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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.31 OF 2000
AND CONNECTED MISCELLANEOUS PETITIONS

The District Forest Officer
Nilgiris South Division
Uthagamandalam. ... Appellant/ 2nd Respondent

Vs.

1.Sebastian
2.The Forest Settlement Officer - II
Coonoor. ... Respondents/Appellants/ 1st Respondent

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 29.11.1995 passed in C.M.A.No.29 of 1994 by the learned District Judge and Appellate Authority of Nilgiris at Uthagamandalam allowing the appeal in part against the order of the Forest Settlement Officer - II, Coonoor, in his proceedings Rc.A.No.972 of 1987, dated 30.04.1994.

For Appellant :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 29.11.1995 passed in C.M.A.No.29 of 1994 by the learned District Judge and Appellate Authority, Nilgiris, partly allowing the appeal against the order of the Forest Settlement Officer-II, Coonoor, in his proceedings Rc.A.No.972 of 1987, dated 30.04.1994.

2. The first respondent / claimant laid a claim before the Forest Settlement Officer, claiming 5 acres of land encroached upon by him in S.No.383/1 of Kil Kundah Village, wherein, he has raised Papaya, Mulberry and vegetables for the past 10 years. The first respondent /



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claimant also produced "B" Memo receipts for fasli 1382, 1394, 1398, 1401 and 1402 with respect to the land in S.No.383/1 in Kil Kundah Village. On inspection, the Forest Settlement Officer had found that the first respondent / claimant occupied a portion of the land encroached by one Tmt.Margaret. He planted coffee under the natural shola area, which is highly objectionable. Considering the actual occupation with that of building and trees around it, adjacent to patta land an extent of 0.10 acre alone was excluded by the Forest Settlement Officer. On appeal, the Lower Appellate Court excluded 0.90 acre of land in favour of the first respondent / claimant. Aggrieved over the same, the State is before this Court by way of filing this Civil Miscellaneous Second Appeal.

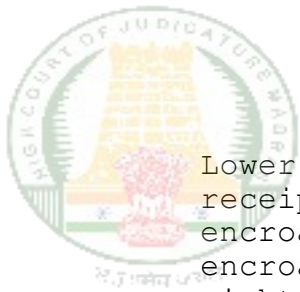
3. The Civil Miscellaneous Second Appeal was admitted by this Court on 03.11.2000 on the basis of the following substantial questions of law: -

"1.Whether in view of the Forest Act the respondent could be said to be in possession and enjoyment of the disputed property?

2.Whether the respondent could in law have title to a portion of a 'Reserve Forest' ?"

4. On a perusal of the judgment of the Lower Appellate Court, it is seen that the documents relied on by the first respondent / claimant are "B" Memo receipts and it is in the name of his sister-in-law. Once it is found that the property is under encroachment, as held in various judgment of this Court, a person, who is encroached the property, cannot be treated as an occupier. The first respondent / claimant is in illegal possession and it will not confer any right on him to get any title or relief.

5. In the instant case, the disturbing factor is that the encroachment is under the natural shola forest area. Shola forest area preserves rain water and contributes the same through rivers. It is as major source for water and Government is trying to improve and develop the shola forests for the purpose of augment natural sources of water. But, the encroachment is right under the natural shola forest area, which is highly objectionable and the Lower Appellate Court, without application of mind, has passed order ignorantly. The Forest Settlement Officer has found that the first respondent / claimant was in actual occupation of 0.10 acre of land. That does not mean that the remaining 0.90 acre of land was in possession of the first respondent / claimant. The order passed by the Lower Appellate Court is based on no evidence and thereby, illegal and perverse. The documents marked as exhibits before the



Lower Appellate Court are "B" Memo receipts. "B" Memo receipt is nothing but payment of penalty for illegal encroachment of Government land. Curiously, the land encroached is a forest land. The revenue authorities have no right to collect penalty for forest lands. For the purpose of illegal object of engulfing forest lands, with the connivance of some erring officials the documents are fabricated. The production of "B" Memo receipts itself will disentitle the claim of the first respondent / claimant.

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. The Lower Appellate Court should have taken a serious view, while dealing with the forest land. But, on the other hand, on assumption and presumption, has granted the relief in favour of the first respondent / claimant. Hence, the substantial questions of law raised by the appellant are answered in their favour.

7. In fine, the judgment and decree dated 29.11.1995 passed in C.M.A.No.29 of 1994 by the learned District Judge and Appellate Authority, Nilgiris at Uthagamandalam, is set aside and the Civil Miscellaneous Second Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TK
To

- 1.The District Judge
and Appellate Authority
Nilgiris at Uthagamandalam.
- 2.The Forest Settlement Officer - II
Coonoor.

Copy to
The section officer,
VR Section,
High court
Madras

C.M.S.A.NO.31 OF 2000

ASK(16/11/2018)