

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

RSA.No. 1242 of 2011 (F)

**AGAINST THE JUDGMENT AND DECREE IN AS 86/2004 of SUB COURT, OTTAPPALAM
DATED 19-08-2011.**

**AGAINST THE JUDGMENT AND DECREE IN OS 358/2000 of MUNSIFF COURT,
OTTAPPALAM DATED 26-06-2004.**

APPELLANT/APPELLANT/PLAINTIFF:

**V.V.AUGUSTINE, AGED 68 YEARS,
S/O.VALAVANATHURUTHEL VARKEY, RESIDING AT
CHETTADIKKUNNUPARAMBIL, VENGASSERY AMSOM AND
DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT.**

BY ADV. SRI.K.V.SADANANDA PRABHU.

RESPONDENTS/RESPONDENTS/DEFENDANTS:

**1. THE STATE OF KERALA, REPRESENTED
BY THE DISTRICT COLLECTOR, PALAKKAD-678 001.**

**2. CONSERVATOR AND CUSTODIAN OF VESTED FORESTS,
PALAKKAD-678 001.**

**3. FOREST RANGE OFFICER,
FOREST RANGE OFFICE,
OTTAPALAM-679 101.**

*** 4. KURUPPAMBATTA NARAYANAN NAIR,
S/O.GOVINDAN NAIR, AGED ABOUT 75 YEARS,
VENGASSERI AMSOM, DESOM, OTTAPALAM TALUK-679 101 (DIED)**

*** THE FOURTH RESPONDENT IS NO MORE AND THE APPELLANTS ARE
EXEMPTED FROM IMPEADING HIS LEGAL REPRESENTATIVES AT
THEIR RISK, AS PER ORDER DATED 16-06-2015 IN I.A NO.1281/2015.**

R1 TO R3 BY SPECIAL GOVERNMENT PLEADER SRI.M.P.MADHAVANKUTTY (FOREST)

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.1242 of 2011

Dated this the 3rd day of July, 2015.

J U D G M E N T

Appellant is the plaintiff in O.S No.358/2000 on the file of the Court of Munsiff, Ottapalam. The suit is one for injunction against the State of Kerala, the Conservator and Custodian of vested Forests, Palakkad, the Forest Range Officer, Ottapalam and also against an individual.

2. Brief facts, pleaded in the plaint, are as follows :

Plaint schedule properties belonged to one Narayanan Nair. After his death, the properties devolved on his legal heirs. They assigned the properties to the plaintiff as per Ext.A1 sale deed. Thereafter, the plaintiff is in exclusive possession as owner of the properties. Original owner Narayanan Nair's mother Naniyamma had applied before the Forest Tribunal, Palakkad to restore possession of 5.23 acres of landed properties

purchased by the plaintiff. That application was allowed. The property was planted with large number of rubber saplings. The Officers of the Forest Department under the guise that it is a vested forest tried to interfere with the possession of the plaintiff and therefore the suit was filed.

3. Defendants filed a written statement contending that the suit is not maintainable before a civil court. Proper forum to adjudicate the contentions raised in the plaint is a Forest Tribunal constituted in the Kerala Private Forest (Vesting and Assignment) Act, 1971. An additional written statement was filed by the defendants contending that meanwhile the Government passed an ordinance by name Kerala Forest (Vesting and Management of Ecologically Fragile Land) Bill, 2001. Therefore, the plaintiff is not entitled to maintain an action before a civil court even by virtue of the provisions of the said ordinance.

4. The courts below considered maintainability of the suit as a preliminary point and disposed of the case finding that the suit was not maintainable.

5. Heard the learned counsel for the appellant and the learned Special Government Pleader for the Forest Department.

6. Learned counsel for the appellant contended that the Government of Kerala by virtue of the powers in Section 19(3) (b) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 de-notified the property shown in the plaint schedule from the operation of the Act. The appellant filed I.A No.1332/2015 in the appeal under Order 41 Rule 27 CPC with a request to receive three documents produced along with the application. First document produced is a letter issued by the Divisional Forest Office, Palakkad to the appellant dated 15-04-2013 intimating that the plaint schedule property had been de-notified by an order dated 28-01-2013 and

it has been published in the Gazette dated 26-02-2013. The copy of the Gazette is also produced along with the petition. Another document produced by the appellant is to establish that the Government has de-notified the plaint schedule property from the operation of the Act as per proceedings of the Custodian (Ecologically Fragile Lands) & Additional Principal Chief Conservator of Forest (Development), Thiruvananthapuram. It has been clearly mentioned that the property included in the dispute has been de-notified.

7. Learned Special Government Pleader contended that in the light of these developments, the suit itself has become infructuous as the department resisted the suit only on the ground that the plaintiff has no right or possession over the property by virtue of operation of the Act. Once the operation of the Act has been de-notified, the department has no other claim over the property. Therefore, the documents filed along with I.A

No.1332/2015 are received in evidence. They are marked as Exts.A6 to A8 in the suit.

In the result, the appeal is disposed of finding that the apprehension of the plaintiff has been alleviated by subsequent passing of orders by the Government indicating that the Forest Department has no claim over the property.

All pending interlocutory applications will stand dismissed.

amk

Sd/-
A.HARIPRASAD,
JUDGE.

//True copy//

P.A to Judge