

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

OP(C).No. 2304 of 2015 (O)

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AGAINST THE ORDER IN EP NO. 70/2013 IN OS NO. 37/1995
OF PRINCIPAL MUNSIF COURT, KOCHI DATED 17-09-2015
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PETITIONER :

**BALAGOPALA MURALI KINI
S/O.GUNA KINI, HOUSE NO.CC 8/232,
SOUTH CHERLAI, KOCHI.**

**BY ADVS.SRI.K.S.RAJESH
SRI.M.SHAJU PURUSHOTHAMAN**

RESPONDENT :

**UMA DEVI MALLIA
D/O.VISWANTHA MALLIA, HOUSE NO.CC 8/231
SOUTH CHERLAI, KOCHI - 682 002.**

**BY ADVS. SRI.N.RATHEESH
SMT.SUMA RATHEESH**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

OP(C).No. 2304 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P-1: A TRUE COPY OF THE DECREE DATED 11.4.1997 PASSED BY THE
PRINCIPAL MUNSIFF COURT, KOCHI.
- EXT.P-2: TRUE COPY OF THE EP 70/2013 DATED 9.4.2013 PENDING BEFORE
THE PRINCIPAL MUNSIFF COURT, KOCHI.
- EXT.P-3: TRUE COPY OF THE OBJECTION STATEMENT DATED 5.11.2013 FILED
BY THE PETITIONER/JUDGEMENT DEBTOR.
- EXT.P-4: TRUE COPY OF THE EA 37/2015 DATED 12.2.2015 FILED BY THE
RESPONDENT/DECREE HOLDER.
- EXT.P-5: TRUE COPY OF THE COUNTER AFFIDAVIT DATED 12.8.2015 IN
EA 37/2015 FILED BY THE RESPONDENT.
- EXT.P-6: TRUE COPY OF THE ORDER DATED 17.9.2015 PASSED BY THE
PRINCIPAL MUNSIFF COURT, KOCHI IN EP 70/2013.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2304 of 2015

Dated this the 30th day of November, 2015

J U D G M E N T

Petitioner is the judgment debtor in EP 70 of 2013 in OS.37 of 1995 of Principal Munsiff Court, Kochi. The decree inter alia granted the respondent/decreed holder perpetual injunction restraining the petitioner from trespassing into plaint B schedule property. On the allegation that the petitioner interfered with the respondent's right to put up a boundary wall the latter filed the EP. By the impugned order passed on an application filed in the E.P the learned Munsiff has ordered to depute an ameen to construct the boundary wall. This is challenged.

2. Heard.

3. I have perused a copy of the EP and affidavit filed along with it by the respondent/decreed holder. There is no allegation that the petitioner attempted to trespass into the decree B schedule property. Even though there is an allegation that the petitioner obstructed construction of the boundary wall, even the date on which the alleged

attempt was made is not mentioned. There is only a wild allegation that there was an attempt to obstruct construction of the boundary wall. The EP was filed about two years ago. It was posted for the evidence of the decree holder on several occasions, he did not adduce any evidence. Thereafter, he filed the present application to depute an ameen to execute the decree with the help of women police. Even without any evidence the learned Munsiff has allowed it, which is illegal.

4. For two reasons the order is liable to be set aside.

One, in the EP there is no allegation that the petitioner attempted to trespass into the decree B schedule property and two there is no evidence to prove that he violated the decree.

In the result this OP is allowed. The impugned order is set aside.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge