

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Sri. Atheek Rahman, Munsiff

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

E.A.No.124/2020 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:-

ORDER

1. This application is filed by petitioners/decreed holders for directing the police to assist the Advocate Commissioner for executing the decree. Application is supported by an affidavit sworn by the 1st decreed holder.
2. Brief averments in the affidavit are as follows:- As per the order dated 09.03.2020 decreed holders took steps to execute the decree. After issuing notice to judgment debtor, on 30.09.2020 Advocate commissioner came to the decreed schedule property to construct the boundary wall on the eastern side of decreed B schedule property up to the southern side Panchayat road. But, Judgment debtor obstructed the work of the Advocate Commissioner. Further, it is averred that judgment debtor trespassed on the property of decreed holders and abused petitioners using filthy language. Judgment debtor demanded to measure out the property delivered once again and abused Advocate Commissioner and surveyor using filthy language. Delivery of the property was effected and now, the judgment debtor is illegally causing obstruction in constructing the boundary wall. Hence, the application seeking police assistance.
3. Respondent/judgment debtor filed objection stating as follows:- Application is not maintainable either in law or on facts. All the averments in support of the affidavit are false. This Court ordered to construct boundary wall on the eastern side of plaint B schedule property towards north. But, against the said order petitioner is trying to construct wall towards south and also including the portion of Panchayat road. Boundary wall was

demolished against Ext. C4 (a) plan and also in the absence of the Advocate Commissioner. Further, it is averred that petitioner demolished the portion of boundary wall near to the northern side post of the gate fitted on the southern side boundary wall of Counter claim property belongs to judgment debtor. The wall ought to have been demolished 60 centimeters towards north from the post of the gate. Petitioner was permitted to demolish the wall in a length of 16.50 metres. But, he had demolished 18.50 metres. The averment that the respondent trespassed on the property of petitioner abused petitioner, Advocate Commissioner and surveyor is false. Respondent did not cause any obstruction to the work of the Advocate Commissioner. Police protection is not necessary to construct boundary wall on the eastern side of plaint B schedule property. Petitioner is seeking police protection for constructing wall towards south including the portion of Panchayat road. Hence, the respondent prayed to dismiss the application with his costs.

4. Both sides were heard. Following points raised for consideration:-
 1. Is it necessary to direct the SHO Thadiyittaparambu to assist the Advocate Commissioner in case of need to execute the order dated 03.09.2020?
 2. Is there any clarification required in the order dated 03.09.2020 of this court?
 3. Order as to costs?

5. **Point Nos. 1 and 2:-** For the purpose of convenience these points are considered together. As per the order dated 03.09.2020 this Court appointed Ameen to deliver B schedule property to decree holders. Further, the petitioners/decreed holders were permitted to construct compound wall on the eastern side of the B schedule property in accordance with the decree and without causing obstruction to the natural flow of the water as stated in Clause No.5 of the decree. For supervising the work Advocate commissioner was appointed. In order to assist the commissioner, surveyor was also deputed. Delivery of the property was effected. But, on 04.11.2020 Advocate commissioner filed an interim report stating that when the Advocate Commissioner and surveyor reached on the decree schedule property, decree holders tried to construct wall separating the boundary between plaint A schedule property and Panchayat road to the southern side of plaint B schedule property and judgment debtor obstructed. Hence, Advocate commissioner returned without executing the work stating that there is no direction from the Court to construct the boundary wall on that portion. During the time of hearing Advocate commissioner submitted that a clarification is needed in the order dated 03.09.2020. Petitioner filed objection to the interim report filed by the Advocate commissioner.
6. Judgment debtor would contend that there is no order to construct wall towards the south of the plaint B schedule property. The decree holders would contend that E.P is filed for permitting him to construct eastern side boundary wall of the B schedule property which starts from the boundary of the Panchayat road lies on the southern side. Further, he would

submit that as per the decision in **Varghese v. T.K Sivaraman** reported in **2011 (1) KHC 773** of the Hon'ble High Court of Kerala if the prayer is only an incidental right of the decree holders to put up a fence or boundary wall and it can be permitted since they are need not be a separate decree permitting to put up a compound wall. In turn, the learned counsel for the judgment debtor would argue that in the order of this court dated 09.03.2020 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 the water as stated in Clause No. 5 of the decree. The said order is not challenged by the decree holders. Hence, they cannot construct boundary wall beyond the said order.

7. I have perused the plan appended along with decree. On going through said plan it can be seen that the boundary wall of the B schedule property is reaching near to the post of the gate erected in the property of judgment debtor. The Panchayat road is lies on the southern side of the entire property. On going through Ext.C4(a) plan it can be seen that decree B schedule property is the part of decree A schedule property. The eastern side boundary of the A schedule property reaches up to the northern side boundary of the Panchayat road. The boundary of A schedule property towards the southern side of plaint B schedule property is clearly demarcated in the plan. Moreover, there is no dispute regarding the said boundary shown in Ext.C4(a) plan. Hence, I am of the view that decree holders can construct the boundary wall as requested in the execution petition and it need not requires any further clarification in the order dated

09.03.2020. Further, from the affidavit in support of the petition and report of the commissioner it can be seen that when the Advocate commissioner tried to execute the work judgment debtor raised objection and thereby he could not execute the work. These points are accordingly answered as above.

8. **Point No. 3**:- In the result, the petition is disposed of as follows:-
1. Advocate commissioner can seek assistance of Thadiyittaparambu police in case of need for executing the decree.
 2. SHO Thadiyittaparambu is directed to assist the commissioner on request without any fail.
 3. Advocate commissioner shall execute the work within 10 days and file report.
 4. Issue copy of this order to Advocate commissioner as well as the SHO Thadiyittaparambu.

Pronounced by me in open court on this the 14th 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.124/2020 in E.P.No.93/2019 in
O.S.No.152/2010

Dated: 14.12.2020