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**(2011) 08 KL CK 0061**  
**In the High Court Of Kerala**  
**Case No : O.P. (C) No. 2557 of 2011**

Vivekanandan

APPELLANT

Vs

Santhakumaran

RESPONDENT

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**Date of Decision :** 05-08-2011

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation :** (2011) 08 KL CK 0061

**Hon'ble Judges :** Thomas P. Joseph, J

**Bench :** Single Bench

**Advocate :** Jacob Sebastian, for the Appellant; No Appearance, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Thomas P. Joseph, J.—Petitioner is the Plaintiff in O.S. No. 410 of 2008 of the Court learned Munsiff, Chittur and Respondent in A.S. No. 98 of 2010 of the Court of learned District Judge, Palakkad. That is a suit for mandatory injunction filed by Petitioner to direct Respondent erect iron gate on the southern terminal point of the suit property and restore the demolished portion of compound wall on the western side. The suit was decreed against which Respondent preferred an appeal and moved I.A. No. 478 of 2010 for stay of execution of the decree. Learned District Judge granted stay on 23.12.2010. That order is under challenge. Learned Counsel has submitted that on account of there being No. compound wall or gate, property of Petitioner is lying exposed and for protection of the property it is necessary that a gate is put up atleast until the appeal is disposed of. It is pointed out that learned District Judge was under the impression that Petitioner had not preferred any execution petition while in fact, he had filed application for execution on 24.07.2010. Learned Counsel has also shown me a copy of commission report and photograph showing condition of the property.

2. It was within the discretionary power of learned District Judge having admitted

the appeal to grant say of execution of the decree particularly, it was a decree for mandatory injunction. The question whether Respondent is liable to do the acts directed in the decree is to be decided by the appellate court. In view of that, I do not find reason to interfere with the impugned order. I am not inclined to think that discretion has been exercised by the learned District Judge arbitrarily, capriciously or perversely calling for interference under Article 227 of the Constitution.

3. But I make it clear that it is open to the Petitioner to request learned District Judge for an early disposal of the appeal if pre-trial steps on the appeal are over.

4. With the above observation this original petition is dismissed.