

IN THE HIGH COURT OF JUDICATURE OF TRAVANCORE-COCHIN

Present :

\* The Hon'ble Shri G. Kumara Pillai, C and  
The Hon'ble Shri M. Varadaraja Iyengar, J

Appeal Suit No. 24 of 1955

C.S. No. 104 of 1122 of the Trichur District Court

Appellant - plaintiff

Cuseph, son of Akkarappattay Thomankutty, resident at Kizhak-kumpattukara, Desom, Peringavu Village, Trichur Taluk

By advocate Shri C.C. John

Respondents - defendants 1 and 2

1. Anthony, son of Arakkal Varied, resident at Mannuthy, Ollukara Village, Trichur Taluk
2. Mathai, son of Thadathil Varghese, resident at Pattikkat Desom, Panancherri Village Trichur Taluk

Respondent by advocate Shri K.F. Abraham

This appeal suit having been finally heard on 25.5.1956, the court on the same day delivered the following

JUDGMENT

This appeal arises out of a suit on a contract. Only two points now arise for decision. The contract was for the felling and sale of timber standing in certain properties. The plaintiff to whom the timber was to be sold had paid an advance of Rs. 250. In this appeal which is filed by the plaintiff he claims that he is entitled to recover back from the defendants this advance. Defendants had made a counter claim in the suit for Rs. 618 due to them from the plaintiff on account of the price of timber actually sold to him. Although plaintiff denied liability for this counter claim, the court below allowed it and gave a decree to the defendants for Rs. 368 which is the balance after setting off the advance amount of Rs. 250 against the amount of Rs. 618 due to them. Plaintiff has not objected in the appeal to the decree thus given to the defendants. Since the advance amount has been taken into account in settling the accounts between the plaintiff and the defendants in regard to the price of the timber sold to him the plaintiff cannot be allowed to recover again the advance amount from the defendants.

A.S. 24/55

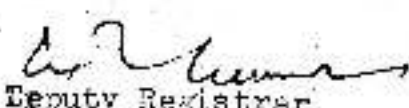
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Therefore the first point urged in the appeal is to be decided against the plaintiff. On the second point also the plaintiff is not entitled to succeed. The plaintiff's grievance in regard to that point is the disallowance of a claim for damages in respect of certain trees in the properties which according to him the defendants should have sold to him under the contract and which they have admittedly sold to other persons. Under this head the plaintiff claims Rs. 750. The evidence of DWs 1 to 4, which has been accepted by the court below, shows that after the agreement the plaintiff visited the properties and selected the trees he wanted, that all these trees were felled and sold to the plaintiff, and that the defendants have sold to other persons only the trees which the plaintiff did not want. DW 2 is the Forest Guard who had to make the verifications in connection with the issue of the necessary passes. We do not see any reason to differ from the court below as to the credibility of these witnesses, and in the light of the evidence of these witnesses ~~of these witnesses~~ we consider the plaintiff's claim under this head to be unsustainable. In the result the appeal fails and is dismissed with costs.

29.5.1956

SD. G. KUMARA PILLAI, JUDGE  
SD. N. VARADARAJA IYENGAR, JUDGE

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Deputy Registrar  
For Registrar

Copy sent by  
U. S. Lakshmi Aune

A. 142/56. Dd. Eni. L. P. Abraham  
7-8-56.