

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

OP(C).No. 681 of 2014 (O)

E.P.NO.43/2012 IN OS 234/2004 of MUNSIFF COURT, THODUPUZHA
PETITIONER(S):

RAJU
S/O. SANKU, AMMAPARAMBIL HOUSE, KALIYAR KARA
VANNAPURAM VILLAGE, IDUKKI DISTRICT.

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.SAJU.S.A
SMT.P.A.SHEEJA
SRI.K.C.KIRAN

RESPONDENT(S):

GEORGE
S/O. MICHAEL, VADAKKEDATHU HOUSE, KALIYAR KARA
VANNAPURAM VILLAGE, IDUKKI DISTRICT - 685 582.

BY ADV. SRI.T.J.MICHAEL

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-04-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 681 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE JUDGMENT OF THE MUNSIF COURT, THODUPUZHA IN O.S 234/2008 DATED 18/02/2008.

EXHIBIT-P2-TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN R.S.A 1379/2010 DATED 07/02/2011.

EXHIBIT-P3-TRUE COPY OF THE JUDGMENT DATED 02/08/2013 IN O.P(C)2461/2013

EXHIBIT-P4-TRUE COPY OF THE REPORT OF THE COMMISSIONER ALONG WITH THE REPORT OF THE EXPERT DATED 24/09/2013.

EXHIBIT-P5-TRUE COPY OF THE OBJECTIONS ON THAT REPORT ON 22/10/2013 MADE BY THE PETITIONER.

EXHIBIT-P6-TRUE COPY OF THE EXECUTING ORDER DATED 02/01/2014.

EXHIBIT-P7-TRUE COPY OF THE CERTIFICATE ISSUED BY THE VANNAPURAM GRAMA PANCHAYATH DATED 05/09/2012.

EXHIBIT-P8-TRUE COPY OF THE CERTIFICATE ISSUED BY THE ELECTRICAL SECTION, VANNAPURAM DATED 17/10/2012.

EXHIBIT-P9-TRUE COPY OF THE REVISED REPORT FILED BY THE EXPERT.

EXHIBIT-P10-TRUE COPY OF THE REPORT OF THE COMMISSIONER DATED 28/02/2014.

(TRUE COPY)

P.B.SURESH KUMAR, J.

O.P.(C) No.681 of 2014

Dated 10th April, 2015.

J U D G M E N T

The third judgment debtor in E.P.No.43 of 2012 on the file of the Court of the Munsiff, Thodupuzha is the petitioner in this original petition. The decree under execution in the said proceedings is the decree in O.S.No.234 of 2004. Ext.P1 is the judgment in the suit. The decree directs the judgment debtors to construct a retaining wall upto the level of plaint A schedule property owned by the decree holder for its lateral support. In case of default, the decree permits the decree holder to construct the retaining wall and recover the costs of the same from the judgment debtors. Since the decree does not provide for the width of the retaining wall to be constructed, disputes arose during execution as to the width of the retaining wall and the said disputes were resolved by this Court as per Ext.P3 judgment, directing the execution court to appoint an expert to supervise the construction of the retaining wall along with the Advocate Commissioner, who was already appointed. It was

also directed in Ext.P3 that the expert so appointed shall decide the width of the retaining wall.

2. Pursuant to the order passed by this Court, an expert was appointed to supervise the construction of the retaining wall and the plan and the estimate prepared by the expert was placed before the execution court. The plan prepared by the expert was objected by the judgment debtors, contending that the width of the same shall not exceed five feet as per the terms of the decree and that the construction of the retaining wall shall not cause any damage to the residential building and the well of the judgment debtors. As per Ext.P6 order, the execution court accepted the contention of the judgment debtors concerning the width of the retaining wall. As regards the objection of the judgment debtors concerning the damage to the residential building and well, the execution court found that the said improvements were effected after the suit and therefore, the objection is unsustainable. Consequently, the execution court directed the expert to revise the plan confining the width of the retaining wall to five feet and proceed with the

construction of the retaining wall accordingly. However, it was clarified that while executing the work, the Commissioner should see that the portion of the well of the judgment debtors within the B schedule property is covered with a concrete slab, if the land over which the well is constructed is necessary for the construction of the retaining wall. The petitioner is aggrieved by the said decision of the execution court. He, therefore, seeks in this original petition a direction to the execution court to execute the decree without causing any damage to his residential building and well.

3. Heard the learned Senior counsel for the petitioner as also the learned counsel for the respondent.

4. As noticed above, as per Ext.P6 order, the execution court rejected the objection raised by the judgment debtors that the construction of the retaining wall shall not cause any damage to the residential building and the well of the judgment debtors, holding that the said improvements were effected subsequent to the suit. There is no challenge to Ext.P6 order in this Original Petition. Ext.P1 does not indicate that the

judgment debtors have raised a contention in the suit that any portion of their residential building and well are protruding into plaint B schedule property. As such, the execution court cannot be faulted for having rendered a finding that the improvements sought to be protected are improvements effected after the suit. Further, in Ext.P6 order, the execution court has directed that the well of the judgment debtors within plaint B schedule property shall be covered with a concrete slab if the land occupying the well is necessary for the construction of the retaining wall. In the said facts and circumstances, there is no justification for claiming the direction sought in the Original Petition. The original petition is without merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)