

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

OP(C).No. 294 of 2015 (O)

OS 680/1996 of MUNSIF COURT,MUVATTUPUZHA

PEITIONERS/JUDGMENT DEBTORS :

- 1. GEORGE PHILIP, AGED 56 YEARS,
S/O PHILPOSE, THENASSERIL HOUSE,
ARAKKUZHA VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM.**
- 2. SALOMI, AGED 53 YEARS,
W/O GEORGE PHILIP, THENASSERIL HOUSE,
ARAKKUZHA VILLAGE, MUVATTUPUZHA ALUK, ERNAKULAM.**

**BY ADVS.SRI.M.B.SANDEEP
SMT.R.PRIYA
SRI.V.VISAL AJAYAN
SRI.B.SURJITH
SRI.ABHILASH JOSE
SRI.M.A.AHAMMAD SAHEER
SMT.R.ANJANA
SRI.K.RAMACHANDRAN**

RESPONDENT/DECREE HOLDER :

**MATHEW THOMAS @ KUNJAPPAN,
S/O THOMAS, KOOVAPLAKKAL HOUSE, ARAKKUZHA VILLAGE,
MUVATTUPUZHA TALUK, ERNAKULAM, PIN:686673.**

BY ADV. SRI. GEORGE SEBASTIAN

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

OP(C).No. 294 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE JUDGMENT DATED 25.9.2012 IN R.S.A.NO.1081/2005 OF THIS HON'BLE COURT.
- EXHIBIT P2: TRUE COPY OF THE EXECUTION PETITION NO.39/2013 IN O.S.NO.680/1996 OF THE MUNSIF COURT, MUVATTUPUZHA.
- EXHIBIT P3: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN E.P.NO.39/2013 IN O.S.NO.680/1996 OF THE MUNSIF COURT, MUVATTUPUZHA.
- EXHIBIT P4: TRUE COPY OF THE JUDGMENT DATED 7.3.2014 IN OP(C)NO.691/14 OF THIS HON'BLE COURT.
- EXHIBIT P5: TRUE COPY OF THE JUDGMENT DATED 3.6.14 IN OP(C)1239/14 OF THIS HON'BLE COURT.
- EXHIBIT P6: TRUE COPY OF THE ORDER DATED 7.7.2014 IN E.P.NO.39/2013 IN O.S.NO.680/1996 OF THE MUNSIF COURT, MUVATTUPUZHA.
- EXHIBIT P7: TRUE COPY OF THE ORDER DATED 17.7.2014 IN OP(CIVIL) NO.1623/2014 OF THIS HON'BLE COURT.
- EXHIBIT P8: TRUE COPY OF E.A.36/2014 (PETITION FILED U/S. 47 OF CIVIL PROCEDURE CODE PENDING BEFORE THE MUNSIF COURT, MUVATTUPUZHA.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

bp

P. BHAVADASAN, J.

O.P.(C). No. 294 of 2015

Dated this the 9th day of February, 2015.

JUDGMENT

The limited prayer in this petition is for a direction to the Munsiff's Court, Muvattupuzha to take up Ext.P8 petition said to have been filed before the said court under Section 47 of the Code of Civil Procedure.

2. The petitioners suffered a decree for recovery of possession and that was put in execution. The property was delivered to the decree holder and he had obtained possession of the same. The judgment debtors on the other hand would have a contention that the property that was delivered is not the property for which decree has been granted and it is a different property and therefore they moved this Court for necessary reliefs as per O.P.(C) 1623 of 2014 seeking various reliefs. This Court observed that the proper remedy available to the petitioners is to approach the court below under Section 47 of the Code of

Civil Procedure since the matter relates to discharge, execution and satisfaction of the decree.

3. Presumably pursuant to the observation of this Court, the petitioners have filed Ext.P8 petition before the court below. It may be noticed here that at the time of disposal of the O.P.(C). 1623 of 2014, this Court by way of abundant caution directed the parties to maintain status quo so as to enable the petitioners to move the execution court for appropriate reliefs.

4. As already stated, Ext.P8 was filed and it is pending consideration. In that petition also they had prayed that there may be a direction to the respondent in the said petition not to cut and remove trees from the property. That petition is yet to be disposed of.

5. Learned counsel appearing for the petitioners pointed out that there is a serious issue to be gone into in the case since the contention of the petitioners is that the property delivered is not the property in respect of which

decree was passed. It is also contended that the property has not been properly identified.

6. Learned counsel for the respondent on the other hand contended that it is after much contest that the decree was obtained and the matter was taken up in first appeal and second appeal and in all forums, the present petitioners failed. It was with the help of the Commissioner, the Amin had delivered the property. Therefore, it is contended that it could not be said that there was wrong or excess delivery.

7. Whatever that be, that is a matter to be gone into while considering Ext.P8 application which is pending consideration. In the interests of both parties, it is only proper that the said petition be disposed of as expeditiously as possible. In the meanwhile, it is only proper that the subject matter of the lis be kept in tact so that neither of the parties is prejudiced by the conduct of the other party.

This Original Petition is disposed of directing the court below to take up Ext.P8 and dispose it of as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment. In the meanwhile, the respondent may not cut and remove the trees from the property. It is also made clear that if commission application has been filed by the petitioners in E.A. 36 of 2014, that shall also be taken up and a commissioner shall be appointed and the court below shall ensure that the commission report is filed at the earliest.

sb.

P. BHAVADASAN,
JUDGE