

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

OP(C).No. 2392 of 2015 (O)

**EA.611/2014 IN EP. NO.202/2011 IN OS. NO.1061/1999 OF ADDITIONAL MUNSIF
COURT-I, NEYYATTINKARA.**

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PETITIONER(S):

- 1. KUNJU KRISHNAN NADAR, AGED 78 YEARS,
S/O.KESAVAN NADAR, PANAVALAKATHU PUTHEN VEEDU,
KOTTAKAL DESOM, ANAVOOR VILLAGE.**
- 2. UDAYAN, AGED 48 YEARS,
S/O.KUNJU KRISHNAN NADAR, JIJO BHAVAN,
PONKIL MELE, KOTTAKAL DESOM, ANAVOOR VILLAGE.**

BY ADV. SRI.G.SREEKUMAR (CHELUR).

RESPONDENT(S):

- 1. KAMALAMMA PILLAI BABY,
KADAYARA PUTHEN VEEDU,
PONGIL, THATHIYOOR DESOM,
PERUMKADAVILA VILLAGE, PIN-695 001.**
- 2. ASSARI NADAR SATHYANESAN,
PANGOTTUKARA MELE PUTHEN VEEDU,
MEPPAMCODE, THATHIYOOR DESOM,
PERUMKADAVILA VILLAGE, PIN-695 001.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 06-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE JUDGMENT IN RSA NO.526/2011 DATED 30/05/2011 ON THE FILE OF THIS HON'BLE COURT.
- EXT.P2 COPY OF THE FINAL JUDGMENT IN CRP NO.470/2014 DATED 25/09/2014 OF THIS HON'BLE COURT.
- EXT.P3 COPY OF THE EA NO.611 OF 2014 IN EP. NO.202/2011 IN O.S. NO.1061/1999 DATED 29/10/2014 ON THE FILE OF THE MUNSIF COURT, NEYYATTINKARA.
- EXT.P4 COPY OF THE COMMISSIONER'S REPORT AND PLAN IN THE SUIT O.S. NO.1061/1999 DATED NIL.
- EXT.P5 COPY OF THE COMMISSIONER'S REPORT IN THE SUIT IN O.S. NO.1061/1999 DATED 20/03/2014 ON THE FILE OF THE MUNSIF COURT, NEYYATTINKARA.
- EXT.P6 COPY OF THE ORDER PASSED BY THE EXECUTION COURT IN EA NO.611/2014 IN EP. NO.202/2011 IN O.S. NO.1061/1999 DATED 17/09/2015 ON THE FILE OF THE MUNSIF COURT, NEYYATTINKARA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2392 of 2015

Dated this the 6th day of October, 2015

J U D G M E N T

Petitioners are the judgment debtors in EP.No.202 of 2011 in O.S.No.1061 of 1999 on the file of Munsiff, Neyyattinkara. The decree was passed in favour of the first respondent/decreed holder. The decree declared that he has a right of way through the property of the judgment debtors and the latter were directed to remove the obstruction caused in the way. The petitioners have constructed a building, put up a septic tank across the way. The sunshade of the building projects over the way. Moreover, they have put up a compound wall obstructing the way. In the EP the prayer was to demolish the construction which caused the obstruction. In the executing court the first respondent/decreed holder made the following admission which is seen recorded in the order passed on 08.07.2014 and which has been recognised by this court in Ext.P2 order in CRP.470 of 2014.

"At the time of hearing counsel for the decree holder submitted that he is not pressing for demolishing the sunshade as it is at a height of 8 feet and it does not cause obstruction in the pathway. Counsel for the decree holder also submitted that the septic tank also does not cause any obstruction to the pathway"

Thereafter, the first respondent filed Ext.P3 application for demolition of the sunshade. By Ext.P6 order the executing court allowed the prayer. This is challenged in this O.P.

2. Heard.

3. As mentioned above, the first respondent/decreed holder made a concession that the portion of sunshade need not be demolished as it does not cause any obstruction. This was recorded by the executing court and recognised by this court. Now he cannot turn round and say that it should be demolished. In fact, he abandoned his right to get it demolished. The learned counsel for the first respondent submits that the property of the first respondent lies at a higher level by 5 feet than the property of the petitioners/judgment debtors and it is difficult for him to enter his property because the sunshade is an obstruction. That may be true. But it was knowing fully

well about this fact he abandoned his right. Once he has abandoned the right and it was acted upon by the court, he cannot be allowed to claim it again. The learned Munsiff was not right in directing demolition of the sunshade. The order is liable to be set aside.

In the result, this O.P is allowed and Ext.P6 order is set aside to the extent it directs demolition of the sunshade of the petitioners' building.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge