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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.20 OF 2004

1.John
2.Yacob

... Appellants

Vs.

1.The District Forest Officer
Gudalur,
The Nilgiris.

2.The Forest Settlement Officer
Gudalur,
The Nilgiris.

... Respondents

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 20.08.2003 made in C.M.A.No.14 of 2003 on the file of the Court of the District Judge and Appellate Authority of the Nilgiris at Uthagamandalam, confirming the order dated 31.01.1998, made in R.C.A.No.62/91 on the file of the Court of the District Settlement Officer, Gudalur.

For Appellant : Mr.B.Soundarapandian

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

J U D G M E N T

The appellants, aggrieved over the order dated 20.08.2003 passed by the learned District Judge and Appellate Authority, Nilgiris, in CMA No.14 of 2003, confirming the order dated 31.01.1998 passed in R.C.A.No.62 of 1991 by the Forest Settlement Officer, are before this Court, by way of filing this Civil Miscellaneous Second Appeal.

2. The appellants claimed possession of the property through their father. According to them, his father was in possession of the property and has paid "B" Memo charges and also served No.7 notice. Since the appellants have not marked



any documents to show that the property was transferred from their father, the Forest Settlement Officer, rejected their claim and dismissed the appeal filed by them. The same was confirmed by the learned District Judge cum Appellate Authority, against which, the present Civil Miscellaneous Second Appeal is filed.

3. The Civil Miscellaneous Second Appeal was admitted by this Court on 18.06.2004 on the following substantial questions of law:

"(i) Whether the decision of the Forest Settlement Officer is sustainable without giving opportunity to let in oral and documentary evidence?

(ii) Whether the learned Appellate Authority is legally correct in relying on the unreported decisions which refers only to illegal encroachment and not mere occupation as recognised by the provisions of the T.N.F. Act 1882? "

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

4(a). The Forest Settlement Officer issued notice to the appellants and conducted enquiry. Not only the appellants and also their mother were enquired. Therefore, it is clear that the Forest Settlement Officer had given opportunity to let in evidence.

5. Even though it is stated by the appellants that they have received property from their father, they have failed to show that their father was an occupier of the land. The statement that they are continuously paying "B" Memo charges and producing No.7 notice by itself clearly shows that they are in illegal occupation of the land as encroachers. It is also categorically replied that an encroacher cannot be equated as an occupier. The appellants should have proved their possession by way of documentary evidence. In the absence of any documentary evidence, the Courts below have rightly come to the conclusion that the appellants are not entitled to the exclusion of properties.

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. In view of the judgment cited supra, the questions of law raised by the appellants are not sustainable and are answered in the negative. Accordingly, the Civil Miscellaneous Second Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

1.The District Judge of the Nilgiris
and Appellate Authority
Uthagamandalam.

2.The Forest Settlement Officer
Gudalur,
The Nilgiris.

3.The District Forest Officer
Gudalur, The Nilgiris.

4.The District Settlement Officer
Gudalur,
The Nilgiris.

5.The Section Officer,
VR Section, High Court,
Madras.

C.M.S.A.NO.20 OF 2004

KJI (CO)

rrs 14/11/2018