

PETITIONER:
S. VALLINAYAGAM & ORS.

Vs.

RESPONDENT:
LUKE STEPHEN & ANR.

DATE OF JUDGMENT: 23/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel for both sides.

This appeal by special leave arises from the order of the Kerala High Court dated April 10, 1996 made in CMA No. 68/96. This Court while issuing the notice on July 30, 1996 stated as under:

"Mr. Subba Rao, learned counsel for the petitioner says that he has no objection as regards injunction restraining the petitioner from alienating the land of erecting or inducing third parties into possession. He says that his client has been growing cardamom. Unless some of the trees are cut or removed it would not be possible to carry on the cardamom plantation. Only to that extent subject to any further condition may be imposed, the injunction may be vacated or suitably modified, We do not propose to go into at this stage on this limited issue."

Pursuant thereto, a counter-affidavit has been filed by the respondent stating that the appellant has obtained plantations of the cardamom. He disbanded the entire labour force. Only two persons are kept in charge of the plantations and, therefore, there is no need to cut and remove any trees. Shri Subba Rao, learned counsel for the appellant has stated that the appellant has been carrying on the planting of cardamom. The trees that obstruct the cardamom cultivation are required to be cut: similarly, the trees suffering from diseases have to be cut so as to keep infection free atmosphere. Under those circumstances, it is necessary that he may be permitted to cut the trees. Shri Vishwanantha Iyer, learned senior counsel for the respondent, states that since the cardamom plantations are required to be done only in the monsoon season, i.e., June, July or March and April and the first season is yet to start

and since there are, at present, no crops there is no need to cut the trees. In view of the allegations and counter-allegations, we cannot set the matter at rest here. Under these circumstances, the trial Court is directed to appoint an advocate Commissioner to make a personal inspection after notice to the parties and to submit a report whether the cardamom plantations have been raised by the appellant and if so in what extent of the land the plantations have been raised. On the receipt of the report from the Commissioner with a finding that cardamom plantations have been raised, necessary directions should be issued to cut such number of trees which require for uninterrupted cultivation of cardamom plantations and also such of the plants which are affected by pests so as to keep the plantations free from infection. The petitioner is required to obtain crop loans. He could also obtain crop loan from the banks etc. The trial Court is directed to dispose of the suit by December 1996.

The appeal is accordingly disposed of. the appellant is directed to approach the civil Court with an application to appoint a Commissioner forthwith. The directions given by the High Court for disposal for the suit stand upheld. No costs.