

IN THE COURT OF THE MUNSIFF, KOTTARAKARA.
Present :- Smt.Sumey Chandran ., Munsiff.
Tuesday the 22nd day of December, 2020/ 1st day of Pousha, 1942

EP No. 23/2015 in OS No.435/1993

Between

Decree Holder/ Plaintiff :-

Sainuddeen, S/o. Muhammad Haneefa,
Roadvila Puthen Veedu, Veyckal,
Vellari Muri, Nilamel Village.

By. Adv. Sri. N.Viswanadhan

And

Judgment Debtors/ Defendants :-

1. Sulekha Ummal @ Asumabeevi (Died),
Roadvila Puthen Veedu, Veyckal,
Vellari Muri, Nilamel Village.
2. Eesulabha Muhammad Haneefa (Died),
Roadvila Puthen Veedu, Veyckal,
Vellari Muri, Nilamel Village.

Addl. JD3 :- Muhammad Haneefa Abdul Salim,
Roadvila Puthen Veedu, Veyckal,
Vellari Muri, Nilamel Village.

Addl. JD4 :- Muhammad Haneefa Nizar,
Roadvila Puthen Veedu, Veyckal,
Vellari Muri, Nilamel Village.

Addl. JD5 :- Majida Beevi, aged 58 years,
W/o.Abdul Latheef, Elavoorkonathu Veedu,
Kadackal Muri, Manickal Village,
Kuthirakulam P.O, Chirathalackal.

Addl. JD6 :- Ramla Beevi, aged 55 years,
W/o.Jamal Muhammed,Charuvia Puthen Veedu,
Mannattinkuzhi, Nellanadu Village, Vellumannadi P.O,
Venjaramodu.

Addl. JD7 :- Razhiya Beevi, aged 50 years, W/o.Abdul Salam,
Kakknatazhikam, Pallickal Village, Vellumannadi P.O.

Addl. JD8 :- Raheela Beevi, aged 47 years,
W/o.Adul Jaleel, Jaleel Manzil,
Adayamon P.O, Moonnukallinmoodu,
Puthukkadu Muri, Kummil Village, Thiruvananthapuram.

Addl. JD9 :- Laila Beegam, aged 35 year,
W/o.Shajahan, Thenguvila Veedu,
Pirappankodu P.O, Velavoor Muri,
Manickal Village, Thiruvananthapuram.

By. Adv. Sri. N.Sukumarn Potty

This petition filed Under Order 21, rule 10 and 11 of C.P.C for titled and possession and injunction coming on for hearing before me on 30.11.20 and having stood over for consideration on 22.12.2020 the court passed the following .

ORDER

The execution petition is filed to proceeded against the Judgment Debtors under Order 21 Rule 10, 11 of the CPC.

The averments of the execution petition were as follows:-

1. The decree holder is the plaintiff in the suit the judgment debtors are the legal heirs of defendant No.1 and 2. As per the decree and judgment the defendants are restrained from taking the yield from the plaint schedule property and from destroying its boundary and also from doing any acts affecting the peaceful and possession and enjoyment of the property and the cancellation deed No.1727/93. Executed by the defendant is also set aside. In violation of the judgment and decree, the defendants are recently constructed a new building in the

plaint schedule property in plaint 1st and 3rd number property and also from restore the boundaries of plaint schedule property. Hence it is prayed to initiate proceedings under Order 21 Rule 22 and to realise the costs of the same from the judgment debtors.

2. The judgment debtors appeared and filed objection stating as follows:-

The execution petition was not maintainable . The Judgment Debtors has not violated the judgment and decree. The decree holder not given any decree given right in the plaint schedule building they have no violated any order of the court. Hence the JD prayed for dismissal of the petition.

3. Heard both sides

4. The points that arosed for consideration are:-

1. Whether the Judgment Debtors can be proceed under Order 21 of CPC ?

5. From the side of decree holder PW1 was examined and Exts.A1 to A6 and C1 to C3 were marked. Judgment Debtor not produced any documents or oral evidence.

6. Heard both sides.

7. **Point No.1**

As per the judgment and decree the Judgment Debtors were permanently restrained from taking yield from the Decree schedule property or from destroying its boundaries and from doing any acts affecting the plaintiffs peaceful possession and enjoyment of the property. The plaintiffs title and possession of the property was declared. Against the judgment and decree the Judgment Debtors filed appeal No.74/2006 before the Hon'ble Sub Court and RSA No.,1058/2014

before the Hon'ble High court of Kerala . As per the order dated 24.10.2014 the appeal was dismissed by the Hon'ble High Court of Kerala. The EP was filed by the decree holder stating that Judgment Debtors have violated the judgment and decree by encroaching in to the plaint schedule property and removed the trees standing therein. According to Decree Holder a new building has been constructed therein by the Judgment Debtor. A basement was also constructed for an other new building. It was also stated that the Judgment Debtors have violated the judgment and decree passed by this court. PW1 was the decree holder who deposed that in violation of the decree of this court Judgment Debtors construct the buildings. PW1 deposed that he is having right in the plaint schedule property. He stated that the plaint schedule property is lying contiguously. He also stated that the defendants have constructed two new houses in the schedule property and constructed a new road. It was the case of the Judgment Debtors that they have not violated the judgment and decree of this court and according to them the defendants have right in the plaint schedule property.

8. During the execution stage the decree holder was caused to issue a commission and the commissioner filed report . The commissioner filed report Exts.C1 to C3 report. As per the decree the decree schedule property is situated in Survey No.383/107/126 having an extent of 25 cents at southern side and 20 cents at northern side and 15 cents at eastern side. In the judgment it is stated that the resurvey No. of old survey No.383/107-126 is 366/2 the Judgment Debtors have no case that the resurvey No of plaint schedule property is not 366/2 . As per the judgment and decree the plaintiff is given declaration and possession over the

plaint schedule property. So he is having right over the plaint A,B and C schedule properties. The Judgment Debtors contended that the plaint schedule property is not a identifiable property they have not produced any evidence to substantiate their case. The document Nos Ext.P3 and P6 would go to show that the plaint schedule property was identified by the commissioner and it was shown in the plan as 'BCDEFKB' and ABKJA and 'JKFGHIJ' . The commissioner has noted about a new way as 'UVRSU' and a construction of two new buildings in the plaint schedule property. There is no evidence adduced by the Judgment Debtors to show that the buildings are already in the plaint schedule property other than the old building. It can be under stood on Exts.C1 to C3 and P1 to P6 that the defendants have constructed the residential buildings violating the judgment and decree passed by this court. More over the commissioner has stated about a new pathway through the plaint schedule property shown by the commissioner 'UVRSU'. The respondents have no case that the buildings and the pathway are constructed by the decree holder. In the circumstances it is found that the Judgment Debtors have violated the decree and they have trespassed in to the plaint schedule properties and destroyed its boundaries and also doing acts affecting the plaintiffs peaceful possession or the decree schedule property. Thus they are liable to be punished for the violation. The points are found accordingly.

In the result, the EP is allowed as follows:-

1. The Judgment Debtors are to be detained in civil prison for a period of 3 months for violation of decree and injunction.
2. The building shown by commissioner in Ext.C3 are to be

demolished by the Judgment debtors with in a period of 1 month from the date of this order and if they failed to do so the decree holder and it done Decree Holder is can file petition to remove the buildings through process of court and it done Decree Holder is entitled to the costs of the same.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 22nd day of December, 2020.

**SUMEY CHANDRAN
MUNSIFF**

APPENDIX:-

Exhibits for the Decree Holder:-

- P1 - 12.07.2002 - Certified copy of Decree in OS 435/93 of Munsiff's Court, Kottarakkara.
- P2 - - Copy of Survey plan prepared by the Village Officer, Nilamel.
- P3 - 25.09.2012 - Mahazar prepared by Adv. Commissioner Mohankumar
- P4 - 01.03.2013 - Commission report prepared by Adv. Commissioner Mohankumar
- P5 - 17.10.2013 - Mahazar prepared by Adv. Commissioner Abilash.C.G
- P6 - 17.10.2013 - Commission report prepared by Adv. Commissioner Abilash.C.G

Exhibits for the Judgment Debtors:- NIL

Court Exhibits :-

- C1 - 16.11.2020 - Commission report prepared by Adv. Commissioner
C.K.Harikumar
- C2 - 16.11.2020 - Mahazar prepared by Adv. Commissioner
C.K.Harikumar
- C3 - 16.11.2020 - Survey Plan prepared by Sri.Krishnakumar, Village
Officer, Nilamel

Witness for the Decree Holder:-

PW1 - 30.11.2020 - Sainudeen

Witness for the Judgment Debtors:- Nil**Court Witness:- Nil**

Id/-
Munsiff.

Typed by : Sobhy.N
Compared by :

MUNSIFF