

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

OP(C).No. 3041 of 2015 (O)

(E.P.NO.75/2014 IN O.S.NO.753/2008 OF ADDITIONAL MUNSIF COURT, ALAPPUZHA)

PETITIONER(S):

- 1. OMANAKKUTTYAMMA, AGED 71 YEARS,
D/O.PARVATHY AMMA, RESIDING AT THAYYIL HOUSE,
PUNNAMADA WARD, KOTTAMKULANGARA, AVALOOKKUNNU P.O.,
ALAPPUZHA- 688 006.**
- 2. AMMINIKKUTTY, AGED 39 YEARS,
D/O.OMANAKKUTTYAMMA, RESIDING AT THAYYIL HOUSE,
PUNNAMADA WARD, KOTTAMKULANGARA, AVALOOKKUNNU P.O.,
ALAPPUZHA- 688 006.**

**BY ADVS.SRI.K.R.ARUN KRISHNAN
SRI.LINDONS C.DAVIS**

RESPONDENT(S):

- 1. RATNAMMA, AGED 75 YEARS,
W/O.GOPINATHAN NAIR, RESIDING AT THAYYIL HOUSE,
PUNNAMADA WARD, KOTTAMKULANGARA, AVALOOKKUNNU P.O.,
ALAPPUZHA- 688 006.**
- 2. CHANDRASEKHARAN, AGED 46 YEARS,
S/O.RATHNAMMA, RESIDING AT THAYYIL HOUSE,
PUNNAMADA WARD, KOTTAMKULANGARA, AVALOOKKUNNU P.O.,
ALAPPUZHA -688 006.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 3041 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- A TRUE COPY OF DECREE IN OS NO.753 OF 2008 ON THE FILE OF THE ADDITIONAL MUNSIFF COURT, ALAPPUZHA DATED 28.2.2013
- P2- A TRUE COPY OF THE PLAN APPENDED WITH EXT P1 DECREE ON THE FILE OF THE ADDITIONAL MUNSIFF COURT, ALAPPUZHA DATED 8.12.2010
- P3- A TRUE COPY OF THE EP NO.75 OF 2014 IN OS NO.753 OF 2008 ON THE FILE OF THE ADDITIONAL MUNSIFF COURT, ALAPPUZHA DATED 7.1.2014
- P4- A TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONERS IN EP NO.75 OF 2014 IN OS NO.753 OF 2008 ON THE FILE OF THE ADDITIONAL MUNSIFF COURT, ALAPPUZHA DATED 26.9.2015
- P5- A TRUE COPY OF EA NO. OF 2015 IN EP NO.75 OF 2014 IN OS NO.753 OF 2008 ON THE FILE OF THE ADDITIONAL MUNSIFF COURT, ALAPPUZHA DATED 8.12.2015
- P6- A TRUE COPY OF THE MAHAZAR REPORT BY ADVOCATE COMMISSIONER IN OS NO.853 OF 2008 ON THE FILE OF THE ADDITIONAL MUNSIFF COURT, ALAPPUZHA DATED 4.12.2008

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. ABRAHAM MATHEW, J.

O.P.(C)No.3041 of 2015

Dated this the 14th day of December, 2015

J U D G M E N T

The petitioners are the judgment debtors in OS 753 of 2008 of Additional Munsiff Court, Alappuzha. The respondents-decree holders filed EP 75 of 2014. The decree directs the petitioners to demolish a wall they have put up in the property of the respondents. It is submitted that the executing court has directed the execution of the decree with the help of police. The petitioners's case is that there is no executable decree.

2. Heard.

3. I have gone through the decree that is sought to be executed. I cannot agree that there is no executable decree. It is an executable one. The learned counsel for the petitioners submits that the one cent of property which is described in the counter claim schedule is not separately shown in the plan attached to the decree. That may be correct. But the wall that has been found to have been put

up by the respondents is in the plot marked K L M H I K which is the property covered by the title deed of the respondents. There cannot be any dispute with regard to the identity of the property. The mere omission to mark the one cent described in the plaint schedule is no reason to refuse to execute the decree.

4. The learned counsel submits that there may be an attempt to demolish the wall of the petitioners which is not situated in the disputed property. To avoid it the learned Munsiff shall appoint a commissioner to supervise the execution of the work. The commissioner shall ensure that unnecessarily no part of the petitioners wall which is not in disputed property is demolished.

With the above observation this OP is closed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge