

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

AS.No. 576 of 1998 (D)

**(AGAINST THE JUDGMENT IN OS.NO. 137/1988 OF SUB COURT,THODUPUZZHA
DATED 19-01-1998)**

APPELLANT(S)/DEFENDANTS :

- *1. K.T.THOMMAN, S/O.THOMAS, AGED ABOUT 48 YEARS,
KUMMINIYIL HOUSE, THUNDANGANAD KARA,
ELLUMPURAM.P.O., MUTTOM VILLAGE,
THODUPUZZHA TALUK. (DIED)**
- 2. JOSEPH @ APPACHAN,S/O.MATHAI, AGED 45 YEARS,
VELLIMOOZHAYIL HOUSE, THUNDANGANAD KARA,
THUNDANGANAD VILLAGE, THODUPUZZHA TALUK.**
- 3. MICHAEL, AGED ABOUT 48 YEARS,
KANJIRAPPILLIL HOUSE, THUNDANGANAD KARA,
OTTALLOOR.P.O., MUTTOM VILLAGE,
THODUPUZZHA TALUK.**
- 4. JOSE, AGED ABOUT 40 YEARS, KAINIKUNNEL HOUSE,
KAKKOMBUR KARA, MUTTOM.P.O., MUTTOM VILLAGE,
THODUPUZZHA TALUK.**
- 5. JOSEPH, S/O.MATHAI, AGED ABOUT 35 YEARS,
MANNARATHU HOUSE, KUZHIYANAL BHAGOM,
ELLUMPURAM.P.O., MUTTOM VILLAGE,
THODUPUZZHA TALUK.**
- *6. JOSE, S/O.KOCHU, AGED ABOUT 35 YEARS,
KALLIDICKAL HOUSE, KAKKOMBUR BHAGOM,
ELLUMPURAM.P.O., MUTTOM VILLAGE,
THODUPUZZHA TALUK. (DIED)**
- 7. MATHAI @ PAPPAN, S/O.JOSEPH, AGED ABOUT 60 YEARS,
KULATHINAL HOUSE, ELLUMPURAM.P.O.,
THUNDANGANAD KARA, MUTTOM VILLAGE,
THODUPUZZHA TALUK.**

*** IT IS RECORDED THAT APPELLANT NOS.1 & 6 DIED VIDE ORDER
DATED 25/06/2015 IN C.F. NO.2787/2015, MEMO DATED 17/06/2015.**

BY ADV. SRI.K.K.CHANDRAN PILLAI

A.S.NO.576/1998

RESPONDENT/PLAINTIFF :

DEVASIA,S/O.FRENCHU, AGED 45 YEARS,
POOVATHUNGAL HOUSE, MUTTOM VILLAGE,
ELLUMPURAM.P.O., THODUPUZHA TALUK,
IDUKKI DISTRICT.

BY SRI.S.V.BALAKRISHNA IYER,SENIOR ADVOCATE
ADV. SRI.P.B.KRISHNAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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P.B.SURESH KUMAR, J.
= = = = =
A.S. No.576 of 1998
&
Cross Objection
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Dated this the 25th day of June, 2015.

J U D G M E N T

This appeal is preferred against the decree and judgment in O.S.No.137 of 1988 on the file of the Sub Court, Thodupuzha. The defendants in the suit are the appellants.

2. The plaintiff is the owner in possession of the plaint schedule property. There exists a road having a width of 10 feet along the western and southern boundaries of the plaint schedule property. The case of the plaintiff is that on 8.10.1988, the defendants and about 70 others trespassed into the plaint schedule property and cut and removed 43 budded rubber trees, 39 clonal rubber trees, 4 jack trees, 28 coffee plants and 20 teak trees planted in the property for the purpose of widening the width of the abutting road to 18 feet. It was also alleged by the plaintiff that in the process of

widening the width of the road, the defendants and others had also destroyed the boundary kayyala of the plaint schedule property on its western and southern boundaries. According to the plaintiff, on account of the aforesaid conduct of the defendants and others, he has sustained a loss of Rs.40,000/- and the suit was filed for realisation of the same.

3. The defendants contested the suit by filing a written statement. An occurrence took place on 8.10.1988 as alleged in the plaint for the purpose of widening the road abutting the plaint schedule property is not denied in the written statement. However, the defendants contended that they were not involved in the said occurrence. It was also contended by them that they were arrayed as parties in the suit due to political rivalry. According to them, the road was widened by a group of persons under the leadership of the brother of the plaintiff and his wife who was a member of the local Grama Panchayat at the relevant time.

4. The evidence in the case consists of the oral testimonies of PW1 to PW5 and Exts.A1 to A11 documents on the side of the plaintiff and the oral testimonies of DW1 to DW9 and Exts.B1 and B2 on the side of the defendants. The reports submitted by the Advocate Commissioners appointed in the suit and the sketches prepared by the Taluk Surveyor were marked in the proceedings as Exts.C1 to C3.

5. The court below, on an elaborate consideration of the pleadings of the parties and the evidence on record, came to the conclusion that the mischief to the property of the plaintiff was committed by defendants 1 to 7 and others and that the plaintiff sustained damage on account of the same. The court below also found that the damages claimed by the plaintiff are moderate and reasonable and the defendants are liable to pay the same. In the light of the said findings, the court below passed a decree permitting the plaintiff to realise from the defendants a sum of Rs.40,000/- with interest at the

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rate of 6% per annum. The defendants are aggrieved by the said decision of the court below and hence this appeal. The plaintiff is also aggrieved by the decision of the court below in so far as the interest for the amount decreed was confined to 6%.

6. Heard the learned Senior Counsel for the appellants and the learned Senior Counsel for the respondent.

7. The learned Senior Counsel for the appellants vehemently contended that the evidence on record are not sufficient to hold that the defendants were involved in the mischief committed in the plaint schedule property on 8.10.1988.

8. The fact that a group of persons trespassed into the plaint schedule property owned by the plaintiff on 8.10.1988, caused destruction of the boundary kayyala and removed various trees planted therein, for the purpose of widening the road abutting the property is not disputed by the defendants.

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Their contention is only that they were not involved in the aforesaid acts of mischief. In the light of the stand taken by the defendants in the written statement filed by them, the plaintiff gave evidence as PW1. He had also examined on his side four witnesses as PW2 to PW5. In the evidence tendered by the plaintiff as PW1, he deposed that the mischief was committed by the defendants and others. PW2, a neighbour of the plaintiff also gave evidence to the effect that the defendants and about 70 others have committed the mischief in the property of the plaintiff on 8.10.1988. PW3 is another witness to the occurrence. He also deposed that on the relevant day about 70 persons, including the defendants caused the destruction of the boundary kayyala of the plaintiff's property and removed the trees planted therein, for the purpose of widening the road abutting the property. Though PW1 to PW3 were cross examined at length, nothing was brought out to discredit their evidence. The first

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defendant who gave evidence as DW1 deposed that he is the Mandalam President and the remaining defendants are the office bearers and workers of the political party of Kerala Congress (Joseph Group) and they were arrayed as defendants in the suit by the plaintiff due to political rivalry. The remaining defendants also gave evidence in tune with the evidence tendered by the first defendant. Even though it was contended by the defendants that they were arrayed as defendants in the suit due to political rivalry, there is nothing on record to indicate that the plaintiff entertained any enmity towards them to implicate them as the defendants in a suit of this nature. Above all, it has come out in evidence that a crime has been registered by the local police in connection with the mischief committed in the property of the plaintiff and in the final report submitted by the police in the said case, after due investigation, all the defendants were arrayed as accused. In the aforesaid facts and circumstances, the court below cannot

be found fault with for having rendered the finding that defendants 1 to 7 were involved in the various acts of mischief committed in the plaint schedule property on 8.10.1988.

9. The next aspect to be considered is the correctness of the quantum of damages determined by the court below. Ext.C1 is the report of the Advocate Commissioner who was deputed to assess the loss caused to the plaintiff. In Ext.C1, the Commissioner reported that the boundary kayyala of the plaint schedule property at a length of 385 meters on the western side and 168 meters on the southern side was destroyed. The plaintiff in his evidence as PW1 deposed that he needs to spend about Rs.10,000/- to restore the boundary kayyala. Ext.C1 report further reveals that 43 budded rubber trees and 39 clonal rubber trees were seen cut and removed from the plaint schedule property. According to the plaintiff, the budded rubber trees were aged 8 to 10 years and those trees could give yield up to 25 years. He has also stated in his

evidence that the annual yield from a tree is about 7 kilograms to 8 kilograms of rubber. According to him, the rubber sheet was priced at Rs.20/- per kg. during 1988 and the said price has increased substantially during the later years. It is stated by the plaintiff that he would have earned more than Rs.1,00,000/- from the said trees in a span of 10 to 15 years. The aforesaid evidence tendered by Pw1 is not seen seriously disputed by the defendants. Nevertheless, the court below had granted only a sum of Rs.40,000/- to the plaintiff towards the loss of the trees and towards the loss caused on account of the destruction of the kayyala. I do not find any illegality also in the said finding of the court below.

10. The grant of *pendente lite* interest is the discretion of the court and it cannot, therefore, be contended that the decision of the court below in confining *pendente lite* interest payable to the plaintiff at 6% per annum is illegal in any manner.

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In the result, there is no merit in the appeal as also in the Cross Objection and the same are, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

**Sd/-
P.B.SURESH KUMAR,
(JUDGE)**

Kvs

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PA TO JUDGE.