

(1961) 11 KL CK 0023
In the High Court Of Kerala
Case No : C.R.P. No. 1041 of 1960

Janaki Pillai

APPELLANT

Vs

Parameswaran Pillai

RESPONDENT

Date of Decision : 27-11-1961

Acts Referred:

Citation : (1962) KLJ 494

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : T.K. Narayana Pillai N, D. Narayanan Potti, M. Sathiapalan and C.P. Kuttappan Nair, for the Appellant; P. Govindan Nair, G. Balagangadharan Nair and K. Sukumaran, for the Respondent

Judgement

T.C. Raghavan, J.—The Civil Revision Petition is against the order of the learned Subordinate Judge of Quilon setting aside a report of the commissioners and directing a fresh commission. The learned Subordinate Judge says in his order that he made a local inspection to ascertain whether the objections filed by the 17th plaintiff-respondent before me and the defendants were tenable and had also prepared notes of inspection. The Notes of inspection have been kept in a sealed cover. Thereafter the learned Judge perused the report of the commissioners, heard arguments thereon and eventually set aside the report saying that the data supplied by the commissioners in the report were not correct to enable the court to arrive at a correct conclusion regarding the value of improvements. The Civil Revision Petition is directed against that order. The procedure adopted by the learned Subordinate Judge in keeping the notes of inspection prepared by him in a sealed cover is rather queer. I have opened the cover and looked into the notes of inspection. The notes contain several opinions like that the property was not fit for cocoanut cultivation, that it was not suited for pepper cultivation and that the nature and character of the growth of the cocoanut trees indicated that the trees might not continue in a prosperous yielding stage for more than 40 years. Notwithstanding that, the learned Judge has directed therein that the notes of inspection should be kept sealed amongst

the records and no copy of the notes of inspection should be given to any of the parties, or to anybody, I fail to see what prompted the learned Judge to keep the notes of inspection in a sealed cover denying copies to the parties in the case. As has been held in *Buckingham v. Daily News Ltd.*, (1956 2 All. E.R. 904), a view of the place by the Court is part of the evidence, just as much as an exhibit, and that it is real evidence and for this reliance is placed on the authority of Denning L.J. in *Goold v. Evans & Co.* (1951 2 T.L.R. 1189). If so, "it is desirable that both sides should know all the facts the Judge observed at his local inspection and the result of such local inspection"--(vide *Kaliammal v. Pongiammal* (A.I.R. 1958 Mad. 331))--and therefore the parties should have been given access to the notes of inspection. A reading of the notes of inspection drives on to the conclusion that the impression gathered by the learned Judge at the local inspection has gone a long way in setting aside the commissioners report. In view of the curious procedure adopted by the learned Judge, I am inclined to think that the order of the learned Judge has to be set aside and the objections to the commissioners report should be reconsidered.

2. Therefore, I set aside the order of the lower court and remand the matter to the lower court for fresh disposal after hearing the parties concerned. The notes of local inspection prepared by the learned Judge shall not be used in these proceedings. If the learned Judge, who disposes of the matter, thinks it is essential to have a local inspection, he may do it after giving notice to the parties and if he inspects, he should prepare notes of inspection and should also make the notes available to the parties. In the circumstances of the case, I direct the parties to bear their respective costs in this Court.

A copy of this order may be sent to the learned Judge, wherever he is.