

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-Sri.Praveen Kumar G.,B.A.L.,LL.B, Principal Munsiff

Wednesday, the 1st day of March, 2017, 10th Magha, 1938

E.A.No.38/2017 in E.P.No.70/2015 in O.S.No.187/2012

Petitioner/Judgment Debtor:-

Ammini, aged 52 years, W/o.Babu @ Nandagopal,
residing at C.C.10/78, SJD Street, Amaravathi,
Fortkochi Village, Kochi Taluk.

By Advs.Krishnadas P.Nair & Sreekala K.L.

Respondent/Decree Holder:-

Rohini, aged 63 years, W/o.Solarajan, residing at
C.C.10/17, SJD Street, Amaravathi, Fortkochi Village,
Kochi Taluk.

By Adv.T.V.Thampi

The petition filed under Section 151 of CPC praying this court to direct the decree holder / plaintiff to demolish or remove the obstructions from A schedule property, which is now lying in B schedule property as per C1 report, the property of petitioner / judgment debtor / defendant on the basis of C1 report and allow the JD to construct the compound wall as per C1 commission report and sketch.

The petition having been finally heard on 01.03.2017 and the court on the same day, passed the following:-

ORDER

Petitioner is the JD and respondent is the decree holder in the execution petition. Parties are referred to as the decree holder and the JD, as they appear in the E.P.

2. JDs' case is thus. The commissioner measured the

property on 28.05.2015 and submitted Ext.C1 report and decree was passed based on it. After fixation of the boundary, some portion of the plaintiff's property was found inside the defendant's property as per Ext.C1. Defendant's property was also found within the plaintiff's property but, it was removed. Subsequent to the filing of the EP, the parties herein came to a settlement, that the encroached portions would be removed. The process of removal of obstructions from the JDs property has not been effected till date. The obstructions made by the decree holder have not been demarcated. JD is ready to construct boundary wall as per Ext.C1 sketch. But, the decree holder has not removed the obstructions noted in Ext.C1. So, the decree holder be directed to demolish them.

3. On behalf of the decree holder, a statement of objection with the following allegations has been filed. The petition is beyond the scope of the decree. After measurement of the property by the surveyor and subsequent to the passage of the decree, the decree holder encroached into the 'A' schedule and made additional constructions, which are liable to be removed. There is nothing to be removed from the 'A' schedule, as alleged and the boundaries have been fixed as of now. So, the application deserves dismissal.

4. Heard both sides.

5. The decree dtd: 28.05.2015 is on the following lines and nothing more.

“1. The boundaries of northern and southern side of plaint schedule property is fixed as per Ext.C1(a) sketch. Ext.C1(a) shall form part of decree.

2. Defendants, their men and agents are hereby restrained by way of permanent prohibitory injunction from trespassing into the plaint schedule property and causing any obstruction and inconvenience to the plaintiff in the peaceful possession and enjoyment of the plaint schedule property.

3. Parties bear their respective costs”.

As of now, the boundaries have been fixed by the Amin, as per the decree, with the assistance of the Village Officer and police. Though the JD has contended that subsequent to the filing of the execution petition, the parties came to a settlement whereby the DH agreed to demolish the constructions in the property of the former is specifically denied on behalf of the decree holder and at any rate, unsupported by any materials on record. Decree holder has

contended that there is nothing to be removed from the 'A' schedule as alleged. The decree does not enable the JD to have any constructions removed at her instance and so, her present request is beyond the scope of the decree. Hence, the application is not maintainable and it is accordingly, dismissed.

Dictated to the Confdl. Asst; transcribed and typed by her, corrected and pronounced by me in open court on this the 1st day of March, 2017.

Praveen Kumar G.
Principal Munsiff

Appendix: Nil

Principal Munsiff.

sks
compd.by: