

IN THE COURT OF THE MUNSIFF, PUNALUR  
 PRESENT:- Smt. Reshma R.S, Munsiff.  
 Wednesday the 10<sup>th</sup> day of July, 2024/ 19<sup>th</sup> day of Ashadam, 1946.

**EA 16/21 in EP 09/2014 in OS 402/2008**  
**Between**

**Petitioners :**

**Judgement Debtors**

1. Chempakakutty, D/o Ammukkunju, Sreedhara Mangalathu Veedu, Alayamon Muri, Alayamon Village, Punalur Taluk.
2. Sulu, aged 55 years, S/o. Sreedharan Nandu Bhavan, Alayamon Muri, Alayamon Village, Punalur Taluk.
3. Girija, aged 49 years, D/o Sundari, Nandu Bhavan, Alayamon Muri, Alayamon Village, Punalur Taluk.
4. Saji, aged about 42 years, Sreedhara Mangalathu Veedu, Alayamon Muri, Alayamon Village, Punalur Taluk.
5. Shibu, aged about 39 years, S/o Yohannan, Plakkattu Veedu, Alanchery Mannuvayal, Yeroor Kara, Yeroor Village, Punalur Taluk.
6. Animol, aged about 34 years, W/o Shibu, Plakkattu Veedu, Alanchery Mannuvayal, Yeroor Kara, Yeroor Village, Punalur Taluk.

**(By Adv.B. Prathip Kumar)**

**And**

**Respondents**

**Decree Holders**

- :1. Suseela, aged 59 years, D/o Raghavan, Anju Mandiram, Alanchery, Alanchery Muri, Alayamon Village, Pathanapuram Taluk (Now at Punalur Taluk)
2. Sasidharan, aged about 54 years, S/o Raghavan, Thodiyil Veedu, Anju Mandiram, Alanchery, Alanchery Muri, Alayamon Village, Pathanapuram Taluk

(Second decree holder Sugathan died on 20.11.2019)

Addnl 3: Aju, aged 28 years, S/o Sugathan,  
Anju Mandiram, Alanchery, Alanchery Muri,  
Alayamon Village, Pathanapuram Taluk

Addnl 4: Anju, aged 30 years, D/o Sugathan,  
Anju Mandiram, Alanchery, Alanchery Muri,  
Alayamon Village, Pathanapuram Taluk

**(By Adv.L. Thomas)**

This execution application is coming on for hearing before me on 10.07.2024 and on the same day court passed the following.

**ORDER**

Petition filed under sections 114 and 151 of the Code of Civil Procedure, 1908.

2. **The petition averments, in brief, are as follows:** - The applicant is the 4<sup>th</sup> judgment debtor in the execution proceedings. This application is filed on behalf of other judgment debtors. The judgment debtors filed an objection to the execution petition. The commission report was filed on 21/10/2019. Thereafter, the decree holder was granted time to adduce evidence in the EP on 15/11/2019, 27/11/2019 and 22/01/2020. During these proceedings, the 2nd decree holder died, and his legal heirs were impleaded on 17/08/2020. Thereafter, the case has been posted to 09/10/2020. Thereafter on 22/12/2020, 17/02/2021, 05/04/2021, 14/06/2021, 31/08/2021, 04/08/2021, 27/09/2021, 16/10/2021, 23/10/2021, 06/11/2021 and 26/11/2021 were posted for taking evidence of the decree holders and later on 06/11/2021 the court ordered to issue

the notice under Order 21 Rule 32 against the decree holders. During these posting dates, neither the decree holders adduced any evidence nor the petition was considered. This court cannot arrive at a finding based on the mahazar and rough sketch prepared by the commissioner. The judgment debtors have to adduce evidence in the execution petition, but due to the pandemic, the court did not give them the opportunity to do so. Proceeding with the EP on the basis of the commission report is violative of the principles of natural justice. Hence, this petition.

3. **The decree holders filed objection contending the following:** - The petition is not maintainable either in law or on facts. The petition has been filed without any bona fides. No sufficient reasons have been stated for reviewing the petition. No appeal is pending against the decree. Hence, the applicants have no right to challenge the decree. This court can pass an order after analysing the petition filed by the decree holders, its objection thereto and the commission report. Hence, the present application is liable to be dismissed with costs.
4. Heard both sides.
5. The sole point to be considered is whether this application can be allowed?
6. **The Point:** The learned counsel for the applicant argued that the application is to be allowed in the interest of justice. The reason

stated in the application is that the applicant was not given an opportunity to adduce evidence to prove his version. It was also contended that amidst the COVID-19 pandemic, the applicant was denied an opportunity to adduce his evidence. Per contra, the learned counsel for the respondent argued that the application lacks bona fides, and hence, the same is liable to be dismissed with costs.

7. It can be seen that the decree in OS 402/2008 was granting permanent as well as mandatory injunction. Now, the present EP is filed seeking damages, restoring the previous position, and also to prosecute the judgment debtors for violating the order of this court. The allegation of the applicant is that they never violated the order of this court, and they were denied of an opportunity to adduce evidence in their support. It was also contended that the same is against the principles of natural justice. A perusal of the order sheet of this case makes it clear that JD has not been given an opportunity to adduce his evidence. As the EP is filed seeking prosecution, I consider it proper to allow this application to enable the JDs an opportunity to answer the allegations levelled against them.

**In the result:** This application is allowed. There shall be no order as to costs.

Pronounced in open court on this the 10<sup>th</sup> day of July 2024.

Sd/-  
Munsiff

**Appendix: Nil**

Id/-  
Munsiff

//True copy//

Typed by : Sreeja Sarojam. S  
Compared by :

**MUNSIFF**