

IN THE COURT OF THE MUNSIFF OF ALATHUR

Present:- Sri.Binu.P., Munsiff, Alathur

Friday, 25th day of August, 2023

(3rd day of Bhadra, 1945 S.E)

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EXECUTION PETITION No.88/2020

IN

ORIGINAL SUIT No.169/2015

Muhammed, aged 65 years, S/o Moulameen, residing at
Cheenikkathodi Theruvu, Puthucode amsom desom,
Alathur Taluk. } Decree Holder/
Plaintiff

Vs.

Kattubavan, aged 77 years, S/o Late Muhammed Kasim,
residing at Cheenikkathodi Theruvu, Puthucode amsom
desom, Alathur Taluk. } Respondent/
Defendant

This petition is coming on this day for final hearing before me in the presence of Smt. V.N.Sheeja, Advocate for the Decree Holder and of Sri.A.K.Muhammed Rafi, Advocate for the respondent and this Court passed the following.

ORDER

The petitioner/decreed holder filed the execution petition under Order XXI Rule 32 of the Code of Civil Procedure.

2. The petition averments in short are as follows :-

The petitioner alleged that the suit O.S. No.169/2015 was decreed by restraining the respondent/defendant by way of permanent prohibitory injunction from causing any obstruction to the peaceful possession and enjoyment of the plaint schedule property in any manner and from demolishing the eastern side granite foundation of the plaint schedule property. The petitioner further alleged that on 09.03.2020 the respondent tried to demolish the eastern granite foundation of the plaint schedule property whereby the petitioner filed a complaint before the Police on 11.03.2020. The respondent is obstructing the construction of the wall on the eastern boundary. Therefore, it is highly necessary to construct the wall for the protection of the plaint schedule property. Hence the petition is for deputing the Amin and permitting the petitioner to construct wall on the eastern side of the plaint schedule property in the supervision of the Amin.

3. The respondent filed counter contending as follows :-

The petition is not maintainable on facts or on law. As per the decree dated 11.12.2019 no relief was granted for construction of eastern side boundary wall of the plaint schedule property. Whereby the petition has no bona fide. The petitioner is not entitled to get any relief as prayed. The court fee calculated in the petition is not correct. The respondent has not attempted to demolish the granite foundation on the eastern side of the plaint schedule property as alleged in the petition and the petitioner had not preferred any complaint to the Police against this respondent. The petitioner has to prove the allegation of complaint dated 11.03.2020 with documentary evidence. The details of the petition schedule property, survey number, extent and the four boundaries

are false. The petition is filed with an intention to get an order by misleading the court. The petitioner filed the petition in order to give hardship to the respondent on an experimental basis. Hence the petition is to be dismissed with costs of the respondent.

4. The following points arise for consideration :-

1. Whether the petitioner/decees is entitled to get the order as prayed in the petition ?
2. Reliefs and costs ?

5. There is no oral or documentary evidence either from the side of petitioner or from the side of respondent.

6. Heard.

7. Point No.1 :- The case of the petitioner is that the respondent is trying to demolish the granite foundation on the eastern portion of the petition schedule property. The petitioner submitted that the respondent is already restrained by way of permanent prohibitory injunction from encroaching and trespassing into the plaint schedule property and also restrained from demolishing the eastern granite foundation. The counsel for the petitioner argued that for enjoying the fruits of the decree the construction of wall on the eastern portion is highly necessary. On the other hand, the respondent vehemently opposed that there is no executable decree passed by this court in respect of construction of wall on the eastern side of the petition schedule property. There is no decree in existence in respect of prayer of the petitioner. The respondent denied the alleged incident dated 09.03.2020 and also denied the lodging of Police complaint. Therefore the petitioner is not entitled to get the relief as prayed.

8. On the perusal of the records it is seen that the petitioner got a decree of permanent prohibitory injunction. The respondent is restrained by causing any objection to the peaceful possession and enjoyment of the petition schedule property in any manner and from demolishing the eastern side granite foundation of the petition schedule property. Now the petitioner alleged that the respondent is trying to demolish the eastern granite foundation. Through the decree the petitioner got the right to enjoy the petition schedule property peacefully and without causing any obstruction from the respondent. But now due to the alleged act it is seen that the petitioner could not enjoy the property as per the decree he obtained.

9. It is true that there is no decree is in existence for the construction of wall on the eastern boundary of the petition schedule property. Here the question raised in respect of the execution of the prohibitory injunction decree. In this case the property is well demarcated on the eastern side of the petition schedule property, there is a granite foundation separating the petition schedule property from respondent's property . Hence no scope for the dispute in respect of the boundary. In the dictum laid down in *Ajaykumar v. Damayanthi* reported in 2004 KHC 541, it is held that as per Order XXI Rule 32(5) it is possible now under Order XXI Rule 32 to have even decrees for prohibitory injunction enforced to a practicable extent in the same way as decrees for mandatory injunction. In the light of dictum laid down in the above said case for the purpose of enjoying the fruits of the decree and enjoying the petition schedule property without any obstruction from the respondent the construction of granite wall on the eastern portion is highly necessary. From the above said discussions the petitioner is entitled to get the prayer as prayed in the petition. The point No.1 is answered in favour of the petitioner.

10. Point No.2 :- In the light of the findings under point No.1, this point is also answered in favour of the petitioner.

In the result, the petition is allowed without costs and the petitioner is permitted to construct the wall on the eastern side of the petition schedule property in the supervision of Amin. Amin is deputed to that effect.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court this the 25th day of August, 2023.

Munsiff

APPENDIX : NIL

Munsiff

Fair/Copy of Order in

EP No.88/2020

in O.S.No.169/2015

Dated: 25.08.2023