



2025:KER:27815

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 26TH DAY OF MARCH 2025 / 5TH CHAITHRA, 1947OP(C) NO. 1620 OF 2024

EP NO.150 OF 2011 OF MUNSIF COURT, KARUNAGAPPALLY

PETITIONER/S:

- 1 CLETUS
AGED 51 YEARS
S/O FRANCIS, KANICHERIL, ARINALLOOR, SOUTH, THEVALAKKARA,
KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 2 SEBASTIAN
AGED 51 YEARS
S/O. FRANCIS, KANICHENL, ARINALLOOR SOUTH, THEVALAKKARA,
KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 3 JOSEPH CARLOS
AGED 45 YEARS
S/O CARLOS, LIJO BHAVANAM, ARINALLOOR MART, ARINALLOOR PO,
THEVALAKKARA, KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 4 LEELA
AGED 40 YEARS
W/O JOSEPH CARLOS, LIJO BHAVANAM, ARINALLOOR MART,
ARINALLOOR PO, THEVALAKKARA, KARUNAGAPPALLY, KOLLAM, PIN -
695018
- 5 SNEHAMMA FRANKLIN @ MERCY
AGED 60 YEARS
W/O FRANKLIN, AIKKARAVILA THEKKATHIL, ARINALLOOR SOUTH P O,
THEVALAKKARA KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 6 SEEJA
AGED 35 YEARS
W/O. YESUDASAN (NIKHIL) AIKKARAVILA THEKKATHIL ARINALLOOR
SOUTH. ARINALLOOR PO THEVALAKKARA. KARUNAGAPPALLY, KOLLAM,
PIN - 695018
- 7 SOOSAMMA
AGED 42 YEARS
W/O EARNEST ANTONY, JIJO BHAVAN, ARINALLOOR.P O THEVALAKKARA



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KARUNAGAPPALLY, KOLLAM, PIN - 695018

- 8 LATHA @ PUSHPALATHA
AGED 51 YEARS
W/O JAMES ANTONY, VELUTHEDATHUVILAVIL, ARINALLOOR MURI,
ARINALLOOR. PO, THEVALAKKARA KARUNAGAPPALLY, KOLLAM, PIN -
695018
- 9 JIJIMOL, AGED 47 YEARS
D/O. LAWRENCE, ANIKKUZHIYIL, ARINALLOOR MURI, ARINALLOOR P.O
THEVALAKKARA, KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 10 JASSY
AGED 70 YEARS
W/O MILQUARE THOMAS OTTAPLAVILA, ARINALLOOR MURI, ARINALLOOR
P.O , THEVALAKKARA, KARUNAGAPPALLY, KOLLAM, PIN - 695018
- BY ADVS.
HARISH GOPINATH
SURUMI NAZAR

RESPONDENT/S:

- 1 STANCY EDWARD
EDWARD BHAVAN, ARINALLOOR PO THEVALAKKARA. KARUNAGAPPALLY,
KOLLAM, PIN - 695018
- 2 FR. AJAY KUMAR
EDWARD BHAVAN, ARINALLOOR PO THEVALAKKARA KARUNAGAPPALLY,
KOLLAM, PIN - 695018
- 3 ANIL KUMAR
EDWARD BHAVAN, ARINALLOOR PO THEVALAKKARA KARUNAGAPPALLY,
KOLLAM, PIN - 695018
- 4 ANNIE MARY
EDWARD BHAVAN, ARINALLOOR PO, THEVALAKKARA. KARUNAGAPPALLY,
KOLLAM, PIN - 695018
- 5 SANTHOSH
S/O GABRIEL THUNDAYYATHU HOUSE, ARINALLOOR, THEVALAKKARA
KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 6 DAISY RAJAN
THUNDAYYATHU HOUSE, ARINALLOOR, THEVALAKKARA KARUNAGAPPALLY,



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KOLLAM, PIN - 695018

- 7 JOLLY (DELETED)
W/O SEBASTIAN, KANICHERIL, ARINALLOOR SOUTH, THEVALAKKARA,
KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 8 RAJAN (DELETED) S/O BELTHAZER,
OTTAPLAVIL, ARINALLOOR SOUTH, ARINALLOOR.P O THEVALAKKARA
KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 9 LUCY *(DELETED)*
W /O RAJAN, S/O BELTHAZER, OTTAPLAVIL, ARINALLOOR SOUTH
ARINALLOOR.P O THEVALAKKARA KARUNAGAPPALLY, KOLLAM, PIN -
695018
- 10 EARNEST (DELETED)
S/O ANTONY, JIJO BHAVAN ,ARINALLOOR.P O THEVALAKKARA
KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 11 JIJO (DELETED)
S/O EARNEST , ANTONY JIJO BHAVAN ,ARINALLOOR.P O
THEVALAKKARA KARUNAGAPPALLY, KOLLAM, PIN - 695018
- 12 ALOCIOUS (DELETED);
S/O KUTTIYIL PADINJATTATHIL ARINALLOOR MURI ARINALLOOR.P O
THEVALAKKARA KARUNAGAPPALLY, KOLLAM *(RESPONDENTS 7 TO
12 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
PETITIONER AS PER ORDER DATED 30.07.2024 IN IA 1/2024 IN OPC
1620/2024.) PIN - 695018

BY ADVS.
K.P.ANTONY BINU
SANIL JOSE (K/63/2013)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 26.03.2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT(Dated this the 26th day of March 2025)

Petitioners are additional judgment debtors in E.P.No. 150 of 2011 in O.S.No.191 of 2007 on the files of Munsiff Court, Karunagappally. Respondent Nos.1 to 4 are the decree holders therein.

2. The suit was filed by Respondent Nos.1 to 4 as plaintiffs for a permanent prohibitory injunction and mandatory injunction. In the suit, there were only 3 defendants. The 1st defendant passed away, and defendants Nos.2 and 3 contested the suit. Defendants filed a written statement contending that the 1st defendant and his wife jointly owned the property as per Deed No.3962/1956, they are residing and using the pathway through the property of the plaintiffs, and they were not obstructed by the plaintiffs' predecessor, at any point of time. The defendants claimed that the counterclaim 'C' schedule pathway is the only



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way to access their property and is also used by many other persons residing further east of the properties of the plaintiffs and defendants. The trial court, decreed the suit and the plaintiffs' exclusive possession and enjoyment of plaint schedule property was declared. The defendants were directed to reinstall the western fencing of the plaint schedule property in its original position by reconstructing the same, which had been removed at the spot at a distance of 6 ft. towards the south from the northwestern corner of the plaint schedule property.

3. The decree holders filed E.P. No.150 of 2011, to appoint an Advocate commissioner to execute the decree of mandatory injunction to reinstall the western fencing removed by the defendants, to recover the cost, and to detain the judgment debtors in civil prison. The decree holders also filed an application to implead the relatives/neighbours of judgment debtors on the



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allegation that they violated the prohibitory injunction. The said I.A. is numbered as E.A.No.107 of 2011. E.A.No.108 of 2021 was filed to amend the execution application to incorporate a prayer to execute the decree of a permanent prohibitory injunction by detaining judgment debtors in civil prison, attaching their properties, and closing the newly constructed pathway, and by installing western fencing. The execution court allowed the impleading as well as the amendment application. Thereafter, the petitioners entered appearance and filed a detailed objection pointing out that they were not made parties to the suit and had not committed any disobedience of the decree.

4. It was also contended that the decree-holder himself had cut and removed the trees and made false allegations against the Judgment debtors. The execution court, by Ext.P14, on an erroneous consideration of the facts and circumstances of the



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case, allowed the E.P.No.150 of 2011 and the judgment debtors and additional judgment debtors were sent to civil prison for a period of one month, and the decree-holder was permitted to close the newly constructed way by installing western fencing on its northern end. Ext.P14 is challenged by additional judgment debtor Nos. 4,5,7 to 9, 12, 14, 16, 18 and 19 in E.P.No.150 of 2011, through this O.P.(C).

5. An application is filed as I.A.No.2 of 2024 in I.A.No. 3 of 2024 to vacate the interim order granted by this court, by which Ext.P14 was stayed. In the affidavit, it is stated that during the pendency of the suit, the defendants and their henchmen committed trespass into the plaint schedule property and forcibly formed a pathway having a width of 3 ft and length of 15 meters in an east-west direction on the northern side of the property.



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6. I.A.No.1105 of 2007 was filed under Order 39 Rule 2A, and pending enquiry, the suit was tried and decreed. Since the judgment debtors failed to comply with the directions, E.P.No.150 of 2011 was filed for executing the decree. The commissioner and Amin deputed for the execution of the decree came to the property on 05.10.2016, and the 2nd defendant and their men physically obstructed them, and this was reported to the court.

7. On 6.10.2016 the judgment debtors and their men again committed trespass into plaint schedule property and removed the fencing. Thereafter, on 14.10.2016, the decree was executed by Amin and an Advocate Commissioner by constructing a compound wall to a length of 1.20-meter portion, which is 6 ft south from the north-western corner of the plaint scheduled property. On 15.10.2016 at 9 pm, the judgment debtors



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and additional judgment debtors trespassed into the property again, cut and removed trees and formed a new pathway. This was complained to the police, and a crime was registered as Crime No.171 of 2016 against judgment debtors and additional judgment debtors. The petitioner, therefore, filed E.A.No.107 of 2021, for impleading the additional judgment debtor Nos.4 to 19, as they wilfully violated the decree and opened a new pathway.

8. E.A.No.108 of 2021 was filed to amend the execution petition, which was allowed on 26.11.2021. The execution court, thereafter, conducted an elaborate enquiry and evidence was adduced by both the parties. PW Nos.1 to 5 were examined, Exts.A1 to 5 marked, and the 5th additional Judgment debtor was examined as DW1 and Ext.B1 and Ext.Nos.C1 and C2 report of the Commissioner was marked. The original judgment debtors remained ex-parte. Based on evidence adduced, the execution



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court, found that the judgment debtors committed flagrant violation of decree and demolished the fence and opened a new pathway.

9. Challenging Ext.P14 order, the petitioners herein filed O.P.(C) No.1091 of 2024 and secured an interim stay. On 18.06.2024, a memo was filed stating that the petitioners were not willing to continue with O.P.(C) and prayed that reserving their right to approach this court again, the O.P. be dismissed as infructuous. Acting on the memo, this court dismissed the O.P.(C) as not pressed by Ext.R1(a) without giving liberty for approaching again.

10. Suppressing the dismissal of the said O.P.(C), this Petition was filed on 26.7.2024 by a few of the judgment debtors, who filed O.P.(C) No.1091 of 2024 and obtained a stay of Ext.P14, to the extent it directed arrest and detention in civil



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prison. After obtaining the stay order, on 7.10.2024, the petitioners again committed trespass and demolished the western boundary. An FIR is registered as FIR No.768 of 2024 u/s 329(3), 324(4), 189(2), 191(2) and 190 of BNS, 2023. This was reported to the execution court, and thereafter, the demolished fencing was reconstructed on 13.10.2024 under police surveillance. At that time, the police officials were also obstructed, and another crime was registered as FIR No.779 of 2024, registered under Sections 189(2), 191(2), 126(2), 221 and 190 BNS.

11. On 17.10.2024, the petitioners again committed trespass and demolished western fencing, and another crime was registered as FIR No.799/24. Thus, it is evident that the judgment debtors are in the habit of deliberately and wilfully violating the



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decree passed by this court, and therefore, no interference is warranted with Ext.P14.

12. The counsel for the respondent points out that it is suppressing the dismissal of the O.P.(C) No.1091 of 2024, that was filed challenging the very same Ext.P14 and having not pressed the case and dismissed as not pressed, this O.P.(C) is filed for the same relief and obtained an interim stay. He further points out that in the affidavit in support of O.P., in paragraph No.2, the 1st petitioner sworn in that he has not filed any other petition before this court similar to the subject matter of this petition. This amounts to perjury also. Therefore, he prayed that O.P.(C) is only to be dismissed as no liberty to approach again, was given when O.P.(C.) No.1091 of 2024 was dismissed.

13. I find force in the contention raised by the counsel for the respondents. Order 23 CPC deals with **withdrawal and**



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adjustment of suits. (i) At any time after the institution of a suit, the plaintiff may as, against all or any of the defendants, abandon his suit or abandon a part of his claim. Subrule (3) to Order 23 Rule 1 prescribed that if the court is satisfied (a) that the suit must fail by the reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or a part of the claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim, with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim. Sub rule (4) prescribed where the plaintiff (a) abandons any suit or a part of the claim under sub rule (1) or (b) withdraw from a suit or part of claim without the permission referred to in sub rule (3), he shall be liable for such cost as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.



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Therefore, once the suit is dismissed as not pressed and no liberty is granted to the petitioners to approach this court again, challenging the very same impugned order, the O.P.(C) filed again is not maintainable in view of the specific bar under Order 23 CPC. Therefore, I am of the considered opinion that this O.P.(C) is not maintainable before this court, and hence, it is dismissed.

Sd/-
BASANT BALAJI
JUDGE

dl/



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APPENDIX OF OP(C) 1620/2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE JUDGMENT DATED 18-10-2011 IN OS NO 191/2007 ON FILE OF THE MUNSIF COURT KARUNAGAPPALLY
Exhibit P2	TRUE COPY OF THE EXECUTION PETITION IN EP NO 150/2011 IN OS NO 191/2007 OF MUNSIF COURT KARUNAGAPPALLY
Exhibit P3	TRUE COPY OF THE IMPEADING PETITION EA NO 107/2011 IN EP 150/2011 IN OS NO 191/2007 OF MUNSIF COURT KARUNAGAPPALLY
Exhibit P4	TRUE COPY OF THE EA NO 108/2021 IN EP 150/2011 IN OS NO 191/2007 OF MUNSIF COURT KARUNAGAPPALLY
Exhibit P5	TRUE COPY OF THE ORDER IN EA NO 107/2021 IN EP 150/2011 IN OS NO 191/2007 OF MUNSIF COURT KARUNAGAPPALLY
Exhibit P6	TRUE COPY OF THE ORDER IN EA 108/2021 IN EP 150/2011 IN OS NO 191/2007 OF MUNSIF COURT KARUNAGAPPALLY
Exhibit P7	TRUE COPY OF THE OBJECTION FILED BY THE JUDGMENT DEBTORS IN EP 150/2011 IN OS 191/2007
Exhibit P8	TRUE COPY OF THE TAX RECEIPT DATED 19-06-2024 IS ISSUED IN FAVOUR OF 1ST PETITIONER
Exhibit P9	TRUE COPY OF THE TAX RECEIPT DATED 19-06-2024 ISSUED IN FAVOUR OF THE 2ND PETITIONER
Exhibit P10	TRUE COPY OF THE TAX RECEIPT DATED 6-7-2023 ISSUED IN FAVOUR OF THE 3RD PETITIONER
Exhibit P11	TRUE COPY OF THE TAX RECEIPT DATED 16-01-2024 ISSUED IN FAVOUR OF MERCY
Exhibit P12	TRUE COPY OF THE TAX RECEIPT DATED 12-8-2023 ISSUED IN FAVOUR OF 8TH RESPONDENT
Exhibit P13	TRUE COPY OF THE TAX RECEIPT DATED 11-10-2023 IN FAVOUR OF THE 9TH RESPONDENT



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Exhibit P14

TRUE COPY OF THE ORDER DATED 12-4-2024 IN EP
150/2011 IN OS 191/2007 OF MUNSIF COURT,
KARUNAGAPPALLY

RESPONDENT EXHIBITS

Exhibit R1 (a)

TRUE COPY OF THE JUDGMENT IN OP© NO. 1091/2024
DATED 18-06-2024

Exhibit R1 (b)

TRUE COPY OF THE FIR NO. 768/2024 OF CHAVARA
THEKKUMBHAGAM POLICE STATION

Exhibit R1(C)

TRUE COPY OF THE FIR NO. 779/2024 OF CHAVARA
THEKKUMBHAGAM POLICE STATION REGISTERED
U/SECTIONS 189 (2), 191(2), 126(2), 221, 190 OF
BNS AGAINST THE PETITIONERS

Exhibit R1(d)

TRUE COPY OF THE FIR NO. 799/2024 OF CHAVARA
THEKKUMBHAGAM POLICE STATION ALONG WITH THE
COMPLAINT