

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Hon'ble Mr. Justice K. Sukumaran.

Tuesday, the 15th January 1985/25th Pousha 1906.

S.A. No. 7 of 1980 B

A.S. No. 183 of 1977 of the Sub Court, Trichur.

O.S. No. 105 of 1974 of the Principal Munsiff's Court,
Trichur.

Appellant:- Appellant - Plaintiff.

Thressia, W/o. Pulukiyil Mathu,
aged 55 years, Killannoor Village,
Trichur Taluk.

By Advs. M/s. M.R. Parameswaran, & M.N. Ravindran.

Respondents:- Respondents - Defendants.

1. The State of Kerala represented by the Chief Secretary to the Government of Kerala, Secretariat, Trivandrum.
2. Prabhakaran, Contractor, residing at Moorkanikara, Mulayam Village, Trichur Taluk.

By Advs. - R1 - Govt. Pleader.

R2 - M/s. M.N.P. Samuel, T.K. Chinman &
K. Mathews Mathai.

This second appeal having been finally heard on 15-1-1985, the Court on the same day delivered the following:

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(Sukumaran, J.)

S.A. No. 7 of 1980 - B

J U D G M E N T

The second appeal was tenaciously argued by counsel for the appellant, Sri. Mathews J. Nedumpara. The principles of law gatherable from judicial decisions in Rylands v. Fletcher, (1868) L.R. 3 H.L. 330 (House of Lords), and State of Punjab v. M/s. Modern Cultivators, A.I.R. 1965 S.C. 17 were placed in the course of the arguments so advanced.

2. The suit was one for damages claimed by the plaintiff towards the cost of repairing a cow shed and other expenses when that shed and the compound had an influx of mud and earth when the water flowing through the adjacent irrigation canal caused such flow of mud and earth in August-September 1973. Though a claim had been made for the damages sustained by her when repair works were carried out by the workers standing in her property, that has been rightly abandoned.

3. The courts below have appreciated the evidence, which consisted of the evidence of P.Ws. 1 and 2 and D.Ws. 1 and 2. The plaintiff had summoned the watchman of the canal to give evidence in the case but had, for 'strange reason' as noted by the court below omitted to examine him.

P.W.2 the Asst. Engineer gave evidence that during the rainy season water is not let out through the canal. This evidence was believed by the courts below. If that be so, the version of the plaintiff about the manner in which she had been damaged, would not be probable. The plaintiff observed:

"It is in evidence that there was heavy rains and the report of the officers found in Ex. B2 file also go to show that the breach took place due to heavy rain."

The lower appellate court also adverted to various circumstances including the discrepancies in the dates of the occurrence of the breach of the canal as seen from the evidence of P.W.1. The admission of P.W.2 that the canal water was let out only for paddy cultivation was also referred to by the lower appellate court. The evidence of P.W.2 was believed. The courts below felt that they could not place any reliance on the oral testimony of P.Ws. 1 and 2.

4. Essentially, therefore, the question turned on the appreciation of evidence in the case. In that area, the jurisdiction of the second appellate court is extremely limited. It cannot be said that the appreciation of evidence undertaken by the courts below is perverse or

totally unreasonable. I am inclined to agree with the approach and appreciation of the evidence in the case as made by those courts. Even if another view is possible, that is not sufficient to attract the jurisdiction of this Court in second appeal.

5. In view of the above, the contentions which had been forcibly put forward, particularly on the legal aspects, would not arise in the second appeal. The second appeal is therefore dismissed but without any order as to costs.

15th January, 1935.

Sd/- K. Sukumaran, Judge.

/True copy/

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Asst. Registrar
6/1/35

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