

Kunju Kunju Chandran Vs. Raghavan

Kunju Kunju Chandran Vs. Raghavan

SooperKanoon Citation : sooperkanoon.com/726376

Court : Kerala

Decided On : Jun-06-2005

Reported in : AIR2005Ker317; 2005(3)KLT644

Judge : J.M. James, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : C.R.P. No. 1953 of 2002

Appellant : Kunju Kunju Chandran

Respondent : Raghavan

Advocate for Def. : K.P. Dandapani, Adv.

Advocate for Pet/Ap. : George Varghese Perumpallikuttiyl, Adv.

Judgement :

ORDER

J.M. James, J.

1. The Decree holder in E.A. No. 16/2001 in E.R. No. 2/1998, O.S. No. 231/1994, on the file of Munsiff Court. Mavelikkara, is the revision petitioner, A decree of mandatory injunction was granted to the revision petitioner, directing the Judgment Debtors to restore the decree scheduled property to its original position. E.P. No.

2/1998 was filed for compliance of the decree. The E.P. was dismissed, for no commission report was appended with the decree to prove prior position of the scheduled properties and therefore, it was not possible to execute the decree granted. Against that, a review application. E. A. 16/2001, was filed. That also was dismissed. Hence, this Civil Revision Petition.

2. I heard both sides. The main contention of the Judgment Debtor, respondent, in this revision is that, as there is no plan or commission report forming part of the decree, it will not be possible to identify the pathway in question as on 1/7/1994. Hence, the decree cannot be executed. The counsel for the revision petitioner, on the other hand, submits that Exts.C1 and C2, the two commission reports in the suit, clearly describe the length and width of the pathway. The same are sufficient to identify the pathway for executing the decree. The trial court had discussed elaborately in its judgment, the details contained in Exts.C1 and C2. Hence, the counsel contends that the dismissal of the E.P. as well as the review petition are against the facts and law.

3. A learned Single Judge of this Court in *Abdulrahiman v. Parameshwarai Amma* (1998 (2) KLT 264) emphasized the point that the Court could peruse the Judgment and then identify the property, if it is not possible to identify the same on the basis of the Commissioner's Report. Hence, the learned Single Judge was of the view that with the available information in the Commission report, the amin could identify the property, on the directions of the executing court.

4. The counsel relied on *Bhavan Vaja and Ors. v. Solanki Hanuji Khodaji Mansang and Anr.* (AIR 1972 SC 1372). Laying down the principle on the point, at paragraph 19, the Apex Court stated thus:

' 19. It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree the Court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution Court and if that Court fails to

discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the execution court in this case thought that its jurisdiction began and ended with merely looking at the decree as it was finally drafted. Despite the fact that the pleadings as well as the earlier judgments rendered by the Board as well as by the appellate Court had been placed before it, the execution Court does not appear to have considered those documents. If one reads the order of that Court, it is clear that it failed to construe the decree though it purported to have construed the decree. In its order there is no reference to the documents to which we have made reference earlier. It appears to have been unduly influenced by the words of the decree under execution. The appellate Court fell into the same error. When the matter was taken up in revision to the High Court, the High Court declined to go into the question of the construction of the decree on the ground that a wrong construction of a decree merely raises a question of law and it involves no question of jurisdiction to bring the case within Section 115, Civil Procedure Code. As seen earlier in this case the executing Court and the appellate Court had not construed the decree at all. They had not even referred to the relevant documents. They had merely gone by the words used in the decree under execution. It is clear that they had failed to construe the decree. Their omission to construe the decree is really an omission to exercise the jurisdiction vested in them.'

5. It is true that in the case at hand, there is no plan appended to the Commission Report. But on going through Exts.C1 and C2, it is seen that the lie of the pathway and other details, are available in the report. However, the said details contained in the reports are not fully included in the judgment. No portion of these Commission reports are forming part of the decree as well. But the court should realise that after litigating for long the plaintiff has obtained a decree. The execution court should not mechanically dismiss the execution petition, giving the reason that the decree lacks details for proper execution, thereby forcing the parties for another round of fresh litigations. This situation will create a lack of confidence in the minds of public towards the judicial system and its functions. Therefore the execution court should interpret the decree with the available details in the judgment and other records. In the case at hand, the trial court directed to restore the pathway to its actual position, as existed on 1/7/1996, the date on which the 1st Commissioner visited the property. Following the principles

contained in Bhavan Vaja's case, cited above, even if the descriptions are insufficient in the decree, as well as in the Judgment, the execution Court shall rely on the other documents available on record and construe the decree in the true sense of the case as allowed by the trial court, so that the decree could be executed for the benefit of both the parties. The basic principle that the execution court cannot go behind the decree under execution does not mean that the executing court has to adhere only to the words and punctuation marks of the decree. The Court should endeavor to dispense justice by considering the pleadings of the parties, the evidence adduced and the records produced, so that the parties are enabled to get a finality in their litigation. While dismissing the E.P. as well as the review petition, the execution Court, in this case, did not rely on any of the documents available before it, including Exts.C1 and C2 Commission reports, which had been discussed by the Trial Court in the judgment.

In the light of the above discussions, I set aside the order dated 19/6/2001 in E.A. 16/2001. The order of dismissal of E.P. No. 2/1998 is hereby reviewed and accordingly, I restore the E.P. on the file of Munsiff Court, Mavelikkara. The learned Munsiff is directed to follow the legal principles discussed herein and dispose of the execution petition accordingly.

This C.R.P. is allowed to the above extent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com