



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 27.03.2018

JUDGMENT PRONOUNCED ON : 28.04.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.S.A.NO.21 OF 2003

1.The Forest Settlement Officer - I
Gudalur,The Nilgiris.

2.The District Forest Officer
Gudalur.

... Appellants

Vs.

Govindan

... 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 in C.M.A.No.31 of 1993 dated 08.02.1995 by the learned District Judge and Appellate Authority of the Nilgiris District at Uthagamandalam partly allowing the appeal against the judgment and order of the Forest Settlement Officer, Gudalur, in his proceedings Rc.A.No.271 of 1985 dated 28.04.1993.

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

For Respondent : Mr.M.Mohamed Hasain

J U D G M E N T

This Civil Miscellaneous Second Appeal is preferred by the Forest Department, against the judgment and decree passed in C.M.A.No.31 of 1993 dated 08.02.1995 by the District Court and Appellate Authority of the Nilgiris at Udhagamandalam.

2. Originally, the Forest Settlement Officer, has perambulated the entire Forest block, along with Special Revenue Inspector (Forest Settlement) Gudalur, Sub-Inspector of Survey and other officials on various dates between 13.11.1991 and December 1992. The respondent deposed before him in his claim in R.C.A.No.271/1985 that he had purchased an extent of 1.00 acre of land in S.No.556 from one Krishnan for



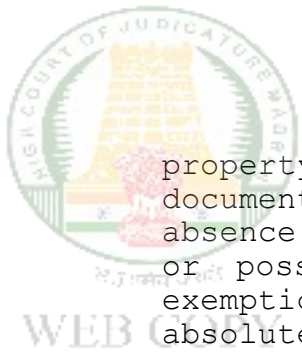
consideration of Rs.1300/- in the year 1983. But, he had not produced any documentary evidence in support of his claim. It was also found that he made claim application to the Special Deputy Collector (Jenmam) Gudalur for assignment of land. Having failed to produce any documentary evidence, the respondent was held not entitled to assignment of land. Against which, the respondent made an appeal. The District Court had found that the factum of cultivation and possession itself will entitle the respondent for exclusion of the land from the Forest Law. Even though the claimant failed to produce any documentary evidence, the District Court has relied on his oral evidence and directed to exclude two acres of land in S.No.556 of Devala Village, which is in possession and enjoyment of the respondent. Aggrieved over the order of the District Court, the Forest Department, is before this Court.

3. This Civil Miscellaneous Second Appeal was admitted on the following questions of law:

"1.Whether the lower appellate court is right in deciding the claim of the respondent without any documentary evidence to establish his right?

2.Whether the lower appellate court is right in allowing the appeal by recognizing the right of the respondent merely on the ground of encroachment to claim exemption or exclusion from Reserve Forest under the Tamilnadu Forest Act?"

4. From the consideration of the materials placed before this Court, it is very clear that the respondent / claimant by himself would state that he purchased the land from one Krishnan in the year 1983, after he came down from Srilanka in the year 1983. In that event, possession of his vendor Krishnan shall be proved. Once a land is declared as Reserved Forest, no right shall be acquired except by succession or by grant or contract in writing made by some person who has got some vested right. Therefore, it is very clear that acquisition of the land, in the instant case, could be only by some written contract. Even assuming that the vendor of the respondent had acquired some vested right, it should be proved through documentary and oral evidence. Section 4 Notification was published on 25.03.1985 and Section 6 proclamation was made on 19.04.1985. The respondent conveniently made a statement that he purchased the property in 1983 before notification. On the other hand, the respondent applies for assignment of land also. If purchase of property from a person having legal possession, there is no need for seeking assignment. In such an event, it is all the more necessary to prove purchase and possession of the



property to claim exclusion. But he failed to produce any documentary evidence for having purchased the property. In the absence of any documentary evidence, towards title of the land or possession of the property, the respondent cannot claim exemption or exclusion under the Tamil Nadu Forest Act. There is absolutely no evidence.

4. The District Court, ought not to have relied on the oral evidence and granted exemption. The finding of the District Court by itself is perverse as it is not supported by any legal evidence. Accordingly, the questions of law are answered in favour of the appellants.

5. In fine, the judgment and decree dated 08.02.1995 passed in C.M.A.No.31 of 1993 by the learned District Judge and Appellate Authority of the Nilgiris District at Uthagamandalam, is set aside and the Civil Miscellaneous Second Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

1.The District Judge
and Appellate Authority
Nilgiris District at Uthagamandalam.

2.The Forest Settlement Officer
Gudalur.

3.The District Forest Officer,
Gudalur.

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

C.M.S.A.NO.21 OF 2003

KJI (CO)

rrs 14/11/2018