

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.2 OF 1998

C.P.Innasu

... Appellant

Vs.

1.The Forest Settlement Officer
Gudalur, The Nilgiris.

2.The District Forest Officer
Gudalur Division, 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 12.11.1996 passed in C.M.A.No.40 of 1990 by the learned District Judge, Nilgiris at Ootacamund confirming the order of the learned Forest Settlement Officer, Gudalur, dated 09.05.1990 passed in R.C.P.No.864/82.

For Appellant : Mr.S.Kingston Jerold for
Mr.S.K.Rakhunathan
For Respondents: Mr.M.Santhana Raman
Addl. Government Pleader (Forest)

J U D G M E N T

This Civil Miscellaneous Second Appeal is preferred against the order dated 12.11.1996 passed in C.M.A.No.40 of 1990 by the learned District Judge, Nilgiris at Ootacamund, confirming the order dated 09.05.1990, passed in R.C.P.No.864/82 by the Forest Settlement Officer, Gudalur, The Nilgiris.

2. The appellant claimed an extent of 50 acres of land in S.No.1468/4, Cherangode Village, Nilgiris, on the pretext that he obtained the land on lease from Nilambur Kovilagam. It is the case of the appellant that he had obtained the land on lease in 1963 and was in possession till 1981, when he was forcibly evicted by the Forest Department. The Forest Settlement Officer, on inspection, during his perambulation, noticed large growth of lemon grass and also coffee plants along with scatted pepper wines. There were clear signs of cultivation by the

appellant. The Forest Settlement Officer, having found lemon grass, coffee plants and scattered pepper vines, in an area of 10 acres of land and remaining 40 acres of land being covered with thick forest, has exempted only 10 acres of land in favour of the appellant / claimant. Against which, the appellant preferred an appeal. The Lower Appellate Court dismissed the appeal confirming the order of the Forest Settlement Officer. Aggrieved over the same, the appellant / claimant is before this Court.

3. The following substantial questions of law are raised in the present Civil Miscellaneous Second Appeal:-

"1. Whether the provisions of Section 4, 6 and 8 of the Tamil Nadu Forest Act have been violated by the Authorities in the instant case so as to negative the claim of the Appellant in respect of 40 ares in S.No.1468/3, 1478/4 and 1468/5 ?

2. Whether the reliance on local inspection by the First Respondent can be taken for negating the claim of the Appellant, especially when a notice of inspection has not been given to the Appellant nor copies of notes of inspection having been furnished to him, which has resulted in violation of statutory rules and principles of natural justice?".

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

5. From the records, it is seen that inspection was conducted by the Forest Settlement Officer and he has categorically held that lemon grass, coffee plants and scattered pepper vines were planted in an area of 10 acres of lands. It is not disputed by the appellant that there is no such plants in the lands claimed by him. One cannot deny the existence of thick forest to an extent of 40 acres. The inspection report of the Forest Settlement Officer has not been disputed by any authentic documentary evidence. It is categorically stated in the order passed by the Forest Settlement Officer that on remand from the District Court, he issued notice under Section 8 of the Tamil Nadu Forest Act, 1882, to the appellant. It is obvious that once a matter is remanded, the parties will have knowledge of the order and that they have to appear before the Forest Settlement Officer. In the instant case also, it is clear that on notice, both sides appeared and represented their case. In that event, it cannot be said that there is violation of principles of natural justice. Therefore, the contention of the appellant that the provisions of Sections 4, 6 and 8 of the Tamil Nadu Forest

Act, 1882, were violated, is not sustainable.

6. As discussed above, when the Forest Settlement Officer negatives the claim of the appellant and held 40 acres of land as a thick forest, it is incumbent on the part of the appellant / claimant to prove that it is not a forest area and it is totally under his possession by producing oral and documentary evidence. In the absence of any documentary evidence that the entire 50 acres of land is being cultivated and without making any specific statement as to what is cultivated and the land in dispute is not a thick forest area, the claimant cannot sustain his appeal. The appellant should not find fault with the case of other side, but he has to prove his case with documentary evidence.

7. In the instant case, there is no documentary evidence on the side of the appellant. Further, the case that he has entered into a lease agreement with Nilambur Kovilagam, is highly improbable after the enactment of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969). As per Section 17 of the said Act, the right of the appellant / claimant in respect of lease agreement ceased to exist. Therefore also, the present Civil Miscellaneous Second Appeal is not sustainable in the eyes of law and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

TK

To

1.The District Court
Nilgiris at Ootacamund.

2.The Forest Settlement Officer
Gudalur, The Nilgiris.

3.The District Forest Officer
Gudalur Division, Gudalur,
The Nilgiris.

+1cc to Mr.S.K.Rakhunathan, Advocate, S.R.No.23093

+1cc to the Special Government Pleader(Forest), S.R.No.23148

C.M.S.A.NO.2 OF 1998

RJI (CO)

GN(14/11/2018)