

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

RSA.No. 405 of 2015

**AGAINST THE JUDGMENT DATED 5.12.2012 IN AS 22/2010 OF ADDITIONAL SUB
COURT, IRINJALAKUDA**

**AGAINST THE JUDGMENT DATED 5.12.2009 IN OS 1457/2008 OF PRINCIPAL MUNSIF
COURT, IRINJALAKUDA**

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APPELLANT(S)/APPELLANTS/PLAINTIFFS:

- 1. ABDUL RAHMAN, AGED 55 YEARS,
S/O.KUTTAMUGATH ABU, MAREKKAD, ASHTAMICHIRA P.O.,
680 731, THRISSUR DT.**
- 2. NADEERA, AGED 46 YEARS,
W/O.KUTTAMUGATH ABDUL RAHMAN, -DO- -DO-**

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. SOORYA DAIRY FARM,
MAREKKAD, ASHTAMICHIRA P. O. - 680 731,
THRISSUR DT,
REP. BY ITS MANAGING PARTNER N. P. SUDHEER.**
- 2. N. P. SUDHEER, AGED 44,
S/O.NILATHATTIL PRABHAKARAN, MAREKKAD, MAREKKAD,
ASHTAMICHIRA P.O., 680 731, THRISSUR DT.**

BY ADV. SRI.SHEEJO CHACKO

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

R.S.A.No.405 of 2015

Dated this the 16th day of November, 2015

JUDGMENT

The plaintiffs in a suit for injunction are the appellants in the second appeal.

2. Defendants 1 and 2 are running a dairy farm in the neighbourhood of the residential property of the plaintiffs. According to the plaintiffs, the conduct of the defendants in running the dairy farm is causing nuisance to them. It is also their case that the defendants are not complying with the directions issued by the Pollution Control Board in the matter of running the dairy farm. The plaintiffs, therefore, sought a decree of permanent prohibitory injunction restraining the defendants from running their

dairy farm otherwise than in accordance with all the requisite permissions and licenses and without causing any nuisance. The defendants contested the suit. According to them, they have all the requisite licenses and permissions for running the dairy farm. They also contended that the conduct of the dairy farm is not causing any nuisance to anybody. They further contended that the suit is not maintainable in the light of Section 46 of the Air (Prevention and Control of Pollution) Act and Section 58 of the Water (Prevention and Control of Pollution) Act.

3. The trial court found that the suit is not maintainable. The trial court also found that the plaintiffs have not established that the conduct of the dairy farm is causing nuisance to the public. Consequently, the suit was dismissed. Though the plaintiffs took up the matter in appeal, the appellate court confirmed the decision of the

trial court. The plaintiffs who are aggrieved by the concurrent decisions against them have thus come up in this second appeal.

4. Heard the learned counsel for the appellants.

5. As noticed above, the case of the plaintiffs is that the conduct of the dairy farm of the defendants is not in accordance with the directions issued by the Pollution Control Board and that the dairy farm of the defendants is causing nuisance to them. While giving evidence, the first plaintiff as PW1 has clarified that he has no grievance against the Pollution Control Board which had given permission to the defendants to run the dairy farm. In other words, the grievance of the plaintiffs in the suit concerns non compliance of the directions issued by the Pollution Control Board by the defendants, in the matter of running the dairy farm and the nuisance caused by the dairy

farm. As such, the view taken by the courts below that the suit is not maintainable in the light of the provisions contained in the Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act may not be correct. However, it is seen that the plaintiffs themselves have examined before the trial court on their side the Environmental Engineer of the Pollution Control Board, the Secretary of the Panchayat as also the Health Inspector. Further, it has come out in evidence that though there was an earlier complaint before the Human Rights Commission concerning the alleged nuisance caused by the dairy farm of the defendants, the same was closed by the Human Rights Commission accepting the stand of the statutory authorities that the dairy farm is not causing any nuisance. From the aforesaid materials, the courts below came to the conclusion that the plaintiffs have not

established that the conduct of the dairy farm by the defendants is causing nuisance to the plaintiffs. I do not find any infirmity in the findings rendered by the courts below that the plaintiffs have not established that the dairy farm of the defendants is causing nuisance to them. As such, even though I do not agree with the view taken by the courts below that the suit is not maintainable, I do not find any reason to interfere with the impugned decisions.

In the result, the second appeal is dismissed *in limine*. However, it is made clear that the dismissal of the second appeal will not preclude the plaintiffs from instituting a fresh suit, if the dairy farm of the defendants causes nuisance to them in future.

P.B.SURESH KUMAR, JUDGE.

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