

**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.123/2020 in E.P.No.93/2019**  
**in**  
**O.S.No.152/2010**

**Petitioner / Judgment Debtor:-**

Pathrose, S/o. Paily, Chemmala House, Vilangu Kara,  
Kizhakkambalam Village.

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

**Respondents / Decree Holders:-**

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

**By Adv. Hashim Althaf.**

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

**ORDER**

1. This petition is filed by petitioner/judgment debtor u/s. 151 of CPC for giving direction to Advocate commissioner and surveyor for re-fixing the western side boundary of plaint B schedule property. The petition is supported by an affidavit.
  
2. The brief averment in the affidavit is as follows:- The execution petition is filed with a prayer to deliver plaint B schedule property to decree holders. Petitioner submitted that he has no objection in delivering the property to the decree holders. The gate and pillars of petitioner/judgment debtor is standing on the south-western corner of the property belongs to him which is specifically described in counter claim as schedule item No. 1. As per Ext. C4(a) plan, plaint A schedule property lies 60 centimeters north to the pillar of the gate of judgment debtor. But, decree holders removed soil from the property of judgment debtor against Ext. C4(a) plan for constructing basement to the boundary wall. The act of the decree holders are illegal. In Ext. C4(a) plan the length of the boundary line of B schedule property towards west is shown as 16.20 mtrs. But, decree holders demolished the boundary wall in 18.50 mtrs. The excess length of the boundary wall demolished by the decree holders belongs to judgment debtor. Decree holders are liable to restore the said portion of the wall. In Ext. C4(a) plan the length of eastern side boundary line of plaint B schedule property is shown as 10.80 mtrs from south to north and 5.40 mtrs from north to west. The said measurement is not clearly fixed by the Advocate commissioner. The south-western corner of counter

claim item No. 1 property situates 5.40 mtrs to north of the point marked at the southern side of the pillar of the gate. Moreover, when the commissioner executed the decree the measurement shown in Ext. C4(a) enlarged plan was not considered. Hence, the petition.

3. Respondents/decreed holders filed objection stating that the petition is not maintainable either in law or on facts. There is no valid reason stated in the affidavit in support of the petition for allowing the same. As per the order of the court commissioner and surveyor measured the property and parties were satisfied also. But, when the decreed holders are about to construct the boundary wall as ordered by the court the judgment debtor trespassed on the property of decreed holders and constructed boundary wall. Hence, he filed E.A 92/2020 and 104/2020 for prosecution and it is pending. During this stage, the present petition is filed by the judgment debtor without any bonafides. Respondents would contend that the present petition is filed only to protract the matter and it is liable to be dismissed.
4. From the rival contentions following points were raised for consideration:-
  1. Is there any ground to give direction to the Advocate commissioner and surveyor to re-fix the eastern side boundary of plaint B schedule property on the basis of Ext. C4(a) plan?
  2. Order as to costs?

5. Both sides were heard. From the side of the petitioner/judgment debtor Ext. A1 and A2 were marked. From the side of the respondents/decreed holders no documents were marked.
6. **Point No. 1:-** The specific contention of the petitioner is that during the time of delivery Advocate commissioner not considered the measurement shown in the enlarged sketch of Ext. C4(a) plan and the south-western corner of the counter claim schedule item No. 1 property fixed by the Advocate commissioner is not correct. Further, he would contend that decreed holders demolished the boundary wall more than the permitted length and decreed holders are liable to restore the same. In order to substantiate his contention judgment debtor produced Ext. A1 CD and Ext. A2 photographs (2 in Nos.).
7. Per contra, the decreed holder would contend that the present petition is filed without any bonafides and only to protract the matter since decreed holder filed E.A 92/2020 and 104/2020 for prosecuting the petitioner/judgment debtor for the violation of the decree. During the time of hearing the learned counsel for the decreed holders would argue that petitioner/judgment debtor has not filed any objection to the delivery report filed by the Amin in this E.P.
8. I have perused the records. As per the order dated 09.03.2020 Advocate commissioner and Amin inspected the decreed schedule properties and delivery of plaint B schedule property was effected on 06.07.2020. Amin filed delivery report also. The said fact is also reported by the commissioner in his report dated 08.07.2020. From the report, it can be seen that objection raised

by the petitioner/judgment debtor is not seen raised at the time of delivery. It is also to be noted that judgment debtor has not filed any objection to the delivery report filed by the Amin. Moreover, on going through the objection filed by the judgment debtor to the report of the Advocate commissioner dated 08.07.2020 the allegations made in the affidavit is not seen raised. The next aspect to be noted is that as averred in the affidavit the decree holder demolished the boundary wall as alleged in the affidavit. In order to substantiate the said contentions except Ext. A1 CD and A2 photographs no other evidence was produced. Ext. A2 photographs produced by the judgment debtor would go to show that the contention of the petitioner/judgment debtor is not correct. Hence, I am of the view that there is no merit in the petition and it is liable to be dismissed.

9. **Point No.2:-** Considering the facts and circumstances of the case, I am not inclined to allow the costs of the proceedings.
10. In the result, the petition is dismissed. No costs.

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.123/2020 in E.P.No.93/2019 in  
O.S.No.152/2010

Dated: 14.12.2020