

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

FAO.No. 79 of 2015 ()

**EA. NOS. 267/2014 & 268/2014 IN EA NO. 630/2012 EP NO. 137/2012 IN O.S. NO.
270/1992 OF SUB COURT, OTTAPALAM**

APPELLANT/PETITINER/.RESPONDENT NO. 2 :

**MUHAMMED, AGED 64 YEARS, S/O. SAIDALI,
PUTHANKULAM, MALA AMSOM,
KAKKATTIRI DESOM, PATTAMBI TALUK,
MALA POST PIN - 679534.**

BY ADV. SRI.R.SREEHARI

RESPONDENTS/RESPONDENTS/PETITIONERS :

- 1. V.P.VASANTHA @THANKAM, D/O. VALLUYR PERUMBILAVIL
LATE KUNHILAKSHMI AMMA , VALLUR PERUMBILAVIL,
MALA AMSOM AND POST, KOTTOPADAM DESOM PATTAMBI TALUK,
PIN - 679534.**
- 2. V.P. KRISHNAKUMAR SHIBU, S/O. V.P. VASANTHA @ THANKAM,
VALLUR PERUNMBILAVIL, MALA AMSOM AND POST,
KOTTOPADAM DESOM, PATTAMBI TALUK PIN - 679534.**

**R1 BY ADV. SRI.SANTHEEP ANKARATH
BY ADV. SRI.ARUN MATHEW VADAKKAN**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

F.A.O.No.79 of 2015

Dated this the 17th day of June, 2015

JUDGMENT

The common order in E.A Nos.267 of 2014 and 268 of 2014 in E.P No.137 of 2012 in O.S.No.270 of 1992 on the file of the Sub Court, Ottappalam is under challenge in this Appeal.

2. The respondents filed O.S No.270 of 1992 before the Sub Court, Ottappalam for partition of a few items of properties. A preliminary decree was passed in the suit on 24.2.1999. Thereafter, the respondents filed E.A No.1521/1999 for passing a final decree and on 13.8.2010, a final decree was also passed allotting plaint C schedule property towards their share. The plaint C schedule property is an item of property having 34.6 cents under the Survey Nos.104/2, 104/3 and 104/4 of Mala Village. Thereupon, the

plaintiffs filed E.P No.137 of 2012 to execute the decree. As there were disputes as to the identity of properties, the property was delivered on 2.3.2015, after identifying the same with the aid of a Surveyor.

3. Prior to the delivery of the property, when the Ameen inspected the property to effect delivery, the appellant and three others obstructed the delivery. The respondents therefore filed E.A No.630 of 2012 to remove the obstructions. The appellant remained ex-parte in E.A No.630 of 2012. Consequently, the said execution application was allowed. When the said application was allowed, the appellant filed E.A No.104/2014 to set aside the ex-parte order against him. That application was allowed and the appellant was directed to file objections, if any, to E.A No.630 of 2012. Though sufficient time was granted, the appellant did not choose to file objections to E.A No.630 of 2012. Consequently, E.A No.630 of 2012 was again allowed, after setting the appellant ex-parte. It was, thereafter, the

property was delivered. In the meanwhile, the appellant filed E.A No.267 of 2014 to set aside the later ex-parte order in E.A No.630 of 2012 and E.A No.268 of 2014 to recall the delivery warrant. E.A Nos. 267 and 268 of 2014 were dismissed by the court below as per the order impugned in this appeal. The appellant is aggrieved by the said decision of the execution court and hence this appeal.

4. It is beyond dispute that the appellant is an assignee of a portion of the plaint schedule property from 23rd defendant and the children of deceased 21st defendant. As such, the appellant is bound by the decree passed in the suit. The appellant who is bound by the decree is not entitled obstruct the delivery of the property pursuant to the decree. That apart, the facts as narrated above indicate that there is no bonafides at all on the part of the appellant in resisting the delivery. As found by the court below, the intention of the appellant is only to protract the execution of the decree.

In the circumstances, I do not find any merits in the appeal and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm