

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

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

CRP.No. 13 of 2014 ()

AGAINST THE ORDER IN EP NO.53/2010 IN OS 399/2002 of MUNSIF COURT, CHENGANNUR
DATED 31-08-2013

REVISION PETITIONER(S)/DECREE HOLDER:

SADANANDAN, AGED 66 YEARS,
S/O.NARAYANAN, CHARIVUKALAYIL (VALIL HOUSE)
KOZHUVALLOOR MURI, MULAKKUZHA VILLAGE
CHENGANNUR TALUK - 689 521.

BY ADV. SRI.N.ASHOK KUMAR

RESPONDENT(S)/JUDGMENT DEBTORS:

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1. GEORGE
VALIYATHARAYIL, KOZHUVALLOOR MURI, MULAKKUZHA VILLAGE
CHENGANNUR TALUK, PIN: 689 521.
 2. SOBHANA,
VALLIYATHARAYIL, KOZHIVALLOOR MURI, MULAKKUZHA VILLAGE
CHENGANNUR TALUK, PIN: 689 521.
 3. PRASANNA KUMAR,
VALLIYATHARAYIL, KOZHIVALLOOR MURI, MULAKKUZHA VILLAGE
CHENGANNUR TALUK, PIN: 689 521.
 4. ROHINI,
VALLIYATHARAYIL, KOZHIVALLOOR MURI, MULAKKUZHA VILLAGE
CHENGANNUR TALUK, PIN: 689 521.

R1, R2 & R4 BY ADVS. SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON

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.13 of 2014

Dated this the 27th day of May, 2015

ORDER

Revision petitioner is the plaintiff in a suit for permanent prohibitory injunction. He obtained a decree against the respondents. Alleging that the respondents are violating the prohibitory injunction decree, he approached the executing court with an execution petition under Order 21 Rule 32 of the Code of Civil Procedure (in short, "CPC"). Executing court by an elaborate order dismissed the execution petition finding that the decree holder (revision petitioner) has failed to prove that he is entitled to an order of the court for fixing boundary to the decree schedule property in the guise of executing the decree.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. Learned counsel for the petitioner submitted that the court below should have allowed the execution petition in its entirety. Per contra, learned counsel for the respondents strongly opposed the prayer in the petition saying that it is beyond the scope of the decree. The relevant provision in the CPC is Order 21 Rule 32. It reads as follows:

"32. Decree for specific performance for

restitution of conjugal rights, or for an injunction.-(1) *Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.*

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(5) *Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expense incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.*

Explanation.- For the removal of doubts, it is hereby declared that the expression “the act required to be done” covers prohibitory as well as mandatory injunctions.”

4. Learned counsel for the respondents took me through the prayers in the execution petition. The decree holder has requested for the indulgence of the court in preventing entry of the judgment debtors to the decree schedule property and also from interfering with the peaceful possession of the petitioner. Further prayer is that the decree holder should be allowed to construct a fence around the property through the intervention of the court. Learned counsel for the respondents submitted that this part of the prayer in the execution petition is beyond the scope of the suit and the decree. I agree with that contention. The suit is one for permanent prohibitory injunction and there was no prayer made or allowed for fixation of boundary. So there cannot be a dispute that a decree for permanent prohibitory injunction cannot be transformed into one for fixation of boundary.

5. Then the question remaining is whether the attempt of the judgment debtor to prevent the putting of boundary by the decree holder could be treated as interference with the enjoyment of property by the decree holder. Stated differently, if the decree holder attempts to put up boundary to secure his property well within the limits, can the judgment debtors resist such an attempt and in that event, can it be termed as disobedience of the decree. According to me, the answer is in the affirmative. Plaintiff, who obtained a permanent prohibitory injunction

decree is entitled to enjoy the property in terms of the decree. Of course, he cannot enlarge the scope of the decree at the execution stage. Construction of compound wall around the property within his limits is also a part of enjoyment of the property. To fortify this view, an unreported decision of this Court in W.P.(C) No.23818 of 2010 is produced before me. Paragraph 8 of the judgment is extracted here for clarity:

“The further argument is that decree in O.S. No.419 of 2003 as confirmed in A.S. No.33 of 2005 only prevents “further trespass” and hence decree in the way sought to be executed in E.P. No.132 of 2009 cannot be permitted. I am afraid, that contention cannot be accepted. True former part of the judgment and decree in O.S. No.419 of 2003 is against petitioner or respondent Nos.2 to 4 “further trespassing” into the suit property. But the later part of the judgment and decree enable respondent No.1 peaceful possession and enjoyment of the decree schedule property. In other words respondent No.1 is entitled to ward off any challenge to his peaceful possession and enjoyment of the suit property in the light of decree in O.S. No. No.419 of 2003. To put compound walls on the boundaries of the suit property is a way of possessing and enjoying the property. Section 51 of the Code of Civil Procedure (fort short, “the Code”) deals with the power of court to enforce execution and sub-clause (e) states that decree could be

executed in "such other manner as the nature of the relief granted may require". I stated that later part of the decree in O.S. No.419 of 2003 enables respondent No.1 for quite and peaceful enjoyment of the suit property. If for that purpose it is necessary to put up compound walls on the sides of the suit property it is well within the right of respondent No.1 to seek assistance of the court to do so in exercise of the power under Sec.51(e) of the Code which I have mentioned above. Hence it was well within the power of court to have permitted boundary to be put up at the portion of the compound wall which was found demolished. I find no infirmity in the order of the executing court."

Learned Judge placing reliance on Section 51(e) CPC held that the executing court has the power to enforce execution of the decree in such other manner as the nature of the relief granted may require. Section 51(e) CPC amplifies the scope of other limbs of the Section. The question posed here whether interference caused to the decree holder's putting up boundary in an indisputable part of his land will amount to disobedience of the decree can be answered only in the affirmative. Learned counsel for the respondents submitted that this order was happened to be passed by the executing court in the matter which was remanded by this Court in the earlier round of litigation. In spite of that, the decree holder had not taken

any steps to identify the property. It is further contended by the learned counsel for the respondents that not even at the trial stage the decree holder has taken any steps to identify the property. In answer to this argument, learned counsel for the petitioner/decreed holder contended that there is explicit admission in the written statement filed by the respondents/defendants that there is no dispute regarding boundary to the property. However, as a rule, the executing court cannot go behind the decree. It is equally settled that for the effective execution of the decree, the executing court has power to issue commission to identify the property. Without taking recourse to these steps in case of a dispute, the decree holder is not entitled to execute the decree. Similarly, the prayer in the execution petition seeking the help of the court to put up boundary also may not be allowed since the suit is one for injunction simplicitor. But, I make it clear that the decree holder is having all the legal rights to put up boundary of his own property without any threat or hindrance from the judgment debtors. The court below, I feel, has not considered the issue from the correct angle. Court below should have considered whether the apprehension of the decree holder that the judgment debtors/defendants are likely to interfere is legally sustainable or not. Therefore, I am of the view that the court below committed an illegality in dismissing the petition in its entirety without addressing the legal issue involved.

In the result, the revision petition is allowed. The impugned order is set aside. The matter is again remanded back to the court below for determination as to whether all the reliefs except the help of the court to put up boundary can be granted to the decree holder, if he is taking appropriate steps to identify the property and establishing that his attempt is only to put up boundary well within the limits of his property. The parties shall appear before the court below on 01.07.2015.

A. HARIPRASAD, JUDGE.

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