

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

RSA.No. 1237 of 2013 ()

**AGAINST THE JUDGMENT IN AS 19/2010 OF IST ADDL. DISTRICT COURT,
THODUPUZHA DATED 25-10-2012
AGAINST THE JUDGMENT & DECREE IN OS.NO. 340/2002 OF MUNSIF COURT,
THODUPUZHA DATED 23-12-2009**

APPELLANT/APPELLANT/PLAINTIFF :

**AJAY
S/O.NARAYANAN, AGED 43
RESIDING AT ELLICKAL HOME
SASTHAMPARA KARA, EDAVETTY P.O.,
KARIKODE VILLAGE, THODUPUZHA TALUK.**

**BY ADVS.SRI.JOICE GEORGE
SRI.LIJI.J.VADAKEDOM**

RESPONDENTS/RESPONDENTS/DEFENDANTS :

- 1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR, IDUKKI
COLLECTORATE, PAINAVU P.O., IDUKKI - 685 603.**
- 2. THE TAHSILDAR
THODUPUZHA TALUK OFFICE, THODUPUZHA
IDUKKI DISTRICT- 685 603.**
- 3. KHADER
S/O.PAREETH, AGED ABOUT 48
RESIDING AT KULATHUMKAL (H)
ANNAIKANNAM KARA, MUTHALAKODAM P.O.,
KARIKODE VILLAGE, THODUPUZHA TALUK,
IDUKKI DISTRICT- 685 605.**

4. PAREETH
S/O.BAVA, AGED ABOUT 48
RESIDING AT NEDUMKANDATHIL (H)
THODUPUZHA KARA, MUTHALAKODAM P.O.,
KARIKODE VILLAGE, THODUPUZHA TALUK,
IDUKKI DISTRICT- 685 605.

R1 & R2 BY GOVT. PLEADER SRI. JOBY JOSEPH
R4 BY ADVS. SMT. P.P. STELLA
SRI.BIJIMON C.CHERIAN

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 26-10-2015, THE COURT ON 09-11-2015 DELIVERED THE
FOLLOWING:

Mn

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P.B.SURESH KUMAR, J.

R.S.A.No.1237 of 2013

Dated 9th November, 2015.

J U D G M E N T

The plaintiff in a suit for injunction is the appellant.

2. The plaint schedule property belongs to the plaintiff. There is a granite quarry in the vicinity of the plaint schedule property. As per Ext.A4 order, the Tahsildar of the concerned Taluk called upon the plaintiff to pay a sum of Rs.92,550/- towards damages for the loss caused to the State on account of the unauthorised quarrying operations done by the plaintiff in a Government property. Ext.A4 order was issued by the Tahsildar to the plaintiff, in exercise of his powers under Section 6 of the Land Conservancy Act ('the Act' for short). According to the plaintiff, the third defendant is conducting quarrying operations in the quarry adjoining his property and that he has only permitted the third defendant to ply his vehicles through his property. The case set up by the plaintiff in the suit is that since he has not done any quarrying

operations in any Government property, he is not liable to pay damages claimed from him. Hence, the suit for injunction restraining the defendants from initiating proceedings for recovery of the damages from him. Defendants 3 and 4 remained ex parte. The State and the Tahsildar who are defendants 1 and 2 in the suit filed a written statement, contending among others, that the plaintiff and his father removed granite stones from the Government property adjacent to the plaint schedule property without obtaining the requisite permissions and licences from the authorities concerned and that therefore, he is liable to pay the damages claimed from him to the State. Defendants 1 and 2 also contended that an appeal lies against Ext.A4 order under Section 16 of the Act and in the light of the said right of appeal, the suit is not maintainable in view of the provision contained in Section 41(h) of the Specific Relief Act. The trial court found that in view of the right of appeal provided against Ext.A4 order, the suit is not maintainable and consequently, dismissed the suit. The appellate court found on facts that the plaintiff is liable to pay damages to the State as provided for under

Section 6 of the Act and consequently confirmed the decision of the trial court. The plaintiff, who is aggrieved by the concurrent decisions against him has thus come up in this second appeal.

3. Heard the learned counsel for the appellant.

4. The learned counsel for the appellant contended that merely for the reason that a right of appeal is provided for under the Act against Ext.A4 order, it cannot be said that the suit is not maintainable. He relied on the decision of the Apex Court in **Shiv Kumar Chadha and others v. Municipal Corporation of Delhi and others** [(1993)3 SCC 161] in support of his contention.

5. As noticed above, the suit is instituted alleging that the plaintiff is not liable to pay the amount covered by Ext.A4 order. Though the trial court dismissed the suit holding that the suit is not maintainable, the decision of the trial court has been confirmed by the appellate court holding that the plaintiff is liable to pay the amount covered by Ext.A4 order. As such, the question whether the suit is maintainable does not really arise for consideration in this second appeal. Further, even assuming that the said issue arises for consideration in

this appeal, I do not find any merit in the contention raised by the appellant as regards the maintainability of the suit. Section 41(h) of the Specific Relief Act provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceedings except in a case of breach of trust. It is beyond dispute that the suit is essentially one against Ext.A4 order issued by the Tahsildar. The fact that a right of appeal is provided against Ext.A4 order under Section 16 of the Act is not in dispute. Section 16 also provides that pending appeal, the appellate authority is authorised to suspend the execution of the order impugned in the appeal. As such, there is no reason at all for me to think that the remedy provided by way of appeal against Ext.A4 order under Section 16 of the Act is not an efficacious remedy. The view taken by the trial court that the suit is not maintainable is also, therefore, perfectly in order.

6. Coming to the decision of the Apex Court in **Shiv Kumar Chadha and others v. Municipal Corporation of Delhi and others** (supra), it is seen that the Apex Court has only clarified in the said case that the civil court should

entertain a suit questioning the validity of statutory orders if the court is of the prima facie opinion that the order is a nullity because of any 'jurisdictional error'. In the instant case, the plaintiff has no case that Ext.A4 order suffers from any 'jurisdictional error'. The case set up by the plaintiff is only that Ext.A4 order is illegal as he has not carried out any quarrying operations in any Government land unauthorisedly. The argument based on the decision of the Apex Court **Shiv Kumar Chadha and others v. Municipal Corporation of Delhi and others** (supra) therefore, fails.

In the result, the second appeal is dismissed in limine. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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