

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

OP(C).No. 4219 of 2013 (O)  
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(AGAINST THE ORDER/JUDGMENT IN EA Nos.98 & 99/2013 in  
EPNo.104/2012 in OS No.288/2007 OS 288/2007 of II ADDL. MUNSIF  
COURT ERNAKULAM)

PETITIONER(S) :  
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P.DILEEP KUMAR,  
S/O. LATE PADAMANABHA MENON, GOKULAM, KARURUTHIL ROAD,  
UDAYAMPEROOR, NOW RESIDING AT HOUSE NO. IX 459,  
PALLICHAKKALA LANE,  
BEHIND SREE RAGAMA HOUSE (10/371 E), EROOR SOUTH,  
TRIPUNITHURA, ERNAKULAM DISTRICT, PIN-682306.

BY ADVS.SRI.N.JAMES KOSHY  
SRI.T.SANJAY

RESPONDENT(S) :  
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1. SMT.SHIBI,  
W/O. LATE KARTHIKEYAN, RESIDING AT MUKULATH PARAMBIL,  
EDATHALA, POOKKATTUPADY, PIN-683561.

2.MR. RAFEEK,  
PROPRIETOR, N.B.STORES,  
POOKKATTUPADU JUNCTION (WIRE ROPE JN.)  
VIA PERUMBAVOOR, ERNAKULAM DISTRICT, PIN-683542.

3. SMT.RADHIKA AJITHKUMAR, AGED 35 YEARS,  
W/O. K.B.AJITHKUMAR, AKHIL NIVAS, ETTUTHYKKAL  
UDYAMPEROOR P.O., MANAKUNNAM VILLAGE, PIN-682307.

4. K.B.AJITHKUMAR,  
AKHIL NIVAS, ETTUTHYKKAL, UDYAMPEROOR P.O.  
MANAKUNNAM VILLAGE, PIN-682307.

R3 & 4 BY ADV. SRI.BABU CHERUKARA  
R3 & 4 BY ADV. SRI.ANZAR BASHEER

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 4219 of 2013 (O)  
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APPENDIX

PETITIONER(S) ' EXHIBITS  
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EXHIBIT P1- TRUE PHOTOCOPY OF THE JUDGMENT IN OS.NO. 288/2007,  
IIND ADDITIONAL MUNSIFF COURT, ERNAKULAM.  
EXHIBIT P2- TRUE PHOTOCOPY OF THE DECREE IN OS.NO. 288/2007, 2ND  
ADDITIONAL MUNSIFF COURT, ERNAKULAM.  
EXHIBIT P3- TRUE PHOTOCOPY OF THE JUDGMENT IN RSA.NO. 1353/2012,  
HIGH COURT OF KERALA.  
EXHIBIT P4- TRUE PHOTOCOPY OF THE DELIVERY REPORT FILED BY THE  
AMIN, SHRI., V.K.SIVASANKARAN.  
EXHIBIT P5- TRUE PHOTOCOPY OF THE JUDGMENT DATED 20-6-2013 IN OPC  
2056/2013.

RESPONDENT(S) ' EXHIBITS  
-----: nil

/true copy/ PS to Judge

**SUNIL THOMAS, J.**

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**O.P.(C).No.4219 of 2013**  
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Dated this the 31<sup>st</sup> day of July, 2015

**JUDGMENT**

This is an unfortunate case in which the petitioner has been desperately seeking enforcement of a decree that was passed in his favour.

2. The petitioner herein, as the plaintiff, laid O.S.No.288/2007 before the Munsiff Court, Ernakulam, seeking, inter alia, a decree of permanent prohibitory injunction with respect to the plaint A schedule property having an extent of 6.60 cents. Pending the suit, an advocate commissioner was deputed, who inspected the property and reported that the property was bounded on four sides by walls. Subsequently, when the advocate commissioner inspected, it was found that the eastern boundary wall was demolished. Thereafter, parties went for trial and the decree was passed in favour of the plaintiff.

3. This was carried in appeal unsuccessfully by the defendants and thereafter in the second appeal, which was also dismissed. The judgment and decree of the court below hence, has become final and binding.

4. While so, the petitioner herein preferred an execution petition for enforcement of the decree. The records reveal that in spite of three repeated orders of the court below for reconstruction of the wall by the petitioner/decreed holder on three consecutive occasions, each time, allegedly the judgment debtors with impunity, demolished the walls, constructed by the decreed holder. It is seen that on one occasion the wall was constructed with the aid of the amin also.

5. While so, the judgment debtors/respondents herein had moved O.P.No.2056/2013 before this Court. It appears that they had taken up a contention that the judgment debtors along with the other person had filed another suit as O.S.No.939/2012 and contended in the light of that proceedings, the present decree cannot be enforced and that

the subject matter of the present decree forms part of the property belonging to the judgment debtors. This Court by Ext.P5 held that such contention was not available and rejected the claim.

6. The present petition is filed seeking appropriate relief with specific direction to the court below to enforce the decree. When the matter was taken up for hearing, the learned counsel who was appearing for the respondents submitted that he has no instruction, which has been conveyed to the party. Since no alternate arrangement was made, the case was posted to 30<sup>th</sup> July 2015 and the records were called for from the court. Perused the records also. Even today, the respondents remained absent.

7. It is pertinent to note that records reveal that the respondents/judgment debtors have been repeatedly adopting all delaying tactics on the belief that they can flout the orders of the Court and render the orders of the Court nugatory. The learned counsel for the petitioner submitted that an application for arrest and detention of the judgment debtor

and attachment of their property under Order 21 Rule 38 CPC is pending consideration. It was even contended that even though proof affidavit was filed, but the judgment debtors remained elusive. This will not disentitle the Court from effectively implementing its own decree and orders as contemplated under the Statute. The courts are not powerless in implementing its own orders.

8. In the above circumstances, I feel that directions are liable to be issued to the court below to ensure that the applications which are stated to be pending (E.A.Nos.496/2012 & 59/2014 in E.P.104/2012 in O.S.No.288/2007) are taken up at the earliest and appropriate orders passed, if not already passed and ensure that orders are implemented effectively in letter and spirit.

The original petition is disposed of as above.

Trial court files may be sent back.

Sd/-

**SUNIL THOMAS,  
Judge.**

dpk

/true copy/

PS to Judge.