

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

CRP.No. 374 of 2013 ()

ORDER DATED 9.4.2013 IN E.A.NO.89/2011 IN E.P.NO.97/2007 IN
O.S.NO.43/1998 ON THE FILE OF THE MUNSIF COURT, PERAMBRA.

REVISION PETITIONER(S): RESPONDENTS

1. RAJAN, S/O.KANDAN
VANIYATHUR HOUSE, AVALA AMSOM
KUTTOTH DESOM, KUTTOTH POST
KOYILANDI TALUK, KOZHIKODE.
2. KUNHIRAMAN, S/O.KANDAN
VANIYATHUR HOUSE, AVALA AMSOM
KUTTOTH DESOM, KUTTOTH POST
KOYILANDI TALUK, KOZHIKODE.
3. SURESH, S/O.KANDAN
VANIYATHUR HOUSE
AVALA AMSOM, KUTTOTH DESOM
KUTTOTH POST, KOYILANDI TALUK
KOZHIKODE.
4. BABU, S/O.KANDAN
VANIYATHUR HOUSE
AVALA AMSOM, KUTTOTH DESOM
KUTTOTH POST, KOYILANDI TALUK
KOZHIKODE.
5. SATHYAN, S/O.ARUTHAN
MEEKAVAUMMAL HOUSE
AVALA AMSOM, KUTTOTH DESOM
KUTTOTH POST, KOYILANDI TALUK
KOZHIKODE.
6. MANOJ KUMAR, S/O.ARUTHAN
MEEKAVUMMAL HOUSE
AVALA AMSOM, KUTTOTH DESOM
KUTTOTH POST, KOYILANDI TALUK
KOZHIKODE.
7. GIRISH KUMAR, S/O.BALAKRISHNAN
KAVULLAKANDI HOUSE, AVALA AMSOM
KUTTOTH DESOM, KUTTOTH POST
KOYILANDI TALUK, KOZHIKODE.

CRP NO.374/2013

8. VINEETH KUMAR, S/O.KUMARAN
KAVULLAKANDI HOUSE, AVALA AMSOM
KUTTOTH DESOM, KUTTOTH POST
KOYILANDI TALUK, KOZHIKODE.
9. SUNIL KUMAR, S/O.KUMARAN
KAVULLAKANDI HOUSE, AVALA AMSOM
KUTTOTH DESOM, KUTTOTH POST
KOYILANDI TALUK, KOZHIKODE.
10. SREENIVASAN, S/O.VELLAN
MANJARIKUZHICHALIL HOUSE
AVALA AMSOM, KUTTOTH DESOM
KUTTOTH POST, KOYILANDI TALUK
KOZHIKODE.
11. RASANTH, S/O.RAGHAVAN
ALLAKOTTU HOUSE, AVALA AMSOM
KUTTOTH DESOM, KUTTOTH POST
KOYILANDI TALUK, KOZHIKODE.
12. K.P.BABU, S/O.POLIYAN
KIZHAKKEPERUVANTHI HOUSE
AVALA AMSOM, KUTTOTH DESOM
KUTTOTH POST, KOYILANDI TALUK
KOZHIKODE.
13. POOLAKOOL BABU, S/O.ARUYAN
POOLAKOOL HOUSE, AVALA AMSOM
KUTTOTH DESOM, KUTTOTH POST
KOYILANDI TALUK, KOZHIKODE.

BY ADV. SMT.S.A.SHERLY

RESPONDENT(S): DECREE HOLDER/DEFENDANT

-
1. NADAKKAL MOOSA, S/O.MOIDEEN
KAVULLAKANDI PARAMBU
AVALA AMSOM, KUTTOTH DESOM
KUTTOTH POST, KOYILANDI TALUK, KOZHIKODE.
 2. M.K.GOPALAN, S/O.THAYYAN
52 YEARS, MANCHERRYKUZHICHALIL VEEDU
AVALA AMSOM, KUTTOTH DESOM
KOYILANDI TALUK, KOZHIKODE.

R1 BY ADV. SRI.P.B.KRISHNAN
R1 BY ADV. SMT.GEETHA P.MENON
R1 BY ADV. SRI.N.AJITH
R1 BY ADV. SRI.P.B.SUBRAMANYAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.374 of 2013

Dated this the 11th day of February, 2015

ORDER

Respondents 2 to 14 in E.A.No.89 of 2011 in E.P.No.97 of 2007 in O.S.No.43 of 1998 on the file of the court of the Munsiff of Perambra, are the revision petitioners. By the order impugned, the court below appointed a Commissioner to supervise the construction of the compound wall separating the plaint B schedule property from the remaining portion of the plaint A schedule property at the cost and expenses of the decree holder.

2. The revision petitioners were not eo nomine parties to O.S.No.43 of 1998. The suit was filed by Kunhayissa Umma and four others against M.K.Gopalan. The first

respondent Nadakkal Moosa was the second plaintiff in the suit. The suit was filed for injunction restraining the defendant from trespassing upon the plaint A schedule property. According to the plaintiffs, the plaint A schedule property belonged to them. The plaint B schedule is admittedly a 'kavu' which is being used by the local public. The plaintiffs also alleged that the defendant in the suit acting as the President of Kshethra Samrakshana Samithi was trying to trespass upon the plaint A schedule property. The suit was filed against the defendant in a representative capacity under Rule 8 of Order I. The trial court decreed the suit as per the judgment and decree dated 30th October, 1999.

3. Alleging that the defendant and certain others violated the decree and filled up a trench constructed by the plaintiffs for putting up a compound wall, E.P.No.97 of 2007

was filed by the second plaintiff under Rule 32 of Order 21 of the Code of Civil Procedure. The executing court appointed a Commissioner to find out whether the acts alleged were done in the property. The Commissioner reported in favour of the decree holders. The Commissioner's reports and plans available in the suit were marked before the executing court as well. The second- plaintiff/decreed holder filed E.A.No.89 of 2011 to appoint an Advocate Commissioner to supervise the construction of compound wall separating the plaintiff B schedule property from the remaining portion of the A schedule property at the cost and expenses of the decree holder. The decree holder expressed his view that he does not wish to see that the respondents in the E.P. are punished and that he only wants to see that his property was protected. The court below considered the evidence on record in detail and held that the request made by the second decree holder to appoint a

Commissioner for the purpose mentioned in E.A.No.89 of 2011 is just and reasonable. Accordingly, a Commissioner was appointed to supervise the construction of the compound wall separating B schedule property from the remaining A schedule property at the cost and expenses of the decree holder. That order is challenged in this revision.

4. It is not in dispute that a decree was passed as stated by the decree holder. The learned counsel for the petitioners pointed out that the Kshethrasamrakshana Samithi filed O.S.No.89 of 2009 on the file of the Munsiff's Court, Perambra against the plaintiffs in O.S.No.43 of 1998 as well as the defendant in O.S.No.43 of 1998 for an injunction restraining the defendants from trespassing upon the plaint schedule property shown therein, under the guise of the decree in O.S.No.43 of 1998. The schedule to the plaint in O.S.No.89 of

2009 shows that the extent of property is 54 cents. The suit was filed by the Secretary of the Kshethrasamrakshana Samithi, who is none other than the first petitioner in this revision. On a perusal of the plaint in O.S.No.89 of 2009, it would appear that the plaintiff therein has a contention that the decree in O.S.No.43 of 1998 was obtained by misrepresentation. The learned counsel appearing for the first respondent submitted that O.S.No.89 of 2009 was dismissed for default on 10.3.2014.

5. In **James v. Mathew (2012(4) KLT 666)**, a learned Single Judge of this Court held that a decree for prohibitory injunction obtained against defendants who were sued in a representative capacity is enforceable under Rule 32 of Order XXI against persons who were not eo nomine parties to the suit, but for whose benefit also the suit was defended.

6. Even a decree for prohibitory injunction can be enforced for the purpose of compelling the judgment debtors to obey the decree and to protect the interests of the decree holder. In the present case, the decree clearly provides that the decree holder is the title holder of the plaint A schedule property and an injunction was granted in respect of that property against the defendant who was sued in a representative capacity. The revision petitioners, though not eo nomine parties to the suit, are claiming the same rights as claimed by the defendant in the suit. The revision petitioners are bound by the decree. The court below did not think it fit to take any coercive action against the petitioners and the decree holder but thought it fit to see that the interests of the decree holder are protected and he is not prevented from constructing a compound wall separating the plaint A and B schedule property. It cannot be said that the view taken by the court below is without

jurisdiction or otherwise illegal.

7. The plaint B schedule property is admittedly not in the possession of the plaintiff. The plaintiff also concedes the right of the local public for the worship in the B schedule property. It is not decided in the case and it was not an issue in the suit as to whom the four boundaries of the plaint B schedule belong. Therefore, the court below was not justified in permitting the decree holder to construct the compound wall just on the boundary line of the B schedule property to separate it from the A schedule property. Faced with the situation, the learned counsel appearing for the first respondent/decreed holder submitted that the decree holder may be permitted to construct the compound wall leaving 1 mtr. away from the boundaries of the plaint B schedule property. This submission is recorded. If the boundary wall is constructed leaving 1 mtr. on the sides

from the boundary line of the B schedule property, the local public would not be affected and the decree holder would not make any undue gain. The Commissioner while inspecting the property and supervising the construction of the compound wall will ensure that the compound wall is constructed leaving 1 mtr. from the boundary lines of the plaint B schedule property. The Commissioner shall also ensure that the user of the plaint B schedule property by the local people of the locality is not hindered in any manner by the construction of the compound wall.

The Civil Revision Petition is disposed of as above.

K.T.SANKARAN
JUDGE

csI