



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

A.S.NO.5 OF 2013

1. The District Forest Officer,
Salem.
2. The Government of Tamilnadu,
Rep. by Secretary to Government,
Revenue Department, Chennai - 9.
3. The Collector of Salem,
Collectorate, Salem - 1.

... Appellants/
Defendants

-Vs-

Soundara Rajesh (died)

1.Mohan Rajes

2.Gowri Pandyinathan

..Respondents/
Plaintiff's

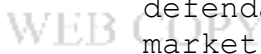
PRAYER: Appeal Suit is filed under Section 96 of CPC against the Judgment and Decree dated 22.09.2010 passed in O.S.No.110 of 2006 on the file of the Additional District Judge, Salem and Fast Track Court No.2, Salem.

For Appellants : Mr.Edwin Prabakar, GA(CS)

For Respondents : Mr.S.Sethuraman for R1 and R2

J U D G M E N T

The Appeal suit is filed against the Judgment and Decree dated 22.09.2010 passed in O.S.No.110 of 2006 on the file of the Additional District Judge, Salem and Fast Track Court No.2, Salem.



3. The said Suit has been filed for directing the defendants to handover the sandal wood weighing 6130 kgs or the market value of the sandal wood.

4.1. The suit property herein consists of coffee, cardamom, orange clove, nutmeg and other fruit bearing trees besides some sandal wood. Therefore, the plaintiffs sought for the assistance of the Forest Department to remove and store the Sandalwood trees. After a period of 6 years, the Forest Department visited the property and directed to cut and store the Sandalwood in the Government Sandalwood Depot Godown and issued letters dated 08.02.1993, 13.09.1993 and 06.10.1993 certifying the village and Survey Number, from which, the sandalwood had been removed. The Forest Department also issued transport permits to transport the wood to the Government Sandalwood Depot for safe custody. The pitting, extraction, sizing and removal from the estate was done at the sole cost of the plaintiffs.

4.3. After the deposit in the years 1992 / 1993 for which, the defendants failed to give any final out-turned acknowledgments even after several communications and reminders were sent. The plaintiffs had made it clear to the defendants about their title to the property and requested only to clean and dress the Sandalwood delivered to the defendants and informed that they should refrain from selling the same until authorized. The first defendant by the letter dated 06.10.1993, 18.06.1993 and 14.10.1993 confirmed that the plaintiffs would be given an opportunity to be present when the wood was being cleaned and out-turned and that it would be done in his presence.



4.4. In spite of several letters during the course of 1992 to 2001, none of these requests were attended by the Department, since the value of the Sandalwood was considerable, deteriorating and as they have been exposed to sun and rain for the past several years. Therefore, the plaintiffs filed the said suit seeking to direct the defendants to handover the possession of the Sandalwood and permit to sell the same.

4.5. It was further averred that the plaintiffs handed over 6130 kgs of raw Sandalwood which would weigh 735.6 kgs when it is cleaned, which would be 12% weight of the raw Sandalwood. The percentage taken above is as per the normal practice followed by the Forest Department. The present value per kgs of cleaned Sandalwood is Rs.2500/-. The plaintiffs value for asking possession of the Sandalwood is 735.6 kgs x Rs.2500 = Rs.18,39,000/- and paying Court Fees. Hence the Suit.

5. Resisting the same, the defendants filed a written statement stating that it is the duty of the plaintiffs to inform to the Forest Department. It is not known as to whether the land in question is registered as a patta land as stipulated in the G.O.Ms.No.1459, Revenue, dated 19.09.1924 and unless it is produced by the plaintiffs, the ownership cannot be established. Mere possession of Sandalwood will not entitle the plaintiffs to claim title over the property. In fact, the plaintiffs duly informed the first defendant by the letter dated 21.09.1995 seeking time for production of records, after which, the plaintiffs failed to produce any ownership certificate so far. They also denied the quantity of Sandalwood certain 6130 kgs and also denied the acknowledgment.

5.1. In the written statement it has been further stated that in G.O.Ms.No.120 Forests and Fisheries Department dated 17.02.1979, it has been clearly stated that the ownership certificate is vested with Government. When the plaintiffs failed to prove their ownership of the property, they cannot say that the Sandalwood belongs to them. The Sandalwood in question was cleaned on 14.05.1994 and it was sold in the year 1994 itself. As per the provisions, it is the duty of the persons to apply for the registration of the property mark in respect of Sandalwood to be extracted from Private Lands within the State accompanied by a Statement in Form IV.

5.2. After the receipt of such application, the District Forest Officer may authorize the Subordinates to fix hammer seal on each tree. Even according to the plaintiffs, the Sandalwood were cut down and it is against the rules. It is their duty to



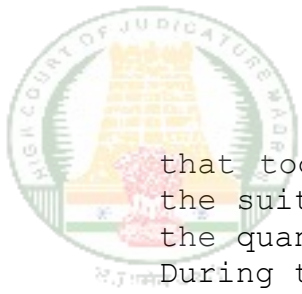
inform the Department about the said fact. Therefore, the plaintiffs have not followed the established procedures and in order to avoid any action which may be taken by the Forest Department, the plaintiffs deposited the Sandalwood in the Department. Even till the date of filing the suit, the plaintiffs failed to prove that they are the owners of the land. That apart, the calculation made by the plaintiffs is in no way connected with the true position and the plaintiffs are not entitled to any relief. Hence they prayed for dismissal of the said suit.

6. On completion of the rival pleadings, the learned Trial Judge framed the following issues:-

1. Whether the plaintiffs is entitled to the relief of directing the defendants to handover the Sandalwood as mentioned in the plaint?
2. Whether the plaintiffs has followed the Sandalwood Transit Rules or not?
3. Whether the plaintiffs is entitled for the relief sought for?
4. To what relief?

7. On perusal of the records, it is seen that on the side of the plaintiffs P.W.1 and P.W.2 were examined and 32 documents were marked as Ex.A1 to Ex.A32. On the side of the defendants, D.W.1 was examined and 4 documents were marked as Ex.B1 to Ex.B4. On considering the oral and documentary evidence adduced by the respective parties and the submissions made by the respective learned counsel, the Court below decreed the suit and fixed the value of Rs.2500/- per kg for the cleaned Sandalwood weighing 735.69 kgs. Aggrieved by the same, the defendants preferred this Appeal Suit.

8. The learned counsel for the appellants would submit that the plaintiffs failed to prove their ownership of the land, in which, the Sandalwood were cut down and as such they are not entitled to any relief as prayed by them. As per G.O.Ms.No.1459 dated 19.09.1924, if the patta is assigned, then only the plaintiffs entitled for compensation. The plaintiffs wrote a letter dated 21.09.1995 to the District Forest Officer to clean the Sandalwood and sought more time to produce the patta. The plaintiffs failed to produce the requisite patta or certificate and Sandalwoods were sold during the month of July 1994 itself. The total price obtained from the sold goods was Rs.8,71,667/-, in which, the plaintiffs are entitled to a compensation of 47.5% of the sale price as per the G.O.Ms.No.126 dated 06.03.1940 and



that too with a condition that the plaintiffs submit records of the suit property assigned prior to 19.09.1924. He also disputed the quantum of Sandalwood which was received from the plaintiffs. During the year 1992 / 1993 the average price for the cleaned lot was fixed at Rs.2,35,832/- per ton. If the plaintiffs produce certificate for the lands which were assigned prior to 19.09.1924, then the amount to be paid to the plaintiffs is only Rs.41,40,042/- as per the calculation submitted by the defendants.

9. Per contra, the learned counsel for the respondents would contend that the plaintiffs proved that the land in which the Sandalwood were cut down was owned by them and it was marked as Ex.A1 the sale deed. After purchase, as there was a dispute between the family members of the plaintiffs, they filed a suit for partition in O.S.No.501 of 1975 on the file of Sub Court, Salem, in which, the final decree was passed and it was allotted to the plaintiffs, the decree of which were marked as Ex.A2. Thereafter, they obtained patta in their names. The quantum of the Sandalwood, which was cut down, was also categorically proved by the plaintiffs through Ex.A7 and Ex.A8. Accordingly, by permit No.386 dated 24.11.1992 and invoice No.6/92 the first defendant duly acknowledged the Sandalwood weighing 3020 kg. Further permit No.387 and invoice No.7/92, the quantity of 3110 kg was also duly received by the first defendant on 25.11.1992. Thus the plaintiffs categorically proved that the first defendant received and acknowledged the Sandalwood and the total weight-age is 6130 kgs. Insofar as the price of the Sandalwood in the year 1992 / 1993 is concerned, the Government produced various G.O's and price list and fixed at Rs.2,35,832/- per ton. As per G.O.Ms.No.126 dated 06.03.1940 the plaintiffs are entitled to claim compensation of 47.5% of the total sale price. Accordingly, the Appeal Suit may be disposed of.

10. Heard, Mr.Edwin Prabakar, GA(CS), learned counsel for the appellants and Mr.S.Sethuraman, learned counsel for the first and second respondents.

11. The plaintiffs owned property comprised in Survey Nos.44/1, 44/3A and 45 of Solur Village, Yercaud Taluk, Salem District. It consists of coffee, cardamom, orange clove, nutmeg and other fruit bearing trees besides some Sandalwood trees. As requested by the plaintiffs, the defendants permitted them to cut the sandalwoods and the same were duly acknowledged by the first defendant. On 24.11.1992, by permit No.386 and invoice No.6/92 3020 kgs of sandalwoods in lot No.497 were duly received and



acknowledged on 25.11.1992. Likewise, by permit No.387 and invoice No.7/92 3110 kgs of sandalwood in lot No.269 were duly received and acknowledged on 25.11.1992. Both the permit and acknowledgment were marked as Ex.A7 and Ex.A8. To prove their ownership, they marked Ex.A1 and Ex.A2 which were a sale deed and a final decree passed in O.S.No.501 of 1975 on the file of Sub Court, Salem. Therefore, the Court below rightly decided the issue that the Sandalwoods were cut down from the land owned by the plaintiffs. The plaintiffs also proved the quantum of Sandalwoods which were duly received and acknowledged by the first respondent weighing 6130 kgs of uncleaned Sandalwoods.

12. Insofar as the price and entitlement are concerned, admittedly the defendants received and acknowledged weighing 6130 kgs of uncleaned Sandalwoods, which were marked as Ex.A7 and Ex.A8. According to the plaintiffs, they are praying for direction to handover the Sandalwoods, or the price of the Sandalwoods. Admittedly the Sandalwoods which were received from the plaintiffs, were sold out in the year 1994 itself. Therefore, the Court below rightly awarded compensation to be paid by the defendants.

13. In respect of the value of Sandalwood is concerned, the learned counsel for the respondents produced the statement showing the details of Sandalwood sold during 1993 related to Moganadu Estate Vide Lot No.65/1992 - 1993 and the statement showing average price fetched for various classes of sandalwood in Salem Sale Depot during the sale held on 06.07.1994. The sandalwoods which were cut down from the plaintiffs land were sold out in the year 1994. Therefore, the average price fixed during the year 1994 for the sandalwood can be taken into consideration to fix the quantum of price. Accordingly, the total uncleaned sandalwoods received from the plaintiffs were equal to 6130 kgs on 25.11.1992. As per the statement showing the details of Sandalwoods sold during 1993, the value of sandalwood per ton is equal to Rs.2,33,565/-. Accordingly the value comes to 6.13 tons x Rs.2,33,565/- = Rs.14,31,757/-.

14. As per G.O.Ms.No.126 dated 06.03.1940, the plaintiffs are entitled to claim compensation of 47.5% of the sale price. Accordingly Rs.14,31,757 x 47.5/100 = Rs.6,80,084/-. In this Appeal Suit, this Court granted interim stay on 11.01.2013 on condition that the defendants should deposit admitted compensation amount to the tune of Rs.4,14,042/-. The defendants deposited the said amount to the credit of O.S.No.110 of 2006.



15. Therefore, the plaintiffs are entitled for compensation of Rs.6,80,084/- with interest at the rate of 6% per annum from the date of receipt of the sandalwood on 25.11.1992 till the payment of the compensation. The defendants are directed to deposit the balance amount after deducting the amount, which was already deposited to the credit of O.S.No.110 of 2006 on the file of the Trial Court with interest at the rate of 6% within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the plaintiffs are permitted to withdraw by filing appropriate application before the Court below.

16. In the result, this Appeal Suit is partly allowed.
No cost.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rna

To

1. The Additional District Judge,
Fast Track Court No.2,
Salem.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Sethuraman, Advocate, S.R.NO.35333
+1cc to Special Government Pleader, S.R.NO.35677

A.S.No.5 of 2013

PVS (CO)
CS/24/11/2021