

(1963) 10 KL CK 0011
In the High Court Of Kerala
Case No : S.A. No. 970 of 1961

Joseph Nadar

APPELLANT

Vs

Kumara Pillay and another

RESPONDENT

Date of Decision : 22-10-1963

Acts Referred:

Citation : (1964) KLJ 439

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : S. Nilakanta Iyer, for the Appellant; S. Easwara Iyer and P.N. Rajan, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—When a decree adjudges possession, as in this case it does, it adjudges possession of the property as it was on the date of the decree and it is the duty of the court executing the decree to see that the property is delivered in the condition it was when the decree was made. If that is not possible owing to waste committed by the judgment-debtor, the discharge and satisfaction of the decree would require that the decree-holder should be compensated for the diminution in value of the property as a result of the waste; in other words, to the extent to which the judgment-debtor has destroyed the property, he must deliver it in the shape of money. It is therefore not merely within the competence of the court to adjudge compensation for waste and direct its payment in executing the decree but it is clearly its duty to do so--see Kumaran Rama v Variathu (A. I. R. 1953 TC 77-F. B.) and the decisions referred to therein; the decision in Venkita Rao v Ramachandra Kamath (1945 T.L. R. 972) relied upon by the appellant judgment-debtor cannot be regarded as good law. The courts below were therefore right in adjudging damages for waste in the course of execution. The property in Schedule A of the decree is held by the appellant under a lease, that in Schedule B under a mortgage. That in the case of the former property Act I of 1957 stayed, and Act VII of 1963 now stays, delivery does not affect the

jurisdiction of the executing court to adjudge compensation for waste which is best done as soon as possible after the waste has been committed. There is nothing in these statutes which stay only actual delivery, which is a bar to such adjudgment and the jurisdiction to adjudge does not depend on actual delivery being presently possible.

2. I dismiss this appeal with costs.