

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

OP(C).No. 663 of 2015 (O)

(OS 429/2010 of MUNSIF COURT, CHALAKUDY)

PETITIONER:

MOHANAN NAMBOODIRI, AGED 56 YEARS
S/O.SREEDHARAN NAMBOODIRI, THIRUTHUR MANAKKAL HOUSE
THIRUTHI PARAMBU, ALOOR VILLAGE, CHALAKUDY TALUK,
THRISSUR DISTRICT.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO

RESPONDENT:

PREETHA SAI, AGED 54 YEARS
W/O.RAMAN NAMBOODIRI, THIRUTHUR MANAKKAL HOUSE
AND D/O.DAMODARAN NAMBOODIRI
CHARAKKATTI @ CHAVARAKKATT ILLAM HOUSE
KAVILPAD DESOM, PALAKKAD-1 VILLAGE,
PALAKKAD DISTRICT - 678 001.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1. A TRUE COPY OF THE EXECUTION PETITION NO.271/2013 IN OS NO.429/2010 BEFORE THE MUNISFF'S COURT, CHALAKUDY DATED 10/12/2013.
- EXT.P2. A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN EXECUTION PETITION NO.427/2013 IN OS NO.429/2010 BEFORE THE MUNISFF'S COURT, CHALAKUDY DATED 8/1/2015.
- EXT.P3. A TRUE COPY OF THE REVIEW PETITION IN EA 13/2014 FILED BY THE PETITIONER IN EXECUTION PETITION NO.271/2013 IN OS NO.429/2010 BEFORE THE MUNISFF'S COURT, CHALAKUDY DATED 9/1/2015.
- EXT.P4. A TRUE COPY OF THE PROCEEDINGS SHEET IN EXECUTION PETITION NO.271/2013 IN OS NO.429/2010 BEFORE THE MUNISFF'S COURT, CHALAKUDY DATED 8/1/2015.
- EXT.P5. A TRUE COPY OF THE ORDER OF DELIVERY IN EXECUTION PETITION NO.271/2013 IN OS NO.429/2010 BEFORE THE MUNISFF'S COURT, CHALAKUDY DATED 6/2/2015.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.663 OF 2015

Dated this the 7th day of April, 2015.

J U D G M E N T

Challenging Ext.P5 order passed on 06.02.2015, this original petition has been filed under Article 227 of the Constitution of India.

2. The petitioner suffered a decree at the hands of the Munsiff Court, Chalakudy in O.S.No.429/2010. It is said to be an ex parte decree. The decree holder took out execution of the decree. Initially delivery was ordered but later, on finding that there was some procedural irregularity, the initial order was recalled. Subsequently, Ext.P5 order has been passed. In Ext.P5 order, execution court ordered police protection for delivery.

3. Learned counsel appearing for the petitioner pointed out that the property which is sought to be delivered does not wholly belong to the decree holder and that would be evident from his document of title. It is also pointed that there was no petition for removal of obstruction under Order 21 Rule 97 of the Code of

Civil Procedure enabling the court to order police help for delivery. The earlier execution proceedings had been set aside and since de nova proceedings were not taken, the delivery proceedings are vitiated in law. It is also pointed out that the petitioner has filed a petition to set aside the ex parte decree and also to direct the court below to keep in abeyance the execution proceedings till the petition to set aside the ex parte decree is considered. According to the petitioner, it was without adverting to the relevant facts that delivery has been ordered.

4. Even though the arguments may look attractive at the first blush, on a deeper analysis, it can be seen to be without any basis. It is not in dispute before this Court that the decree was put in execution in terms of the decree passed even though the petitioner would contend that the decree schedule itself is wrong. If the petitioner has got a grievance against the decree schedule and the property that is covered by the decree, appropriate steps ought to have been taken to have the decree set aside. Having not done so, he cannot be heard to say that the property scheduled in the execution petition, in terms of the decree,

cannot be delivered to the decree holder. Equally unsustainable is the contention that since there is no obstruction caused and since there is no petition under Order 21 Rule 97 CPC, police aid could not have been ordered. Even though earlier execution proceedings were set aside, court below noticed that the obstruction was imminent and that persuaded the court below to pass an order of delivery with police aid.

5. In the light of the history of the litigations, if the court below anticipated obstruction at the hands of the judgment debtor, it cannot be found fault with.

6. As regards the petition for setting aside the ex parte decree is concerned, it is still pending consideration and that is not a ground to restore the execution petition. It may be remembered that the petitioner had to surrender the premises within 30 days as per the decree. He had not done so.

7. It is conceded by this Court that delivery has been effected and there is no challenge to the delivery so effected and there is no plea for restitution also. In the light of the fact that delivery has been effected in pursuance to Ext.P5 order, nothing

remains to be considered especially in view of the fact that the execution petition stands dismissed. True, the word 'dismissed' is incorrect. Whatever that be, that cannot help the petitioner at all. This Court finds nothing wrong in Ext.P5 order.

The original petition is without merits. Leaving open the remedy of the petitioner to take such steps as are available to him under law, this original petition is dismissed. If any of the articles of the petitioner remains in the premises, the petitioner can remove the same.

Sd/-

**P.BHAVADASAN
JUDGE**

smp