

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

RSA.No. 1201 of 2015

A.S.NO.93/2013 OF SUB COURT, PERUMBAVOOR

O.S.NO.93/2012 OF MUNSIF COURT, PERUMBAVOOR

APPELLANT/APPELLANT/PLAINTIFF :

**SAJI ABRAHAM, AGED 48 YEARS,
S/O.ABRAHAM, PATHIKKULANGARA HOUSE,
THAMARACHALPURAM KARA, KIZHAKKAMBALAM VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM.**

**BY ADVS.SRI.G.G.MANOJ
SRI.P.M.BENZIR
SMT.AYSHAMMA ABRAHAM
SRI.S.SARATH PRASAD**

RESPONDENT(S)/RESPONDENT/DEFENDANT:

**M.P.GEORGE, AGED 49 YEARS,
MATTAKKATTIL HOUSE, THAMARACHALPURAM KARA,
KIZHAKKAMBALAM VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM-683 562.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A.No.1201 of 2015

Dated this the 23rd day of November, 2015

JUDGMENT

The plaintiff in a suit for injunction is the appellant in the second appeal.

2. The case of the plaintiff is that the fabrication unit run by the defendant in the neighbourhood of the property of the plaintiff is causing pollution. It is also the case of the plaintiff that the conduct of fabrication unit by the defendant is in violation of the conditions imposed by the Grama Panchayat while issuing licence to the fabrication unit of the defendant. It is the further case of the plaintiff that the defendant is putting up some unauthorised structures in his property. The defendant resisted the suit, contending *inter alia* that no pollution is caused on account of the operation of the industrial unit by him. He also

contended that the conduct of the industrial unit by him is in accordance with the conditions in the licence issued by the Grama Panchayat. He further contended that he has not erected any unauthorised structure in his property.

3. The trial court found that the plaintiff has not established that the industrial unit of the defendant is causing pollution. The trial court also did not accept the case of the plaintiff that the conduct of the industrial unit by the defendant is in violation of the conditions imposed in the licence issued by the Grama Panchayat. The trial court also did not accept the case of the plaintiff that the defendant is putting up unauthorised structures in his property. Consequently, the suit was dismissed. Though the plaintiff took up the matter in appeal, the appellate court confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions against him has thus come up in the second appeal.

4. Heard the learned counsel for the appellant.

5. As noticed above, the courts below have

concurrently found that the plaintiff has not established the contentions raised by him in the suit. The learned counsel for the appellant, relying on Ext.A3 communication received by the plaintiff under the Right to Information Act from the Panchayat and Ext.B8 certificate issued the Kerala State Electricity Board, contended that the defendant is using power more than what is permitted. Ext.B8 certificate issued by the Kerala State Electricity Board indicates that the sanctioned load in the premises of the defendant is 24,550 watts and the defendant has an unauthorised additional load of 9,871 watts. Ext.A5 indicates that the defendant is permitted to use only 10 HP. Neither the Panchayat nor the Kerala State Electricity Board is a party to the suit. There is nothing on record to connect the load sanctioned to the defendant by the Kerala State Electricity Board and the power allocated to the defendant by the Panchayat. In the said view of the matter, it cannot be said that there is any infirmity in the decisions of the courts below. There is, therefore, no merit in the second appeal and the same is accordingly, dismissed.

However, it is made clear that the dismissal of the present suit will not preclude the plaintiff from instituting a fresh suit if the industrial unit of the defendant causes pollution or if the defendant violates the conditions and restrictions imposed by the Panchayat or other statutory authorities in the matter of granting him the permissions and licences required for the conduct of the fabrication unit.

P.B.SURESH KUMAR, JUDGE.

smm