restrained by an order of temporary injunction from making any permanent construction in the boundary in between the plaintiff A and B schedule property till the disposal of the suit.
- c) It is made clear that this order of injunction will not restrain the defendant/respondent from making any temporary construction like steel wire fencing above the existing boundary wall in between the plaintiff A and the

plaint B schedule properties to avoid casualties as the boundary of the plaint B schedule property is much higher in level than the plaint A schedule property.

d) Parties are directed to bear their respective costs in appeal.

(Prepared through Adalat AI, corrected and pronounced by me in open court on this the 23<sup>rd</sup> day of October, 2025).

Sd/-

Rajasree.C.R,

Civil Judge (Senior Division).

Appendix:- NIL

Id/-

Civil Judge (Senior Division)

(True Copy)

Typed by :BR

Compd by :

Civil Judge

(Senior Division)

**Copy of Order in CMA.32/2022**

Dated:23.10.2025.