

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

CRP.No. 376 of 2015

**ORDER DTD.25.6.2015 IN EA.82/2015 IN EP.20/2015 IN OS.308/1997 OF PRINCIPAL
MUNSIFF, PALAKKAD**
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REVISION PETITIONER(S)/RESPONDENTS/JUDGMENT DEBTORS:

1. RAJAN, S/O.KOSSU @ GOPALAN, AGED 50 YEARS,
AGED 50 YEARS, CHATHAPURAKKAL HOUSE, VADAKKUMMURI,
KUNNANNUR, PALAKKAD DISTRICT.
2. SREEDHARAN, AGED 49 YEARS,
S/O.KOSSU @ GOPALAN, CHATHAPURAKKAL HOUSE,
VADAKKUMMURI, KUNNANNUR, PALAKKAD DISTRICT.
3. DEVADAS, AGED 47 YEARS,
S/O.KOSSU @ GOPALAN, CHATHAPURAKKAL HOUSE,
VADAKKUMMURI, KUNNANNUR, PALAKKAD DISTRICT.

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA**

RESPONDENT(S)/PETITIONER/DECREE HOLDER:

**MANI, S/O.PAZHANIMALA, AGED 62 YEARS,
S/O.PAZHANIMALA, VADAKKUMMURI, KUNNANNURMEDU,
KUNNANUR AMSOM, PALAKAD DISTRICT - 678 012.**

BY ADV. SRI..RAJESH SIVARAMANKUTTY

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

B.KEMAL PASHA, J.

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C.R.P.No.376 of 2015

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Dated this the 13th day of July, 2015

ORDER

A decree was obtained by the respondent herein in a suit for injunction. Initially the suit was dismissed by the trial court, against which an appeal was filed. The appellate court granted the decree as prayed for, thereby restraining the petitioners herein from trespassing in to the plaint schedule property. The same was challenged in a Regular Second Appeal before this Court. The decree passed by the appellate court has been upheld in the Regular Second Appeal by this Court.

2. By alleging that the petitioners had attempted to commit trespass into the property, E.P. was filed and E.A. was filed in it under Order XXI Rule 32 CPC. Notices were issued. In the meantime, the respondent herein has filed E.A.No.82 of 2015 in E.P. for deputing an Amin from the

execution court for putting up a fencing at the southern boundary of the plaint schedule property. The court below has allowed E.A.No.82 of 2015 through the impugned order.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. The learned counsel for the petitioners has argued that under the guise of a violation of the decree for injunction, the attempt of the respondent is to get the southern boundary of the plaint schedule property fixed and the same is not permissible. It is also argued that such so called violations of the decree have not been proved before the court below and only after proving such violations the respondent may be permitted to put up a fencing at the southern side of the property.

5. *Per contra*, the learned counsel for the respondent has pointed out that the petitioners have no property at the southern side of the decree schedule property; whereas at the southern side of the decree schedule property, there is a pathway. There was earlier a fencing separating the

pathway as well as the decree schedule property and the said fencing was destroyed. Of course, the learned counsel for the petitioners has pointed out that even at the time of passing the decree there was no such fencing; but the fencing was there during the first visit of the Commissioner. Thereafter there was no fencing. Whatever it is, the petitioners cannot be aggrieved in any manner by permitting the respondent to put up a fencing at the southern boundary of the decree schedule property. If at all the petitioners have any claim over the property, they can moot those questions in appropriate proceedings before the appropriate forum. It has been pointed out that by claiming title over the property and demanding recovery of possession, a suit was filed by the petitioners and the said suit was dismissed on which a Regular First Appeal is pending. Let those questions be decided in the Regular First Appeal. In the meantime, the respondent can be permitted to put up a fencing at the southern boundary of the decree schedule property and the Amin shall carry out the said mission. There is absolutely

nothing to interfere with the impugned order at present.

6. Of course, for taking steps against violation of the decree under Order XXI Rule 32 CPC, the respondent has to prove that the decree was violated by the petitioners. At the same time, the same will not stand in the way of the respondent to put up a fencing at the southern boundary of the property.

With the said observations this C.R.P. is dismissed.

B.KEMAL PASHA
JUDGE