

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

**Present:- Smt. Alshari A., Munsiff**

Tuesday, the 2<sup>nd</sup> day of August, 2022/ 11<sup>th</sup> Sravana, 1944.

**E.A. No. 149/2022 in E.P. 123/2016**

**in**

**O.S. 152/2010**

**Petitioner/ Decree Holder/Defendant:-**

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

By Adv. P. T. Geevarghese

**Respondents/Judgment Debtors/Plaintiffs :-**

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

By Adv. Hashim Althaf.

This Petition having been finally heard before me on 26/07/2022 and the court on 02/08/2022 passed the following:-

**ORDER**

1. Heard both sides.
2. This is a petition filed to review the order dated 29.06.2022 by which the surveyor I.P. Sivaraman was substituted by appointing a Taluk surveyor. The decree holder had filed E.P 93/19 for getting the delivery of plaint B schedule property and the petitioner herein had submitted that, they have no objection in delivering the property covered by as per Ext. C4(a) plan. Ext. C4(a) plan was submitted by surveyor Sri. I.P. Sivaraman. The counter claim preferred by

the petitioner was allowed by which the item No. 2 of the property scheduled in written statement is to be delivered to the petitioner herein for which the petitioner had filed the execution petition. By raising false allegations that the surveyor was not present when the commissioner required to measure the property, the respondent had filed E.A 229/19 in E.P 93/19. The petitioner herein had filed counter statement to the effect that, there is no need to change the surveyor. But without considering the objection raised by the petitioner herein, T.D. Cheriyan was appointed as surveyor in the place of I.P. Sivaraman. The petitioner had not preferred any petition to change the surveyor in E.P 123/16 and an Amin was deputed to effect execute the decree in E.P. 93.19 and another Amin was deputed in E.P 123/16. Sri. T.D. Cheriyan had inspected the property for several times. But, he could not identify the property. E.A 123/2020 was filed to refix the plan as per C4(a). The commission application was preferred as E.A 35/21 which was allowed. Commissioner had filed report. The changes noted by the commissioner is not stated in the petition. The report submitted by the Cheriyan is different from the C4(a) plan as per the commission report.

3. The 1<sup>st</sup> respondent had filed counter statement denying the petition averments by raising contention that the petition is not maintainable. The reason stated are not sufficient for the petition. The petitioners are filing petition one after another only to drag the matter. The respondent had no objection in appointing any surveyor other than I.P Sivaraman. The measurement will be correct only if the Sri. Sivaraman measures the properties is doubtful and astonishing. Hence the petition is to be dismissed.
4. On going through the petition, it is seen that the grievance of the petition with respect to the commission report submitted, are not required to be decided in

this petition which is filed to review the order dated 29.06.2022. According to the petitioner, on 29.06.2022, the surveyor Sri. Sivaraman was substituted as the judgment debtors was not having confidence in the said surveyor. According to the petitioner, C4(a) plan was prepared by Sri. I.P. Sivaraman. So, it is desirable to appoint the same surveyor for which the petition is filed, to review the order. As per the order dated 29.06.2022, the surveyor was substituted since the judgment debtors in this E.P who are the decree holders in E.P 93/19 had raised a suspicion of bias. To eradicate any dissatisfaction and to ensure fairness in getting the work done, the surveyor was substituted by the Taluk surveyor. There is absolutely no requirement to appoint the same surveyor who had prepared the plan so as to identify the property as per the plan. A competent surveyor who is qualified is capable of identifying the property on the basis of survey plan already available that is C4(a) plan based on which the decree is to be executed. It is not discernible why the new surveyor is in capable to identify the property as per the plan on measuring the property in the place. As per the measurements available in the plan, by a competent surveyor, the property could be identified as per the survey plan on the basis of the measurements available in the C4(a) plan. So, there is absolutely no requirement to appoint the same surveyor to identify the property as per C4(a) plan as submitted by the learned counsel for the petitioner herein. The surveyor was substituted only to ensure fairness, I could not find any error apparent on the face of records or any sufficient grounds to review the order dated 29.06.2022. It is not discernible why the petitioner is insisting for the same surveyor even if a qualified surveyor is capable of identifying the property on the basis of measurement available in C4(a) plan in the place. So, I could not find any sufficient reason or ground for reviewing the order dated 29.06.2022. Hence, this petition is dismissed.

5. In the result, the petition is dismissed.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 2<sup>nd</sup> day of August, 2022.

Sd/-  
ALSHARIA,  
MUNSIFF

**Appendix: Nil**

Id/-  
Munsiff  
( By Order )

// True Copy //

Junior Superintendent

Typed by : jav  
Compd.by :

Copy of Order  
in EA 149 /2022  
in  
EP.123/2016 in OS 152/10.  
Dated: 02/08/2022