

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 26TH DAY OF SEPTEMBER 2023 / 4TH ASWINA, 1945

OP(C) NO. 1485 OF 2023

AGAINST THE ORDER DATED 15.06.2023 IN EP 80/2021 IN OS 390/1995 OF
PRINCIPAL MUNSIFF COURT, PALAKKAD

PETITIONER:

SUDEVAN K, AGED 60 YEARS, S/O KANDAN, RESIDING
AT MANGODE VEEDU, KALLUR AMSOM DESOM, KALLUR POST,
MANKARA VILLAGE, PALAKKAD TALUK, PIN - 678613

BY ADVS.
T.C.SURESH MENON
B.DEEPAK

RESPONDENT:

RAJAN K, AGED 68 YEARS, S/O KANDAN, KOOTTAPPURA
VEEDU, KALLUR AMSOM, KALLUR POST, MANKARA
VILLAGE, PALAKKAD TALUK, PIN - 678613

BY ADV G.SREEKUMAR (CHELUR)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 26.09.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner impugns Ext.P4 order of the Principal Munsiff, Palakkad, whereby, an Amin has been deputed to execute the decree in O.S.No.390/1995.

2. Sri.B.Deepak – learned counsel for the petitioner, vehemently argued that Ext.P4 will cause prejudice to his client because, he has already complied with the directions in the decree; and then constructed a new fence, well within his property. He submitted that, however, since the Amin has been deputed with orders to execute the decree, it is most likely that he will demolish the new fence also, under the impression that it is the old one – which is the one reflected in the decree. He thus prayed that Ext.P4 be set aside and the learned Munsiff be directed to reconsider E.P.No.80/2021 in the afore perspective.

3. In response, Sri.G.Sreekumar (Chelur) – learned counsel for the respondent, submitted that the afore submissions of the petitioner are untenable because, the Amin will certainly verify whether the fence has been constructed within the property of the

petitioner and only then will he demolish it, if it is found to be constructed in violation of the decree. He, therefore, prayed that this Original Petition be dismissed.

4. It is evident from the afore narrative of the rival positions that the petitioner has approached this Court with an apprehension that should the Amin act mechanically, he would demolish the alleged new fence constructed by him, even though it is well within his property and as per the decree. This apprehension may have some basis because, through Ext.P4, the learned Munsiff has directed the Amin to execute the decree by identifying the decree-schedule property and the fence. Obviously, therefore, it will be in the fairness of things that the Amin reports back to the learned Munsiff as to the lie of the property and the fence, before the latter is demolished.

With the afore clarification and leaving liberty to the Munsiff to act in terms of law thereafter, I order this Original Petition.

RR

Sd/-
DEVAN RAMACHANDRAN
JUDGE

APPENDIX OF OP(C) 1485/2023

PETITIONER EXHIBITS

Exhibit-P1	TRUE COPY OF THE JUDGMENT IN R.S.A. NO. 603/ 2005 ON THE FILE OF THIS HONORABLE COURT, DATED 19.12.2018.
Exhibit-P2	TRUE COPY OF E.P. NO.80/2021 IN O.S. NO.390/1995 ON THE FILE OF THE MUNSIFF'S COURT, PALAKKAD, DATED 2.8.2021.
Exhibit-P3	TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO E.P. NO.80/2021, DATED 2.6.2023.
Exhibit-P4	TRUE COPY OF THE ORDER PASSED BY THE LEARNED MUNSIFF IN E.P. NO.80/2021 IN O.S. NO.390/1995, DATED 15.6.2023.