



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.24 OF 2003

1.The Forest Settlement Officer
Gudalur.

2.The District Forest Officer
Gudalur Division
Gudalur.

...Appellants/Respondents

Vs.

Mohammed

... Respondent/Petitioners

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.62 of 1993 by the learned District Judge and Appellate Authority of Nilgiris at Uthagamandalam partly 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.62 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 filed a claim before the Forest Settlement Officer, claiming one acre of land encroached upon by him in S.No.303/1 of Devala Village. He had put up a thatched hut and plantain coffee, Guava were planted there. The Forest Settlement Officer, on inspection during his perambulation, has found that the respondent was in possession of 0.50 acres of land only and considering the thatched hut and plantation of coffee and Guava, declared the remaining 0.50 acres of land as forest block. Aggrieved over the same, an appeal was preferred by the respondent / claimant. The learned District Judge, has



partly allowed the appeal by rejecting the claim of the respondent for the remaining 0.50 acres of land. 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 partly 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 respondent has deposed before the Forest Settlement Officer that he encroached upon an extent of 1.00 acre of land in R.S.No.303/1 of Devala Village and that he has put up a thatched hut and raised plantain, coffee and Guava in the above said land, but however, he has not paid any land revenue to the Government. To prove his possession, the respondent has not filed any document, not even the revenue receipts. However, on appeal, the Lower Appellate Court has observed that " simply because, the appellant has not produced any document in support of his claim, the claim of the appellant cannot be rejected."

6. An encroacher cannot be equated with an occupier. An occupier is a person who derived title to the land by succession, or by a grant through a written contract from the Government or from a person who has some vested right. Mere possession of forest land will not entitle a person for exemption of land. The possession shall be proved legally by documentary evidence. The Hon'ble Supreme Court in the case of 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.

7. In the considered opinion of this Court, the Lower Appellate Court has grossly erred in giving such a finding. Such a finding is based on no evidence and perverse. Therefore, the order passed by the Lower Appellate Court is patently erroneous and the questions of law raised by the appellants are answered in the affirmative.



8. In fine, the judgment and decree dated 31.03.1995 passed in C.M.A.No.62 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.

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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.23151

C.M.S.A.NO.24 OF 2003

RJ(CO)

rrs 15/11/2018