IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari.A, Munsiff

Saturday the 1ˢᵗ day of April, 2023/ 11ᵗʰ Chaithra, 1945.

E.A.No.315/2022 in E.P.No.93/2019
in
O.S.No.152/2010

Petitioners/Decree Holders:-

      1   M M Sam @ Mathew 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 14.3.2023 and the court on 1.4.2023 passed the following:-

O R D E R

1.   Heard both sides.

2.   Petition averments in brief:- According to the petitioner, the surveyor

is not able to identify the property as per Ext. C4(a) appended to the decree. According to the petitioner, they are entitled to get delivery of property having an extent of 0.31 sq.meters including the rubber tree. But, the respondents are disputing the delivery of the property by obstructing the measurement by the surveyor. So, the properties of both parties to be measured and the delivery is to be effected. When the property is measured as per Ext. C4(a), there is difference in the side measurements which cannot be accepted or allowable. Both the parties are admitting the mistake in the side measurements in Ext. C4 commission report and plan. Therefore, for the convenient property cannot be measured to one party alone. The surveyor had not identified the property or able to deliver the property. So, the measurement has to be started from the survey stone shown as C on the north-eastern corner. Only then, the delivery could be effected as per the decree. Hence, the directions are to be given to the surveyor and commissioner.

3. The respondent had filed counter statement. According to him, the Adv. John Kurian delegated by the surveyor had measured the property on the basis of resurvey wrongly. Hence, the commissioner should be given necessary directions.

4. On the perusal of records it is seen that in connected E.P 123/16 as per the order in E.A 310/22 and 3/23, the necessary directions were given to the Advocate commissioner by substituting the earlier commissioner and the Taluk surveyor were appointed. This court cannot go beyond the scope of the decree. So, the decree schedule property has to be identified on the basis of decree schedule and the delivery of the property is to be effected as per the plan appended to the decree. The properties has to identified on the basis of all the plans appended to the decree. According to the respondent, the property is to be identified on the basis of Ext. C4(a) and according to the petitioner if the property is

identified on the basis of Ext. C4(a) there is every chance for mistake. So the commissioner and surveyor is directed to measure the property on the basis of all the plans appended to the decree including Ext.C4(a). If the property cannot be identified on the basis of plan submitted it is to be reported this court with necessary materials to rectify the lacuna in identifying the property properly. The surveyor is directed to measure the property as per the survey manual directly and he shall not delegate the work to any others. All the A, B, C and D decree schedule property has to be identified without which the proper delivery cannot be effected. So, the Advocate commissioner is hereby directed to identify the A, B, C and D scheduled properties on the basis of all the plans appended with the assistance of the surveyor as per the survey manual.

5.   In the result, the petition is allowed accordingly.

Dictated to the confdl. asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 1st day of April, 2023.

Sd/-
ALSHARI.A,
MUNSIFF.

APPENDIX
NIL

Id/-
Munsiff

(By Order)

// True Copy //

Junior Superintendent

jpp/-
Compd.by :

Copy of Order

E.A.No.315/2022 in

E.P.No.93/2019 in

O.S.No.152/2010

Dated : 1.4.2023