

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari.A, Munsiff

Friday the 15th day of December, 2023/ 24th Agrahayana, 1945.

E.A.No. 314/2023

in

E.P.No. 107/2022 in O.S.No.524/2013

Decree Holders/Defendants No. 1 & 4:-

1. M. J. Shajan, S/o. Late John, aged 55 years, Driver,
Madathiparambil House, Pazhanganadu Kara,
Kizhakkambalam Village, Kunnathunadu Taluk.
2. Jessy, W/o. Shajan, aged 51 years,
Madathiparambil House, Pazhanganad Kara,
Kizhakkambalam Village, Kunnathunadu Taluk.

By Advs. Suja Mathew, G. Mini & M.V. Joy

Judgment Debtor/Plaintiff:-

E. C. Sebastian, S/o. Chacko, Aged 61 years,
Idayappurakkal House, Pazhanganad Kara,
Kizhakkambalam P O, Kizhakkambalam Village,
Kunnathunadu Taluk.

By Adv. K. V. Gopakumar.

This petition having been finally heard before me on 11.12.2023 and the court on 15.12.2023 passed the following:-

ORDER

1. Petition averments in brief:- The execution petition was filed against

the judgment debtor to construct the retaining wall on the eastern side of the judgment debtors/plaintiffs property as required as per the compromise decree dated 28.10.17. The survey plan was also appended to the compromise. As per the order dated 08.08.23, Amin was deputed with the assistance of Taluk surveyor, to construct the retaining wall as per the decree. The judgment debtor was not ready to construct the retaining wall and comply the order of this court. As per the report of the Amin, the Hon'ble court as per order dated 28.02.23 directed the decree holders to bear the expenses for getting the decree executed as per the compromise. Amin is also deputed to execute the decree with the assistance of Taluk surveyor and the decree holders are allowed to realize the expenses for the construction of the retaining wall as cost of the execution petition from the judgment debtor. The construction was completed on 09.10.23 and the decree holder had borne the expenses for the construction. The decree holder had borne expenses to the tune of Rs. 3,38,000/-, which is to be directed to be paid by the judgment debtor. Hence, the petition.

2. The respondent had filed counter statement by denying the petition averments. According to him, the decree holder had forged or fabricated documents in support of the prayer, claiming huge amount as the expenses for the construction. The Amin who was deputed to construct the compound wall as per clause (C) of the compromise decree violated the directions with the assistance of decree holder, constructed the compound wall or retaining wall in the property of the defendant/decreed holder. So, clause No. (C) of the compromise decree is not yet executed so far. The decree does not empower any of the parties to construct compound wall and to claim the expenses from the other party. The execution court cannot go behind the decree and impose the financial burden with a party, unless and until the same is specifically stated in the decree, especially a compromise decree. The decree holder himself volunteered to construct a compound wall in his own

property at his own cost and therefore, he is prevented from claiming the cost from judgment debtor without any such condition in the compromise decree. A reading of clause (c) and (d) of the compromise decree would show that there will be compound walls on both eastern and western sides of his property to protect his property from further trespass from the side of the defendant, that is the decree holder herein. The judgment debtor had filed an execution petition bearing No. 20/18 by which, he had constructed a compound wall and did not seek to realize the expenses from the defendant/judgment debtor therein. He had constructed the wall, in tune to the compliance of clause (D) of the compromise decree. The defendant/decree holder cannot now turn around and claim that, he constructed a compound wall on the western side of his own property, especially when the decree does not empower him to do such an act, and claiming the entire expenses from the judgment debtor. The mere permission to approach the court to execute the work does not entitle him to realize the cost of the construction from the other party. Hence, the petition is to be dismissed with costs.

3. Heard both sides.
4. On going through the records, it can be seen that, Amin was deputed to execute the decree and the decree holder was directed to borne the expenses and it is also ordered that decree holder is directed to realize the expenses from the judgment debtor as costs of the execution petition. The Amin on 22.08.23 had reported that, with the assistance of surveyor the property was measured and identified and preparations were made for the construction of the compound wall. But, the judgment debtor was not ready to comply the order. It is reported that, the red shaded portion in the survey sketch attached to the decree noted as plot No. 1, that is plaint A schedule property was identified, so as to construct the retention wall. The boundary line was also demarcated and the stumps were pleased for the construction of the

compound wall. So, as per the report of the Amin dated 22.08.23, the boundary line noted is on the boundary of the plot No. 1, that is the plaintiff A schedule property, the property that belonged to the plaintiff/judgment debtor. So, from the report, it is very clear that boundary line fixed is the boundary of plot No. 1 of the survey sketch attached to the decree. The boundary line so fixed with the assistance of the surveyor. The surveyor had also filed report stating that, the boundary of the red shaded portion shown as plot No. 1 in the plan attached to the decree, was identified and the stumps were fixed, as per the report dated 21.08.23. As per the report dated 18.09.23, the Amin had sought for further time as the construction work and cutting and removing of trees, could not be completed within time. In the said report also, it is mentioned that the boundary of the judgment debtor is to be cleared for the construction of the compound wall. As per the report filed by the Amin on 18.10.23, the compound wall was reported to be constructed on the eastern boundary of the judgment debtors property. So, the report filed by the Amin and the surveyor, would go to show that the property was identified as per the plan appended to the decree and the eastern boundary of the judgment debtor was fixed and the compound wall was constructed on the eastern boundary of the judgment debtor. On the other hand, the judgment debtor had contended that, the compound wall constructed is on the decree holders property and not on the judgment debtor's property. But, as per the records and as per the reports available, it is not possible to see the same to be on the property of the decree holder. On the other hand, the reports of the surveyor as well as the Amin would clearly go to show that the compound wall was constructed on the eastern boundary of the property of the judgment debtor as per the plan appended to the decree.

5. Other contentions raised is that, this court lacks jurisdiction to order any cost in execution petition, when there was no clause for the cost as

per the compromise entered into between the parties. It is true that, there is no cost of the suit to be realized by the parties, as per the compromise decree. When one of the party refrains from complying the decree and when the other party was forced or constrained to approached the court to get the decree executed, then the provision applicable is Order 21 Rule 32, in case of an execution of an injunction decree. As per Rule 32(5) of Order 21 where a decree for the injunction has not been obeyed, the court may direct the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor and upon the act being done the expenses incurred may be ascertained in such a manner as the court may direct and may be recover as if they were included in the court. So, as per Order 21 Rule 32 clause 5, it is very clear that the judgment debtor was who had an opportunity to obey the decree, willfully disobeyed the act, then the act required to be done by the judgment debtor may be directed to be done by the decree holder, at the expenses of the judgment debtor and such expenses incurred would be required, as if it was included in the decree. So, even if, as per the compromise decree, there is no clause or any stipulation for the payment of costs after passing the decree at an execution stage, Order 21 Order 32 clause (5) would apply in a case of injunction decree as herein. So, the contentions raised on that point could not be found to be having any merits. The judgment debtor did not sought for payment of any cost in E.P 20/18 is not the matter to be adjudicated in this petition as on the other hand, when the decree holder had done the acts which are to be done as per the decree by the judgment debtor then he is entitled to get the cost as per Order 21 Rule 32 clause (5). So, in view of the above discussions, I could only find that, the decree holder is entitled to realize the costs. As per the receipt dated 16.10.23, issued from the C.C.C constructions it can be see that the expenses boned by the decree holder is to the tune of Rs. 3,38,000/-. There are no

materials available to see the same to be contrary. Hence, I could only find in view of the above discussions that, the judgment debtor is liable to pay Rs. 3,38,000/- towards the expenses boned by the decree holder in constructing the compound wall. Hence, the petition stands allowed.

6. In the result, this petition stands allowed.

Dictated to the confdl. asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 15th day of December, 2023.

Sd/-
ALSHARI.A,
MUNSIFF.

APPENDIX
NIL

Id/-
Munsiff
(By Order)

// True Copy //

Sd/-
Junior Superintendent

jpp/-
Compd.by : Sadhique

Copy of Order in
E.A.No. 314/2023 in
E.P.No.107/2022 in
O.S.No.524/2013
Dated : 15.12.2023