



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.S.A.NO.37 OF 1995

1.The Forest Settlement Officer
Gudalur.

2.The District Forest Officer
Gudalur Division
Gudalur.

... Appellant/Respondents

Vs.

I.Mohammed

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 10 of the Tamil Nadu Forest Act read with Section 100 of Civil Procedure Code against the judgment and decree dated 31.03.1995 passed in C.M.A.No.64 of 1993 by the learned District Judge and Appellate Authority of Nilgiris at Uthagamandalam allowing the appeal against the judgment and order of the Forest Settlement Officer, Gudalur in his proceedings Rc.A.No.755/84 dated 07.01.1993.

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

For Respondent : Mr.S.Kingston Jerold
for Mr.S.K.Raghunathan

J U D G M E N T

This Civil Miscellaneous Second Appeal is preferred against the order dated 31.03.1995 passed in C.M.A.No.64 of 1993 by the learned District Judge and Appellate Authority, Nilgiris, confirming the order dated 07.01.1993 passed in R.C.A.No.755/84 by the Forest Settlement Officer, Gudalur.



2. The respondent laid a claim before the Forest Settlement Officer, Gudalur, claiming 5 acres of land in S.No.303/1 of Devala Village, encroached upon by him. The Forest Settlement Officer, on inspection, during his perambulation, having found a thatched hut and old coffee plants of aged about 15 years and lemon grass over an extent of 4 acres, excluded the 4 acres of land and rejected the request in respect of one acre of land. Aggrieved over the same, the respondent preferred an appeal and the same was allowed by the Lower Appellate Court. Challenging the same, the State is before this Court.

3. The Civil Miscellaneous Second Appeal was admitted on the basis of the following substantial questions of law: -

"1.Whether the Lower Appellate Court is right in deciding the claim of the respondent when there is no documentary evidence to establish the right of the respondent?.

2.Whether the Lower Appellate Court is right in allowing the appeal by recognising the right of the respondent mainly on the ground of encroachment?."

4. Heard the submissions made on either side and perused the materials available on record.

5. From a perusal of the materials available before this Court, it is seen that the Lower Appellate Court granted exemption on the ground that the Forest Settlement Officer having allowed 4 acres of land, ought to have exempted one acre of land, without any documentary evidence therefor. The order passed by the Lower Appellate Court is based on assumption and presumption. When it is clearly held that the claim of the respondent is not supported by any documentary evidence and that only 2 years old tea crops were planted in the land in dispute, the Lower Appellate Court, on presumption, should not have been allowed the appeal and included the remaining one acre of land to which there is no evidence for possession. Once the land is declared as forest land, nobody can acquire title over the same except by succession or by a grant through written contract from the Government or from a person who has vested right. In the instant case, it is categorically proved that the respondent / claimant was not having any documentary evidence. In the absence of documentary evidence, it shall be construed that the claimant is an encroacher, for, the Janmis or lessees of Janmis or occupiers who were otherwise in possession were granted patta as per Janmam Act. Even persons who were in occupation before the date of notification without documentary evidence and those who came into occupation after the date of notification are treated as encroachers. The respondent / claimant has not proved her



claim by way of any oral and documentary evidence. It is an admitted case of encroachment of land. An encroacher is a person in illegal possession of the land. In such circumstances, the respondent / claimant cannot be equated with an occupier as defined under the Tamil Nadu Forest Act, 1882. An encroacher is not entitled to any relief.

6. The Hon'ble Supreme Court in T.N.GODAVARMAN THIRUMULPAD VS. UNION OF INDIA [W.P.(CIVIL) NO.202 OF 1995 DECIDED ON 12.12.1996] has categorically held that no patta shall be granted nor shall any encroachment be regularised in a forest land.

7. The order passed by the Lower Appellate Court is based on no evidence and perverse. Therefore, in the absence of any documentary evidence, the respondent / claimant is not entitled to the remaining one acre of land. Accordingly, the substantial questions of law are answered in favour of the appellants.

8. In fine, the judgment and decree dated 31.03.1995 passed in C.M.A.No.64 of 1993 by the learned District Judge and Appellate Authority, Nilgiris at Uthagamandalam, is set aside and the Civil Miscellaneous Second Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TK
To

1.The District Judge
and Appellate Authority
Nilgiris at Uthagamandalam.

2.The Forest Settlement Officer
Gudalur.

Copy to:
The Section Officer,
VR Section High Court, Madras.

+1cc to the Spl Government Pleader, S.R.No.23157

C.M.S.A.NO.37 OF 1995

SSI(CO)
GSP(20/11/2018)