

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP(C).No. 2860 of 2015 (O)

**ORDER DATED 12.11.2015 IN EP.NO.199/2014 IN OS 934/2009 OF PRINCIPAL MUNSIF
COURT, ERNAKULAM**
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PETITIONER(S)/JUDGMENT DEBTOR NAMED IN E.P:

**LIJOY P.VARGHESE, AGED 36 YEARS,
S/O. LATE PARACKAL DEVASSY VARGHESE, ADVOCATE,
RESIDING AT PARACKAL BHAVAN, 44/2401, FRIENDS LANE -4,
DESHABHIMANI VIA, KALOOR, ERNAKULAM,
COCHIN-682 017.**

BY PARTY IN PERSON

RESPONDENT(S)/DECREE HOLDER NAMED IN E.P:

**LINSON P. VARGHESE, AGED 39 YEARS,
S/O. LATE PARACKAL DEVASSY VARGHESE, CIVIL CONTRACTOR,
RESIDING AT PARACKAL BHAVAN, 44/2401, FRIENDS LANE -4,
DESHABHIMANI VIA, KALOOR, ERNAKULAM,
COCHIN-682 017.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 17-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE PLAINT IN OS 131/14
- EXT.P2: TRUE COPY OF THE JUDGMENT AND DECREE IN OS 934/09
- EXT.P3: CARBON COPY OF THE ORDER IN EP NO. 199/14 IN OS NO. 934/09
- EXT.P4: CARBON COPY OF THE ORDER IN EA 415/15 IN EP 199/14 IN OS 934/09
- EXT.P5: TRUE COPY OF THE EP 199/14 IN OS 934/09
- EXT.P6: TRUE COPY OF THE EA 518/15 IN EP 199/14 IN S 934/09 FOR
DETERMINATION OF QUESTIONS
- EXT.P7: TRUE COPY OF THE EA 519/15 IN EP 199/14 IN OS 934/09 FOR STAY OF
EP 199/14.
- EXT.P8: THE PHOTOGRAPHS PRODUCED HEREIN SHOWING FRONT DOOR OF
THE HOUSE AND THE DOOR OF THE OFFICE.
- EXT.P8(a): THE PHOTOGRAPHS PRODUCED HEREIN SHOWING FRONT DOOR OF
THE HOUSE AND THE DOOR OF THE OFFICE.
- EXT.P8(b): THE PHOTOGRAPHS PRODUCED HEREIN SHOWING FRONT DOOR OF
THE HOUSE AND THE DOOR OF THE OFFICE.
- EXT.P8(c): THE PHOTOGRAPHS PRODUCED HEREIN SHOWING FRONT DOOR OF
THE HOUSE AND THE DOOR OF THE OFFICE.
- EXT.P8(d): THE PHOTOGRAPHS PRODUCED HEREIN SHOWING FRONT DOOR OF
THE HOUSE AND THE DOOR OF THE OFFICE.
- EXT.P8(e): THE PHOTOGRAPHS PRODUCED HEREIN SHOWING BACK DOOR OF
THE HOUSE.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2860 of 2015

Dated this the 17th day of December, 2015

J U D G M E N T

Petitioner and the respondent are brothers. The former filed OS.934 of 2009 against the latter and their mother for a perpetual injunction prohibiting them from evicting him from the plaint-C schedule room. The matter was settled between the parties and a compromise petition was filed. The court recorded it and passed a compromise decree. On the allegation that by the compromise the petitioner undertook to vacate the plaint-C schedule room and handover its possession to the respondent and their mother, the respondent filed EP.199 of 2014 for execution of the compromise decree. The petitioner who appeared in person raised two contentions. One, the mother is not a party to the execution petition and two, he did not undertake to vacate the room. His contentions were rejected by the executing court and it ordered delivery of the room under the supervision of a commissioner. The court, in EA.415 of 2015 filed by the respondent, ordered police assistance to execute the decree. It also empowered the ameen to break open the lock. This is challenged in

this OP.

2. The petitioner who is a practising advocate appears in person.

3. His first submission is that the decree does not direct him to surrender vacant possession to the respondent, who has filed the execution petition. The second submission is that the mother is not a party to the execution petition.

4. It is seen from the plaint in the suit that the plaint-C schedule room is a part of the building on the land belonging to the mother, who was the second defendant. The title deed which was produced before me shows that the mother is the only vendee in the document. The petitioner has no right to claim any right in it. This is one of the relevant clauses in Ext.P2 compromise petition. "The petitioner undertakes to vacate the plaint-C schedule room within two months". The other relevant clause is clause No.5 which says that if the petitioner fails to vacate the room the respondent and their mother are entitled to get the decree executed through court.

5. The petitioner submits that he has not

undertaken to vacate the property but has only undertaken that he would not conduct his office in the plaint-C schedule room. I cannot agree. When clauses 1 and 5 are read together it is clear that he undertook to surrender vacant possession to the respondent as well as their mother. The petitioner admits that he has not removed all the articles from the room. The court has to execute the decree as it stands. The executing court cannot go behind it. In this view of the matter the executing court was perfectly justified in ordering his eviction. I do not find anything wrong in the impugned order.

In the result, this OP is dismissed.

If the petitioner does not surrender vacant possession before 06.01.2016 the executing court shall implement the order forthwith.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge