

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

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

Saturday, the 19<sup>th</sup> day of November, 2022/ 28<sup>th</sup> Karthika, 1944.

**E.A. No. 269/2022 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. Geevarghese

**Respondents/Judgment Debtors :-**

- 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 17/11/2022 and the court on 19/11/2022 passed the following:-

**ORDER**

1. Petition averments in brief:- The execution petition is filed to get the delivery of plaint B schedule property as per C4(a) plan appended to the decree. The petitioner herein had submitted before the court that they have no objection in delivering the property to decree holder. On the south-western side of the property which belonged to the petitioner herein there are two pillars. Plaint A schedule property is lying about 60 centimeters away from the pillars. The

judgment debtors had constructed compound wall by abutting to the said pillars. Photographs are produced in E.A 36/21 filed for prosecution. Due to the construction of the foundation, the water from the thodu which is lying on the north-eastern side of the gate of the petitioner is not flowing through the same. The water should be drawn through the thodu is now flowing through the property of the petitioner herein. There is a decree to the effect that the judgment debtors shall not obstruct the flow of the water. It was ordered in E.P 93/19 that (a) Amin is appointed to deliver the B schedule property to the decree holder/plaintiff in accordance with the decree. (b) The decree holder/plaintiff is 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. (c) Adv. P.G. Dileep Kumar is appointed as the commissioner to supervise the said work and surveyor Sri. T.D Cheriyan is also appointed to assist the commissioner. The judgment debtors had obstructed the natural flow of water by constructing compound wall by violating the order in E.P 93/19, the water is flowing through the house of this petitioner. Hence, the petition is filed to appoint an Advocate commissioner.

2. The respondent had filed objection by denying the petition averments. there is no sufficient reason stated in the petition to allow this petition. This petition is intended to delay the execution proceedings in E.A 93/19. The petitioner is continuously filing the petitions to delay the execution of the decree. Compound wall was constructed as per the order of the Hon'ble Court in the supervision of the commissioner. Moreover, the petitioner had filed several petitions for the same purpose. So, the petition is barred by principles of resjudicata. The particulars required to be noted as per this petition was

similar to the requirements in E.A 147/21. From the commission report filed in the said E.A, it can be discerned by the court. This petition is nothing but abuse to the process of court intended to protract the matter. Hence, the petition is to be dismissed.

3. Heard both sides.
4. On going through the records, it is seen that on earlier occasions also several commission applications were filed and at last E.A 147/21 is filed which was allowed in part by the court and it was made clear in the order in E.A 147/21 that “the commission report filed as per order in E.A 35/21 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 that is the factors required to be noted by the Advocate commissioner in E.A 147/21 were already noted in the commission report filed as per order in E.A 35/21 and as per order in E.A 147/21, the Advocate commissioner was directed to inspect the property to ascertain the queries 3, 4 and 9 in the petition. On going through the factors required to be noted as per order in E.A 147/21, it can be seen that the factors required to be ascertained in this petition is the same which is required to be noted in E.A 147/21 which was already ascertained and the commissioner had filed report in E.A 147/21. So, to note the same factors which is required to be noted herein, there were two commission reports earlier and commissioner had also noted the factors and filed the report. So, there is no requirement to note the same which were already noted by the commissioner as per order in E.A 147/21 and E.A 35/21. So, I could not find it necessary to appoint Advocate commissioner again for the same purpose. Hence, this petition stands dismissed.

5. In the result, the petition stands dismissed.

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, 2022.

Sd/-  
ALSHARIA,  
MUNSIFF

**Appendix: Nil**

Id/-  
Munsiff  
( By Order )

// True Copy //

Junior Superintendent

Typed by : jav  
Compd.by :

Copy of Order  
in EA 269 /2022  
in  
EP.123/2016 in OS 152/10.  
Dated: 19/11/2022