

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C) .No. 2794 of 2012 (O)

AGAINST THE ORDER/JUDGMENT IN OS 231/2006 of MUNSIF COURT,
PARAPPANANGADI DATED 27.08.2009

PETITIONER/JUDGMENT DEBTOR:

CHITHRAMPALLI SAIDALAVI
S/O. MAYINKUTTY, VALIYAMBURAM NANNAMBRA AMSOM DESOM
TIRURANGADI TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENT/DECREE HOLDER:

NANNAMBRA PANCHAYATH
REPRESENTED BY ITS SECRETARY, NANNAMBRA AMSOM DESOM
POST NANNAMBRA, TIRURANGADI TALUK
MALAPURAM DISTRICT-687001.

R1 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 THE TRUE COPY OF THE DECREE IN OS NO. 231/06 ON THE FILE OF THE MUNSIF COURT, PARAPPANANGADI DATED 27-8-2009.

EXT.P2 THE TRUE COPY OF THE LAWYER NOTICE ISSUED BY THE PETITIONER DATED 19-5-2010.

EXT.P3 THE TRUE COPY OF THE EP NO. 76/10 IN OS NO. 231/06 OF THE MUNSIF COURT, PARAPPANANGADI DATED 8-6-2010.

EXT.P4 THE TRUE COPY OF THE COUNTER IN EP NO. 76/10 IN OS NO. 231/06 OF THE MUNSIF COURT, PARAPPANANGADI DATED 24-11-2010.

EXT.P5 THE TRUE COPY OF THE ORDER IN EP. NO. 76/10 IN OS NO. 231/06 OF THE MUNSIF COURT, PARAPPANANGADI DATED 6-7-2012.

RESPONDENTS' EXHIBITS

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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O.P(C).No.2794 of 2012

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Dated this the 20th day of August, 2015

JUDGMENT

This O.P. arises from the order dated 06.07.2012 in E.P.No.76 of 2010 in O.S.No.231 of 2006. The plaintiff/panchayath had entrusted a tractor with the defendants for the purpose of agricultural operations. Alleging that it was not returned within the time and that it was misused by the defendants in contravention of the agreement entered into between the parties, suit was laid for a mandatory injunction commanding the defendants to surrender the tractor to the panchayath in its original condition, with damages. The court below after trial, granted Ext.P1 decree directing the defendants to surrender the tractor in its original condition. Rs.9,740/- was also granted as costs. No separate decree was granted for damages that was allegedly caused by the defendants. Thereafter the execution petition was filed for enforcing the decree. In the course of the execution proceedings, it was contended by the panchayath that in spite of the efforts taken by them, the tractor was not returned and that was not in good condition now, due to the damages caused by the judgment debtor. An objection was filed by the judgment debtor contending that in spite of notice, panchayath

has not taken it back. Without going into the allegations and counter allegations on that issue, Court seems to have proceeded with execution of the decree and in the course of the proceeding, E.A.No.98 of 2011 was filed by the decree holder to call for a report from the Divisional Engineer at Kerala Agro Industries Corporation Ltd., or from an expert to assess the damages. E.A. was allowed and report was obtained as Ext.C1. Thereafter, evidence was let in, two witnesses were examined and three documents were marked on the side of decree holder along with report of the Divisional Engineer. On the basis of the above report, the court below quantified the damages at Rs.52,958/-. The Court held that the decree being mandatory in nature and the act required to be done cannot be enforced, compensation can be awarded under Order XXI, Rule 32 (3). The judgment debtor was directed to hand over the tractor within ten days from that day, with a direction to pay the damages assessed at Rs.52,958/-. This is assailed in this original petition.

2. Heard both sides and examined the records.

3. In the original decree, the decree holder was not granted a decree for damages. It appears that the tractor has been damaged which is evidenced by materials on record. To claim

damages, the decree holder has relied on Order XXI Rule 32(3). Evidently, Order XXI Rule 32 is the specific provision relating to the execution, the decree being one granting mandatory injunction. The mode of execution of that, as contemplated by Order XXI Rule 32 is by ordering the attachment of the property of the judgment debtor or by his detention in the civil prison or by both. Only thereafter, the operation of Order XXI Rule 32(3) arises. It does not per se enable a Court to quantify the damages and give a direction to the judgment debtor to pay that money. Decree also does not authorize payment of damages. To that extent, the impugned order of the court below is not legally sustainable and is liable to be set aside. The prayer in the E.P. is also for commanding the judgment debtor to repair the vehicle, to restore it to original condition and to deliver it.

4. However, it is for the decree holder to seek for enforcement of the decree by the modes known to law, which is either by seeking attachment of the property belonging to the judgment debtor or by his arrest and detention and to compel him to restore the tractor to the same form and to deliver it, as directed by the court below. Keeping this right open to the decree holder, this impugned order is liable to be set aside. The question whether

he can claim damages for the amount quantified in the E.A. is a matter to be worked out by separate proceedings. It is made clear that the decree holder can proceed with the decree by seeking appropriate reliefs by attachment of the property belonging to the judgment debtor or by his arrest and detention. Court below shall grant sufficient opportunity to the decree holder to proceed accordingly. It is made clear that no comment is made regarding the amount quantified by the decree holder. The impugned order is set aside.

The original petition is allowed in part as above.

SD/-
SUNIL THOMAS
Judge

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