

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

OP(C).No. 1389 of 2014 (O)

(E.A.NO.524/2013 IN O.S.NO.954/2002 OF 1ST ADDL.MUNSIFF'S COURT,
THIRUVAANTHAPURAM)

PETITIONER/JUDGMENT DEBTOR :

C.CHANDRAN,
S/O CHELLAPPAN , AGED 52 YEARS,
RESIDING AT T.C NO.25/552(1),
VAYAL NIKATHIYA PUTHEN VEEDU, THAMPANNOOR,
THIRUVANANTHAPURAM,
NOW RESIDING AT RAILWAY QUARTERS NO 80-F,
POOJAPPURA,THIRUVANANTHAPURAM, PIN- 695 001

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE

RESPONDENT(S)/DECREE HOLDERS :

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1. NANDINI.R, D/O.ROBAMMA, AGED 36 YEARS,
RESIDING AT T.C NO.25/552 (1),
VAYAL NIKATHIYA PUTHEN VEEDU, THAMPANNOOR,
THIRUVANANTHAPURAM, PIN -695 001
 2. SHIBU,S/O. RETNA BAI, AGED 31 YEARS,
RESIDING AT T.C NO.25/552 (1),
VAYAL NIKATHIYA PUTHEN VEEDU, THAMPANNOOR,
THIRUVANANTHAPURAM, PIN- 695 001

R1 & R2 BY ADV. SRI.S.MOHAMMED AL RAFI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 1389 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 24-06-2004 IN O.S NO 954 OF 2002 ON THE FILE OF THE 1ST ADDL.MUNSIFF'S COURT, THIRUVANANTHAPURAM
- EXHIBIT P2 TRUE COPY OF THE DECREE DATED 24-06-2004 IN O.S NO 954 OF 2002 ON THE FILE OF THE 1ST ADDL.MUNSIFF'S COURT, THIRUVANANTHAPURAM
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 31-05-2013 IN R.S.A NO 301 OF 2010 BEFORE THIS HON'BLE COURT
- EXHIBIT P4 TRUE COPY OF THE E.A NO 524 OF 2013 IN EP NO 214 OF 2010 IN OS NO 954 OF 2002 ON THE FILE OF THE 1ST ADDL.MUNSIFF'S COURT, THIRUVANANTHAPURAM
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 29-05-2014 IN E.A NO. 524 OF 2013 IN EP NO 214 OF 2010 IN O.S NO 954 OF 2002 ON THE FILE OF THE 1ST ADDL.MUNSIFF'S COURT, THIRUVANANTHAPURAM

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.BHAVADASAN, J.

Original Petition (Civil) No.1389 OF 2014

Dated this the 28th day of January, 2015.

J U D G M E N T

The petitioner, as plaintiff, laid O.S.No.954/2002 before the 1st Additional Munsiff Court, Thiruvananthapuram seeking a decree of permanent prohibitory injunction to have the defendants restrained from trespassing into plaint schedule property which he claimed to have an extent of 3½ cents though by kudikidappu he obtained only 3 cents. The defendants in the suit who are respondents herein not only resisted the suit but also filed a counter claim pointing out that the plaintiff had only 3 cents of property and not only he had trespassed into a portion of the property owned by the defendants but also put up a structure therein. They therefore sought for mandatory injunction and other consequential reliefs.

2. After trial, suit was dismissed and the counter claim was decreed. Aggrieved plaintiff carried the matter in appeal and also in second appeal but without success and the decree became final

and it was put in execution. At the time of execution, the petitioner before this Court came forward with a plea that as per re-survey, there is change in the extent of property and in the light of the said fact, a fresh survey has to be conducted and fresh report and plan have to be obtained before the decree is executed. That was opposed by the respondents herein. The court below finding that property was measured and the plan drawn with the help of a surveyor formed part of the decree felt that there is no need to re-survey the property and the court was also of the opinion that execution court cannot go beyond the decree. Holding so, petition was dismissed.

3. Learned counsel appearing for the petitioner before this Court who had filed E.A.No.524/2013 for re-measurement of the property contended that in re-survey measurement it was found that there was deficiency in the extent of property held by the plaintiff and if that be so, parties must suffer proportionate change in extent of property. That aspect has been lost sighted of and that has resulted in miscarriage of justice.

4. Learned counsel appearing for the respondents, on the

other hand, contended that the question of re-survey does not arise for consideration for the simple reason that the property was measured with the help of a Taluk Surveyor and two plans were prepared and in the decree granted in the counter claim, sketch formed part of the decree. In the light of the said fact, it was contended that there is no reason for a re-survey as the executing court was bound to execute decree as it stands. That is what the court below has done and there are no grounds to interfere with the order of the court below.

5. After having heard the learned counsel on both sides and also after having perused the records, it seems there is considerable force in the submission made by the learned counsel for the respondents. It is not much in dispute that both the plaintiff in the suit and the defendants obtained 3 cents of property as kudikidappu from the same owner of land. However, in the suit, the plaintiff came forward with a claim that apart from the 3 cents, he was also in possession of an additional extent of 0.50 cents and for that extent of property, he laid the suit. That claim of the plaintiff was found to be false and it was also found

that by claiming so, he has encroached into a portion of the property owned by the defendants. It must be borne in mind at this point of time that both parties obtained 3 cents of property by kudikidappu. Records reveal that property was assigned to respective persons after measurement and sketch was appended to the certificate granted to each of the persons. Therefore, there could not have been any dispute regarding the identity of the property obtained by each of the parties. It is in this context the claim made by the plaintiff that he had more extent will have to be viewed. Both the courts have concurrently found that the claim made by the plaintiff cannot be accepted and consistently held that the plaintiff is entitled to only 3 cents.

6. In the light of the fact that there was a sketch appended to purchase certificate and also in the light of the fact that there was measurement during trial stage with the help of a Taluk Surveyor and a plan has been prepared, question of re-surveying the property does not arise for consideration.

7. It is not the case of the plaintiff that the sketch prepared during trial stage was wrong. But his case was that as per the

re-survey conducted, he has got lesser extent of property. One fails to understand how that would affect the decree. Even assuming that the plaintiff in re-survey is seen to have a lesser area, it is difficult to accept the plea that that should result in modification of the decree passed in favour of the defendants. As rightly noticed by the lower court, executing court cannot go behind the decree and it has to execute the decree as it stands. The only situation where the execution court can refuse to execute decree is when decree is found to be a nullity. In all other cases, hands of the execution court are tied. If that be so, court below was perfectly justified in passing the impugned order.

This original petition is without merits and it is liable to be dismissed. I do so. However, there will be no order as to costs.

**P.BHAVADASAN
JUDGE**

smp