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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.S.A.NO.19 OF 1997

1.J.Bellie Gowder (Deceased)

2.Lakshmi

3.Dharman

4.B.Ravichandran

(Appellants 2 to 4 brought on record
as LRs of the deceased sole appellant
vide order of Court dated 12.06.2015
made in CMP Nos.226 to 228 of 2015
in CMSA No.19 of 1997)

... Appellant/Claimant

Vs.

1.The Forest Settlement Officer - II
Coonoor, Nilgiris.

2.The District Forest Officer
Nilgiris North Division
Uthagamandalam.

.. Respondents/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 10 of the Forest Act read with Section 100 of Civil Procedure Code against the fair and decreetal orders dated 05.11.1996 in C.M.A.No.57/1995 before the District Court, Nilgiris at Uthagamandalam preferred against the order dated 29.09.1995 passed in RC.A.No.19 of 1990 in the Court of the Forest Settlement Officer - II, Coonoor.

For Appellants : Ms.Hema Sampath
Senior Counsel
for Ms.R.Meenal

For Respondents: Mr.M.Santhana Raman
Addl. Government Pleader (Forest)



J U D G M E N T

The present Civil Miscellaneous Second Appeal is preferred against the Judgement passed by the District Court, Nilgiris, in C.M.A.No.57 of 1995, dated 05.11.1996, against the rejection of claim for the forest land.

2. According to the appellants, they are in possession of the property for a period of over 20 years and their predecessors were in long and continuous possession. Without considering the existence of the plantation and perusing the proper sketch of the forest land and without verifying the revenue records, FMB book, the Forest Settlement Officer has erroneously rejected the claim. Therefore, the order passed by the Courts below are liable to be set aside for non-application of mind.

3. On the basis of the above contentions, the appellants have raised three substantial questions of law:

" (i) Whether in law the Courts below are right in rejecting the appellant's claim when exemption has been granted to a portion of the same plot in prior proceedings and that order has become final ?

(ii) Whether in law the Courts below are right in overlooking that the order passed in R.C.A.18/90 would operate as res judicata in the present proceedings ?

(iii) Whether in law the Courts below are not wrong in overlooking that the appellant and his predecessor have prescribed title by adverse possession ? "

4. I have given my anxious consideration to the materials placed before me.

5. The appellant staked his claim with respect to a land in S.No.248/8. The name of the appellant was found recorded in S.No.234. When the matter was dealt by the authority, admittedly, the appellant in R.C.A.No.19 of 1990 would make a statement that he was in occupation of one acre of land in S.No.248/8 of Jackanarai Village, by way of planting Tea, Coffee, Orange and Silver Oak trees. Further, he would state that the occupation in S.No.248/8 was recorded as though he is in occupation under S.No.234 by mistake. The appellant secured a favourable order in respect of other land in S.No.248/8. Whereas, in the present case, it is contended that he is in occupation of the property for over twenty years in S.No.234 of



Jackanarai Village. The contention made by the appellant by itself is contradictory and false. Further, pursuant to the declaration of forest land, the Forest Settlement Officer had inspected the field on 21.11.1990 and recorded his inspection notes, wherein the appellant's name was not found in the list of encroachers or occupants of the field.

6. On the other hand, the evidence of the Village Administrative Officer, Jackanarai Village, goes to show that the land was in possession of one tribal called Achuthan and his name was found to be included in the list of encroachers. The report of the Forest Settlement Officer, mentioned above in report no.19/90 dated 30.11.1990, also corroborate the revenue records and statement of the Village Administrative Officer. In that event, the appellant could not have been in possession before 1990. The contention of the respondents that he could have purchased the property from the tribal called Achuthan for some consideration, has some force. Further, it is found that the appellant is an economically sound person having land and house in other revenue villages. If that being so, he could not be a forest dweller living in the forest. To claim exclusion, it is very important to produce evidence of possession and right over the property. The appellant has not produced any evidence with regard to his possession and his right over the property.

7. Therefore, the District Court has rightly found that the land claimed by the appellant was in possession of the tribal called Achuthan till 1990 and admittedly, was not in his possession. Further, it is proved that the appellant is an economically sound person having land and house in other revenue villages and that he failed to produce any documentary evidence to show that he is entitled to the claim and therefore, the finding of the Forest Settlement Officer that the appellant is not entitled to the land, is correct.

8. In view of the above discussions, I find that no question of law is available to entertain the above appeal. The questions raised in the grounds of appeal are mere questions of fact on the basis of contradictory facts pleaded by the appellant. That proceedings in R.C.A.No.19 of 1990 pertains to different field and the area name claimed. As admitted by the appellant himself, survey number of the land was wrongly recorded by mistake. As long as the same issue between the same parties was tried and finally decided on merits, it will not amount to res judicata. Unless and until the title is legally conferred, the illegal encroachment made by his predecessors, will not confer any right on the appellant to claim any possession, much less adverse possession. Under such circumstances, the question of adverse possession will not arise. Therefore, all the questions are answered against the appellants.



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9. In fine, the Civil Miscellaneous Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

TK

To

1.The District Court
Nilgiris at Uthagamandalam.

2.The Court of the Forest Settlement Officer - II
Coonoor.

3.The Section Officer,
High Court,
VR Section,
Madras-104.

C.M.S.A.NO.19 OF 1997

NM(CO)

rrs 04/12/2018