

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

OP(C).No. 181 of 2015 (O)

**AGAINST THE JUDGMENT AND DECREE IN OS 477/1987 of PRINCIPAL MUNSIF,
ALAPPUZHA.**

PETITIONER(S)/JUDGMENT DEBTORS 3 TO 9 :

- 1. AMMUKUTTY, AGED 60 YEARS,
D/O.GOPALAN, VADAKUZHI CHIRA, KATTOOR MURI,
KALAVOOR PO., ALAPPUZHA, PIN CODE-688 522.**
- 2. CHANDRAN, AGED 55 YEARS,
S/O.GOPALAN, VADAKUZHI CHIRA, KATTOOR MURI,
KALAVOOR PO., ALAPPUZHA, PIN CODE-688 522.**
- 3. PARVATHY, AGED 50 YEARS,
D/O.GOPALAN, VADAKUZHI CHIRA, KATTOOR MURI,
KALAVOOR PO., ALAPPUZHA, PIN CODE-688 522.**
- 4. PURUSHOTHAMAN, AGED 45 YEARS,
S/O.GOPALAN, VADAKUZHI CHIRA, KATTOOR MURI,
KALAVOOR PO., ALAPPUZHA, PIN CODE-688 522.**
- 5. KAMALA, AGED 42 YEARS,
D/O.GOPALAN, VADAKUZHI CHIRA, KATTOOR MURI,
KALAVOOR PO., ALAPPUZHA, PIN CODE-688 522.**
- 6. RADHAMONEY
D/O.GOPALAN VADAKUZHI CHIRA, KATTOOR MURI
KALAVOOR PO., ALAPPUZHA, PIN CODE-688522**
- 7. ANANDAVALLY, AGED 35 YEARS,
D/O.GOPALAN, VADAKUZHI CHIRA, KATTOOR MURI,
KALAVOOR PO., ALAPPUZHA, PIN CODE-688 522.**

**BY ADVS.SRI.P.VISWANATHAN.
SRI.PRAMOD KOCHUTHOMMEN.E.
SRI.SUNIL N.SHENOI.
SMT.NIMITHA SALIM.**

RESPONDENT(S)/1ST DECREE HOLDER & 2ND ADDITIONAL DECREE HOLDER :

1. A.N.KRISHNAKURUP, AGED 75 YEARS,
S/O.LATE PARAMESWARAKURUPU,
AMBIKA NIVAS, KATTOOR MURI,
KALAVOOR P.O., ALAPPUZHA,
PINCODE-688 522.
2. A.K.SANAL, AGED 47 YEARS,
S/O.KRISHNAKURUP, AMBIKA NIVAS, KATTOOR MURI,
KALAVOOR P.O., ALAPPUZHA, PINCODE-688 522.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT P1:** THE TRUE PHOTOSTAT COPY OF THE EP.NO.80 OF 2012 IN OS.NO.477 OF 1987 ON THE FILE FO THE PRINCIPAL MUNISFF, ALAPPUZHA.
- EXT P2:** THE TRUE PHOTOSTATE COPY OF THE IMPEADING PETITION FILED AS E.A.NO.142 OF 2014 IN EP.NO.80 OF 2012 IN OS.NO.477 OF 1987 ON THE FILE OF THE PRINCIPAL MUNISFF, ALAPPUZHA.
- EXT P3:** THE TRUE PHOTOSTAT COPY OF THE OBJECTION FILED BY THE PETITIONERS HEREIN TO THE IMPEADING PETITION FILED AS E.A NO.142/2014 IN E..P NO.80/2012 IN O.S NO.477/1987 ON THE FILE OF THE PRINCIPAL MUNISFF, ALAPPUZHA.
- EXT P4:** THE TRUE PHOTOSTAT COPY OF THE SECTION 47 PETITION FILED BY THE PETITIONERS HEREIN IN THE EP.NO.80 OF 2012 IN OS.NO.477 OF 1987 ON THE FILE OF THE PRINCIPAL MUNISFF, ALAPPUZHA.
- EXT P5:** THE CERTIFIED COPY OF THE ORDER IN EA.NO.142 OF 2014 IN EP.NO.80 OF 2012 IN OS.NO.477 OF 1987 ON THE FILE OF THE PRINCIPAL MUNISFF, ALAPPUZHA.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A TO JUDGE

amk

A.HARIPRASAD, J.

O.P (C) No.181 of 2015

Dated this the 21st day of January, 2015.

J U D G M E N T

Original petition filed under Article 227 of the Constitution of India.

2. Petitioners are the respondents/judgment debtors 3 to 9 in E.A No.142/2014 in E.P No.80/2012 filed for execution of the decree passed in O.S No.477/1987 on the file of the Principal Munsiff's Court, Alappuzha. The application mentioned above was filed by the first respondent herein to implead the 2nd respondent as the additional decree holder in the said execution petition.

3. Heard the learned counsel for the petitioners.

4. The apprehension of the petitioners is that the executing court should have considered Ext.P4 application filed under Section 47 C.P.C challenging the executability of the decree. The suit is one for recovery of possession of 3.520 cents.

It is the contention raised by the learned counsel for the petitioners that subsequent to the decree, the property sought to be recovered had been sold in different lots to various persons. Hence the decree holder has no right to execute the decree. That apart, other contentions regarding executability of the decree are also raised. As per the impugned order, son of the decree holder (first respondent) was sought to be impleaded as an additional decree holder in the proceedings. The lower court allowed the application. The anxiety expressed by the learned counsel is in the context that the contentions raised by the petitioners in Ext.P4 application have not been finally decided so far. Ext.P5 order passed shall not have any impact on the decision in Ext.P4 application is the request made before this Court. Considering the facts and circumstances of the case, I am of the view that the court below is obliged to take an independent decision on

Ext.P4 on merits, untrammelled by the observations in Ext.P5 order. With this observation, the original petition is disposed of.

All pending interlocutory applications will stand dismissed.

Sd/-
A.HARIPRASAD,
JUDGE.

//True copy//

P.A to Judge

amk