



C.M.A.(MD) No.1484 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED :31.12.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

C.M.A.(MD)No.1484 of 2024  
and  
C.M.P.(MD)No.15776 of 2024

S.Christoper. ...  
Appellant/respondent/defendant

vs.

S.Devarajan. ... Respondent/petitioner/plaintiff

**PRAYER:** Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(r) of C.P.C., against the fair order and decretal order, dated 16.02.2024 in I.A.No.2 of 2023 in O.S.No.96 of 2017, on the file of the Additional District Court, Kuzhithurai.

For appellant	: Mr.K.N.Thambi for Mr.G.Cenil
For Respondent	: Mr.M.Charles

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## **J U D G M E N T**

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Having aggrieved by the order passed in I.A.No.2 of 2023 in O.S.No.96 of 2017, dated 16.02.2024, by the Additional District Court, Kulithurai, the respondent/defendant therein has preferred this Civil Miscellaneous Appeal.

2. Devarajan S/o. Savarianantham has filed a suit before the District Court, Kanyakumari at Nagercoil, in O.S.No.96 of 2017 against Christopher S/o.Sathiyanesan for recovery of money of Rs.16,96,000/- with interest at 12% p.a.

3. For the sake of convenience, the parties are referred to as per the litigative status in the suit.

4. The case of the plaintiff is stated in nutshell as follows:

(a) The plaintiff is the owner of rubber garden measuring 8.36 Acres in R.S.No.200 of Kadaiyal Village. Plaintiff and the defendant entered into an agreement on 16.08.2014 for slaughtering the rubber trees and tapping latex from the rubber trees in the garden.



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The terms and conditions delineated in the agreement are  
extracted hereunder:

*“(I) Slaughter tapping has to be done in a phased manner within 3 years and the defendant has to pay Rs.38,00,000/- (Thirty eight lakhs) to the plaintiff. Although it was written in the agreement that the 1<sup>st</sup> installment of Rs.15 lakhs was paid on the date of agreement but the same was not paid on the date of agreement but the same was paid on 2 subsequent dates, namely, an amount of Rs.5,00,000/- was paid on 16.08.2014 and Rs.10 lakhs was paid on 31.08.2014. The 2<sup>nd</sup> installment of Rs. 13,00,000/- (Rupees thirteen lakhs) was to be paid on 13.08.2015 and the 3<sup>rd</sup> installment of Rs.10,00,000/- (Rupees ten lakhs) was to be paid on 13.08.2016. The defendant has no more right except tapping latex and slaughtering the rubber trees. The defendant has no right to enter the property after slaughtering the trees. By not strictly adhering to the schedule of payment detailed in the agreement, the agreement has been frustrated (as the amount due to the plaintiff has not been paid)”*



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(b) The defendant paid the first installment of Rs.15,00,000/- to the plaintiff and tapped latex for a full one year and earned profit not less than Rs.10,00,000/- to Rs.15,00,000/-. Due to the improper maintenance of the defendant, 15 rubber tree withered and latex was not collected from it. The defendant filed Indigent O.P.No.508 of 2015. The plaintiff filed I.A.No.21 of 2016 in the said O.P. for order of interim injunction restraining the defendant not to interfere with the plaintiff's possession and enjoyment of the suit property, in which interim injunction was granted till the disposal of the pauper O.P. on 24.07.2016. However, the defendant obstructed the plaintiff from taking yield from the rubber trees. The remaining a sum of Rs.13,00,000/- was not paid by the defendant. As 15 trees withered due to improper maintenance, the plaintiff incurred loss of Rs.60,000/-. Since the defendant is liable to pay a sum of Rs.14,10,000/- besides interest at 12% p.a. on Rs. 13,00,000/-, the suit for recovery of money of Rs.16,96,000/- was filed by the plaintiff.

6. The defendant resisted the claim of the plaintiff in his written statement and the details are given hereunder:



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(a) The plaintiff's father Sabarianantham purchased the suit property from a stranger. At the time of execution of agreement, no permission was granted by the District Committee as per the provisions of Tamil Nadu Preservation of Private Forests Act, 1949. Sabariananatham conveyed his right to the plaintiff without obtaining permission from the Committee.

(b) It is true that an agreement was entered between the plaintiff and the defendant and Rs.38,00,000/- was fixed not only for tapping latex but also for slaughtering the rubber trees. The plaintiff prevented the defendant from taking yield after one year and hence, the plaintiff is liable to return 2/3 of the amount of latex value in Rs.13,00,000/-. No sane man will sell 925 trees for slaughter tapping for three years and to cut and remove the same for an amount of Rs.38,00,000/-, if the one year profit from latex is Rs.10 to 15 lakhs. Though the plaintiff, after giving the trees for slaughtering and removing, received Rs.15,00,000/-, he tapped latex for two years from 15.08.2015 to till date. The plaintiff could have earned Rs. 30,00,000/-. There is a removal of 125 trees without



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permission from the Committee after 15.08.2015. The defendant has filed a counter claim, claiming an amount of Rs.3,92,640.66/-, which is payable by the plaintiff.

(c) Meanwhile, the defendant moved an application in I.A.No.366 of 2017 under Order XXXIX Rules 1 and 2 and Section 151 of C.P.C. for an order of interim injunction against the plaintiff restraining him from cutting and removing the rubber trees standing in the suit property till the disposal of the counter claim. The parties were examined and thereafter, upon consideration, the Trial Court granted an order of interim injunction in favour of the defendant by directing the plaintiff not to cut and remove the rubber trees standing in the suit property till the disposal of the counter claim.

(d) Thereafter, the plaintiff therein filed another interim application in I.A.No.2 of 2023 under Order XXXIX Rule 4 and Section 151 of C.P.C. to modify the order passed in I.A.No.366 of 2017 in O.S.No.96 of 2017 and to grant permission to the petitioner/plaintiff to cut and remove the old trees in the schedule of property. It was averred by the plaintiff that as the order of the interim injunction was granted



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in I.A.No.366 of 2017 in favour of the defendant, though the defendant has not paid the second installment of Rs. 13,00,000/-, the plaintiff was unable to cut the old rubber trees and replant new rubber plants. It was further averred by the plaintiff that out of 925 rubber trees, due to the improper maintenance of the defendant, 56 trees lost its life and due to 'Occi' cyclone, 42 trees were uprooted. As per the report of the Advocate Commissioner, only 829 rubber trees are available in the suit property. If these 829 rubber trees are not cut and removed, as they are old, these trees will automatically loose its strength and would become value less. The agreement period is - 16.08.2014 to 15.08.2017. The agreement was automatically terminated on 13.08.2015, due to non-payment of second installment. Therefore, the defendant has no right over the suit property. Hence, it is necessary to modify the order passed in I.A.No.366 of 2017 and further, the petitioner/plaintiff can apply to the District Collector for grant of permission to cut the rubber trees in the suit property.



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WEB COPY 7. The details of petition filed by the plaintiff are given in brief:

- (a) Originally, a suit in O.S.No.96 of 2017 was filed against the defendant for recovery of second installment amount of Rs.13,00,000/- along with other amount, totalling a sum of Rs.16,96,000/- with interest from the defendant. Both entered into an agreement dated 16.08.2014 for a period of three years. As per the terms of the agreement, the defendant is permitted to carry out rubber tapping from the date of agreement and at the end of the third year, the defendant is permitted to cut and remove the trees from the suit schedule property.
- (b) It has further been averred in the petition that the defendant failed to pay the second installment of Rs.13,00,000/- on 13.08.2015, as per the terms of the agreement and despite repeated requests of the plaintiff, he has continued to tap latex from the rubber trees owned by the plaintiff.
- (c) In order to avoid the payment of the installment, the defendant filed an indigent suit in P.O.P.No.508 of 2015 dated 02.12.2015 before the District Court, Kanyakumari. As





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the plaintiff was not permitted to enter into the suit property, the plaintiff filed I.A.No.21 of 2016 against the defendant and his men for an order of injunction and it was ordered in favour of the plaintiff on 27.04.2016. Thereafter, he was allowed to enter into his property.

(d) Thereafter, the defendant filed I.A.No.366 of 2017 and an injunction was granted in favour of the defendant on 21.04.2018 restraining the plaintiff from cutting the rubber trees till the disposal of the counter claim. As of now, out of 925 rubber trees, due to the improper maintenance of the defendant, 56 trees are not alive and due to Ocki cyclone, 40 trees got uprooted. As per the report of the Advocate Commissioner, only 829 old rubber trees are available in the suit property. If these trees are not cut and remove at this stage, these trees would automatically loose its strength and would become worthless. The said respondent entered into a fraudulent agreement with one Pushparaj, who is not connected with the subject matter. The said Pushparaj colluded with the respondent and filed a suit against the Christopher and two others.



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(e) The respondent/petitioner filed a petition before the District Collector for permission to cut the trees in which the defendant Christopher referred the injunction order granted in I.A.No.366 of 2017 and objected his application not to grant permission to cut and remove the standing trees.

(f) The agreement period is between 16.08.2014 to 16.08.2017. As the agreement is automatically terminated on 13.08.2015, the defendant Christopher has no right over the suit property. It is highly necessary to modify the order in I.A.No.366 of 2017 enabling the petitioner to apply to the District Collector for grant of permission to cut and remove the rubber trees in the suit property. If the order passed in I.A.No.366 of 2017 is not modified to cut and remove the standing rubber trees, which are in the stage of degradation, he will be put to great revenue loss. Hence, this petition.

8. The averments of the plaintiff/petitioner was resisted by filing of the counter stating that the plaintiff did not obtain permission from the District Collector to cut and remove the trees. As the defendant was prevented from tapping latex after one year,



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the plaintiff is liable to refund 2/3 of Rs.13,00,000/- and Rs. 2,00,000/- which was paid to the District Committee by the defendant.

9. Upon consideration, the Trial Court allowed the petition on the following conditions.

1. The petitioner is allowed, on condition that the counter claim amount of Rs.3,92,640/- is to be deposited in the Court on or before 15.03.2024.
2. For cutting and removing the old trees from the suit property, the procedure adumbrated in Tamil Nadu Preservation of Private Forests Act, 1949 is to be followed strictly.
3. On failure of the petitioner to comply with the above said conditions, the order shall stand automatically cancelled.

10. Against the said order, the defendant/respondent has preferred this appeal.



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11. Heard Mr.K.N.Thambi, learned counsel appearing for the appellant/respondent/defendant and Mr.M.Charles, learned counsel appearing for the respondent/petitioner/plaintiff.

12. The learned counsel for the appellant/defendant would strenuously argue that the plaintiff has suppressed the fact that 925 trees were sold to the defendant for a price of Rs.38,00,000/- and also for extracting latex for three years. The plaintiff did not obtain permission from the District Collector to cut the trees. Since the plaintiff has prevented the defendant from tapping latex after one year, the plaintiff is liable to refund 2/3 of Rs.13,00,000/-. It is his further argument that the income of the defendant is blocked for the last seven years.

13. Per contra, the learned counsel for the respondent/plaintiff would submit that as the plaintiff and the defendant entered into the agreement dated 16.08.2014 for three years. As per the agreement, the defendant has to carry out the rubber tapping and at the end of three years, he has to cut and remove the trees in the suit property. He would further contend that



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the defendant without paying second installment of Rs.13,00,000/- on 13.08.2015, was collecting latex from the rubber trees owned by the plaintiff. Due to the order of injunction granted in I.A.No.366 of 2017 in favour of the defendant, the plaintiff was unable to cut the old rubber trees and replant new rubber plants. As the defendant did not pay the second installment, it is necessary to modify the order passed in I.A.No.366 of 2017.

14. The execution of agreement by the plaintiff and the defendant is an admitted fact. The agreement period is from 16.08.2014 to 15.08.2017. Out of the agreed amount of Rs. 38,00,000/-, the defendant paid the first installment of Rs. 15,00,000/- to the plaintiff. The second installment of Rs. 13,00,000/- was payable on 13.08.2015 and the third installment of Rs.10,00,000/- was payable on 13.08.2016 were not paid.

15. The admitted fact is that the first installment of Rs.15,00,000/- was paid by the defendant. It is relevant to note that as per the agreement, the plaintiff, who is the owner of the trees, has to obtain permission from the District Committee under Tamil



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Nadu Preservation of Private Forests Act, 1949.

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17. The agreement was entered into between the parties before 10 years for collecting latex and for cutting and removing the trees after the work of collection of latex is over. Already it is delayed by seven years. Hence, the learned Trial Judge may come to a conclusion as expeditiously as possible, preferably within a period of seven (7) months from the date of receipt of a copy of this judgment without being carried away by the observation made by this Court.

18. With these observations, this Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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**31.12.2024**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
apd

To

1.The Additional District Judge, Kuzhithurai.

2.The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.KALAIMATHI,J**

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Pre-delivery order made in  
**C.M.A.(MD) No.1484 of 2024**

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