

IN THE COURT OF THE ADDITIONAL MUNSIF, CHERTHALA

Present: Smt. Veena.V.S. B.A.LL.M., Additional Munsiff

Tuesday 24th November, 2015/ 3rd Agrahayanam, 1937

E.P.201/2014 in O.S.858/2003

Filed on 18/12/2014

Decree Holders: :

1. Syed Muhammed, S/o Alikunju,
Kannezhathu, Panavally Village. (Died).

Additional Decree Holder.2: Sheeba, W/o Farookh,
Kannezhathu, Panavally Village.

Additional Decree Holder.3: Zeenath, of -do-

Additional Decree Holder.4: Sebiya of -do-.

Additional Decree Holder.5: Rehmath, of -do-.

Additional Decree Holder.6: Umma Rabiya, of -do-.

Additional Decree Holder.7: Reziya, of -do-.

Additional Decree Holders 2 to 7 are impleaded as the LR's of deceased decree holder 1 as per the order dated 16.07.15 in E.A. 158/2015.

By Adv.Sri.K.Premkumar

Judgment Debtors:

1. Rughminiamma, W/o Parameswara Panicker,
Puthen Veliyil, Panavally Village.

2. Vinu @ Omanakuttan,
S/o Parameswara Panicker, of -do-.

3. Divya, D/o Rughminiamma, of -do-.

4. Pappankunju @ Padmanabha Panicker,
S/o Kesava Panicker, of -do-.

Additional Judgment Debtor.5: Shibu, S/o Sankunni,
Padath @ Chithira Mangalam,
Panavally Muri, Panavally Village.

Additional Judgment Debtor.6: Reshmi, W/o Shibu, of -do-.

JD1 to JD3 by Adv. Smt.Geetha.S. Nair

JD.4 to JD6 are Exparte

This Execution petition has been heard on 17.11.2015 and the court on 24.11.2015 passed the following

ORDER

Heard both sides. The specific case of the Decree Holder is that Judgment Debtor 5 & 6 trespassed into plaint schedule property, cut and removed trees and excavated soil from the Decree schedule property. The Judgment Debtor filed objection by denying the allegations. The decree holder obtained a Commission report in which the commissioner reported that a concrete foundation was newly created in the decree schedule property. She also reported that soil was excavated from the decree schedule property. But she could not see any sign of cut & removed trees from the plaint schedule property.

2. Since the Judgment debtor denies the allegations in the petition, the burden is upon the Decree Holder to prove the allegation. Even though the Decree Holder adduced evidence of the new construction of concrete foundation and fencing and the

excavate of soil from decree schedule property, there is no evidence adduced to prove that the afore mentioned activities were done by the Judgment Debtors 5 & 6 themselves. The Decree Holder did not care to depose his case in the box. Further there is no specific allegation that when the Judgment Debtors 5 & 6 trespassed into the schedule property and did the alleged activities.

3. It is the trite law that violation of Permanent Prohibitory Injunction being a penal in nature, it should be proved beyond reasonable doubt. But no evidence adduced by the Decree holder to prove that it is the Judgment Debtor 5 and 6 who did the alleged activities by violating the permanent prohibitory Injunction.

In the result, the prayer on the E.P. is not allowable. Hence the E.P. is dismissed.

Pronounced by me in open court on this the 24th day of November, 2015.

Sd/-

Veena.V.S

Additional Munsiff.

Appendix: Nil

Id/-

Additional Munsiff

// True Copy //

Typed by: KB
Compared by: KG

By Order,

Sd/-

Fair Copy Superintendent

Carbon copy of Order in
E.P.201/2014 in O.S.858/2003
Dated: 24 .11.2015