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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 5TH DAY OF MARCH 2025 / 14TH PHALGUNA, 1946

OP(C) NO. 141 OF 2025

AGAINST THE ORDER DATED 09.12.2024 IN EP No.23/2019 IN OS
NO.403 OF 1996 OF MUNSIF COURT, KOTHAMANGALAM

PETITIONERS/JUDGMENT DEBTORS, 3, 6 AND 8/DEFENDANTS NO.3, 6 & 8:

- 1 MEERAVU HAJI, AGED 88 YEARS
S/O OORAI, INJAKUDIYIL, NOOLELY KARA, ASAMANNOOR
VILLAGE, ASAMANNOOR P.O.,
ERNAKULAM DISTRICT, PIN - 683549
- 2 KATHIRU, AGED 69 YEARS
S/O MAKKAR, KIZHAKKEL HOUSE, METHALA KARA, ASAMANNOOR
VILLAGE, ASAMANNOOR P.O.
ERNAKULAM DISTRICT, PIN - 683549
- 3 MUHAMMED, AGED 60 YEARS
S/O KOYAN, CHITTETHUKUDY, METHALA KARA, ASAMANNOOR
VILLAGE, ASAMANNOOR P.O.,
ERNAKULAM DISTRICT, PIN - 683549

BY ADVS.
K. PAUL KURIAKOSE
T. A. RAFEEK (CHERTHALA)
ABRAHAM P. BINU
AKASH ANTONY A.A.

RESPONDENTS/DECREE HOLDERS 1 TO 18, JUDGMENT DEBTORS 1, 2, 4,
5, 7, 9 TO 17/PLAINTIFFS 1 TO 6, LRS OF PLAINTIFFS 1 TO 3, AND
DEFENDANTS 1, 2, 4, 5, 7, 9, 10 AND LRS OF DEFENDANTS 1 AND 9:

- 1 EBRAHIM@KOCHORAN (DIED)
THOTTATHIKULAM RESIDING AT MALIKAYIL, KUTTILANJI
KARA, ERAMALLOOR VILLAGE, PIN - 686691
- 2 KUNJU BAVA (DIED)
S/O AVARAN, THOTTATHIKULAM RESIDING AT THOTTUMKAL,
KUTTILANJI KARA, ERAMALLOOR VILLAGE, PIN - 686691



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- 3 KUNJU BAVA (DIED)
S/O MUHAMMED, THOTTATHIKULAM RESIDING AT
VALIYAVEETIL, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, PIN - 686691
- 4 SIDHIKUL AKBER
S/O MAKKARUPILLA, THOTTATHIKULAM RESIDING AT
CHAMAKALAYIL, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, PIN - 686691
- 5 HASSAN
S/O MAKKAR, THOTTATHIKULAM RESIDING AT
MANGALATHPUTHENPURAYIL, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, PIN - 686691
- 6 ALIPILLAI (DIED)
S/O MUHAMMED, THOTTATHIKULAM RESIDING AT
NEDUMPARAMBIL, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, PIN - 686691
- 7 T K MAKKAR
S/O KARRORKUTTY, MALIKAYIL THOTTATHIKKULAM,
KUTTILANJI KARA, ERAMALLOOR VILLAGE, KOTHAMANGALAM,
PIN - 686691
- 8 T K MUHAMMED
S/O KUNJU BAWA, THOTTATHIKKULAM, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 9 T K MAKKAR
S/O KUNJU BAWA, THOTTATHIKKULAM, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 10 T K EBRAHIM
S/O KUNJU BAWA, THOTTATHIKKULAM, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 11 T K ABDUL KHADER
S/O KUNJU BAWA, VALIYAVEETIL HOUSE, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 12 T K NAZERUDEEN
S/O KUNJU BAWA, VALIYAVEETIL HOUSE, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 13 T K ABDUL RAZAK
S/O KUNJU BAWA, VALIYAVEETIL HOUSE, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691



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- 14 T K ABDUL SALAM
S/O KUNJU BAWA, VALIYAVEETIL HOUSE, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 15 T K SHAMSUDEEN
S/O KUNJU BAWA, VALIYAVEETIL HOUSE, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 16 T K KASSIM
S/O KUNJU BAWA, VALIYAVEETIL HOUSE, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM, PIN - 686691
- 17 T K JAMEELA
W/O MAKKAR, IPPOTTIL HOUSE, MUDICAKAL P.O,
MARAMPILLY VILLAGE, PIN - 683547
- 18 T K SUHARA
W/O KASSIM, KUMBAKKALLIL HOUSE, KARIKODE
VILLAGE, THODUPUZHA EAST, PIN - 685585
- 19 MUHAMMED HAJI (DIED)
S/O AVARAN, THOTTATHIKKULAM, RESIDING AT THOTTUMKAL,
KUTTILANJI KARA, ERAMALLOOR VILLAGE, PIN - 686691
- 20 ABDUL KHADAR
S/O PARIYADHU, CHITTETHUKUDY KIZHAKKEVEETIL,
EAKUNNAM KARA, ASAMANNOOR VILLAGE, PIN - 683549
- 21 PARIYADHU
S/O MAKKARU, CHETTUKUDIYIL, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, PIN - 683691
- 22 MAITHEEN (DIED)
S/O KUNJUBAVA, MOLETHUPUTHENPURAYIL, KUTTILANJI KARA,
ERAMALLOOR VILLAGE, PIN - 686691
- 23 KINJUBAVA
S/O PAREETHU, PULICKAPARAMBIL, METHALA KARA,
ASAMANNOOR VILLAGE, ASAMANNOOR P.O. ERNAKULAM
DISTRICT, PIN - 683549
- 24 MAKKARU (DIED), S/O MEERAN, PARAKANDACHALIL, RESIDING
AT CHITTETHUKUDY, ENKUNNAM KARA,
ASAMANNOOR VILLAGE, PIN - 683549
- 25 KERALA STATE WAQF BOARD
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
V.I.P.ROAD, KALoor, ERNAKULAM, KOCHI, PIN - 682017



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- 26 SAINABA MAKKAR
PUNNAKOTTAYIL HOUSE, KUTTILANJIKARA, ERAMALLOOR
VILLAGE, KOTHAMANGALAM, PIN - 686691
- 27 MEEREANKOCHAKOM
VATTAKUDY HOUSE, KUTTILANJIKARA, ERAMALLOOR VILLAGE,
KOTHAMANGALAM, PIN - 686691
- 28 RAFINA MAJEED
THOTTATHIKKULAM HOUSE, KUTTILANJIKARA, ERAMALLOOR
VILLAGE, KOTHAMANGALAM, PIN - 686691
- 29 SUHARA ALIYAR
KANJIRAKKATTU HOUSE, KUTTILANJIKARA, ERAMALLOOR
VILLAGE, KOTHAMANGALAM, PIN - 686691
- 30 NABEEZA MAKKAR
MAKKANIYIL HOUSE, KAVUMKARA P.O,
MUVATTUPUZHA, PIN - 686693
- 31 KHADEEJA (DIED)
W/O MAKKAR, PARAKANDANCHALIL, CHITTETHUKUDY,
EAKKUNNAM KARA ASAMANNOOR VILLAGE, PIN - 683549
- 32 MUHAMMED, S/O MAKKAR, PARAKANDANCHALIL,
CHITTETHUKUDY, EAKKUNNAM KARA ASAMANNOOR VILLAGE,
KOTHAMANGALAM, PIN - 683549
- 33 SIDHEEKUL AKBER (DIED), AGED 53 YEARS
SLO MAKKARUPILLA, THOTTATHIKULAM , CHAMAKALAYIL
KUTTILANJI ERAMALLOOR VILLAGE, PIN - 686691
- 34 HAZEM KHAN ADVOCATE
KANELI HOUSE, CHELAMATTOM VILLAGE, CHELAMATTOM
VILLAGE, KUNNATHUNADU TALUK (INTERIM MUTHAWALLI), PIN
- 683550
- 35 ABDUL KHADIR P.M
PATHAYAPURA HOUSE, PERUMBAVOOR (INTERIM MUTHAWALLI),
PIN - 683542

BY ADVS.

ARYA RAGHUNATH

BABU KARUKAPADATH (B-13)

M.A.VAHEEDA BABU (K/256/1991)

P.LAKSHMI (K/001868/2021)

AYSHA E.M. (K/001130/2022)

ABUASIL A.K. (K/001702/2024)



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HANIYA NAFIZA V.S. (K/003695/2024)
HASHIM K.M. (K/002518/2023)
MANU KRISHNA S.K. (K/002737/2023)
P.K.ABDUL RAHIMAN(A-28)
KARUKAPADATH WAZIM BABU(MAH/8319/2019)
JAMSHEED HAFIZ, SC,WAQF BOARD

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03.03.2025,
THE COURT ON 05.03.2025 DELIVERED THE FOLLOWING:



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JUDGMENT

Ext.P7 order passed by the Munsiff Court, Kothamangalam (for short, the Executing Court) in EP No.23/2019 in OS No.403/1996 ordering delivery of the decree schedule property is under challenge in this original petition.

2. The petitioners are the judgment debtors 3, 6 and 8 and the respondents are the decree holders 1 to 18 and judgment debtors 1, 2, 4, 5, 7 and 9 to 17.

3. The Execution Petition has been filed to execute the decree for recovery and possession of the decree-schedule property in OS No.403/1996. The Execution Petition was filed in the year 2019. The decree-schedule property is a waqf property. The judgment-debtors mainly took up two contentions in the Execution Petition (i) The decree is inexecutable inasmuch as it was passed by a court which did not have jurisdiction (ii) The Execution Petition was not maintainable before the civil court/the Executing Court. The Executing Court, as per the order dated 8th November 2022, repelled the challenge against the executability of the decree but found that it has no jurisdiction to execute the decree, and the remedy open to the decree holders is to file an Execution Petition before the Waqf Tribunal. Accordingly, the Execution Petition was returned to file before the proper court/Waqf



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Tribunal. The said order was challenged by the decree-holders before this Court in OP(C) No.177/2023 successfully. This Court found that the decree is executable, and the Executing Court has jurisdiction to execute the decree. The order passed by the Executing Court returning the Execution Petition to file before the proper court was set aside, and the Executing Court was directed to proceed with the execution and complete it as expeditiously as possible, at any rate, within a period of three months. Thereafter, the Executing Court, after issuing notice under Rule 35 of Order 21 of CPC to all the judgment debtors, deputed Court Amin to take delivery of the property and hand over the same to the decree-holders as per the decree vide the impugned order.

4. I have heard the learned counsel for the petitioners Sri.Paul Kuriakose, Sri.Jamsheed Hafiz, the learned Standing counsel for the Waqf Board and Sri.Babu Karukapadath, the learned counsel for respondents 7, 8 and 15.

Ext.P7 order has been challenged mainly on two grounds: (i) The decree sought to be executed is a nullity since it was passed by a court which lacked inherent jurisdiction to entertain and try the suit in view of the bar under Section 85 of the Waqf Act. (ii) The delivery was ordered without giving an opportunity to the petitioners to be heard. So far as the first ground is concerned, the Executing Court had already found that the Munsiff Court, Muvattupuzha, which passed the



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decree, had jurisdiction to pass the decree. This court, in the judgment in OP(C) No. 177/2023, also found that the Munsiff Court, Muvattupuzha, which passed the decree, had jurisdiction to pass the decree despite the bar under Section 85 and repelled the contention of the petitioners that the decree sought to be executed is a nullity. Hence, the said issue cannot be agitated again in this original petition. So far as the second ground is concerned, Ext.P6 copy of the B diary proceedings would show that the petitioners entered appearance on 18/11/2024, and the delivery was ordered only on 9/12/2024 after complying with all the statutory formalities. The petitioners had filed a counter statement in the year 2019 itself in the Execution Petition. In the counter statement, only two contentions were taken by them: that the decree is inexecutable, and the Executing Court had no jurisdiction to execute the decree. Both these contentions were already considered by this court in OP(C) No. 177/2023 and have become final. The Execution Petition has been pending for the last six years. There is no scope for extending any further opportunity of hearing to the petitioners. I see no illegality or impropriety in the impugned order. Accordingly, the Original Petition is dismissed.

sd/-

DR. KAUSER EDAPPAGATH**JUDGE**

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APPENDIX OF OP(C) 141/2025

PETITIONER EXHIBITS

- Exhibit P1** THE TRUE COPY OF THE AFORESAID LETTER BEARING NO.D3(A) 9219/2000 DATED 22.02.2000 TOGETHER WITH THE APPENDIX ATTACHED
- Exhibit P2** THE TRUE COPY OF THE JUDGMENT DATED 31.08.2000 OF THE MUNSIFF'S COURT, MUVATTUPUZHA IN OS NO 403 OF 1996.
- Exhibit P3** THE TRUE COPY OF THE JUDGMENT DATED 16.11.2016 OF THE SUB COURT, MUVATTUPUZHA IN A.S. NO. 87 OF 2000.
- Exhibit P4** THE TRUE COPY OF THE EXECUTION PETITION NO. 23 OF 2019 ON THE FILES OF THE MUNSIFF'S COURT, KOTHAMANGALAM
- Exhibit P5** THE TRUE COPY OF THE JUDGMENT DATED 05.11.2024 OF THIS HON'BLE COURT IN OP (C) 177 OF 2023
- Exhibit P6** THE TRUE COPY OF THE 'B' DIARY OF THE EXECUTION COURT EVIDENCING THE PROCEEDINGS OF THE EXECUTION COURT DATED 05.12.2024, 09.12.2024 AND 11.12.2024
- Exhibit P7** THE TRUE COPY OF THE ORDER DATED 09.12.2024 OF THE EXECUTION COURT IN E P NO. 23 OF 2019 IN OS NO.403/1996