

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

OP(C).No. 638 of 2013 (O)

E.P.No.30/2012 in O.S. No.345/2004 of the Munsiff's Court, Harippad

PETITIONER:

**DEVAKI,
MANGALATHU HOUSE, MAHADEVIKKADU MURI,
KARTHIKAPPALLY VILLAGE, ALAPPUZHA.**

BY ADV. SRI.K.SUBASHCHANDRA BOSE

RESPONDENT:

**AYYAPPAN,
VISHNUBHAVANAM, MAHADEVIKKADU MURI,
KARTHIKAPPALLY VILLAGE, ALAPPUZHA- 690516.**

R1 BY ADV. SMT.S.L.SYLAJA

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.T.Q

APPENDIX

- EXHIBIT P1: TRUE COPY OF THE DECREE AND PLAN IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT HARIPPAD DATED 21/3/2009.
- EXHIBIT P2: TRUE COPY OF THE EXECUTION APPLICATION FILED BY THE RESPONDENT E.P.No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.
- EXHIBIT P3: TRUE COPY OF THE OBJECTION TO E.P. No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.
- EXHIBIT P4: TRUE COPY OF THE PETITION IN E.A. No.102/2012 IN E.P. No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.
- EXHIBIT P5: TRUE COPY OF THE OBJECTION TO EXHIBIT P4 PETITION FILED BY THE RESPONDENT EA. No.102/2012 IN E.P. No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.
- EXHIBIT P6: TRUE COPY OF THE OMMISSION APPLICATION IN E.P. No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.
- EXHIBIT P7: TRUE COPY OF THE OBJECTION TO EXHIBIT P6 COMMISSION APPLICATION IN E.P. No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.
- EXHIBIT P8: TRUE COPY OF THE REPORT RECEIVED BY THE PETITIONER.
- EXHIBIT P9: TRUE COPY OF THE ORDER IN EA. No.102/2012 IN E.P. No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.
- EXHIBIT P10: TRUE COPY OF THE MEMO DATED 13-2-2013 FILED BY THE RESPONDENT E.P.No.30/2012 IN O.S. No.345 OF 2004 BEFORE THE MUNSIFF'S COURT, HARIPPAD.

RESPONDENT(S) EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

LPD

B. KEMAL PASHA, J.

.....
O.P.(C) No.638 of 2013
.....

Dated this the 23rd day of July, 2015

J U D G M E N T

Ext.P1 decree on counter claim is put in execution. A plan is also appended with the decree. The pathway in question was set out in Ext.P1 plan as 'HGSFO'. When the petitioner had attempted to obstruct the said pathway, execution was necessitated. Even though execution was sought for against the violation of the decree in counter claim through the detention of the judgment debtor in civil prison, subsequently Ext.P10 memo was filed by the said decree holder stating that the decree holder wanted to get the obstructions caused in the 'HGSFO' portion removed, and no further relief in the matter was required.

2. Ext.P1 decree has become final. Its executability is under challenge. There is absolutely nothing to show that the said decree is not executable. The decree is perfectly executable when it is appended with a plan which clearly shows all the measurements of all the plots and the pathway in question. As there are no materials to show that the said decree is not executable, this Original Petition is not maintainable, and it is only to be dismissed.

In the result, this Original Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge