IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

CRP.No. 457 of 2010 ( )

AGAINST THE ORDER IN EP 75/08 IN OS 250/1987 OF MUNSIFF COURT, KOTTARAKKARA DATED 08-04-2009

REVISION PETITIONER(S)/(PETITIONER/DECREE HOLDER-DEFENDANT):

KUNJANDI, S/O.KOCHU OOMMEN,
THIRUVANKODE PUTHENVEEDU, THRIPPALAZHIKAM MURI
KAREEPRA VILLAGE, KOTTARAKARA.

BY ADVS.SRI.ALEX N.MATHEW (KOLLAM)
SRI.H.RAMANAN
SRI.JAMES JOSE

RESPONDENT(S)/(RESPONDENT/JUDGMENT DEBTOR-PLAINTIFF):

YOHANNAN, S/O.KOCHU OOMMEN,
PUTHENVEETTIL PADINJATTATHIL VEEDU, KOTTARAKKARA.

R BY ADV. SRI.ANCHAL C.VIJAYAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.457 of 2010

Dated this the 29th day of January, 2015

O R D E R

The respondent filed O.S.No.250 of 1987 on the file of the court of the Munsiff of Kottarakkara against the petitioner. That suit was compromised as per a compromise petition and it was agreed that the plaintiff has ownership and possession over the property which is marked as PQJHCLMNO in the plan submitted by the Commissioner dated 23.3.2001. The compromise further provided that the defendant would be entitled to the right to use a two feet width pathway on the southern side of PQ line and eastern side of QJ line, so as to enter into the property of the defendant.

2. The defendant filed E.P.No.87 of 2001 to execute

the decree in respect of the pathway. The Taluk Surveyor fixed 'PQ' and 'QJ' line and that E.P. was closed. He filed a second Execution Petition as E.P.No.136 of 2005 alleging that the plaintiff violated the decree and caused obstruction to the pathway. The Commissioner appointed in the case reported that there was no obstruction to the pathway and hence, the E.P. was closed. Thereafter, the defendant filed E.P.No.75 of 2008 to execute the decree and restore the pathway after removing the obstructions allegedly made by the plaintiff with the assistance of an Advocate Commissioner.

3. The plaintiff contested the Execution Petition. He contended that as per the order in E.P.No.87 of 2001, the boundary was fixed on 10.4.2002 with the assistance of a Taluk Surveyor and the E.P. was closed. Subsequently, E.P.No.136 of 2005 was filed by the defendant alleging that the

plaintiff violated the order of injunction. That E.P. was closed on the basis of the Commissioner's report. It was contended that after fixing the boundary, the defendant had not used the pathway at all. The plaintiff constructed the compound wall on PQ line.

4. The court below appointed a Commissioner. The Commissioner submitted a report and sketch. On an erroneous reasoning that the Commissioner's report did not indicate any obstruction to the pathway, the court below dismissed the Execution Petition. The court below thought that the non-appearance of the pathway was due to the growing of shrubs and bushes and not due to any obstruction caused by the judgment debtor. On a perusal of the Commissioner's report, it is seen that the Commissioner reported that there was recent constructions made by the plaintiff. The Commissioner

reported that the present state of affairs is that the two feet width pathway forms part of the property of Thomaskutty and the property of the judgment debtor (plaintiff). The observations made by the court below were not fully justified in the light of the Commissioner's report.

5. The executing court has to see that the compromise decree is obeyed by all the parties. It is necessary to provide the pathway as mentioned in the compromise petition. The petitioner (defendant - decree holder) should also co-operate, so that a permanent solution is found out. It is not proper to file Execution Petitions one after the other.

In the peculiar facts and circumstances, I am of the view that the order passed by the court below should be set aside and the matter should be remitted to the court below for fresh

disposal. The court below shall permit the parties to adduce evidence and, if necessary, to take out a Commission for properly implementing the compromise decree in the presence of the Commissioner. If the Commissioner who prepared the report and sketch dated 23.3.2001 is available, it would be ideal to appoint him as the Commissioner. The court below shall dispose of the Execution Petition after affording an opportunity of being heard to both parties. The parties shall appear before the court below on 23rd February, 2015.

K.T.SANKARAN
JUDGE

csl