

Devadas Vs. Chandran

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Court : Kerala

Decided On : Dec-31-2012

Judge : HONOURABLE MR.JUSTICE THOMAS P.JOSEPH

Appellant : Devadas

Respondent : Chandran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH
MONDAY, THE 31ST DAY OF DECEMBER 2012 10TH POUSHA 193 CRP.No. 476 of 2012 () -----
EP.NO.255/2011 IN OS.276/1996 of ADDITIONAL MUNSIF COURT, ALAPPUZHA REVISION PETITIONER(S)/1ST
JUDGMENT DEBTOR/1ST DEFENDANT: ----- DEVADAS,
VADAYAKKUPURATH, THOTTAPPALLY MURI, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT. BY ADVS.SRI.JOMY
GEORGE SRI.SEBASTIAN THOMAS RESPONDENT(S)/DECREE HOLDERS & JUDGMENT DEBTORS 2 TO
4/PLAINTIFFS: ----- 1. CHANDRAN, S/O RAGHAVAN, COLONY 74
THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 2. SOMAN S/O RAGHAVAN, COLONY 74
THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 3. JAGADAMMA, W/O RAVEENDRAN,
COLONY 74 THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 4. MOHANAN, S/O RAGHAVAN,
COLONY 74 THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 5. VALSALA, W/O SOMAN,
COLONY 74 THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 6. KUSUMAM, W/O
VIJAYAPPAN, COLONY 74 THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 7. BABY, W/O
SIVADASAN, COLONY 74 THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 CRP NO.476/201

8. SOBHANA, W/O SURESH, VAZHAVILAYIL HOUSE ULANAD, PANDALAM, PATHANAMTHITTA DISTRICT 68950
9. KARTHIKEYAN, S/O RAGHAVAN, COLONY 74 THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT
68856 10. UTHAMAN, S/O RAGHAVAN, COLONY 74 THOTTAPPALLY, PURAKKAD VILLAGE, ALAPPUZHA
DISTRICT 68856 11. PRASEETHA, W/O DEVADAS, VADAYAKKUPURATH, THOTTAPPALLY MURI, PURAKKAD
VILLAGE, ALAPPUZHA DISTRICT 68856 12. ANANDAVALLY MUNDAKATHIL, VADAYAKKUPURATH,
THOTTAPPALLY MURI, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT 68856 13. RAMAKRISHNAN, S/O AYYAPPAN,
ARAYANTE PARAMBIL, THOTTAPPALLY MURI, PURAKKAD VILLAGE, ALAPPUZHA DISTRICT (DIED) 68856 R1 BY
ADV. SRI.K.V.SADANANDA PRABHU THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31-12-
2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: THOMAS P. JOSEPH, J.

----- C.R.P. No.476 of 2012 ----- Dated this the 31st day of
December, 2012. ORDER The order dated 18.09.2012 in E.P.No.255 of 2011 in O.S.No.276 of 1996 of the
Additional Munsiff's Court, Alappuzha is under challenge in this civil revision at the instance of petitioner/1st
judgment debtor.

2. Respondents/decree holders obtained a decree for prohibitory injunction restraining the petitioner and
other judgment debtors from trespassing into the plaint schedule property, identified by the Advocate
Commissioner and marked in Ext.C1(b), plan as ABCDEF plot. The decree also restrain petitioner and other

judgment debtors from causing obstruction to the decree holders carrying out necessary repairs to the shed in the suit property.

3. Respondents filed E.P.No.255 of 2011 alleging that when they put up a fence on the AF line, that was obstructed by the petitioners and others and hence requested the executing court to depute an Amin with the assistance of a Surveyor for construction of fence or compound wall along the AF line and if necessary to order delivery of ABCDEF plot to the respondents. CRP No.476/201

5. That application was opposed by the petitioner on various grounds including that the decree does not provide for fence or compound wall, construction of fence or compound wall would affect right of access of the petitioner and others and that the decree does not provide for delivery of possession of the property.

6. The executing court overruled the objections and passed the impugned order. One Gopinatha Kurup, stated to be a private Surveyor was appointed to survey the property and identify the same and execute the decree as prayed for. The said order is under challenge.

7. Learned counsel for the petitioner has reiterated the contentions petitioner and others advanced in the execution court.

8. In response it is contended by the learned counsel for the respondents that so far as the decree is for prohibitory injunction restraining the petitioner and other judgment debtors from trespassing into the plaint schedule property identified in Ext.C1(b), plan as ABCDEF plot, that recognizes possession of the respondent in the said plot and hence either by putting up a fence or compound wall along the boundary the respondents are entitled to protect their possession of the property. According to the learned counsel, a specific provision in the decree for construction of fence or compound wall is not required. CRP No.476/201

9. So far as the prayer for ordering delivery of possession in E.P.No.255 of 2011 is concerned, it is argued by the learned counsel that if subsequent to the institution of the suit, petitioner or any other judgment debtors have forcibly taken possession of a portion of the plaint schedule property, it is well within the power of the executing court to grant delivery of possession since the change is effected after institution of the suit. The learned counsel has referred to Sec.52 of the Transfer of Property Act where it is stated that if during the pendency of the suit the property which is directly and specifically in question is otherwise dealt with by any of the parties to the suit, such dealings with the property would be subject to the result of the suit. Reliance is also placed on the decisions in *Narain Singh v. Imam Din* and another (AIR 193.Lahore

978) and *Mohd. Ismail v. Ashiq Husain* (AIR 197.Allahabad 648).

10. Having heard the learned counsel on both sides and gone through the copy of decree, I am unable to accept the contention of the petitioner that since the decree does not specifically provide for putting up of fence or compound wall it is not within the power of the executing court to permit so. The reason is that the decree enables the respondents to protect their possession of the suit property, identified by the Advocate Commissioner in Ext.C1(b), plan as ABCDEF plot. Such protection can be by putting up a fence or compound wall. It is idle for the petitioner to contend in the execution proceeding that he has right of access through the property. That contention was required to be raised in the suit. That was either not done or done but found against. CRP No.476/201

11. So far as delivery of possession is concerned, since the impugned order does not say so I do not find reason to go into that question. It is open to the parties to contend on the sustainability of that relief in the execution petition having regard to the facts and circumstances and the point of law involved.

12. Another objection raised by the petitioner is that though Ext.C1(b), plan was prepared by the Taluk Surveyor, a private Surveyor has now been appointed. Having heard the learned counsel on both sides I am inclined to think that the appropriate course is to appoint the Taluk Surveyor since Ext.C1 (b), plan was prepared by the Taluk Surveyor.

13. Identification of the property has to be made by the Taluk Surveyor in accordance with Ext.C1(b), plan. To that extent above stated the impugned order is required to be modified. Resultantly, the civil revision is allowed in part modifying the order dated 18.09.2012 in E.P.No.255 of 2011 in O.S.No.276 of 1996 of the Additional Munsiff's Court, Alappuzha as under: i. It is directed that instead of the Surveyor appointed by the executing court, it shall appoint the Taluk Surveyor to identify the suit property in accordance with Ext.C1(b), plan. ii. The contention raised by the petitioner that the respondents have no right to put up fence or compound wall for protection of the plaint schedule property identified in Ext.C1(b) as ABCDEF is rejected. CRP No.476/2012 5 iii. The question whether delivery of possession if any could need be ordered by the executing court is left open to be decided by that court after hearing both sides. iv. The executing court shall pass appropriate orders concerning the reliefs prayed for in the execution petition and order execution of the decree in the presence of the Advocate Commissioner, assisted by the Taluk Surveyor. All pending interlocutory applications will stand dismissed. THOMAS P.JOSEPH, Judge. cks

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