

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

RSA.No. 858 of 2010

**JUDGMENT DATED 30-11-2009 IN AS 69/2006 OF PRINCIPAL SUB COURT,
IRINJALAKUDA
JUDGMENT DATED 08-02-2005 IN OS 113/2003 OF MUNSIF COURT, CHALAKUDY
.....**

APPELLANT/1ST RESPONDENT/1ST DEFENDANT:

**THOMAS, S/O.KANICHA CHAKKAPPAN,
KALLUR VADAKUMURI VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.**

**BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SRI.M.AJAY**

RESPONDENT(S)/APPELLANT & 2ND RESPONDENT/PLAINTIFF & 2ND DEFENDANT:

- 1. THAMIKUTTY CHARITABLE SOCIETY,
REG.NO.529/86, KOTTATT DESOM, PADINJARE CHALAKKUDY
VILLAGE, MUKUNDAPURAM TALUK, REPRESENTED BY
CHAIRMAN SUBRAMANIAN, S/O.THAMIKUTTY, KAIPPAPLACKAL,
KOTTAATT DESOM, PADINJARE CHALAKKUDY VILLAGE,
MUKUNDAPURAM TALUK - 691 585.**
- 2. ROY, S/O.KUTTIVIL SEBASTIAN,
CHERIYAKANDAMANGALAM, ATHIRAMPUZHA VILLAGE,
KOTTAYAM TALUK-686 562.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

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R.S.A.No.858 of 2010.

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Dated this the 26th day of October, 2015.

J U D G M E N T

The first defendant in a suit for injunction is the appellant in this Second Appeal.

2. The plaintiff is a charitable society. The plaint A schedule property was purchased by the plaintiff in the year 1988 as per Exts.A1 to A3 sale deeds. The plaintiff is running a tile factory in the plaint A schedule property, after erecting the required structures and machinery for the same. The plaint B schedule property owned by the defendants is situated on the north and east of the plaint A schedule property. According to the plaintiff, plaint A and B schedule properties were lying on the same level and in due course the defendants started removing soil from the plaint B schedule property and consequently the northern and eastern boundaries of the plaint A schedule property have been destroyed. It is alleged by the plaintiff that

the defendants have removed soil from the plaint B schedule property to a depth of 50 feet at a distance of 12 feet from the northern and eastern boundaries of the plaint A schedule property. The case set up by the plaintiff in the plaint is that the plaintiff is entitled to have lateral support for their property from the plaint B schedule property and that the conduct of the defendants in removing soil from the plaint B schedule property resulted in loss of the lateral support of the plaint A schedule property. They have, therefore, claimed a decree of prohibitory injunction restraining the defendants from removing soil from the plaint B schedule property. The defendants resisted the suit. It was contended by the defendants that the plaintiff has burdened the plaint A schedule property by constructing buildings, erecting machinery and also by stocking huge quantity of raw materials. According to them, since the plaintiff has changed the natural condition of the plaint A schedule property, they are not entitled to lateral support from the plaint B schedule property by way of easement. The trial court accepted the contention of the defendants and dismissed the suit. The plaintiff has taken up the matter in appeal. The appellate court, on an appraisal of the

evidence on record, reversed the decision of the trial court and decreed the suit. The first defendant who is aggrieved by the decision of the appellate court has thus come up in this Second Appeal.

3. Heard the learned counsel for the appellant.

4. It is seen that the case of the plaintiff is that they are entitled to the natural right of lateral support for their property from the plaintiff B schedule property and the case of the defendants is that since the plaintiff has burdened his property with the additional weight of the buildings, structures, machinery, raw materials, etc., he is not entitled to the natural right of lateral support claimed by the plaintiff in the suit. It is now settled that the owner of a property is not entitled to the natural right of lateral support from the adjoining properties if he has burdened his property with additional weight by erecting buildings and other structures, unless such right has been acquired by him by way of easement. In the instant case, it is beyond dispute that the plaintiff has burdened his property with additional weight by erecting buildings, machinery, etc. But, the appellate court found on facts that on account of the conduct of

the defendants in removing soil from the plaint B schedule property, the plaint A schedule property would have lost its natural support even in its original position. In other words, the finding of the appellate court is that the lateral support of the plaint A schedule property is not lost due to the additional burden created on the same by the plaintiff by erecting buildings, machinery, etc. In the said view of the matter, there is no illegality in the decision of the appellate court. There is no question of law, much less any substantial question of law involved in this matter. The Second Appeal, in the circumstances, is devoid of merit and the same is accordingly dismissed. All the interlocutory applications in this case are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.