



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.22 OF 2003

1.The Forest Settlement Officer
Gudalur.

2.The District Forest Officer
Gudalur Division, Gudalur.

...Appellants /Respondents

Vs.

C.J.John

... Respondent/Appellant

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 31.03.1995 passed in C.M.A.No.46 of 1993 by the learned District Judge and Appellate Authority of Nilgiris at Uthagamandalam allowing the appeal against the judgment and order of the Forest Settlement Officer, Gudalur in his proceedings Rc.A.No.755/84 dated 07.01.1993.

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

For Respondent : Mr.S.Kingston Jerold

J U D G M E N T

This Civil Miscellaneous Second Appeal is preferred against the order dated 31.03.1995 passed in C.M.A.No.46 of 1993 by the learned District Judge and Appellate Authority, Nilgiris, confirming the order dated 07.01.1993 passed in R.C.A.No.755/84 by the Forest Settlement Officer, Gudalur.

2. The respondent laid a claim before the Forest Settlement Officer, Gudalur, claiming 6 acres of land encroached upon by him. The Forest Settlement Officer, on inspection, during his perambulation has found that the respondent/claimant was in possession of one acre of land in S.No.303/1 of Devala Village. Out of one acre of land, 0.50 acres was planted with tea aged 2 years and scattered coffee aged about 12 years. The balance of 5.50 acres is with lemon grass. Considering the existence of a tiled house and coffee plants of 12 years of age around the same, the Forest Settlement Officer, excluded 0.50 acres of the land along with the tiled house and declared the remaining 5.50 acres of land as forest land. Aggrieved over the



same, an appeal was preferred by the respondent / claimant and Exs.A1 to A4 - pattam receipt for the years 1966 to 1972 were marked. On the basis of the pattam receipts, the learned District Judge, has set aside the order passed by the Forest Settlement Order and granted exemption to the entire land of the respondent / claimant by allowing the appeal preferred by him. Aggrieved over the same, the State is before this Court by way of filing this Civil Miscellaneous Second Appeal.

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

"1.Whether the Lower Appellate Court is right in deciding the case of the respondent when there is no documentary evidence to establish the right of the respondent?.

2.Whether the Lower Appellate Court is right in allowing the appeal by recognising the right of the respondent mainly on the ground of encroachment?."

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

5. From a perusal of the materials available before this Court, it is seen that the Lower Appellate Court has relied on the pattam receipts and those receipts were not produced before the Forest Settlement Officer. The respondent / claimant is a Srilankan Repatriate. He would depose before the Forest Settlement Officer that he purchased the property for an extent of 6 acres in S.No.303/1, Devala Village, from one Kulla Gowder by way of an unregistered deed on 20.04.1970 and that he had planted with coffee and pepper in the said land and was in occupation of the property. However, the unregistered sale deed through which the respondent / claimant derived title was neither produced before the Court nor marked as a document. Though in the claim before the Forest Settlement Officer as well as before the Lower Appellate Court, a categorical admission is made by the respondent that he had encroached upon 6 acres of land, he failed to produce any documentary evidence to prove his possession. Exs.A1 to A4 are the pattam receipts, which are nothing but receipt for payment of lease amount.

6. A person who is paying the lease amount should prove his title of possession as lessee. On the one hand, the respondent has stated that he purchased the property by way of an unregistered sale deed dated 20.04.1970, and on the other hand, he derived possession through lease. In so far as lease is concerned, as per the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969) a person is construed to be in possession (i) if he is in



genuine possession; (ii) if he is an authorized person or lessee under the Act; or (iii) a person who is otherwise in possession of the property and cultivating the land three years prior to the date of the Act coming into force i.e., from 1966 to 1969. Those persons are entitled to grant of patta under Act 24 of 1969. Those, who failed in their attempt, are not entitled to any patta or occupation of the lands. Therefore, the pattam receipts, which are relied on by the Lower Appellate Court does not have any evidenciary value to show that the respondent was in possession of the land. Merely producing the pattam receipts is not enough. It should be proved that there was a lease by a person who has got vested right over the land. Without proving the same through a competent person, who issued the same, by itself, will show that the possession is not genuine. Since it is admitted by the respondent / claimant that he has encroached on the land and the tea crops planted are only two years of age, the Forest Settlement Officer has rightly rejected the claim. The respondent having failed to prove his possession through oral and documentary evidence, is not entitled to exclusion of the land. The order passed by the Lower Appellate Court is based on no evidence and thereby perverse. Accordingly, the questions of law raised by the appellants are answered in the affirmative.

7. In fine, the judgment and decree dated 31.03.1995 passed in C.M.A.No.46 of 1993 by the learned District Judge and Appellate Authority, Nilgiris 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

To

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

2.The Forest Settlement Officer
Gudalur.

+1cc to the Government Pleader(Forest), S.R.No. 23149

C.M.S.A.NO.22 OF 2003

RJ(CO)

rrs 15/11/2018