

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

**Present:- Sri. Atheek Rahman, Munsiff**

Friday, the 19<sup>th</sup> day of November, 2021/ 28<sup>th</sup> Karthika, 1943.

**E.A. 147/2021**

**in**

**E.P. 123/2016 in O.S. 152/2010**

**Petitioner / Decree Holder:-**

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

By Adv. P T Gheevarghese

**Respondents/Judgment Debtors:-**

- 1 Mathew Sam @ M M Sam, S/o. Isho Mathew,  
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 17/11/2021 and the court on 19/11/2021 passed the following:-

**ORDER**

1. This petition is filed by the petitioner/decreed holder under O. 26 R. 9 of CPC. The petition is supported by an affidavit sworn by the petitioner.
2. Brief averments in the affidavit are as follows:- In E.P No. 93/19 filed by the respondent/judgment debtor, this petitioner submitted no objection in delivering plaint B schedule property to the judgment debtor in accordance with Ext. C4(a) plan appended along with decree. On the southern side item No. 1 of counter claim schedule property petitioner constructed gate on two pillars. As per Ext. C4(a) plan, plaint A schedule property situates 60

centimeters away from the pillars towards north. But violating the decree, judgment debtors constructed foundation pit by encroaching the portion of the petitioner's property. The photographs of the said illegal act is produced before the court. Complaining the said illegal act petitioner filed E.A 40/2021 and it is pending consideration. Under the guise of constructing boundary wall on the eastern side of plaint schedule property judgment debtors constructed boundary wall by encroaching the Panchayat road into 5 metre length. Due to the said construction of the wall the heavy goods vehicles could not easily enter into the property of the petitioner. That apart, during rainy season the water will flow into his property. In order to ascertain the said matters it is highly necessary to appoint a commissioner. Hence, the petition.

3. Respondents/judgment debtors filed objection stating that the petition is not maintainable either in law or facts. There is no sufficient reason stated in the affidavit in support of the petition to allow the same. The marriage of the daughter of respondents is fixed on 22.11.2021. It is decided to conduct the function from 18.11.2021 to 22.11.21 in accordance with Covid protocol. The said fact is well known to the petitioner. So, in order to wreck vengeance and to harass the judgment debtors purposefully the petitioner filed the present petition. The petition filed by petitioner for changing the surveyor is pending. During this stage the present petition is unnecessary. All the matters enumerated in the petition is already reported by the Advocate commissioner after inspecting the property as per order in E.A 35/21. Further, as per the order in E.A 103/2020 in E.P 93/19 even though the commissioner inspected the property, no report seen filed so far. The petition filed by the petitioner for reviewing the order in E.A 103/20 is pending consideration. On 07.07.2020, in the absence of the Advocate commissioner petitioner tried to construct boundary wall. With respect to the said illegal act respondent complained to

the Thadiyitaparambu police. Police intervened in the matter and the illegal act of the petitioner was restrained. But, even though the petitioner stopped the work, on 08.07.2020 when the respondent was not in station, petitioner illegally constructed boundary wall by encroaching into the property of the respondents. With respect to the said incident respondent filed E.A 91/21, 92/21 and 93/21 and those petitions are also pending in E.P 93/2019. The water channel mentioned in Ext. C4(a) plan completely filled by the petitioner in violation of the decree. Due to the said act water is over flowing into the property of respondents. In order to redress the grievance he filed E.A 124/20 and it is pending consideration in E.P 93/19. Several review petitions filed by the petitioner are also pending in E.P 93/19. The present petition is an abuse of process of court. The query Nos. 1, 2, 5, 6, 7 and 8 in the petition are already reported by the Advocate commissioner as per order in E.A 35/21. The present petition is filed only to escape from the illegal acts committed by the petitioner. Respondent constructed the boundary wall in the presence of the Advocate commissioner. The petition is infructuous and it is liable to be dismissed.

4. Apart from the objection, 1<sup>st</sup> respondent filed an affidavit stating that the marriage of his daughter is fixed on 22.11.21. It is decided to conduct the function of the marriage in accordance with the Covid protocol from 18.11.21 to 22.11.21. In the event of allowing the petition, respondents requested to give direction to the Advocate commissioner to inspect the property only after 25.11.21.
5. Both sides were heard. From the rival contentions the following point raised for consideration :-

Is there any sufficient ground existing to issue a commission as requested?

6. **The point:-** I have perused the records. It is to be noted that as per order dated 01.03.2021 in E.A 35/21 filed by the petitioner, Advocate commissioner Sri. P.G. Dileep Kumar inspected the property and filed report before the court on 22.03.2021. In the affidavit the petitioner would contend that in violation of the decree judgment debtor constructed boundary wall on the eastern side of the plaint schedule property by encroaching the property of the Panchayat. Further, on the northern side of the plaint schedule property respondent took pit for constructing foundation by encroaching a portion of the property of the petitioner. On going through the commission report filed as per order in E.A 35/2021 it can be seen that as stated in the objection by the respondents the queries 1, 2, 5, 6, 7 and 8 in the present petition already seen reported by the Advocate commissioner. Even though detailed objection filed by the respondents, in the affidavit filed along with the objection 1<sup>st</sup> respondent would contend that in the event of allowing the petition kindly direct the Advocate commissioner to inspect the property only after 25.11.21. It is to be noted that the court is not expected to shut out evidence. Hence, I am of the view that the petition can be allowed only to the extent of ascertaining the queries 3, 4 and 9 of the petition. Considering the affidavit filed by 1<sup>st</sup> respondent I am of the view that the Advocate commissioner can be directed to inspect the property only after 25.11.21.

7. In the result, the petition is allowed in part as follows:-

1. Adv. P.G. Dileep Kumar is appointed as the Advocate commissioner to ascertain the queries 3, 4 and 9 enumerated in the petition.
2. Advocate commissioner shall inspect the property only after 25.11.2021. Further, he is directed to issue notice to both sides before inspection.

3. Commission batta is fixed as Rs. 3,000/-. Pay batta directly to the commissioner and file memo to that effect.
4. Office is directed to issue copy of this order to the Advocate commissioner along with the commission warrant.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 19<sup>th</sup> day of November, 2021.

Sd/-  
ATHEEK RAHMAN  
MUNSIFF

**Appendix:- Nil**

Id/-  
Munsiff  
( By Order )

// True Copy //

Junior Superintendent

Typed by: jav  
Compd.by :

Copy of Order in  
E.A. 147/2021 in E.P. 123/2016  
in O.S. 152/2010  
Dated : 19/11/2021