

(1927) 03 MAD CK 0021
In the Madras High Court

Thuna Runa Ana Vellachami Servai and Others	APPELLANT
Vs	
Samusuvava Rowther and Another	RESPONDENT

Date of Decision : 22-03-1927

Acts Referred:

Citation : AIR 1928 Mad 392

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—Defendants 2 to 4 are the appellants in this ease. The first contention of Mr. Krishnaswami Iyer for the appellants is that his

clients are not liable for damages for breach of contract by defendant 1. The Subordinate Judge has not made the appellants liable for breach of

contract by the defendant, but he has made them liable for the value of the number of cart-loads of firewood removed by them.

2. The facts are: Defendant 1 sold the trees standing on a piece of land to the plaintiff. Before the plaintiff could cut and remove the trees he seems

to have interfered with his possession and defendants 2 to 4 joined defendant 1 and cut and carried away the trees. The allegation that they

purchased the trees from defendant 1 without the know ledge of the sale to the plaintiff was found against. The simple question therefore is whether

defendants 2 to 4 were justified in carrying away timber trees, the property in which had already passed to the plaintiff. They, having cut and

carried away the trees belonging to the plaintiff, are liable to the extent of the loss caused by them.

3. It is next urged by M. Krishnaswami Iyer that his client carried away only 50 cart-loads of wood and therefore they should not be made liable

for anything more. The finding of both the courts is that 300 cart-loads were removed by defendants 2 to 4 as well as by defendant 1. They acted

in concert and therefore they are liable to the amount of firewood which was actually removed by them and by the defendant 1. It is suggested by

Mr. Krishnaswami Iyer that there is nothing to support the finding, but Mr. Rajah Aiyar has drawn my attention to the evidence of P.W. 1 to the

effect that the defendant removed 500 cart-loads. The quantity of wood removed being found by both the Courts and there being evidence in

support of the finding, it cannot be interfered with in second appeal.

4. Another point was feebly raised by Mr. Krishnaswami Iyer, that the trees being immovable property, there should have been a registered deed

for the sale of them. The Act specifically says that immovable property does not include standing timber, growing crops or grass. Mr.

Krishnaswami Iyer relies upon Krishna Rao v. Babaji [1900] 24 Bom. 31 and contends that

by the term timber is meant property in such trees only as are fit to be used in building and impairing houses.

5. Granting that the decision in Krishna Rao v. Babaji [1900] 24 Bom. 31 lays down the correct meaning of the term "timber" the trees sold to

the plaintiff were karuvela trees, the timber of which, as is well known in southern districts, is used for building purposes. I hold that karuvela and

velvela trees are timber within the meaning of the decision in Krishna Rao v. Babaji [1900] 24 Bom. 31. But, with great respect to the learned

Judges, I do not think that the term "timber" can be limited to the class of trees the timber of which is used for building purposes. In that case the

learned Judges held that a mango tree did not come within "the term "standing timber." Whatever may be the use to which mango-wood is put in

the Bombay Presidency, in Southern India mango planks are used not only for making doors and windows but also for making boxes, tables,

benches, etc. The judgment of the Subordinate Judge is correct. The second appeal fails and is dismissed with costs.