

**IN THE COURT OF THE MUNSIF, PERUMBAVOOR**

Present:- Sri. Atheek Rahman, Munsiff

Monday, the 14<sup>th</sup> day of December, 2020/ 23<sup>rd</sup> Agrahayana, 1942.

**E.A.No.103/2020 in E.P.No.93/2019**  
**in**  
**O.S.No.152/2010**

**Petitioners / Decree Holders:-**

1. Mathew Sam @ M.M.Sam, Mamoottil House, Vilangu Kara, Kizhakkambalam Village.
2. Beena George, Mamoottil House, Vilangu Kara, Kizhakkambalam Village.

**By Adv. Hashim Althaf.**

**Respondent / Judgment Debtor:-**

Pathrose, Chemmala House, Vilangu Kara, Kizhakkambalam Village.

**By Adv. P.T.Geevarghese.**

This petition having been finally heard before me on 14.12.2020 and the court on the same day delivered the following:-

**O R D E R**

1. This petition is filed by the petitioners/decreed holders under O. 26 R. 9 of CPC for issuing a commission. The petition is supported by an affidavit sworn by the 2<sup>nd</sup> decreed holder.
  
2. The brief averments in the affidavit are as follows:- As per the decree in the suit decreed holders are permitted to recover plaint B schedule property. Further, a decree of permanent prohibitory injunction was passed against the judgment debtor restraining him from trespassing on plaint A and B schedule properties, committing waste in the decreed schedule property and doing any act detrimental to the rights of the plaintiffs therein. As per the order dated 05.07.2020 the properties of either sides were delivered. After delivery of the property, judgment debtor purposefully in violation of the decree of injunction a portion of the thodu shown in Ext. C4(a) sketch which passing through the property of judgment debtor is filled with soil. Apart from that, the direction of the natural flow of water on the northern side of the judgment debtor's property was changed so as to flow the water through the property of decreed holders. Judgment debtor is flouting the decree of permanent prohibitory injunction passed by this court and harassing the decreed holders. In order to prosecute the judgment debtor, a prosecution petition is filed along with this petition. So, in order to ascertain the mischief committed by the judgment debtor it is highly necessary to appoint an Advocate commissioner to ascertain the matters enumerated in the commission application.

3. Judgment debtor filed objection to the petition as follows:- The matters enumerated in the commission application are not stated in the plaint. The thodu mentioned in the commission application is not a subject matter of the suit and also there is no mention regarding the thodu in the plaint. The averment that the portion of the thodu which passing through the property of the judgment debtor is filled with soil is false. Judgment debtor never filled the thodu as alleged. The thodu mentioned in the commission application has no connection with the matters in dispute decided in the suit. On 04.07.2020 plaint B schedule property was delivered through the process of this court to the decree holders. Subsequently, the decree holders filed unnecessary petitions in the execution petition. The present petition is one of those petitions and devoid of merit. Hence, the respondent/judgment debtor prayed to dismiss the petition with his costs.
4. Both sides were heard and following point raised for consideration:-

Is the issuance of a commission warranted?

5. **The Point**:- The present petition is filed by the decree holders for issuance of a commission alleging that the judgment debtor in violation of the decree of permanent prohibitory injunction filled the portion of the thodu which passing through the property of judgment debtor so as to obstruct the natural flow of water. Further, he would contend that the direction of the natural flow of the water on the northern side of the judgment debtor's property is also obstructed and thereby during rainy

season the water will be flowed through the property of the decree holders. Hence, he filed prosecution petition as E.A 104/2020 before this court and it is pending. In order to ascertain the alleged mischief committed by judgment debtor the present petition is filed by the decree holders for issuing a commission to ascertain the matters enumerated in the commission application.

6. Per contra, the learned counsel for the judgment debtor would argue that the matters sought to be ascertained are not covered by the decree. There is no mention regarding the thodu in the decree sought to be executed. Even after the delivery of the property the decree holders are filing unnecessary petitions in order to harass judgment debtor and also to protract the matter. Hence, the respondent/judgment debtor prayed to dismiss the petition.
7. I have perused the records. As per the decree, the decree holders have got a decree of permanent prohibitory injunction restraining the defendants from trespassing from plaint A schedule property. From the decree, it is also clear that recovery of plaint B schedule property is allowed. In the execution petition an Amin, Advocate commissioner and Surveyor were deputed to deliver the property as per order dated 09.03.2020 and the property was delivered. In that order the decree holders were permitted to construct compound wall on the eastern side of the B schedule property in accordance with the decree and without causing any obstruction to the natural flow of water as Clause No.5 of the decree. Hence, Advocate commissioner filed an interim report after delivery of the property stating that the

delivery is effected and the construction of the wall is not completed and he requires more time to file the commission report. The specific case of the decree holders is that after delivery of the property judgment debtor violated the decree of permanent prohibitory injunction and filled the thodu passing through his property in violation of the decree. According to him, due to the said violation the natural flow of water is blocked. Hence, he filed the prosecution petition as well as the commission application. The contention of the learned counsel for the judgment debtor that the present petition is not maintainable has no due force and only to be discarded. There will not cause any prejudice to the judgment debtor in allowing the petition.

8. In the result, the commission application is allowed and the Advocate commissioner Dileep Kumar is directed to ascertain the matters enumerated in the commission application. The decree holders are directed to pay commission batta of Rs. 3,000/- directly to the commissioner and file memo. Commissioner shall issue notice to both sides before inspection.

Dictated to the confdl. asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 14<sup>th</sup> day of December, 2020.

Sd/-  
ATHEEK RAHMAN  
MUNSIF

**APPENDIX**  
**NIL**

// True Copy //

Id/-  
MUNSIFF.  
(By Order)

(Carbon copy allowed as per order in E.A.139/2020 dated 15.12.2020)

Examiner

PPJ.  
Comp.by:

Carbon copy of Order in  
E.A.No.103/2020 in E.P.No.93/2019 in  
O.S.No.152/2010

Dated: 14.12.2020