

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

FRIDAY, THE 31ST DAY OF OCTOBER 2014/9TH KARTHIKA, 1936

CRP.No. 451 of 2013 ()

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AGAINST THE ORDER IN E.P.NO.69/2012 IN O.S.NO.410/2010 OF MUNSIF  
COURT,MUVATTUPUZHA DATED 06-04-2013

REVISION PETITIONERS/DECREE HOLDER/PLAINTIFF:  
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1. JAYAN, AGED 38 YEARS  
S/O.LATE KUMARAN, MATTATHIL HOUSE, MEKKADAMPU KARA  
VALAKOM VILLAGE, MUVATTUPUZHA TALUK.
2. RAJAMMA, AGED 60 YEARS  
W/O. LATE KUMARAN, MATTATHIL HOUSE  
MEKKADAMPU KARA, VALAKAM VILLAGE  
MUVATTUPUZHA TALUK.

BY ADVS.SRI.M.M.MONAYE  
SRI.M.PAUL VARGHESE  
SRI.DESI MATTHAI

RESPONDENTS : JUDGMENT DEBTORS/DEFENDANTS :  
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1. ALEYAMMA, AGED 59 YEARS  
W/O. KUNJAPPAN, MOLATHUKUDUIYIL HOUSE, MEKKADAMPU KARA  
VALAKAM VILLAGE, MUVATTUPUZHA TALUK-686 661.
2. BIJU , AGED 36 YEARS  
S/O. KUNJAPPAN, MOLATHUKUDUIYIL HOUSE, MEKKADAMPU KARA  
VALAKAM VILLAGE, MUVATTUPUZHA TALUK-686 661.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
31-10-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.T.SANKARAN, J.**

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C.R.P.No.451 of 2013  
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Dated this the 31<sup>st</sup> day of October, 2014

**ORDER**

The revision petitioners are the decree holders in O.S.No.410 of 2010 on the file of the court of the Munsiff, Muvattupuzha. The suit was filed by the petitioners against the respondents for a permanent prohibitory injunction restraining the defendants from committing waste in the plaint schedule property and from altering the nature and lie of the property. The suit was decree ex-parte on 16.6.2011.

2. The petitioners/decreed holders filed E.P.No.69 of 2012 for execution of the decree by arrest and detention of the judgment debtors and for attachment of their properties, the judgment debtors having allegedly violated terms of the decree.

In the Execution Petition, the judgment debtors remained ex-parte in spite of service of notice. On the side of the decree holders, PW1, a neighbour was examined.

3. The court below dismissed E.P.No.69 of 2012 on the ground that the decree holders did not adduce any oral evidence and that the evidence of the neighbour of the decree holders does not inspire confidence.

4. The learned counsel for the petitioners submitted that the first petitioner had filed a proof affidavit in the Execution Petition and he was present in court. The judgment debtors did not appear and did not avail any opportunity to cross examine the first petitioner. However, the executing court did not take note of the proof affidavit filed by the first petitioner. In paragraph 5 of the Memorandum of Civil Revision Petition, it is stated as follows :

“5. In fact on 5.11.2012 when the case was posted for evidence, the first judgment debtor filed the proof affidavit and was also present in the court on the day. When the case was called, he reported also before the court. As the judgment debtors were ex-parte, the junior counsel from the office of the counsel for the decree holder was also under the bona fide belief that the proof affidavit was accepted in evidence. The case was adjourned to 10.12.2012 on which day another witness was examined in chief by filing the proof affidavit. But the evidence of the decree holder did not come as part of the court records.”

The learned counsel submitted that in the first sentence in paragraph 5 of the Memorandum of Civil Revision Petition, there is a mistake, that is, instead of the first decree holder it is typed as first judgment debtor.

5. In view of the categorical statement of the decree holders that a proof affidavit of the first petitioner was

filed, I am of the view that the court below should consider the Execution Petition afresh. Accordingly, the order dated 6<sup>th</sup> April, 2013 passed by the court below dismissing E.P.No.69 of 2012 is set aside and the matter is remanded to the executing court for fresh disposal, after taking into account the proof affidavit filed by the first petitioner.

**K.T.SANKARAN**  
**JUDGE**

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