

IN THE COURT OF THE ADDITIONAL MUNSIF, CHERTHALA
Present: Smt.Akshaya.P.R, Additional Munsiff
Friday, 04th day of February, 2022/15th Magha 1943

E.P. 201/2014 in O.S.858/2003
Filed on 18.12.2014

Decree holders :-

1. Syed Muhammed,S/o Alikunju,
Kannezhathu, Panavally Muri,
Panavally Village (Died)
- Additional DH2. Sheeba, W/o Farook,
Kannezhathu,of-do-do-
- Additional DH3. Zeenath,Kannezhathu,of-do-do-
- Additional DH4. Sebiya,of-do-do-
- Additional DH3. Rehmath,of-do-do-
- Additional DH3. Umma Rabiya,of-do-do-
- Additional DH3. Raziya,of-do-do-

(As per the order dated 16.07.2015 in EA.158/2015 the additional DH2 to
DH7 are impleaded as the legal heirs of deceased decree holder)

By Adv.K. Prem Kumar

Judgment debtors:-

1. Rugminiyamma, W/o Parameswara Panicker,
Puthan Veliyil, Panavally Muri, Panavally Village.
2. Vinu @ Omanakuttan,S/o Parameswara Panicker,
of-do-do-
3. Divya, D/o Rugminiyamma, of-do-do-
4. Pappankunju @ Padmanabha Panicker
S/o Keasava Panicker, of-do-do-

Additional JD5. Shibu, S/o Sankunni, Padath @ Chithira Mangalam,
Panavally Muri, Panavally Village.

Additional JD6. Reshmi, W/o Shibu, of-do-do-

JD1 to JD4 by Adv. Geetha.S.Nair

Addl.JD5 and JD6 by Adv.Thomas Joseph

This petition having been heard on 17.12.2021 and the court on 04.02.2022 passed the following:-

This Execution Petition coming up for hearing and the Court passed the following

ORDER

1. Gist of the case put forward by the Decree Holder is that Judgment Debtors 5 and 6 trespassed into Decree Schedule Property, cut and removed trees and excavated soil from the decree schedule property. Hence, arrest and detain Additional Judgment Debtors 5 and 6 and detain them in the civil prison and make them obey the order of the Hon'ble Court.

2. Judgment debtors filed objection denying the allegations and added that only on recovering the possession of the Decree Schedule Property on which their title was declared, the case as to trespass and excavation can be understood. Further added that Decree Schedule Property is not identifiable. Additional Judgment Debtor 5 and 6 also objected the case put forward by the Decree Holder.

3. For the purpose of this Execution Petition, PW1 to PW3 were examined from the side of the Decree Holder and Exts. A1 and A2 were marked. The report and plan in Original Suit is marked as Exts. C1 and C1(a)

through PW2, 1st report and plan filed by Adv. Commissioner in Execution Petition is marked as Exts. C2 and C2(a) through PW3. No evidence adduced from the side of Judgment Debtors.

4. Heard both sides.
5. Considering the rival contentions following point raised.
 1. Is the Prayer to arrest and detain Judgment Debtor 5 and 6 allowable?

6. **Point No. 1**

Here, the specific case of Decree Holder is that 5th and 6th Judgment Debtors has trespassed into Decree Schedule Property and excavated soil and cut and removed trees from the property. Though the same was denied by the Judgment Debtor No. 5 and 6, I believe that the evidence adduced by the Decree Holder has to be evaluated or the purpose of proceeding with the question as to violation of decree.

7. From the proof affidavit of PW1 who is the daughter of deceased Decree Holder clearly stated that Judgment Debtor No 5 and 6 has trespassed into Decree Schedule Property and has excavated and transported 20 loads of soil from there and further added that they have cut and removed the trees from there. Owing to the same a loss of Rs. 1 lakh was incurred to Decree Holder. Further, added that there is a foundation constructed by Judgment Debtor No. 5 and 6 in the Decree Schedule Property. When these aspects were cross examined by Judgment Debtors, PW1 has firmly hold her statements in the affidavit in lieu of examination. Even the dates are clearly reproduced by her.

8. Further, these statements of Judgment Debtor No.5 and 6 is corroborated by the documents marked in the Execution Petition. Ext A2 is

the FIR. The edict in serial No.12 also supports the version of PW1. For better clarification the relevant portion is extracted below.

"പ്രതിക്ക് ആവലാതിക്കാരിയോടും മറ്റുമുണ്ടായിരുന്ന മുൻ വൈരാഗ്യം നിമിത്തം ടിയാളെയും മറ്റും ദേഹോപദ്രവം ഉണ്ടാക്കണമെന്നുള്ള ഉദ്ദേശത്തോടെ ടിയാളുകൾ തമ്മിൽ വസ്തു സംബന്ധമായ തർക്കം നിലനിൽക്കുന്ന പാണാവള്ളി പഞ്ചായത്ത് 6 -ആം വാർഡിൽ കണ്ണേശത്തു വീടിന് സമീപമുള്ള സ്ഥലത്ത് 28 -12 -2015 തീയതി 10 .00 മണിക്ക് മതിൽ പണിയുന്നതിന് ശ്രമിച്ച പ്രതിയെ ആയതിൽ നിന്നും തടഞ്ഞ ആവലാതിക്കാരിയെ പ്രതി മുടിക്ക് പിടിച്ച് മുതുകിൽ അടിച്ചതിൽ വച്ച് ടിയാൾ കൈകുത്തി കല്ലിൽ വീണ് ആവലാതിക്കാരിയുടെ കൈപ്പത്തിയിൽ മുറിവുണ്ടാകുന്നതിനും ആയതിൽ വച്ച് ടിയാൾക്ക് മാനഹാനിയും മനോവിഷമവും ഉണ്ടാക്കി എന്നുള്ളത്".

9. In order to give strength to these allegations, the Decree Holder had taken Adv. Commissioner to conduct local investigation . The report marked as Ext C2 and C2(a) clearly states that there is a stone foundation in the Decree Schedule Property and level difference due to soil excavation is also visible then the Adv. Commissioner was examined as PW3, the deposition of PW3 supports the findings in Ext C2 and C2(a).

10. Another serious objection raised by the learned counsel for Judgment Debtor1 to Judgment Debtor 4 is that the Decree Schedule property is not identifiable. But the decree in Original Suit clearly declares right and title of Decree Holder over 'BCEFGIB' plot in Ext C1 (a) in the survey commission report in Original Suit. The same Commissioner was examined here as PW2 and the commission report is also taken by the Execution court for understanding the lie of the Plaint Schedule Property and to execute the decree effectively. From Ext C1 and C1 (a) plan, the measurement of the property is clear and the property is identifiable. Hence, I believe that no further discussion is needed in this aspect.

11. Thus, from the deposition of PW1 , who is a direct witness to the

unlawful activities of Judgment Debtor 5 and 6 and from the evidence marked for the purpose of this Execution Petition, it is limpid that Judgment Debtor No.4 and 5 has disobeyed in violation of the decree of this court. Since, the same was committed after the institution of Execution Petition and from the circumstances mentioned above it has to be considered as a willful disobedience of the Order of this Court and that too after getting an opportunity to obey the same.

12. Now coming to the remedy available to the Decree Holder, as per Order XXI Rule 32 of the Code of Civil Procedure, 1908, if a person who had an opportunity of obeying the decree has willfully failed to obey it, the same may be enforced in case of decree for injunction by his detention in civil prison or by attachment of his property. Here, the relief sought by the Judgment Debtor is to arrest and detain the Judgment Debtor 5 and 6 so to make them obey the decree of the Court. But even though the mode sought by the Decree Holder is to arrest and detain Judgment Debtor, the intention of Decree Holder is to make them restoring the status of the Plaint Schedule Property as on the date of the decree.

13. At this juncture, it shall be borne in mind, the object and spirit of Rule 32 of Order XXI is to enforce the injunction or like relief contained in the decree or orders and not to punish a person/party guilty of disobedience and hence resort cannot, therefore be had to the Rule for the purpose of punishing a person for breach of an injunction. Therefore, I believe that rather than opting for the mode sought by Decree Holder i.e., to arrest and detain, the other mode under Rule 32 to compel the Judgment Debtors to restore the status of Decree Schedule Property has to be opted.

14. As found afore, it is found that Judgment Debtor has willfully

disobeyed the decree even on getting an opportunity to obey the same, the property owned by the Judgment Debtor 5 and Judgment Debtor 6 has to be attached. Therefore, the Decree Holder is hereby directed to furnish property details of the Judgment Debtor 5 and Judgment Debtor 6 to initiate attachment proceeding.

Point No.1 is found in favour of the Decree Holder.

In the result, it is found that Judgment Debtor 5 and Judgment Debtor 6 has willfully disobeyed the decree of this Court. Hence, Decree Holder is directed to furnish property details of Judgment Debtor 5 and Judgment Debtor 6 to initiate attachment proceeding.

(Dictated to the Confidential Asst. typed by her, corrected by me and pronounced in the open Court on this the 4th day of February, 2022.)

Sd/-
Akshaya.P.R.
Additional Munsiff

Appendix: -

Witnesses for the Decree holder

PW1 :- Sheeba
PW2 :- Adv.K.K. Mohan Kumar, Commissioner
PW3 :- Adv. D.B.Deeparani

Exhibits for Decree Holder

A1 :- Receipt dated 08.08.2015
A2 :- Attested copy of FIR

Witnesses for the Judgment Debtor:- Nil

Exhibits for Judgment Debtor:- Nil

Court Exhibits

- C1 :- Commission report filed by Advocate Commissioner
K.K. Mohankumar
- C1(a) :- Plan prepared by Advocate Commissioner K.K.
Mohankumar
- C2 :- Commission report filed by Advocate Commissioner
D.B. Deeparani
- C2(a) :- Plan prepared by Advocate Commissioner D.B. Deeparani
Id/-
Additional Munsiff