

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Monday, the 8th day of August, 2022/ 17th Sravana, 1944.

E A No. 165/2022

in

EP No. 69/2019 in O S No. 14/2012

Judgment Debtors:-

1. K P Varghese, S/o. Paulose, Kanjirathumkudy House, Panichayam Kara, Asamannoor Village.
2. Ulahannan, S/o. Paulose, Kanjirathumkudy House, Panichayam Kara, Asamannoor Village.
3. P A Mohanan, S/o. Ayyappan, Parakkattu House, Nedungapra P. O., Panichayam Kara, Asamannoor Village.
4. C K Krishnan, S/o. Kunjan, Cheruvallippadiyil House, Nedungapra P. O., Panichayam Kara, Asamannoor Village.
5. C K Gopalakrishnan, S/o. Kuttappan, Chemmayathu House, Nedungapra P. O., Panichayam Kara, Asamannoor Village.
6. C K Sugathan, S/o. Kuttappan, Cheruvallippadiyil House, Nedungapra P. O., Panichayam Kara, Asamannoor Village.
7. C I Thamban, S/o. Ikkoran, Chemmayathu House, Nedungapra P. O., Panichayam Kara, Asamannoor Village.

By Adv. T. N. Arunkumar

Decree Holders:-

- 1 Kunjamma, W/o. Ulahannan, Kanjirathumkudy House, Asamannoor Kara, Asamannoor Village.
- 2 Ulahannan, S/o. Geevarghese, Kanjirathumkudy House, Asamannoor Kara, Asamannoor Village.

By Adv. Sri. K. M. Alias

This Petition having been finally heard before me on 26/07/2022 and the court on 08/08/2022 passed the following:-

ORDER

1. Heard both sides.
2. This is a petition filed to review the order dated 20.07.22. According to the petitioner, the execution petition filed in O.S 393/98 was dismissed. The decree holder is relying on the decree and plan in O.S 393/98, is not maintainable. As per the direction of the Hon'ble High Court in the appeal preferred by the decree holder against the dismissal of execution petition in O.S 393/98, the suit bearing No. 14/12 was filed. Against the decree in O.S 14/12, the petitioners had preferred appeal before the Hon'ble High Court as RSA 546/18 which is pending. The decree holder had filed this petition so as to close the way being used by the judgment debtors. Hence the execution petition is not allowable and Amin cannot be deputed to construct the compound wall. The petitioner had raised the question of non joinder also in the petition. According to the petitioner, no notice was issued under Rule 35 against the judgment debtor. The decree schedule property cannot be identified in the absence of Kunnathunadu Taluk Surveyor and Periyar Valley Department Surveyor. Hence, the order deputing the Amin to execute the decree with the assistance of surveyor Sri. Sebastian has to be reviewed.
3. Respondent had filed objection to the petition by stating that there is no error apparent on the face of record. The order was passed by hearing both the parties. The petitioner had no case regarding non issuance of notice till this time. There is no stay in force against the execution of the decree. Even after the filing of RSA 596/2018, no stay order produced after the laps of 4 years. The order is appealable and no petition to review could be maintainable.
4. On the perusal of records, it is seen that the judgment debtor was represented through counsel and appearing through the counsel through out after served with notice under Rule 22 of Order 21. As per Order 21 Rule 35, the notice

contemplated is in a case where the decree is for delivery of immovable property which is not the case herein. The decree sought to be executed is a decree of permanent prohibitory injunction. So, Rule 35 of Order 21 is not applicable in a case of decree of permanent prohibitory injunction. Hence, I could not find any force in such argument raised by the petitioner to see any error apparent on face of record on that ground. Remaining grounds stated are not the matters to be adjudicated in the execution petition which is beyond the scope of the decree. Hence, I could not find sufficient reason or error apparent on the face of record so as to review the order dated 20.07.2022 as sought for. Hence, this petition stands dismissed.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 8th day of August, 2022.

Sd/-
ALSHARI.A,
MUNSIFF

Appendix: Nil

Id/-
Munsiff
(By Order)

// True Copy //

Junior Superintendent

Typed by : jav
Compd.by :

Copy of Order
in

EA No. 165/2022 in
EP. 69/2019 in OS. 14/2012.
Dated: 8/8/2022