

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

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

OP(C).No. 963 of 2015 (O)

I.A.No.21/15 IN OS 122/2013 of MUNSIF COURT,CHENGANNUR

PETITIONER :

VARGHESE JOSEPH, AGED 60 YEARS,
S/O.MATHUNNY VARGHESE, OMMASSERRIL CHIRAYIL HOUSE,
PENNUKKARA VADAKKU MURI, CHENGANNOOR,
ALAPPUZHA DISTRICT.

BY ADVS.SRI.V.PHILIP MATHEW
SRI.GIBI.C.GEORGE
SRI.P.K.AJITHKUMAR

RESPONDENT :

JAMES JOHN, AGED 45 YEARS,
S/O.JOHN, VELUTHERIL MANNARETH HOUSE,
PENNUKKARA VADAKKU MURI, CHENGANNOOR,
ALAPPUZHA DISTRICT - 689 520.

BY ADV. SRI.N.ASHOK KUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(C) .No. 963 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1: COPY OF PLAINT IN OS NO. 122/2013.

EXT.P2: COPY OF IA NO. 718/2013 IN OS NO 122/2013.

EXT.P3: COPY OF ORDER DATED 29/05/2013 PASSED BY THE MUNSIF COURT, CHENGANOOR IN IA NO. 718/2013 IN OS NO. 122/2013.

EXT.P4: COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER IN OS NO. 122/2013.

EXT.P5: COPY OF IA NO. 21/2015 FILED BY THE PLAINTIFF IN OS NO. 122/2013.

EXT.P6: COPY OF OBJECTION FILED BY THE PETITIONER IN IA NO. 21/2015 IN OS NO. 122/2013.

EXT.P7: COPY OF ORDER DATED 04/03/2015 PASSED BY THE MUNSIF COURT, CHENGANOOR IA NO. 21/2015 IN OS NO. 122/2013.

RESPONDENT'S EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/6/6/15

B.KEMAL PASHA, J.

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O.P.(C). No.963 of 2015

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Dated this the 5th day of June, 2015

J U D G M E N T

A suit for perpetual injunction is filed for restraining the petitioner from trespassing into the plaint schedule property. An order of temporary injunction was passed in the matter. It is alleged that by violating the said order, the petitioner committed trespass into the property and applied some chemicals on certain valuable trees in the property, thereby those trees got dried. The respondent, who is the plaintiff, wanted to get an Advocate Commissioner appointed with the assistance of an expert for bringing a report regarding the same. The court below has appointed an Advocate Commissioner and the Forest Range Officer, Social Forestry Range Office, Chengannur as special Commissioner vide Exhibit P7. The said order is under challenge.

2. Heard the learned counsel for the petitioner and the

learned counsel for the respondent.

3. According to the learned counsel for the petitioner, the special Commissioner appointed by the court below is not an expert and a Forensic expert ought to have been appointed. It is for the petitioner to prove that the trees were damaged and the same got dried on the application of some chemical substances. According to the learned counsel for the respondent, the special Commissioner appointed by the court below is an expert, who can assess the same. Whether he has got competency to assess it or not is a matter that has to be brought out through evidence. It is an urgent matter in which the Commissioner has to visit the property with the assistance of an expert. Presently, it cannot be said that the Forest Range Officer is not an expert. Let the Commissioner with the assistance of the special Commissioner appointed by the court below, visit the property and prepare a mahazar and report. This Court does not find any merit in the Original Petition (Civil), it is only to be dismissed and I am doing so.

In the result, this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/5/6/15