

**IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF
TUESDAY 15th OCTOBER, 2024 / 23rd ASWINA, 1946**

EA No.31/2020 IN EP No.22/2010

Petitioner:

Sudhina, D/o Natarajan Chettiyar, aged 52 years, Palavila Veedu, Karuvalliyad, Karette, Vamanapuram. PO, Pulimath Village.

By Advocate: Sri. N. Smart

Counter Petitioners:

1. Vijayan, S/o Late Sukumaran Nadar, Kunnumpurathu Pokmel Puthen Veedu, Karette, Karuvalliyad, Pulimath Village.
2. Mohanakumari, D/o Rugmini, Kunnumpurathu Pokmel Puthen Veedu, Karette, Karuvalliyad, Pulimath Village.
3. The State of Kerala, represented by Chief Secretary, Govt. Secretariat, Thiruvananthapuram.
4. The Superintendent of Re-Survey, Officer of the Superintendent of Re-Survey, Neyyattinkara, Thiruvananthapuram.
5. The Pulimath Grama Panchayath, represented by its Secretary, Pulimath Grama Panchayath Office, Pulimath.
6. G. Divakaran Pillai, S/o Gangadharan Pillai, Ganga Sadanam, Vamanapuram Desom, Pulimath Village, Vamanapuram. PO.
7. Ayyappan Chettiyar, S/o Chellakkannu, Palavila Veedu, Pulimath Village, Vamanapuram. PO.
8. Rajendra Pillai, S/o Late Ramakrishna Pillai, Nellikkunnil Veedu, Pulimath Village, Vamanapuram. PO.
9. Gopinathan Pillai, S/o Ananthakrishna Pillai, Nellikkunnil Veedu, Pulimath Village, Vamanapuram. PO.
10. Anilkumar, S/o Ananthakrishna Pillai, Nellikkunnil Veedu, Pulimath Village, Vamanapuram. PO.
11. Rajan, S/o Gopalan Nadar, Chandrika Bhavan, Nellivila, Kakkakkuzhy, Nellivila. PO, Peringammala, Venganoor Village.

(For CP1 and 2) - By Advocate: Sri. K.S. Vinod

This petition having been finally heard on 30.09.2024 and the court on 15.10.2024 passed the following:

ORDER

This is a petition filed under Section 47 of CPC.

2. **Petition averments as follows:** The petitioner is the daughter of 6th judgment debtor. The petitioner's father was arraigned as 6th defendant and he died on 07.05.2017. He left behind the petitioner, petitioner's mother and siblings as his legal heirs/ representatives. The decree holders were aware of the death of the petitioner's father but they have not taken any steps to bring the legal representatives on record. The decree holders are nearby residents and they cannot make a plea of ignorance about the death of the petitioner's father. The 1st plaintiff's husband had some property in Survey No.1048 of Pulimath Village in Re-survey 262/14, 262/16 and 266/2. The properties are now in the hands of the decree holder 2,3 and 4. There are cartable pathways along the eastern and western side of the properties. The pathways existed even before Sukumaran Nadar obtained the property. The said Sukumaran Nadar tried to obtain the portion of the said pathways. The pathway on the west of the above properties is a public pathway used by many families of the locality. The court passed judgment and decree declaring the plaintiff's right over the plaint schedule properties and permitted them to put up boundaries on eastern and western sides of the properties after leaving a pathway having a width of 4 feet. The judgment and decree were confirmed in appeal. The beneficiaries of the pathway on the western side of the properties of the decree holder widened the above pathway taking portions of the properties on the western side of pathway. The owners who surrendered properties for such widening of the western pathway include the prior owner of the property comprised in re-survey 264/12 which later on came to

hands of 3rd decree holder in this case, 5th judgment debtor in this case and Smt.Omana Amma who is having property in between properties of 5th judgment debtor and the above property in re-survey 264/12. The western pathway is now having a width of more than 3.5 meters. When the advocate commissioner went to execute the decree, the decree holders 2 and 3 and their people have strongly demanded them to fix the boundary for putting up granite wall by leaving 4 feet width measured from the western end of the present pathway at the site ie, from the eastern boundaries of properties on the west of the said pathway. The advocate commissioner, surveyor and Amin had informed the persons gathered at the spot that they can fix the line through which construction of boundary wall as per the decree is to be effected only after measuring the properties. The surveyor and the commissioner measured the properties thereafter and had some discussions with the decree holders. Suddenly the decree holders shouted and declared that they did not accept the measurements and insisted on fixing the boundary at a distance of 4 feet towards east from the eastern boundary of properties on the west of the pathway. In the above circumstances it became highly necessary to adjudicate that the boundary line for construction of granite wall on the western side of decree schedule properties is 4 feet eastward from the western boundary of decree schedule properties. Hence this petition may be allowed.

3. **The decree holder filed an objection as follows:** The petition is not maintainable either under law or on facts. The present petitioner is not a party to the decree or the EP. She is claiming to be the legal heir of the 6th judgment debtor alleging that the 6th judgment debtor passed away on 07.05.2017. The 6th judgment debtor appeared on 05.08.2010 through his counsel and thereafter it has never been reported that he passed away. The present petitioner

has no locus-standi to file a petition under Sec. 47 of CPC. The veracity of the measurements conducted by the resurvey authority regarding the plaint schedule properties is the borne of contentions raised by the defendants by filing a written statement in the suit. It was their case that the properties shown as Re-survey Nos. 266/2014 and 266/2016 in the resurvey plan are public pathways over which the decree holder's have no right at all. The nature of right pleaded by defendant over Re-survey No.266/2014 and 266/2016 and also the nature of decree holders right over the said portions were considered by the trial court in paragraph No. 17 of the judgment and it was concluded that the pathway on the western side of the decree schedule property was having only a 4 feet width and the so called demarcation as per the resurvey plan are not binding on the decree holders. That is the reason why the decree holders' right, title and possession over the entire A to D schedule properties were declared and the decree holders were allowed to construct a boundary wall on the eastern as well as the western sides of the schedule property after leaving out 4 feet width pathways on either side. The Panchayath and the State of Kerala are also parties to the decree. During trial, it was contended all along that there are public motorable ways on either side of the decree schedule property and the decree holder's right is confined to those portions of property excluding the public ways. The merit of the said contentions were appreciated by the trial court and it was concluded that except the pathways having a width of 4 feet on either side, the rest of the available way belongs to decree holders and the right, title, possession etc. are declared by the trial court. A.S No.187/2015 was filed before the Hon'ble District Court, Trivandrum and that too was dismissed confirming the decree. The plea put forward is to the effect that the public way on the western side is created by taking properties from those properties situated further

west is a new contention which should have found a place in the written statement during trial. Such a contention challenging the legality or otherwise of the decree and judgment cannot be entertained in an application under Section 47. The commissioner surprisingly has not looked into the first relief granted in the decree whereby the plaintiff's title and possession over A to D schedule property were declared. The commissioner was trying to interpret relief No.2 granted as per the decree in a way that the commissioner is asked to locate the boundaries of A to D schedule properties and then to leave out 4 feet width portions on either sides and to construct a boundary excluding the 4 feet width pathway on either sides of the property located. The commissioner has deliberately omitted to look into paragraph 16 & 17 of judgment since the discussions in the said paragraph would rule out the interpretation attributed by the commissioner.

4. The points that arise for consideration are:

1. Can the claim petition be allowed ?

2. Reliefs and costs ?

5. Heard both sides.

6. **Point No.1:** This petition is filed by the daughter of the 6th judgment debtor under Section 47 of CPC. The first objection levelled by the decree holder is that the petitioner has no locus-standi to file this petition. The petition is filed to adjudicate and declare that the line along which the granite wall on the western side of the decree schedule properties is to be 4 feet eastwards from the actual western boundary of the decree schedule properties. The main objection by the decree holder on this point is that the veracity of measurements is born of contention raised by contested defendant who filed written statement in the original suit.

Hence the right of parties were considered by the trial court itself. Hence the decree holders right, title and possession over the entire D schedule property were declared and the decree holders were allowed to construct boundary on the eastern and western sides of property leaving out 4 feet width pathway on either side. Except pathways having a width of 4 feet on either sides, rest of pathway belongs to the decree holders and their right, title and possession are declared by the trial court itself. The petitioner relied upon the judgment of Hon'ble High Court of Kerala in ***Savithri Ammal Vilasini Ammal v. Jayaram Pillai Padmavathi Amma (1989) 2 KLJ 709*** and in ***Kumaran Krishnan v. Ulahannan Mathai (1975) KLT 42***. In ***P.Velu v. P.Padmavathy Amma 1984 KHC 463*** the Hon'ble High Court of Kerala held that 'if one of the descriptions is vague or uncertain, that description which is more certain and stable and least likely to have been mistaken or inserted inadvertently must be preferred if it sufficiently identifies the subject matter of the transaction and the other descriptions must be rejected as erroneous or inaccurate'. All these decisions is with regard to the description of properties and it is related to the trial stage.

8. Hence it can be seen that all the aforesaid decisions cited by the learned counsel for the petitioner is not related to the stage of execution. The scope of Sec.47 CPC is restricted and executing court cannot travel behind the decree or pass any order jeopardizing the parties thereunder. It is well settled that only in limited cases where the court lacks inherent jurisdiction or the decree is a nullity the executing court can interfere. All the averments raised by the petitioner in the application is to be considered at the trial stage and it is not proper for the executing court to consider such questions that has to be adjudicated and was passed by a court of law which is considered sacrosanct.

9. **Point No.(2):** In result, the petition is dismissed with costs.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 15th day of October, 2024.

Sd/-
SWATHI.R.KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

//True copy//

Typed by : Lasitha
Compared by: Sheena.K

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