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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.S.A. No.16 of 2003
and C.M.P.6021 of 2003

K.K.Nandanan (Died)

... Appellant/Claimant

***2.Tmt.Sarojini**

3.Sureshu

4.Ravi.V.N

5.Usha

6.Ashokan

7.Sunil Kumar

**Petitioners 2 to 7 brought on Records as Lrs of
the Sole petitioner as per court dt.28/01/2019 made in
CMP.6031/2017.**

vs.

1.The District Forest Officer,
Gudalur Division,
Gudalur.

2.The Forest Settlement Officer,
Gudalur.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Second Appeal filed under section 10(2) of Tamil Nadu Forest Act 1882 read with Under section 100 of the Civil Procedure Code against the Judgment and decree dated 13.02.2003 made in C.M.A.No.14 of 1998 on the file of the Court of the District Judge of the Nilgiris at Uthagamandalam, reversing the order dated 13.05.1998 made in Rc.A.78/78 on the file of the Court of the Forest Settlement Officer, Gudalur.

For Appellant : Mr.B.Soundarapandian

For Respondent 1 : M.Santhanaraman
Additional Government Pleader
(Forest)

JUDGMENT

This Appeal is against the order passed in C.M.A.No.14 of 1998 dated 13.02.2003 on the file of the District Judge of



the Nilgiris at Uthagamandalam, reversing the order dated 13.05.1998 in Rc.A.78/78 on the file of the Court of the Forest Settlement Officer, Gudalur.

2.The appellant/claimant states that he is the occupier of the land in S.No.155/139 of Moonanad village. The short facts of the appellant's case are as follows:

The appellant/claimant one Mr.K.K.Nandanan is residing at Vattakolli in Moonanadu village from the year 1950. He occupied Government lands and was cultivating coffee, rubber, pepper, ginger and lemon grass. He was occupying up to 30 to 35 acres on these lands in S.Nos.144/2, 155/139, 155/137, 164 and 202 of Moonanad Village. The Revenue Department issued notice under Section 7 of encroachment Act in the year 1961. B.Memo numbers 717 to 726 for land measuring to an extent of 22.09 acres. He was also issued a patta to the extent of 4.85 acres out of the total extent in the land mentioned above and he is cultivating in the remaining lands. The Rubber Board issued license in his favour in respect of 7.50 acres and also he has paid agricultural income tax. Therefore he sought for exclusion of lands in his occupation from transferring the same to Forest Department. The Forest Settlement Officer excluded 8.20 acres in S.No.155/139 in Moonanad Village occupied by the appellant/Claimant from Veetikamoola forest block.

3.Originally the Forest Settlement Officer passed an order on 31.07.1982. The appellant appealed up to the level of High Court and got the matter remanded back to the Forest Settlement Officer. Again on fresh enquiry, the Forest Settlement Officer passed a order dated 13.05.1998 excluding 8.20 acres from the forest land, against which an appeal was preferred the Forest Department before the District Court and Appellate Authority, Nilgiris, which stood allowed by the decree and judgment dated 13.02.2003. Aggrieved over the order of the District Court in C.M.A.No.14 of 1998, the appellant/claimant is before this Court.

4.Even though the appeal was taken up for hearing as early as 25.04.2003, it was not admitted. Today, by consent of the parties the matter is taken up for final hearing.

5. According to the appellant, he has raised the following questions of law:

"a. Whether the finding of the Lower Appellate Court that there was no time limit or duration or limitation prescribed for filing appeal on behalf of the Government is correct?

b. Whether the judgment of the Lower Appellate Court to set aside the well considered order



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of the trial authority is based on any evidence?

c. Whether the Lower Appellate Court has framed any independent issues to render its judgment?

d. Whether the Lower Appellate Court has considered the finding of this Hon'ble in A.A.A.O.No.69/68 dated 24.01.1997 between the same parties that what applies to the 3 acres of land is also applicable to other area under occupation of the appellant, which was considered by the trial authority?

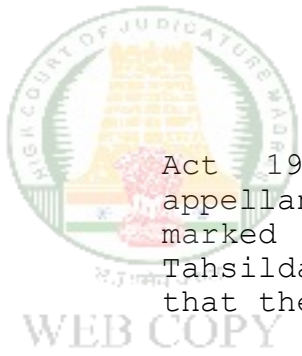
e. Whether the land of the appellant is excluded as per the definition of the term 'land at the disposal of Government'?

f. Whether the provisions of Forest Conservation Act which came into force on 25.10.1980 i.e. Subsequent to the order of the Forest Settlement Officer on 28.02.1980 are applicable to the land of the appellant?"

6. The appellant would contend that he had produced valid documentary evidence to prove his possession from the year 1950 and is paying land revenue to the Revenue Department. Therefore his land shall be exempted. Secondly, the appeal by the Forest Department was barred by limitation and therefore the order passed by the District Court is liable to be set aside.

7. Per Contra, the learned counsel appearing for the respondent would submit that the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act 1969 (Tamil Nadu Act 24 of 1969) came into force in the year 1969. The Janmis, Lessess of the Janmis or who ever in possession of the Janmam lands were given patta on the basis of valid documents. If at all, the appellant's claim that he was in possession before 1969 he should have been granted Janmam Patta as per the Janmam Act, but in the absence of the same and he cannot be construed to be an occupier under the Forest Act. Secondly, the reliance of B.Memo and eviction notice under Section 7 would show that the appellant was not an occupier but only an encroacher. Therefore, the ground raised on this aspect is not sustainable. The appeal preferred by the Forest Department before the District Court was very much within the time from the date of receipt of a copy of the order. Therefore it is barred by limitation.

8. This Court has considered the rival contentions. Though it is admitted by the appellant that he was in possession of lands from the year 1950, there is no explanation as to why he was not granted patta for having been in possession under Gudalur Janmam Estates (Abolition and Conversion into Ryotwari)



Act 1969 (Tamil Nadu Act 24 of 1969). Be that as it may, the appellant claims that he was issued with B.Memo receipts and marked them as Exhibits P4 to P20. The notice issued by the Tahsildar has been marked as Ex.P1. From this it is very clear that the appellant was holding the land as an encroacher.

9. It is well settled that an encroacher cannot at all be equated to an occupier. By producing documents like B.Memo and eviction notice, the appellant cannot claim any right over the property. His continuance of possession over the property by itself is illegal. Therefore, the payment of penalty to the property will not confer any right. It is also well settled that he can claim possessory right only when patta is issued. In the instant case, even though the appellant/claimant made a statement that the patta was issued by the Revenue Department, no such patta was produced before the Forest Settlement Officer or the Appellate Court. In the absence of any patta, the applicant can be treated only as an encroacher and not as an occupier as defined under the Forest Act. Recently, the Honourable Supreme Court in T.N.Godavarman Thirumulpad Vs. UNION OF INDIA AND OTHERS [W.P.(CIVIL) No.202 OF 1995 DECIDED ON 12.12.1996] case has categorically declared that no patta with regard to any forest land shall be granted nor any encroachment shall be regularised. In such circumstances, the claim of the appellant for exclusion of land for cultivation is not at all sustainable. He shall be treated as an encroacher as admitted by him and is not entitled to any relief.

10. The learned Counsel for the appellant would vehemently argued that as per Section 10(2) of Tamil Nadu Forest Act, 1882, the appeal shall be filed within thirty days from the date of the order passed by the Forest Settlement Officer. In the instant case, the Government preferred an appeal before the District Court after lapse of thirty days. Therefore the appeal is not maintainable.

11. On a reading of proviso under Section 10(2) of Tamil Nadu Forest Act, 1882, it is seen as follows:

"Provided that the (Government) may, on just and reasonable cause for the same being shown, extend the period for such appeal within such further period as may seem proper, and an order or endorsement under the signature of one of the Secretaries to Government shall be sufficient authority for the said Court to entertain such appeal beyond the limit above specified."

12. From a reading of this proviso, it is clearly shown that the Court can entertain the appeal beyond the time limit specified if one of the Secretaries of Government endorses just



and reasonable cause shown by the appellant. The same treatment is also applicable to the Government. Therefore, when an endorsement is made, the appellate Court will entertain the appeal. Hence the delay in filing will not be a bar for entertaining the appeal as long as a certification is there. In the instant case, the respondent had clearly explained the cause of filing at a belated date was due to delayed receipt of the order from the original authority. In such circumstances, the question of law raised by the appellant that the appeal filed by the respondent was barred by limitation is not sustainable. If just and reasonable cause is shown and if it endorsed by one of the Secretaries of Government, the Court can entertain the appeal. Therefore, the question of law raised by the appellant is not sustainable. Secondly, the appellant being an encroacher is not entitled to contest the case equating himself as an occupier who derives right through succession or by grant or by way of written contract. Therefore, this Court is of the considered opinion that the appeal merits no admission at all.

13.The record of proceedings shows that the sole appellant died and permission was granted to take steps and the matter was posted on 17.02.2017. Again it was adjourned for two weeks for taking steps. The learned counsel for the appellant would submit that he has no instruction regarding to the death of the applicant and chosen to argue the case on merits. The appeal is pending at the admission stage itself and not admitted till date. In the event of death of the appellant, the appeal filed by a dead person cannot be entertained. Hence this Civil Miscellaneous Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

***Corrected as per order**

dated 28/01/19 made in

CMP.6031/17 in

CMSA.NO.16/03

Sd\-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bkn



To

1. The Forest Settlement Officer,
Gudalur.

2. The District Judge of the Nilgiris,
Uthagamandalam

Copy to

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

+1cc to Mr.B.Soundara Pandian, Advocate Sr.32418

ssi[col]
srg 14/11/2018
nr 29/05/2019

**Corrected order to be
Substituted already order
despatched on 10/12/2018**

C.M.S.A. No.16 of 2003
and C.M.P.6021 of 2003