

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

OP(C).No. 2985 of 2014 (O)

PETITIONER(S)/JUDGMENT DEBTOR NO.2:

**G.KAALIMUTHU, AGED 62 YEARS,
S/O. GURUSWAMY, RESIDING AT M.P.X 696, K.D.H. VILLAGE,
MUNNAR.**

BY ADV. SRI.BABU PAUL

RESPONDENT(S)/DECREE HOLDER/JUDGMENT DEBTGROR NO.1:

**TATA TEA LTD.,
MUNNAR, PRESENTLY DUE TO THE CHANGE OF
NAME TATA GLOBAL BEVERAGES LTD., KOLKOTA ,
WITH SPECIAL PROJECT OFFICE, G.H. COMPLEX,
MUNNAR-685 612.**

**BY ADVS. SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 2985 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

P1. TRUE COPY OF THE E.P. NO. 7/2012 IN O.S. NO. 213/2006.

P2. TRUE COPY OF THE I.A. NO. 494/13 IN O.S. NO. 213/2006.

P3. TRUE COPY OF THE REPORT OF THE AMIN DT. 11/11/14.

P4. THE TRUE COPY OF THE E.A. NO. 118/2014.

P5. THE TRUE COPY OF THE ORDER IN E.A. NO. 118/2014 DT. 25-11-14.

P6. THE TRUE COPY OF THE ADVANCE APPLICATION E.A. NO. 125/14.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

SUNIL THOMAS, J.

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O.P(C).No.2985 of 2014

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Dated this the 7th day of August, 2015

JUDGMENT

This petition is filed by the judgment debtor in O.S.No.213 of 2006 of the Munsiff Court, Devicolam, aggrieved by Ext.P5 order dated 25.11.2014 in E.A.No.118 of 2014.

2. The decree holder obtained a decree for recovery of possession of an item of property described as a room bearing MGP.IX/696 in Munnar Panchayath. In execution of decree, delivery was ordered and delivery warrant was issued to the Amin. Amin went to the spot and thereafter filed a report stating that on 10.11.2014, when he went to the spot, the building with its number referred to in the decree could not be identified. However, he has noted four rooms XI/388, XI/529, 12/74 and 9/704. He also reported that instead of 8 rooms as mentioned in the decree, there were 12 rooms. One woman who was available in the room also raised objection. Thereupon, decree holder filed Ext.P4 application seeking a direction to the Secretary, Munnar Grama Panchayath to identify the decree schedule building bearing MGP IX/696 for the period 1997-2002 and also for ancillary reliefs including delivery with the help of women police. The court below by the impugned order allowed the prayers as sought for. The Secretary, Munnar

Grama Panchayath was directed to render necessary assistance to identify the decree schedule building. Amin was also granted permission to break open the door of decree schedule building if necessary, on proper identification. S.H.O., Munnar was directed to render necessary police help including Women Civil Police Officer. This is assailed in this petition.

3. Heard both sides and examined the records.

4. The decree indicates that the property is described as one line unit in 8 rooms bearing No.M.P. IX/696 situated near High Range Club in Munnar. The boundaries of the property are also mentioned. The northern boundary of the decree schedule property is referred as unit No.M.P.IX/695 and the southern boundary is M.P.IX/697. Evidently, the property that is to be delivered is identified with well defined specific boundaries. It is the settled legal position that a property is identified by its four boundaries. The boundaries of the disputed property are available in the decree. The report of the Amin shows that he has gone to the plaint schedule property, identified the disputed room with reference to the boundaries. However, the dispute arose on essentially two aspects. One was regarding the building number and the other relating to the number of rooms in that building.

5. Then the only question that has to be resolved is regarding the building number as well as the number of rooms. I do not feel that the mere fact that instead of 8 rooms as mentioned in the decree, 12 rooms are available. That by itself, may not be a crucial aspect especially, if the building to be delivered is identified with reference to four boundaries. Hence the question that narrows down is whether the building as seen by the Amin was the same building, regarding which the decree has been granted.

6. However, the prayer sought in the I.A. was to direct the Secretary of the Grama Panchayath to assist the Amin in identifying the building and to deliver the property. This, to my mind, is not permissible. The question of identifying the building at the spot cannot be relegated to the Secretary of the Grama Panchayath. It is for the decree holder to establish before Court with reliable evidence, that the room which was found by the Amin on physical inspection with reference to its number, is the same building referred to in the decree. Thereupon, the Court shall pass appropriate orders. Hence, the order to that extent is not sustainable. The question whether police help is to be granted or not arises only if there is resistance regarding execution and that too, based on the Amin's report at appropriate stage.

7. Petitioner has a specific case that the execution petition was advanced from 07.01.2015 to 15.12.2014 and thereafter, the order was passed without notice to him. The copy of Ext.P4 available on record does not indicate that copy of the I.A. was served on the petitioner. However, as of now the petitioner has notice regarding the I.A., which forms part of this original petition.

8. In the above circumstances, to keep the records straight, the impugned order is liable to be set aside. However, the court below shall grant an opportunity to the judgment debtor/petitioner to file an objection to the I.A. from which the present order arises and thereafter conduct such enquiry, permitting the decree holder to let in evidence regarding the identity of the building that is sought to be evicted and to establish whether the building regarding which decree holder sought delivery, is the same as seen by the Amin. After conducting due enquiry, Court shall proceed to pass fresh order.

The original petition is disposed of as above. Court below shall expedite the execution proceedings, considering the fact that the matter has been pending for quite long time.

Sd/-

SUNIL THOMAS
Judge

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