"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 23RD DAY OF NOVEMBER 2026 / 2ND AGRAHAYANA, 1948

FAO NO. 166 OF 2026

AGAINST THE ORDER DATED 02.09.2026 IN IA 1/2026 IN OS NO.5 OF 2026 OF ADDITIONAL DISTRICT JUDGE -II (SPECIAL), KOTTAYAM

APPELLANT/PETITIONER/PLAINTIFF:

K.T. MATHEW
AGED 81 YEARS
S/O. LATE THOMMAN, RESIDING AT KINATTUKARA HOUSE, MEENACHIL TALUK, KONDOOR VILLAGE, THIDANAD KARA, KALAKETTY P.O., KOTTAYAM 686 508, REPRESENTED BY ARUN MATHEW AGED 52 YEARS, HIS SON AND SPECIAL POWER OF ATTORNEY HOLDER, RESIDING AT KINATTUKARA HOUSE, MEENACHIL TALUK, KONDOOR VILLAGE, THIDANAD KARA, KALAKETTY P.O., KOTTAYAM

BY ADVS.
SHRI.VIZZY GEORGE KOKKAT
SRI.THOMAS J.ANAKKALLUNKAL
SRI.V.BOVAN CHERIAN VARKEY
SRI.RENJITH RAJAPPAN
SHRI.K.HARI SANKAR
SMT.ANJALA FARHATH V.S.

RESPONDENT/RESPONDENT/DEFENDANT:

PHILIP DEVASIA ALIAS APPACHAN
AGED 62 YEARS
PROPRIETOR/OWNER, KUNNEL NUTMEG PLANTATION AND NURSERY, PINNAKANADU, KALAKETTY P.O., KOTTAYAM, PIN - 686508

BY ADVS.
SRI.P.ABRAHAM CHERIAN
SHRI.JAISON S. ROZARIO
SMT.NIMMY K. JOSEPH
SHRI.JOE JOSEPH
SHRI.V.VARUN
SMT.POOJA JOSE
SHRI.ARAVIND VARGHESE
SMT.HARITHA MOHAN
SHRI.AMAL JOHN SABU

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 23.11.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S.DIAS,J. **“C.R.”**

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F.A.O. No.166 of 2026

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Dated this the 23rd day of November, 2026

JUDGMENT

Aggrieved by the order passed by the Court of the Additional District Judge-II (Special), Kottayam (‘Trial Court’, for brevity), in I.A. No.1 of 2026 in O.S. No.5 of 2026, the plaintiff has preferred this appeal. The respondent is the defendant in the suit.

2. The facts relevant for the determination of this appeal, in brief, are the following:

(i) The appellant claims that he is the certified breeder and producer of the “KINATTUKARA Nutmeg Variety”, which, according to him, was developed through sustained research, and he has obtained a certificate of registration of the above-said variety from the competent authority as per the provisions of the Protection of Plant Varieties and Farmers’ Rights Act, 2001 (‘Act’, for short).

The appellant contends that he is engaged in nutmeg grafting and nursery development for about forty years and has identified approximately fifty-five distinct varieties. According to him, his variety possesses unique and superior characteristics.

(ii) The appellant alleges that the respondent has a plantation named “Kunnel Nutmeg Plantation and Nursery”, situated about 500 metres from the appellant’s plantation.

(iii) It is the appellant’s case that the respondent, on realising the market potential of the appellant’s variety, commenced breeding and marketing the same variety under the names “Ceylon Hybrid”, “Ceylon High-breed” and “Ceylon 1”. Though the appellant requested the respondent to desist from the alleged conduct, the latter continues breeding, marketing, and selling the variety, which, according to the appellant, are spurious versions of his registered variety. The

respondent's actions are misleading farmers and agricultural co-operative societies. In the aforesaid circumstances, the appellant filed the suit to restrain the respondent’s alleged unlawful acts.

(iv) Along with the suit, the appellant filed an application seeking an order of temporary injunction. The respondent filed a counter-affidavit denying the allegations in the application. His case is that he commenced his plantation in 1979 and has since then been breeding different varieties of nutmeg, including plants with distinct characteristics, which he markets as “Ceylon” and “Ceylon One”. He claims to have developed those varieties more than thirty-three years ago. He further alleges that the appellant obtained registration by suppressing material facts. The respondent has developed and stocked about 12,000 nutmeg trees in his nursery. If an order of injunction is passed against him, it would cause substantial loss and injury to him. On these grounds, he sought the

dismissal of the application.

(v) The Trial Court, after considering the rival pleadings and the materials on record, dismissed the application for temporary injunction.

3. I have heard the learned counsel for the appellant and the learned counsel for the respondent.

4. The question that arises for consideration is whether the impugned order warrants interference by this Court in exercise of its appellate jurisdiction.

5. The appellant relies principally on Annexure A1 registration certificate issued by the Plant Varieties Registry, Government of India. The certificate recognises the registration of “Kinattukara of Nutmeg” (Myristica fragrans Houtt) as a farmer plant variety and the appellant as the breeder of the said variety.

6. It is on the basis of the registration that the appellant asserts that he is entitled to the plant variety rights recognised under the Act. He alleges that the

respondent is breeding and marketing the same variety under different names. The appellant also relies on Annexure A2 report, described as a Summary of Genetic Fidelity Test Report issued by the ICAR-Indian Institute of Spices Research, which, according to him, indicates that the variety bred by the respondent is the same as his registered variety.

7. The materials on record, however, do not conclusively establish the identity of the variety tested or the alleged genetic identity of the two varieties.

8. A prima facie reading of Annexure A1 certificate discloses the registration particulars and the name of the registered variety; it does not, by itself, resolve the controversy as to whether the variety being propagated and marketed by the respondent is, in fact, the registered variety. Equally, Annexure A2 report does not clearly establish that the sample tested was taken from, and can be attributed to, the respondent’s nursery.

9. It is not in dispute that the test was conducted without notice to the respondent. More importantly, the report itself contains a disclaimer that it is not intended to be relied on as evidence for the resolution of a legal dispute.

10. In the aforesaid circumstances, Annexure A2 report cannot, at this interlocutory stage, be treated as a conclusive determination of the disputed issue. The question whether the two varieties are genetically identical, and whether the respondent's plants are derived from or reproduce the appellant's registered variety, requires an objective scientific assessment on properly identified and authenticated samples. The issue is, therefore, a disputed question of fact with a scientific component, which cannot safely be resolved merely on the basis of the rival assertions or the present report.

11. In this context, it is apposite to refer to Section 67 of the Act, which reads as follows:

> ***"67. Opinion of scientific adviser.—*** *(1) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to inquire into and report upon the matter to enable it to form the desired opinion.*
> *(2) The scientific adviser may be paid such remuneration or expenses as the court may fix."*

12. The learned counsel for the appellant submits that an application had been filed before the Trial Court seeking scientific assistance to determine whether the two varieties are similar, but that the application had not been considered before passing of the impugned order.

13. The learned counsel for the respondent, on the other hand, contends that Annexure A1 certificate does not identify the variety allegedly cultivated by the appellant and merely records the name of the registered variety. He also submits that the respondent has summoned the application form submitted by the appellant before the Plant Varieties Registry and has filed an objection before the Registry seeking cancellation of the registration.

14. The Trial Court found that the appellant had not established a prima facie case and that the balance of

convenience was not in his favour. It also took note of the respondent's assertion that he had developed and stocked approximately 12,000 nutmeg trees in his nursery, at an alleged cost of Rs.200/- per tree, and concluded that an injunction would cause the respondent irreparable injury.

15. The grant or refusal of a temporary injunction requires the Court to consider, cumulatively, whether the applicant has made out a prima facie case, whether the balance of convenience lies in his favour and whether refusal of relief would occasion an injury incapable of being adequately compensated in damages. These considerations have to be assessed on the materials available, without converting the interlocutory inquiry into a final adjudication of the parties' rights.

16. The registration certificate relied on by the appellant is a relevant circumstance and cannot be brushed aside. At the same time, the existence of the registration certificate does not answer the distinct factual

question whether the plants being sold by the respondent are the same variety registered in the appellant's name. The said question assumes significance because the respondent disputes the appellant's claim of development and asserts prior development and use of his own varieties. The respondent's pending challenge before the Plant Varieties Registry is also a relevant circumstance, though the mere filing of such an objection does not, by itself, nullify or suspend the registration. The legal effect, if any, of that proceeding must be assessed on the basis of its present status and the governing provisions of the Act.

17. It is pertinent to point out that Section 67 of the Act expressly enables the Court, when required to form an opinion on a question of fact involving a scientific issue, to appoint an independent scientific adviser to assist it or to inquire into and report on the matter. The Court must consider whether expert assistance is necessary and appropriate, having regard to the nature of the

controversy, the material available on record, and the assistance required for a fair determination.

18. In the present case, the controversy concerns the identity and genetic fidelity of two alleged nutmeg varieties. The existing test report is disputed. The request for independent scientific assistance was therefore a material matter requiring consideration before the application for injunction was finally disposed of.

19. If the Trial Court considers expert assistance necessary, the inquiry should be independent and procedurally fair. The parties should be afforded an opportunity to address the choice and qualifications of the scientific adviser, the identification and collection of representative samples, the manner in which the samples are sealed and transmitted, the methodology to be adopted and the opportunity, if necessary, to have the test conducted in the presence of both sides or their nominees. Such safeguards would ensure that the test result is

reliable and that neither party is prejudiced by a unilateral opinion.

20. The respondent's assertion that he has stocked 12,000 trees is also relevant to the balance of convenience. The said circumstance cannot by itself conclude the inquiry; it must be weighed against the nature of the appellant's statutory rights and the consequences alleged to flow from continued propagation and sale. Conversely, the appellant's registration cannot, in the absence of a sufficiently reliable prima facie link between the two varieties, automatically justify an injunction affecting the respondent's existing nursery. The competing claims emphasise the need for a reasoned consideration of the application and, if required, an expert report.

21. In the light of the above, and particularly because the appellant's application filed under Section 67 of the Act had not been considered, I am of the view that the injunction application requires reconsideration, for the

Trial Court to consider the necessity of obtaining an independent scientific opinion and affording both parties a fair opportunity to place relevant material.

In the result, the appeal is allowed by setting aside the impugned order and directing the Trial Court to reconsider I.A. No.1 of 2026 in O.S. No.5 of 2026 in accordance with law. The Trial Court shall first consider and dispose of the appellant's application filed under Section 67 of the Act, bearing in mind the nature of the scientific controversy and the requirements of a fair and reliable inquiry. If the Trial Court finds that appointment of an independent scientific adviser is warranted, it shall obtain such opinion and thereafter reconsider the application. If it finds such appointment unnecessary, it shall record its reasons and proceed to decide the injunction application on the materials legally admissible and available to it. At any rate, the Trial Court shall afford both parties a reasonable opportunity to produce such

additional materials as are relevant, to address the proposed scientific process, if any, and to be heard. The application shall be disposed of as expeditiously as possible, untrammelled by any observation made in this judgment.

Sd/-
C.S.DIAS, JUDGE

rkc/dkr

APPENDIX OF FAO NO. 166 OF 2026

PETITIONER ANNEXURES

ANNEXURE A1	**THE TRUE COPY OF CERTIFICATE OF REGISTRATION NO REG/2025/0035 DATED 03.10.2025**
ANNEXURE A2	**THE TRUE COPY OF THE ICAR- INDIAN INSTITUTE OF SPICES RESEARCH REPORT WAS COMMUNICATED TO THE APPELLANT THROUGH ARUN MATHEW**
ANNEXURE A3	**THE TRUE COPY OF COUNTER AFFIDAVIT IN I.A.NO 1 OF 2026 IN O.S.NO 5 OF 2026 FILED BY THE RESPONDENT BEFORE THE HON'BLE ADDITIONAL DISTRICT JUDGE - II (SPECIAL), KOTTAYAM DATED 31.07.2026**