

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

CRP.No. 702 of 2014 ()

REVISION PETITIONER(S)/PETITIONERS/JUDGMENT DEBTORS:

1. **MARY @ ACHAMMA,
W/O.SOURIYAR,
KOTHEETHARAVEEDU (MARY MANGALAM),
KARUMADY KIZHAKKE MURI,
KARUKADY VILLAGE, AMBALAPUZHA TALUK.**
2. **THANKACHAN XAVIER, S/O.SOURIYAR,
KOTHEETHARAVEEDU (MARY MANGALAM),
KARUMUDY KIZHAKKE MURI,
KARUKADY VILLAGE, AMBALAPUZHA TALUK.**

**BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA**

RESPONDENT(S)/COUNTER PETITIONERS/DECREE HOLDERS:

1. **MURALI,
S/O.NARAYANAN, MURALIKA HOUSE,
KARUMADY KIZHAKKETHIL MURI,
KARUMADY VILLAGE, AMBALAPUZHA, PIN - 688 561.**
2. **GEETHARANI, W/O. MURALI,
MURALIKA HOUSE,
KARUMADY KIZHAKKETHIL MURI,
KARUMADY VILLAGE, AMBALAPUZHA, PIN - 688 561.**

R1 & 2 BY ADV. SRI.K.V.SADANANDA PRABHU

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

DG

THOTTATHIL B.RADHAKRISHNAN, J.

C.R.P.No.702 of 2014

Dated this the 14th day of December, 2015

ORDER

1. The judgment debtors 1 and 2 bound by a decree for fixation of boundary and perpetual injunction in relation to an item of immovable property are the revision petitioners.
2. Heard the learned counsel appearing for the parties.
3. The suit was, initially, decreed ex parte on the basis of Exhibit C1 Mahazar and Exhibit C1(a) rough sketch. That decree was set aside. Thereafter, Exhibit A1 title deed was marked on behalf of the plaintiffs. The defendants again remained ex parte. Affidavit on behalf of the plaintiffs, in line of chief examination, was on record. Thereafter, Exhibits C1 and C1(a) were remitted and Exhibits C2 and C2(a) were produced by the Commissioner. Exhibit C2(a) plan was prepared by a retired Taluk Surveyor. The Advocate Commissioner was examined before the trial court as CW1. The defendants

remained ex parte.

4. The trial court granted a decree as follows:

“i. The boundary between the plaintiff schedule property and the 1st and 2nd defendants' property on to the west is ABCD line in C2(a) plan and the boundary line separating the plaintiffs' property and the 3rd and 4th defendants' property on the east and north is FGHF line in C2(a) plan.

ii. The defendants are restrained by a device of permanent perpetual injunction from trespassing into plaintiff schedule property with BCDEFGHIJKLMNB in C2 (a) plan and from committing any waste and mischief therein and from cutting and removing any valuable trees from the properties.”

5. Exhibit C2(a) plan is the basis of the description of the boundaries as decreed.

6. The decree was put in execution. Thereupon, judgment debtors

1 and 2 filed an application, purportedly under Section 47 of the Code of Civil Procedure; essentially raising claim to two Mahogany trees. The executing court held that in terms of the decree, the judgment debtors cannot make any claim over those trees. Resultantly, the executing court ordered that those trees be cut down to put up the boundary since, going by Exhibits C2(a) plan and C2 report, those trees were found to be on the line BCD along which the boundary has to be put at one stretch.

7. This revision is filed challenging the aforesaid order of the executing court. It is the revision petitioners' contention that the two Mahogany trees standing on the boundary cannot be treated as belonging to the decree holders and the execution petition seeking the felling of those trees and erection of the common boundary will result in excessive execution which would be unauthorized and impermissible.

8. Reference is made by the learned counsel appearing on either side to the decisions of this Court in **Mythiankunju v. Pareethkunju** [1971 KLT 826], **Achuthan v. Sumitha**

[1987 (1) KLT 457], Enose Justus v. Yohannan Thomas [2006 (4) KLT 111] and Asst.Engineer, PWD (Roads) v. Karunakaran Kidav [2013 (2) KLT 810]. The sum and substance of the principle of law noticed in those precedents is that the right to a tree stems from ownership referable to the planting and upbringing of the tree though its roots and branches may, as part of the natural course of the growth of that tree, go into the land of the neighbour; and, if there is uncertainty in that aspect and if the tree is on the boundary between two properties, it could be taken that the tree belongs equally to the owners of the two adjoining lines on the boundary between which the tree stands.

9.I have considered the plan, the judgment, the decree and Exhibits C1, C1(a), C2, C2(a) reports and plans and the contents of the impugned order, as also the execution petition filed by the decree holders. The suit is built on the cause of action of an attempt by defendants 1 and 2 to trespass into the plaint schedule property by pulling out some part of the fencing. It is also specifically alleged in the plaint that there are two Mahogany trees in the plaint schedule property and

the 2nd defendant, who is the son of the 1st defendant, and his henchmen tried to cut and remove those Mahogany trees. The specific case set up in the plaint is that there are two Mahogany trees in the plaint schedule property and it is situated towards the western extremity of the plaint schedule property; that is to say, near the actual boundary. In spite of summons based on such plaint having been served on them, the defendants did not contest. Obviously, the uncontested position is that the two Mahogany trees stand in the plaint schedule property. The trial court decreed the suit fixing the boundary between plaint schedule property and the properties of defendants 1 and 2, as ABCD line in Exhibit C2(a) plan and the boundary line separating the plaintiffs' property and property of defendants 3 and 4 on the east and north as FGHF line in Exhibit C2(a) plan. The defendants were restrained by a decree of permanent perpetual injunction from trespassing into plaint schedule property with BCDEFGHIJKLMNB in Exhibit C2(a) plan and from committing waste or mischief therein, and from cutting and removing any valuable trees from the properties. A reading of the plaint will show that the valuable things specifically mentioned in the

plaint as standing in the plaint schedule property are the two Mahogany trees. The decreed perpetual injunction is specific to the effect that it restrains, among other things, the removal of valuable trees from the properties; that is to say, the plaint schedule properties. Any amount of the meat mincing of the decree and the contents of the judgment will not bring home to the defendants a sustainable plea in the execution proceedings that the trial court had consciously excluded the Mahogany trees from the cover of the prohibitory injunction issued by it.

10. The trump card of the revision petitioners who are judgment debtors 1 and 2 is that Exhibit C2(a) plan shows that two Mahogany trees stand on the BCD line. Exhibit C2 report mentions that the two Mahogany trees are shown by markings in green colour and they are shown in Exhibit C2(a) plan through BCD line where the Mahogany trees stand. That does not by itself lead to the conclusion that the plaintiffs have not demonstrated in the execution proceedings their accrued right in the nature of title to those Mahogany trees. This is so because, the result of the adjudication which has crystallized to a decree at the hands of the trial court is nothing but the

clear expression restraining the defendants from trespassing into the plaint schedule property as identified in Exhibit C2(a) plan and from committing any act of waste and mischief therein and from cutting and removing any valuable trees from the properties.

11. In execution proceedings, the finality of the decree put in execution cannot be mutilated in the performance of the judicial function of deciding an application under Section 47 of the Code of Civil Procedure. The executing court would be concerned only with questions relatable to the due execution, discharge and satisfaction of the decree. That does not include the power to go beyond the decree or refuse to give effect to the terms of the decree.

12. In this view of the matter, the executing court was fully justified in holding that the right to the Mahogany trees as sought to be raised by defendants 1 and 2 (judgment debtors 1 and 2) who stood bound by the terms of the decree cannot be considered in the execution side and as part of any application under Section 47 of the Code of Civil Procedure.

13. For the aforesaid reasons, the impugned order is not illegal or vitiated by material irregularity in the exercise of jurisdiction. The court below has also not failed to exercise its jurisdiction. Nor has it exercised any jurisdiction not vested. Therefore, this revision is bound to fail.

In the result, this civil revision petition is dismissed. No costs. Parties are directed to mark appearance before the court below on 25.02.2016.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

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P.A TO JUDGE

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