

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

CRP.NO. 269 OF 2011

**AGAINST THE JUDGMENT IN AS 117/2008 OF ADDITIONAL DISTRICT COURT, NORTH
PARAVUR**

AGAINST THE JUDGMENT IN OS 93/2007 OF MUNSIF COURT, NORTH PARAVUR

PETITIONER/APPELLANT/PLAINTIFF:

**AMMUKUTTY, AGED 59, W/O.DIVAKARAN,
MANJAPPILLY AMBATTU VEETIL, CHERUKADAPPURAM KARA
PUTHENVELIKKARA VILLAGE, PARAVUR TALUK, PIN 683 594.**

**BY ADVS.SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. STATE OF KERALA
REPRESENTED BY DISTRICT COLLECTOR, ERNAKULAM- 682 001.**
- 2. SUB INSPECTOR OF POLICE,
PUTHENVELIKKARA POLICE STATION
PUTHENVELIKKARA- 683 594.**

R1, R2 BY GOVERNMENT PLEADER SRI.P.K.ABDUL RAHMAN

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
05-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AS

A.HARIPRASAD, J.

C.R.P.No.269 Of 2011

Dated this the 5th day of June, 2015

ORDER

The revision petition challenging concurrent findings of the courts below that the petitioner, who is the plaintiff in O.S.No.93 of 2007 on the file of the Munsiff's Court, North Paravur, is not entitled to get damages claimed against the defendants.

2. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

3. Points in controversy in short are as follows: Revision petitioner is the owner of 81 cents of property situated in Puthenvelikkara Village. There was a dispute between the revision petitioner and the eastern property owner which ultimately resulted in the former filing a suit as O.S.No.437 of 2001 before the Munsiff's Court, North Paravur for recovery of possession and injunction. The suit was decreed on 21.12.2004 in favour of the revision

petitioner. On 20.05.2006 the revision petitioner tried to cut down two mango trees standing in the property shown in the decree schedule in O.S.No.437 of 2001 and then the defendants therein resisted her attempt. So she approached Police with a complaint. Pursuant to the complaint the Police called the defendants in O.S.No.437 of 2001 to the Police Station and directed them not to interfere with the plaintiff's enjoyment of the trees. Finally the plaintiff cut and removed the trees. The defendants in the earlier suit filed a false complaint alleging offences against the petitioner under Sections 447 and 427 r/w Section 34 of the Indian Penal Code. Crime No.105 of 2006 was registered by the Police. In that crime the trees cut and removed were seized from a saw mill where it was kept. It is the case of the petitioner that the trees were completely destroyed due to keeping them exposed to the vagaries of weather. Therefore, the petitioner claimed Rs.6,000/- as compensation for the value of the trees and Rs.4,000/- as compensation for mental agony from the

defendants.

4. Second defendant is the Sub Inspector of Police, Puthenvelikkara Police Station. It is pertinent to note that the second defendant is not impleaded in individual capacity, but in the official capacity. Second defendant filed a written statement opposing the plaint claim. According to him, what he had done is only discharge of his duty as a police officer on receiving a complaint. The fact that trees were seized and produced before the magistrate having jurisdiction is not in dispute. According to the defendants the suit is not maintainable.

5. The only question arising for determination is whether it can be stated that the second defendant acted in excess of his authority and thereby the petitioner suffered any loss. Learned counsel for the petitioner submitted that the second defendant should have respected and enforced the decree passed in favour of the petitioner in the first round of litigation. The defendants in the earlier suit are the complainants and

the complaint was filed without any bona fides. The grievance of the petitioner is that the second defendant without any lawful excuse seized the timber from the saw mill and produced it before the court ultimately causing its destruction.

6. The court below found that the timber was seized in a criminal case, registration of which itself is admitted by the petitioner. Ext.B1 seizure mahazar and Ext.B2 thondi list would show that on 2.7.2006 the property involved in the criminal case (timber) was seized and produced before the court. The court below took notice of fact that the petitioner did not move the learned magistrate for getting custody of the timber involved in the case. On going through the entire evidence, I am of the view that it cannot be stated that the second defendant was acting beyond his authority or powers to defeat the rights of the petitioner. That apart, the 2nd defendant, Sub Inspector of Police, Puthenvelikkara cannot be impleaded in his official capacity.

The grievance of the petitioner is only against one individual, but he has not been impleaded in personal name. For that reason also, the suit is not maintainable. On re- appreciation of the entire facts, I do not find any illegality or irregularity in the judgments of the courts below. The revision petition is devoid of any merit. Hence, it is dismissed.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge