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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.32 OF 2000
AND CONNECTED MISCELLANEOUS PETITIONS

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

Vs.

1.Rangaswami

2.The Forest Settlement Officer - II
Coonoor. .. Respondents / Appellant/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.30 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.30 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 3 acres of land encroached upon by him in S.No.383/1 of Kil Kundah Village, wherein, he has raised lime, coffee and orange from the year 1972 onwards. The first respondent / claimant also produced "B" Memo receipts for fasli 1382, 1385, 1393, 1394, 1396 and 1403 with respect to the land in S.No.383/1 in Kil Kundah Village. On inspection, the Forest Settlement Officer has found that the land is covered with jungle trees and bushes and in between the forest, he has also found lime and guava trees and therefore, the claim of the first respondent / claimant was rejected in its entirety for S.No.381/1 in Kil Kundah Village. The Lower Appellate Court, on perusing the report of the Forest Settlement Officer, has observed that since lemon and guava trees were found, it is proved that the first respondent / claimant was in occupation of the land and allowed the appeal by excluding the entire 3 acres of the 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 records, it is clearly seen that the "B" Memo receipts are from year 1975 to 1995. A person who is paying penalty is admittedly an encroacher. Payment of penalty by way of "B" Memo will not confer any right or title in favour of the encroacher. As held by this Court in various judgments, an encroacher cannot be equated with an occupier defined under the Tamil Nadu Forest Act, 1882. If the possession is illegal, he is liable to be evicted at any time. He will not get any possessory right on the basis of his illegal retention of the land. When it is a clear case of encroachment, the Lower Appellate Court has proceeded on the basis of assumption and presumption. On inspection, the Forest Settlement Officer has found that the entire area is covered with jungle trees and bushes and in between, there were lemon and Guava trees. Only because lemon and Guava trees were found, a person, who is claiming



possession, is not automatically entitled to exclusion of the land. The Lower Appellate Court, based on no evidence, has excluded 3 acres of land, without any documentary evidence.

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5. 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 presumption and assumption, 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.

6. In fine, the judgment and decree dated 29.11.1995 passed in C.M.A.No.30 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 vi)

//True Copy//

Sub Assistant Registrar

TK
To

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

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The section officer,
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High court
Madras
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C.M.S.A.NO.32 OF 2000

ASK(16/11/2018)