

IN THE COURT OF THE II ADDITIONAL MUNSIFF
NEYYATTINKARA

Present : Smt . Rajani Thankappan, BAL, LL.B, II Additional Munsiff

Monday, the 10th day of November, 2014
19th day of Karthika, 1936.

EA.565/13 in EP 366/10 IN OS.265/76

Petitioner/4th defendant:-

Ummini Nadar Krishnan Nadar, Roadarikathu kadayara
veedu, Chowara, Kottukuzhi vila, Kottukal desom, do
village.

By Adv. Sri. R. Harigopal.

Respondents/Plaintiffs:-

1. Suresh Kumar @ Babukuttan, S/o. Sreedharan,
Chemkottu Varuvilakathu veedu, Upaniyoor desom,
Nemom village.
2. Udaya Rani, D/o. Krishnamma of do. do.
3. Usha, D/o. Krishnamma, of do. do.

By Adv. Sri. J. Rajan

This Execution application coming on for finally heard on
10..11..2014 and the court on the same day passed the following:

ORDER

1. This petition is filed by the 4th JD for appointing an Advocate Commissioner to ascertain the after decree improvements. The respondents are the decree holders in the suit for redemption of mortgage and recovery of possession of the plaint B schedule property. On 26.09.1985 preliminary decree was passed and allowed the decree holder to redeem the plaint B schedule property on deposit of the mortgage amount of ₹57.32. The appeal was taken from the preliminary decree and the appellate court held that the defendants are entitled for the value of improvements. On 27.09.2002 final decree was passed, directing the plaintiff to deposit the sum of ₹8,117.27, being the value of improvements within 2 months from the date of decree. Decree holder deposited the said sum on 28.10.2003 and filed EP 548/2003. JD filed appeal from the final decree. Hence, that EP was closed in view of appeal from the final decree. Appeal from final decree was dismissed by Hon'ble Sub Court on 05..07..2010. After that decree holder filed this EP.

2. Judgment debtor entered appearance and filed objection contending that the value of improvements was not deposited on time. Hence, this EP cannot be executed. The decree holder there upon filed EA No. 357/2011 to condone the delay. The executing

court condoned the delay of 10 months in remitting the value of improvements as per order No. EA 357/2011. The said order was challenged before the Hon'ble High Court of Kerala in civil revision petition CRP No. 612/2013. The Hon'ble High Court found that no prejudice have been caused to the petitioner / JD by condoning the period fixed for the deposit of the value of improvements, there is no condition in the final decree that, unless the value of improvements is deposited within the stipulated time, the right to relieve the mortgage will stand forfeited. The final decree only stipulated 2 months time, within which, the value of improvements was to be deposited. The only stipulation in the final decree is that until the value of improvements is deposited the final decree cannot be executed.

3. On perusal of records it is seen that in this EP, the final decree was passed on 27.09.2002 and on 22.10.2010 appeal from final decree was dismissed. It is also seen that the mortgage money was deposited before final decree was passed and the value of improvements were also deposited on 28.10.2003. On 20.10.2013 the Civil revision petition filed by the JD challenging the enlargement of time granted by the Execution Court for depositing the value of improvements was dismissed by the Hon'ble High Court. Now the

petitioner/4th JD filed a petition for appointing an Advocate Commissioner to ascertain the value of after decree improvements. From the final decree order passed by the trial court it can be seen that the JD is entitled to ₹8,117.25, the value of improvements @ 6% interest p.a. from the date of deposit till delivery of possession or for a period of 3 years, whichever event occurs first. On perusal of Final Decree it can be seen that there is no mention that the JD is entitled to the value of after decree improvements till date of delivery of possession, he is only entitled to get interest @ 6% p.a. till delivery of possession or for a period of 3 years, whichever event occurs first. Hence, it is found that there is no necessity to ascertain the after decree improvements at this stage. Hence IA dismissed. No costs.

(Dictated to the C.A, transcribed and typed by her,
corrected and pronounced by me in Open Court
on this the 10th day of November , 2014)

**RAJANI THANKAPPAN
II ADDITIONAL MUNSIFF**

APPENDIX:- Nil

II ADDITIONAL MUNSIFF

RV.
Comp:
FCS:

ORDER IN EA 565/13
IN EP 366/10 IN OS 265/76
Dated: 10..11...2014