

1.

IN THE COURT OF THE MUNSIFF, HARIPAD.
Present: Smt. Maneesha K Bhadran., Munsiff
Saturday, 18th January, 2025/28th Pausha 1946

EP. No.73/2019 in OS. 119/2017

Filed on 17.12.2019

Decree Holder

Plaintiff

1. Sumathi, aged 79 years,
W/o Bharathan, Thekkeparambil House,
Kizhakkekkara North Muri,
Thrikkunnappauzha Now residing at
Kochukuruppante Parambil,
Thrikkunnappauzha.
2. Pushpa Veni, aged 63 years,
D/o Sumathi, Thekkeparambil House,
Kizhakkekkara North Muri,
Thrikkunnappauzha Now residing at
Kochukuruppante Parambil
Thrikkunnappauzha.
3. Sidharthan, aged 61 years,
S/o Bharathan, Thekkeparambil House,
Kizhakkekkara North Muri,
Thrikkunnappauzha Now residing at
Kochukuruppante Parambil
Thrikkunnappauzha.
4. Lathi , aged 50 years,
D/o Sumathi, Thekkeparambil House,
Kizhakkekkara North Muri,
Thrikkunnappauzha Now residing at
Kochukuruppante Parambil,
Thrikkunnappauzha.
5. Shilaja, aged 45 years,
D/o Sumathi, Thekkeparambil House,
Kizhakkekkara North Muri,
Thrikkunnappauzha Now residing at
Kochukuruppante Parambil,
Thrikkunnappauzha.

6. Salim, aged 42 years,
S/o Bharathan, Thekkeparambil House,
Kizhakkekara North Muri,
Thrikkunnappauzha Now residing at
Kochukuruppante Parambil
Thrikkunnappauzha.

By Adv.S. A. Sreemon

Judgment Debtor/

Defendants

1. Sajeev, Aged 51 years,
S/o Gopinathan, Kochutharakkattil House,
Kizhakkekara North Muri,
Thrikkunnappuzha Village
2. Anilkumar, 54 Years,
S/o Bharathan, Vandikkaran Chirayil
Kizhakkekara North Muri,
Thrikkunnappuzha Village
3. Anjitha, 49 years,
W/o Anilkumar, Vandikkaran Chirayil House
Kizhakkekara North Muri,
Thrikkunnappuzha Village.
4. Leela, 51 years, W/o Retnappan,
Kochutharakkattil House, Kizhakkekara
North Muri, Thrikkunnappuzha Village.
5. Sumangi, aged 49 years,
W/o Viswambharan, Kochutharakkattil House,
Kizhakkekara North Muri,
Thrikkunnappuzha Village.
6. Sreeletha, aged 54 years,
W/o Ponnappan, Kaithamoolayil House,
Kizhakkekara North Muri,
Thrikkunnappuzha Village.
7. Sujatha, aged 50 years,
W/o Haridasan , Vrindavan House,
Kizhakkekara North Muri,
Thrikkunnappuzha Village.

8. Rajamma, aged 67 years, W/o Purushan, Undante Tharappad House, Kizhakkekara North Muri, Thrikkunnappuzha Village.
9. Ammini, aged 52 years, W/o Sasi, Neelima Nivas, Kizhakkekara North Muri, Thrikkunnappuzha Village.

JD1 to JD9 Exparte

This execution petition having been finally heard on 18.01.2025 and passed the following Order:-

ORDER

Execution petition filed by decree holders seeking prosecution of the judgment debtors who have wilfully violated the decree dated 29.10.2019 by their detention in civil Prison and also by attachment of their property as provided under Order XXI Rule 32 of Code of Civil Procedure.

2. The averments in the petition in brief, are as follows: The original suit was instituted for relief of permanent prohibitory injunction and it was decreed, vide judgment dated 29.10.2019. As per the judgment, judgment debtors are restrained from encroaching into plaint schedule property, cutting the standing trees therein and constructing a new pathway through the western portion of plaint schedule property and committing any mischief therein. However, on 16.12.2019, the Judgment Debtors and their men had trespassed plaint schedule property and cut and removed the yielding trees standing on the western side of plaint schedule property and thereby violated and willfully disregarded the injunction decree passed against them. Hence this petition.

3. Pursuant to the notice issued, judgment debtors entered appearance

but failed to file objection and they were set *ex parte*.

4. From the side of the petitioners/ decree holders, PW1 was examined and Exts.A1 and C1 series were marked.

5. The point that arises for determination is;

1. Whether the injunction decree passed against the judgment debtors has been willfully violated thereby rendered themselves liable for prosecution as alleged?

2. What is the order as to costs?

6. Heard.

7. **Point No.1** :- As per the judgment and decree in the Original Suit No.119/2017, the Judgment Debtors were restrained from encroaching on the plaint schedule property, cutting the trees standing thereon and constructing a new pathway through the western portion of the plaint schedule property and committing any mischief therein.

8. From the side of decree holders, the 3rd decree holder was examined as PW1 who filed proof affidavit in lieu of examination in chief in consonance with the averments in the application. According to PW1, the judgment debtors have willfully disregarded the injunction decree and on 16.12.2019 they had trespassed into plaint schedule property and cut and removed the yielding trees standing on the western side of plaint schedule property and caused loss to the tune of Rs.50,000/-. Ext.C1 report of advocate commissioner would show that yielding coconut trees, cashew nut trees and fig trees were felled and the advocate commissioner estimated the loss to the tune of Rs.50,500/-.

11. The statement of PW1 stand unchallenged. The evidence adduced on the side of decree holders reveals that judgment debtors have trespassed into plaint schedule property felled the standing trees and thereby committed mischief to the tune of Rs.50,000/-and have wilfully violated the decree. The question of detaining the Judgment Debtors in Civil Prison is an extreme step and it should be taken with caution.

14. Furthermore, the Hon'ble High Court of Kerala in ***Valsamma and Other v. Abraham and Another*** reported in **2013(1) KHC 139** held that mere detention in the Civil Prison is not the purpose envisaged under Order XXI Rule 32 when the Decree Holder asked for attachment and sale of property also.

15. Upon considering the above dictum, in the instant case, the Decree Holder has sought for detention of the Judgment Debtors in Civil Prison and also for attachment and sale of the property of Judgment Debtors. Therefore, before resorting to the punitive step of detaining the Judgment Debtors in Civil Prison and of the opinion that other remedies as provided under Order XXI Rule 32 of the Code is to be executed. Therefore, I am inclined to allow this application to the extent of ordering attachment and sale of the property of Judgment Debtors. Point is answered accordingly.

16. **Point No.2** :- Considering the facts and circumstances of the petition, the Decree Holders are entitled to realise costs of this application from the Judgment Debtors and their assets.

In the result,

