

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH  
&  
THE HONOURABLE MR. JUSTICE SATHISH NINAN

WEDNESDAY, THE 28TH DAY OF FEBRUARY 2018 / 9TH PHALGUNA, 1939

AFA.No. 44 of 2002

AGAINST THE JUDGMENT IN AS 220/1991 of HIGH COURT OF KERALA DATED  
01.10.2001

AGAINST THE JUDGMENT AND DECREE IN OS 19/1984 of SUB COURT, KOTTARAKKARA

APPELLANTS(APPELLANTS-DEFENDANTS)

- 1 STATE OF KERALA, REPRESENTED BY ITS  
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.
- 2 DIVISIONAL FOREST OFFICER, KALLAR VALLEY  
TEAK PLANTATIONS, ACHANKOVIL.

BY ADVS.SPL.GOV.T.PLEADER SRI.MADHU.K.P  
SRI.NAGARAJ NARAYANAN, SPL. G.P. FOR FOREST

RESPONDENT(RESPONDENT-PLAINTIFF):

MARIA ANTONY, OWNER OF WILSON SAW MILL  
AND TIMBER DEPOT, PIRANCOR BORDER, SHENCOTTAH. (DIED)

- ADDL. 2. MARY STELLA BAI, W/O MARIA ANTONY,  
12/61, RAILWAY FEEDER ROAD, AMBASAMUDRAM 627 401
3. WILSON JOSEPH KENNEDY, S/O MARIA ANTONY,  
12/62 RAILWAY FEEDER ROAD, AMBASAMUDRAM 627 401
4. MALLIKA KINGSLEY, W/O BENITO ARUL RAJAPPAN,  
4/316 THAMARAI STREET, MAIN ROAD, KARUTHAPILLAIYOR. 627 418.
5. KINGSON XAVIER KENNEDY, S/O MARIA ANTONY,  
1/488 TENKASI ROAD, PIRANOR BORDER, SHENKOTTAI 623 708.
6. SARATHA KINGSLEY, W/O JAYA VINSE RUBAN,  
7C PARAMESWARAN STREETS, VETURNIMADAM, NAGARCOIL 629 003
7. SANGEETHA KINGSLEY, W/O JERALDIN JINO,  
4/19, VANIAN VILLAI, VELLICODE, MULAGUMOODU, NAGERCOIL 629 167
8. KENSON SAHAYA KENNEDY, S/O MARIA ANTONY,  
12/61 RAILWAY FEEDER ROAD, AMBASAMUDRAM 627 401
9. JAISON BALAN KENNEDY, S/O MARIA ANTONY,  
12/59 RAILWAY FEEDER ROAD, AMBASAMUDRAM 627 401

BY ADV. SRI.K.K. JOHN

LEGAL REPRESENTATIVES OF THE DECEASED SOLE RESPONDENT ARE IMPEADED AS ADDITIONAL  
RESPONDENTS 2 TO 9 AS PER ORDER DATED 22.02.2018 IN I.A No.4297/2016.

THIS APPEAL FROM FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22-02-2018,  
THE COURT ON 28.02.2018 DELIVERED THE FOLLOWING:

V.Chitambaresh & Sathish Ninan, JJ.

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A.F.A No.44 of 2002

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Dated this the 28<sup>th</sup> day of February, 2018

**JUDGMENT**

**Sathish Ninan, J.**

Challenging the concurrent decree for recovery of money and declaration in relation to a contract for sale, the defendants are in appeal.

Tenders were invited by the defendants for sale of teak poles consisting of four categories. The plaintiff was the highest bidder. The total bid amount was ₹4,92,565/-. The auction amount was to be paid in ten instalments. The plaintiff paid a sum of ₹48,614/- which included the sale consideration of ₹25,956/- for 1584 teak poles of the fourth category and sales tax amount of ₹22,658/-. He also deposited ₹29,722/- towards the sale consideration of teak poles of category

number 3. The said amount would cover the value of 627 teak poles. It is the plaintiff's case that before making payment of the third instalment when he inspected the stock of teak poles, it was found that the poles which he bid for, was not there and was replaced by inferior quality poles. Therefore, he refrained from making further payment. He had made excess payment of ₹9,883.86/- in respect of fourth category teak poles. Since the very subject matter of the contract ceased to exist, he prayed for a declaration that the contract has terminated and also for recovery of the excess sale amount paid by him, for return of the security amount and also the excess sales tax amount. The defendants would contend that the allegation of removal of the auctioned teak poles and replacement of the same with inferior quality poles are without any basis and are incorrect. Consequent to the non-payment of the bid amount by the plaintiff within the time stipulated the

defendants had to re-auction the teak poles and suffered losses consequent thereto. They would claim that they are entitled to compensation from the plaintiff.

The trial court found that the teak poles as auctioned by the plaintiff was not available and accordingly granted a decree as prayed for. On appeal, the learned single judge confirmed the finding and the decree.

The learned Govt. Pleader would contend that the plaintiff having failed to pay the balance sale consideration within the time stipulated, the defendants had to conduct reauction whereunder they suffered damages. The present suit is only a ploy to get away from fixing of liability upon the plaintiff for deficit amount and damages. He would submit that the evidence on record proves that the plaintiff failed to pay the balance purchase price within the stipulated time. It is the case of the plaintiff that the amounts payable

from third instalment onwards was not paid by him since it was found that the specific teak poles which were bid by the plaintiff were not available and were removed by the defendants. The trial court had issued commissioners to visit the place on five occasions. Relying on the reports of the commissioners marked as Ext C2 series, it was found that the specific teak poles as auctioned, were not available. Therefore, the very subject matter in respect of which the contract for sale was entered into having ceased to exist or not being available, the plaintiff could not have been found fault with for non-payment of the balance consideration. Necessarily the plaintiff is entitled to refund of the excess purchase price paid by him towards the value of the undelivered 577 number of teak poles, the security amount and the excess sales tax amount paid by him. We do not find sufficient materials on record to come to a conclusion that the finding by the trial court as well

as the learned single judge regarding the nonavailability of the auctioned teak poles at the site was erroneous. In the circumstances, the plaintiff is entitled for the amount as claimed.

We do not find any reason to interfere with the impugned judgment and decree.

The appeal is dismissed.

**Sd/- V.Chitambaresh, Judge.**

**Sd/- Sathish Ninan, Judge.**