

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

RSA.No. 1170 of 2014 ()

**(AGAINST THE JUDGMENT IN AS.NO. 149/2009 OF PRL. SUB COURT, THALASSERY
DATED 04-07-2014)**

**(AGAINST THE JUDGMENT IN OS.NO. 84/2006 OF MUNSIF COURT,
KUTHUPARAMBA DATED 25-09-2009)**

APPELLANT/2ND APPELLANT/2ND PLAINTIFF:

**K.T. VINOD,
S/O LATE V.C.MADHAVAN NAMBIAR, BUSINESS,
SANKAR NIVAS, KUTHUPARAMBA AMSOM,
AMBILAD DESOM, THALASSERY.**

BY ADV. SRI.P.R.VENKETESH

RESPONDENT(S)/RESPONDENTS/ DEFENDANTS:

**1. KERALA STATE,
REPRESENTED BY KANNUR DISTRICT COLLECTOR,
KANNUR-670 001**

**2. RECOVERY OFFICER,
ESI CORPORATION, THRISIVAPEROR-680 001**

**R1 BY GOVERNMENT PLEADER SRI.JOBY JOHN
R2 BY ADV. SRI.K.SANDESH RAJA,STANDING COUNSEL FOR ESI
CORPORATION**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

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R.S.A.No.1170 of 2014.

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Dated this the 23rd day of September, 2015.

J U D G M E N T

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

2. The plaint schedule property belonged to the first plaintiff V.C.Madhavan Nambiar and others. The first plaintiff committed default in remitting the contributions payable to the Employees' State Insurance Corporation in respect of his employees in the establishment M/s.Raja Match Factory and Oil Mills. The Corporation, in the circumstances, determined the contributions payable by the first plaintiff invoking Section 45A of the Employees' State Insurance Act and initiated proceedings under the Kerala Revenue Recovery Act ('the Act' for short) for recovery of the amounts due. The suit was filed at that point of time seeking a decree of prohibitory injunction against the proceedings initiated under the Act. The main contention raised in the suit was that the claim of the Employees' State Insurance

Corporation is barred by limitation. The defendants contended that the suit is barred by Section 72 of the Act. The trial court held that the suit is barred by Section 72 of the Act and the appellate court confirmed the decision of the trial court. The second plaintiff is aggrieved by the concurrent decisions of the courts below.

3. Heard the learned counsel for the appellant.

4. Ext.A7 is a notice issued to the first plaintiff in furtherance to the proceedings initiated against him under the Act for recovery of the amounts due to the Employees' State Insurance Corporation. The first plaintiff seeks in the suit a decree of permanent prohibitory injunction restraining the defendants from proceeding pursuant to Ext.A7 notice. It is alleged in the plaint that the proceedings initiated against the first plaintiff under the Act is vitiated by fraud. Section 72(1) of the Act provides that every question arising between the Collector or the authorised officer and the defaulter or his representative or any person claiming through the defaulter relating to execution, discharge or satisfaction of a written demand issued under the Act or relating to the confirmation or setting aside by an order under the Act of a sale held in

execution of such demand shall be determined not by suit, but by order of the Commissioner of Land Revenue where the Collector is a party to the question and the Collector in other cases. Section 72(2) of the Act provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Government, or the Commissioner of Land Revenue or the Collector or any officer or authority under this Act. Earlier, Section 72(1) of the Act contained a proviso to the effect that a suit may be brought in a civil court in respect of any such question on the ground of fraud. However, the said proviso was omitted with effect from 12.12.2005. The suit in the instant case is filed in the year 2006. It is in the said circumstances, relying on the amended provisions contained in Section 72 of the Act, the courts below took the view that the suit challenging the proceedings initiated against the first plaintiff under the Act is not maintainable. I do not find any illegality in the view taken by the courts below. There is no question of law, much less any substantial question of law, involved in the Second Appeal and the same is, accordingly dismissed. All the interlocutory

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applications in the appeal are dismissed.

**P.B.SURESH KUMAR,
JUDGE.**

Kvs/-