

(2011) 02 KL CK 0161
In the High Court Of Kerala
Case No : W.A. No. 1959 of 2010

K.P. Gopalakrishnan Nair

APPELLANT

Vs

The Thashildar and Executive Magistrate and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 133
Easements Act, 1882 — Section 13

Citation : (2011) 1 KLJ 746

Hon'ble Judges : Pius C. Kuriakose, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : M.M. Abdul Aziz and M.A. Abdul Hakhim, for the Appellant; G.P.R. Bindu and P.B. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Balakrishnan, J.—Sri. K.P. Gopalakrishnan Nair, the petitioner in W.R. (C) No. 14605/2010 is the appellant in W.A. No. 1959 of 2010. The aforesaid Gopalakrishnan Nair and his wife Smt. Lalithakumari are the appellants in W.A. No. 1990 of 2010. The litigation between the parties started in the year 1984. Sri. Sreedharan Nair, the father of Sri. Pratap S. Nair and husband of Smt. Ashadevi owned 78 cents of land in Survey No. 10211, 1.14 Acre in Survey No. 10212 and 85 cents in Survey No. 10213 thus, making a total of 2 Acre 77 cents. It was alleged that in 1984, certain persons residing on the western side of the above 2 Acres 77 cents of land attempted to trespass upon a portion of that property in order to form a pathway to go to the public road on the eastern side of that property. Sreedharan Nair thus filed O.S. No. 37/1984 before the Munsiff's Court, Kollam seeking a permanent prohibitory injunction restraining those persons from trespassing upon his land. In the aforesaid suit the plaint "A" schedule property was shown as 85 cents in Survey No. 10213. The pathway claimed by the defendants therein was shown as "B" schedule. Besides, the

compound wall on the eastern side was specifically shown as "D" schedule. Though that suit was dismissed by the trial court, the appellate court in A.S. No. 19/1986 reversed the decree and judgment of the trial court and granted a permanent prohibitory injunction as sought for in the plaint as evidenced by Ext. P1 judgment dated 10.7.1989. The Second Appeal No. 939/1989 filed by the defendants in that suit was dismissed on 30.7.1998. Sreedharan Nair died. His legal representatives filed E.P. 274/2006 to enforce the decree. The compound wall was got constructed on the eastern side of the plaint schedule property therein in terms of the decree passed pursuant to Ext. P1 judgment, under the supervision of the Advocate Commissioner. Sri. Gopalakrishnan Nair, the appellant herein and his brother owned an extent of 35 cents of land lying immediate to the south of the property held by late Sreedharan Nair shown as "A" schedule in Ext. A1 suit. A partition was entered into between Gopalakrishnan and his brother in 1975 by which 18 cents of land being the western portion was allotted to Gopalakrishnan Nair. The property measuring 17 cents having road frontage on the east was allotted to the brother of Gopalakrishnan Nair. An attempt was made by Gopalakrishnan Nair to encroach upon a portion of his northern boundary property held by late Sreedharan Nair. For that purpose compound wall lying on the southern side of Sreedharan Nair's property was demolished. It is contended that the very same pathway claimed by the defendants in Ext. P1 judgment was tried to be created again by Gopalakrishnan Nair and it was for that purpose he demolished the southern compound wall of Sreedharan Nair's property and attempted to use a portion of Sreedharan Nair's property as a pathway to proceed to the road on the east. Gopalakrishnan Nair and his wife were not parties to Ext. P1 suit. Hence, Sreedharan Nair filed O.S. No. 193/99 against Gopalakrishnan Nair for a prohibitory injunction restraining Gopalakrishnan Nair and his men from trespassing into the property held by Sreedharan Nair and also for a mandatory injunction to restore the compound wall to its original position. Gopalakrishnan Nair remained ex-parte in that suit and consequently Ext. P3, Ex-parte decree dated 9.1.1996 was passed. It is marked as Ext. P5 in W.P. (C) No. 14605/2010.

2. The appellant contends that he and his wife have been residing in the building situated in 18 cents of land in Survey No. 10214 and that the said property has compound walls on all sides and iron gate on northern boundary for passage to the way on the north. According to the appellant 2.50 Ares (6.178 cents) of government land in Re-Survey No. 41 described as "Bhoosthithi way" is part of 84 cents of government land in old Survey No. 10210 and it was reserved by the government for road in Ext. P16, the Government Order dated 3.11.1967. The appellant contends that, that pathway has been in existence from time immemorial and appellant and others have been continuously using that pathway for their ingress and egress from their residential plots. Ext. P2 in W.P. (C) No. 14605/2010 is the survey sub division record of Kollam East Village in which 2.50 Ares of land in Re-Survey No. 41 was shown in column No. 3 as "Puramboke". In column No. 6 which was to note "present nature of the land" it was shown as

"Kerala Sarkar Bhoosthithi Vazhi".

3. The appellant contends that except the pathway shown in Ext. P2 there is no other access to his property and that it will remain land locked if the said pathway is not allowed to be used by the appellant and his family members. The appellant contends that the aforesaid 2.50 Ares in Re-Survey No. 41 described as way is part of 84 cents of government land in old Survey No. 10210 and that the property shown in the schedule to Ext. P3 decree is only 85 cents of registered land/private land comprised old Survey No. 10213 and that it does not take in the property measuring 2.50 Ares, described as way in Ext. P2. According to the appellant Sreedharan Nair who obtained Ext. P3 decree falsely and fraudulently represented that when resurvey was conducted, there was shortage in the extent of the decree schedule property shown in Ext. P3 and thus, he included the aforesaid 2.50 Ares of land also as part of the decree schedule property and that it was got done by a fraudulent representation made by Sreedharan Nair. According to the appellant, evidently under the influence of Sreedharan Nair the Assistant Director of Survey and Land Records passed Ext. P6 order dated 17.3.2003 stating that there is shortage in the extent of Ext. P3 decree schedule property while resurvey was done and holding that 2.50 Ares of government land in Re-Survey No. 41 is part of Ext. P3 decree schedule property, effected mutation of 2.50 Ares of government land in Re-Survey No. 41 in the name of Sreedharan Nair and accordingly basic tax receipt was issued to Sreedharan Nair under a new Thandaper. The appellant contends that the aforesaid land which was used as pathway was never a private land and was not part of 85 cents of land mentioned in Ext. P3 decree. The Deputy Director of Survey and Land Records passed Ext. P11 order setting aside Ext. P6 order passed by Assistant Director of Survey and Land Records holding that there is no shortage in the land covered by Ext. P3 decree and held that 2.50 Ares in Re-Survey No. 41 is not part of Ext. P3 decree. Based on the same, the 3rd respondent, Tahasildar who is also the Executive Magistrate issued Ext. P12 order to provide way-far ingress and egress to the appellants for their residential plot of 18 cents.

4. Ext. P1 is the partition deed entered into between Gopalakrishnan Nair and his brother in 1975. The description column mentioned therein would indicate that the plot allotted to the appellant being the rear portion was abutting a way on its north. It is submitted by the learned counsel for the appellant that in the schedule to the property allotted to his brother which is the eastern portion also it is shown that it lies to the south of the pathway mentioned above. So much so, the learned counsel for the appellant submits that apart from the fact that as per government order of 1967, it was noted and set apart as road, there is also clinching evidence to show that there was a pathway in existence to the north of the property held by the appellant. That pathway according to the appellant forms part of 84 cents of land which was reserved for road as per the Government Order dated 3.11.1967 mentioned above. The copy of the order was marked as Ext. P16 in W.P. (C) No. 14605/10.

5. Ext. P18 produced in that case which is the copy of the tax receipt dated 18.3.1998 also according to the appellant would strengthen his case that only the private land originally held by Sreedharan Nair, on his death devolved upon his wife Ashadevi and his son Pratap S. Nair and that alone was included in Re-Survey No. 42. The total extent of the property comprised in Re-Survey No. 42 is shown as 2 Acres 76.75 cents. Thus, according to the appellant, the entire 2 Acres and 77 cents of land which was originally comprised in three old survey Nos. 10211, 10212 and 10213, were shown as a single plot assigning the Re-Survey No. 42 and hence it would sufficiently indicate that, that alone was the property which belonged to and was held by late Sreedharan Nair and thereafter by his legal heirs.

6. Respondent Nos. 5 and 6 in the appeal W.A. No. 1959/2010 (Smt. Ashadevi and Sri. Pratap S. Nair) resist all these contentions projecting Ext. P5 decree in O.S. No. 193/95. Even though it was an ex-parte decree unless and until it is set aside, the decree is binding on the appellant. Therefore, the contention that Ext. P5 is only an ex-parte decree and so it cannot be much relied upon has no legs to stand. But the learned counsel for the appellant would submit that even accepting the position that Ext. P5 is binding on the appellant still the respondent Nos. 5 and 6 mentioned above cannot sustain their plea since Ext. P5 was only in respect of 85 cents of land originally comprised in Survey No. 10213. It is pointed out that since even after resurvey, the legal heirs of Sreedharan Nair are having 2.77 Acres of land originally comprised in three Survey Nos. 10211, 10212 and 10213, they cannot now contend that they were in possession of any land in excess of 2.77 Acres. The very fact that this disputed 2.50 Ares (6.178 cents) was separately shown assigning separate Re-Survey No. as 42 according to the appellant would demolish the case of respondent Nos. 5 and 6 that this disputed property forms part of the patta land originally held by late Sreedharan Nair.

7. It is contended by the appellant that the earlier judgments were based on a misconception that late Sreedharan Nair and respondent Nos. 5 and 6 were the owners of land in Re-Survey No. 41 and it forms part of the registered land whereas the survey records and the government order of 1967 would show that they have no land, over and above 2.77 Acres, and as such it should have been found that respondent Nos. 5 and 6 have no land in Re-Survey No. 41. It is further contended that Ext. P5 decree was only in respect of 85 cents of land which was originally comprised in 10213. Admittedly Re-Survey No. 41 is not the corresponding resurvey No. 10213. Hence on that ground also respondent Nos. 5 and 6 cannot lay claim on this 2.50 Ares comprised in Re-Survey No. 41, the appellant contends. Projecting these aspects, the learned counsel for the appellant submits that Ext. P5 decree and the consequent orders obtained by respondent Nos. 5 and 6 are vitiated by fraud and therefore, the order passed by the Assistant Director of Survey and Land Records based on those orders cannot be sustained.

8. In this connection the decision of the Apex Court in S.P. Chengalvaraya Naidu

(Dead) by LRS. v. Jagannath (Dead) by LRS. and others [(1994) 1 SCC 1] has been relied upon by the learned counsel for the appellant. It was held in the aforesaid decision:

The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

The learned counsel submits that the facts of this case would also show that Ext. P5 decree was obtained by the plaintiff therein by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. The learned counsel submits that if the court finds that Ext. P5 was obtained by fraud the fact that Ext. P5 has attained finality will not salvage the position since fraud cloaks everything.

9. The decision in *N. Khosla v. Rajlakshmi (Dead) and others* [(2006) 3 SCC 605] has also been cited by the learned counsel for the appellant. Relying upon *S.P. Chengalvaraya Naidu's* case cited supra it was held by the Apex Court that fraud avoids all judicial acts and that decree obtained by playing fraud is a nullity and it can be challenged in any court, even in collateral proceedings. The decision in *Hamza Haji v. State of Kerala and another* [(2006) 7 SCC 416] has also been relied upon in this connection. That was a case where the court found that the appellant therein had founded his case before the Forest Tribunal on a false plea or on a claim which he knew to be false and suppressed documents or transactions which had relevance in deciding his claim. In that context it was held that the appellant there in suppressed the fact that he had parted with almost the entire property purchased by him under the registered documents through which he claimed title to the property. It was held that the basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof.

10. In the decision of the House of Lords in *Frank Reddaway and Co. Ltd. v. George Banham*, 1896 Appeal Cases 199, Lord Macnaghten explained the multifarious aspects of fraud very lucidly:

But fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court.

Also vide *Venture Global Engineering v. Satyam Computer Services Ltd. & Anr.* [AIR 2010 SC 3371]. It was held in that decision that fraud cannot be put in a strait-jacket and it has a very wide connotation in legal parlance. That was a case dealing with Arbitration and Conciliation Act, 1996. In that context it was held that if an award is induced or affected by fraud or corruption, the same will fall within the aforesaid grounds of excess of jurisdiction and a lack of due process.

11. The learned counsel for the respondents has stoutly resisted the arguments advanced by the learned counsel for the appellant. It is submitted that except the allegation made by the appellant there is absolutely nothing on record to show that the respondents had played fraud on the court. It is also submitted that appellant at the earliest opportunity should have filed a suit to declare the judgment passed in O.S. No. 193/95 null and void, as vitiated by fraud if as a matter of fact the appellant has a serious contention with regard to the decree passed in that suit. That was not done. Hence it is too late in the day to contend that Ext. P5 is vitiated by fraud, the respondents 5 and 6 contend. The learned counsel for the appellant would submit that the decree in the aforesaid suit was pertaining only to property comprised in old survey No. 10213. It does not take in the property in Re-Survey No. 41 (the pathway measuring 2.50 Ares). Hence there was no necessity or occasion for the appellant to challenge that decree since the appellant at no point of time had objected to the respondents' title to or possession over the property measuring 85 cents in survey No. 10213 but when the appellant making use of that decree wanted to demolish the pathway and to tack on that pathway as the property forming part of the land originally held by respondents Nos. 5 and 6, the resistance was offered.

12. Another contention was also advanced by the appellant to the effect that in O.S. No. 193/95 he was shown as Gopalakrishna Pillai instead of Gopalakrishnan Nair. That also according to the appellant is an act of fraud. But there is no merit in that contention since it was found that the appellant was described in so many other proceedings as Gopalakrishna Pillai. He did not raise any objection in those proceedings that he was not "Pillai" but "Nair". Therefore that belated contention advanced by the appellant is only to be turned down.

13. It was vehemently argued by the learned counsel for the appellant that since compound wall of the property was completely constructed blocking his entry into the road/pathway, he has been confined in the compound and is not in a position to go out. According to the learned counsel if the appellant wants to go out they have to scale over the compound wall, as there is no other way at all. This contention has been stoutly resisted by the learned counsel for respondent Nos. 5 and 6. It is pointed out that the property measuring 18 cents now held by the appellant and 17 cents lying to its east were originally held in common ownership and was a contiguous plot. The property was severed by Ext. P1 partition deed of 1975. That contiguous plot measuring 37 cents as it stood before severance was abutting the road on the east and as such the appellant being the owner of the severed plot (18 cents) can very well have access to the

road through the other portion which as per the partition deed was allotted to his brother, claiming easement by necessity u/s 13 of the Easement Act. So much so, the grievance attempted to be projected by the appellant cannot draw sympathy of the court.

14. Late Sreedharan Nair filed E.P. No. 171/1997 for executing Ext. P3 decree. An order was passed by the executing court directing this appellant to restore the compound wall demolished by him and to remove the gate installed by him. While passing such an order executing court held that appellant herein is not entitled to any portion of the decree schedule property as a way. The order passed by the executing court was challenged in revision before this Court in CRP No. 1024/2001. It was stated that the aforesaid CRP was withdrawn by the petitioner therein on 19.7.2001. Since Gopalakrishnan Nair did not obey the direction of the court in E.P. No. 171/97 an application was filed by the Decree Holder to restore the demolished portion of the compound wall by appointing an Advocate Commissioner. It was during the pendency of that application Sreedharan Nair died. His wife and children got themselves impleaded in that E.P. It was allowed. The order which directed issuance of a Commission to supervise the implementation of the order mentioned above was challenged by the appellant herein by filing W.P. (C) No. 32713/2004. That writ petition was also dismissed. The compound wall was restored. Again Sri. Gopalakrishnan Nair and his supporters demolished the compound wall on 22.1.2005. Again the legal representatives of Sreedharan Nair filed E.A. No. 48/2005 before the execution court to restore the compound wall. The petitioners therein were permitted to construct the compound wall through the process of the court. That order was also challenged by Gopalakrishnan Nair by filing W.P. (C) No. 4321/2008. That petition was dismissed on 6.2.2008. The relevant portion of the judgment in that case can be extracted here:

This is a classical case which will demonstrate the disregard of a party to the orders and judgments of the Courts. A perusal of the order passed by the learned Munsiff would reveal that time and again the judgment debtor will violate the order of the Court and if a wall is constructed through the Court it will be demolished and I can give few illustrations as is seen from the order. The original decree holder filed E.A. 416/01 and before that on 9.1.1996 there was an order to restore the compound wall into its original position on 26.12.96. The judgment debtor and his relatives demolished a portion of the compound wall. In E.A. 416/01 an application was made for restoration of the compound wall through a Commissioner which was allowed by the Court with the assistance of the police. The judgment debtor approached the High Court, though obtained an interim stay later it was dismissed and thereafter the compound wall was restored through the process of the Court on 22.1.2005 also with a right to recovery of loss of Rs. 10,000/-. Thereafter at 6.30 PM on the very same day the relatives and men of the judgment debtor gathered there and demolished the compound wall as it is seen proved by Exts. C1 and C2. There has been a persistent and consistent move on the part of the judgment debtor to nullify the decree that has

been granted by the court. It is under such circumstances the Court again permitted the decree holder to construct the compound wall and also to recover the expenses incurred. I do not find any ground to interfere with that order.

Hence that writ petition was also dismissed. When the Ameen of the Munsiff Court attempted to restore the compound wall pursuant to the direction made by the court he was obstructed by the appellant herein and his men. The matter was reported to the court. The learned Munsiff addressed Superintendent of Police to give protection for enforcement of the order. Thus, with police protection the compound wall was restored on 7.2.2008. It is alleged that in the night of 7.2.2008 itself, the appellant herein demolished the compound wall pursuant to which the police registered crime against him. Again the Decree Holder filed E.A. No. 156/2008 seeking necessary orders to restore the compound wall through the process of the court. The Superintendent of Police took lukewarm attitude presumably because of the political influence of the appellant. She approached this Court to give necessary direction to the Superintendent of Police. Necessary direction was issued to the police for rendering assistance to the Ameen for due execution of the order. Thereafter with police protection the compound wall was restored. Since proper police assistance was not given for maintenance of compound wall the writ petition was filed by Smt. Ashadevi, the wife of deceased Sreedharan Nair. That petition was allowed directing the police to render necessary protection for maintenance of the compound wall already constructed. In the aforesaid case also, the appellant raised all the contentions which are now raised in these appeals. It was observed by this Court in the aforesaid writ petition-W.P. (C) No. 9899/2008 that the appellant herein can pursue his rights before the civil court.

15. Sri. P.B. Suresh Kumar, the learned counsel for the respondent Nos. 5 and 6(Smt. Ashadevi and Pratap S. Nair), the wife and son of late Sreedharan Nair submits that the judgments of this Court in the earlier writ petitions would operate as res judicata. It was also argued by Sri. P.B. Suresh Kumar that Gopalakrishnan Nair, the appellant herein cannot by-pass the decree validly passed by the civil court in O.S. No. 193/1995 unless and until he gets a decree in O.S. No. 789/2001 filed by him to the effect that the decree in the earlier suit is vitiated by fraud. As said earlier, Gopalakrishnan Nair raised similar contentions in W.P. (C) No. 9899/2008 and in other writ petitions mentioned earlier and those contentions were negated by this Court. The findings in W.P. (C) No. 9899/2008 would thus operate as res judicata as against the contentions raised by Gopalakrishnan Nair in the present writ petitions. It was held by the Supreme Court in Union of India v. Nanak Singh [AIR 1968 SC 1370]:

.....on the general principle of res judicata any previous decision on a matter in controversy decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly should be competent to decide the subsequent suit

or that the former proceeding and the subsequent suit should have the same subject matter. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Article 226 or Art. 32 of the Constitution from operating as *res judicata* in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. AIR 1965 SC 1153, Rel. on.

It was held in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, :

A judgment of the High Court under Article 226 passed after a hearing on the merits must, therefore, bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of this petition or the grounds cannot be allowed to defeat the plea of *res judicata*. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive *res judicata* underlying Explanation IV of Section 11 of the CPC was applied to writ case.

It was argued by Sri. P.B. Suresh Kumar, the learned counsel for Smt. Ashadevi and Pratap. S. Nair that even if the decree schedule property in O.S. No. 193/1995 does not take in the property comprised in Re-survey No. 41 still the appellant cannot succeed as the boundary and descriptions of the property shown in that schedule would clearly show that its southern boundary extends up to the property of Gopalakrishnan Nair. In other words, the southern boundary of the property shown in the schedule to O.S. No. 193/1995 is not a pathway or puramboke land. So much so, the contention raised is that, it was because there was no puramboke land or pathway as contended by the appellant, the southern boundary was shown as the property of Gopalakrishnan Nair. What ever that be the southern boundary in Ext. P3 decree was not shown as pathway or puramboke land. The learned counsel Sri. Suresh Kumar would submit that when there is conflict in description by measurements and boundaries the boundaries will prevail as has been held in *Kumaran Krishnan v. Ulahannan Mathai* [1957 KIT 42], *Chacko Joseph v. Varghese Markose* [1957 KLT 485], *S.N. Chellayyan Nadar v. K.K.P. Padmanabha Pillai* [1957 KLT 825]. Those decisions were followed in *P. Velu and others v. P. Padmavathy Amma and another* [ILR 1984 (1) Kerala 30] also. It is not necessary to probe into those details in these appeals since the question whether the decree passed in O.S. No. 193/1995 is vitiated by fraud or not is to be decided in the suit filed by Gopalakrishnan Nair for that purpose. In cases where the dispute revolves round questions of fact, the matter ought not be entertained under Article 226 of the Constitution of India vide the decision of

the Hon"ble Supreme Court reported in Orissa Agro Industries Corporation Ltd. and Others Vs. Bharati Industries and Others, .

16. It is submitted by Sri Abdul Aziz, the learned senior counsel for the appellant that another fraud committed by R5 and R6 was in getting Ext. P6 order passed According to him, Pratap S. Nair and others prevailed upon the Assistant Director to pass Ext. P6 order against the survey records. The fact that originally the property was shown as "Puramboke Bhoosthithi vazhi" according to the appellant was ignored by the Assistant Director due to political and other influences of Pratap S. Nair and others by ordering deduction of 2.50 Ares from the Puramboke land and adding it to the property held by Pratap S. Nair and others. It was ordered that necessary corrections are to be made in the survey records. The learned counsel Sri. Suresh Kumar submits that fraud was actually committed by the appellant herein by influencing the Deputy Director of Survey and Land Records in upsetting that order which actually amounts to nullifying the decree passed by a competent civil court Ext. P6 order was passed by the Assistant Director on 17.3.2003. It was long prior to that, the decree in O.S. No. 193/1995 was passed That apart the contention regarding the Puramboke land, pathway etc. raised by the appellant was negated by the civil court as well as by the High Court in appropriate proceedings and suppressing all those facts the appellant could prevail upon the Deputy Director of Survey and Land Records to pass Ext. P14 order dated 5.4.2010. It is also pointed out that the Executive Magistrate also ignored the decree passed by the civil court and the orders passed by the executing court. The decree passed in O.S. No. 193/1995 was executed and the compound wall was restored to its original position after hearing Gopalakrishnan Nair. The orders with regard to the same passed by the civil court were upheld by the High Court several times when the validity of the same was questioned by the appellant. The Executive Magistrate has no jurisdiction to interpret or upset the decree passed by the civil court. As such it was held by the learned Single Judge of this court that the Executive Magistrate was not justified in initiating proceedings u/s 133 Cr. P.C. contrary to the decree passed by the civil court. It was rightly held by the learned Single Judge that the survey officials and Executive Magistrate have no jurisdiction to by-pass the decree or nullify the same. On going through the order passed by the Deputy Director it could be seen that Deputy Director has made a discussion which has the effect of nullifying the decree passed by the civil court in O.S. No. 193/1995. Ext. P6 order passed by the Assistant Director of Survey and Land Records is found to be in tune with the decree passed by the civil court in O.S. No. 193/1995. As such the order passed by the Deputy Director which was challenged in W.P. (C) No. 13746/2010 and also Ext. P2 order passed by the Tahasildar and Executive Magistrate u/s 133 of Cr. P.C. were rightly quashed by the learned Single Judge allowing W.P. (C) No. 13746/2010. For the same reasons, W.P. (C) No. 14605/2010 was rightly dismissed by the learned Single Judge. We find no merit in these appeals and are accordingly dismissed. Parties are directed to suffer their respective costs.