

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JY AISHTA, 1937

CRP.No. 201 of 2012 ()

AGAINST ORDER IN EP NO.148/2011 IN OS NO.215/2010 OF MUNSIFF COURT, ALATHUR
DATED 21.03.2012

REVISION PETITIONER(S)/JUDGMENT DEBTOR NO.1/DEFENDANT NO.1:

MANIKANDAN
S/O.KUMARAN, VELUR VEETIL, KOTTAYI VILLAGE
CHENDAMKAD P.O., ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENT(S)/DECREE HOLDER & JUDGMENT DEBTOR NO.2/PLAINTIFF &
DEFENDANT NO.2 :

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1. KUMARAN
S/O.NEELAKANDAN EZHUTHACHAN, VELUR VEETIL
KOTTAYI VILLAGE, CHENDAMKAD P.O.,ALATHUR TALUK
PALAKKAD DISTRICT-678 501.
 2. UNNIKRISHNAN
S/O.KUMARAN, VELUR VEETIL, KOTTAYI VILLAGE
CHERUKULAM P.O.,ALATHUR TALUK, PALAKKAD DISTRICT-678 501.

R1 BY ADV.SRI.SURIN GEORGE IPE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.HARIPRASAD, J.

C.R.P. No.201 of 2012

Dated this the 27th day of May, 2015

ORDER

The dispute in this proceedings is between father and two sons. Facts stated shortly are thus: Father filed a suit against four children seeking a permanent prohibitory injunction from interfering with his possession over the plaint schedule property and a house therein. The trial court decreed the suit against all the defendants. Alleging that the petitioner (1st defendant) violated the decree of injunction, the respondent (plaintiff/father) approached the executing court with an execution petition under Order 21 Rule 32 of the Code of Civil Procedure (in short, "CPC"). Learned Munsiff passed the impugned order in the execution petition on 21.03.2012 directing issuance of a warrant of arrest against the petitioner for detention in civil prison. Aggrieved by that order, the petitioner has come up in this revision.

2. Heard the learned counsel for the petitioner and the first respondent.

3. Learned counsel for the petitioner submitted that the petitioner along with his wife and children was residing in the house shown in the plaint schedule. So much so, it cannot be said that he trespassed into the property warranting an action under Order 21 Rule 32 CPC. Per contra,

learned counsel for the first respondent/plaintiff contended that no such contention was ever taken by the petitioner either at the trial stage or at execution stage. The decree passed by the trial court shows that the petitioner has been enjoined from interfering with the possession of plaintiff/first respondent over the paint schedule property. The court below considered the contentions of rival parties and appreciated the oral evidence to arrive at a conclusion that there was a threat against the right of the decree holder/plaintiff caused by the petitioner. I do not find any reason to find that the impugned order is flawed on any legal ground. However, considering the relationship between the petitioner and first respondent, I am of the view that the matter can be disposed of by directing the petitioner to file an affidavit before the court below unconditional undertaking by way of an undertaking that he will not in any way disobey the directions in the decree and he will never cause any interference with the plaintiff's peaceful possession and enjoyment of the properties and the house therein. In the event of filing such undertaking affidavit within a period of one month from today before the execution court, the court below shall close all the proceedings. It is made clear that the petitioner has no right to challenge the plaintiff's right over the decree schedule property. If the petitioner fails to do so, the execution court is free to proceed with the

matter in accordance with law.

Petition is disposed of with the above directions.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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