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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.27 OF 2003

1.The Forest Settlement Officer
Gudalur.

2.The District Forest Officer
Gudalur Division
Gudalur.

... Appellants/Respondents/Respondent

Vs.

P.P.Joseph

... Respondent /Appellant/Petitioner

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.71 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.71 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 / claimant filed a petition before the Forest Settlement Officer claiming that he has encroached upon 7 acres of land in S.No.303/1 of Devala Village. The Forest Settlement Officer, on inspection, during his perambulation, has found that the 7 acres of land was covered with lemon grass and old coffee plants aged about more than 15 years over an extent



of 0.50 acres with an old thatched hut. The respondent / claimant failed to produce any documentary evidence to show that he was in possession and occupation of the land in dispute. It is also found that the respondent / claimant is a Srilankan Repatriate of the year 1983. Since no documentary evidence was available with the respondent / claimant, the Forest Settlement Officer negatived the claim in respect of 6.5 acres of land, where trees and lemon grass were existed. Aggrieved over the order of the Forest Settlement Officer, the respondent preferred an appeal. The Lower Appellate Court observed that the respondent has been in possession of the entire extent of 7 acres for more than 15 years and there are old coffee plants aged about 15 years scattered all over the land and accordingly, allowed the claim of the respondent. Challenging the order passed by the Lower Appellate Court, the State is before this Court.

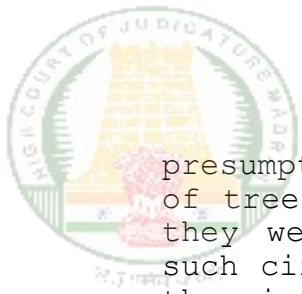
3. The following substantial questions of law are raised in this Civil Miscellaneous Second Appeal: -

"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. On consideration of the judgment of the Lower Appellate Court, it is very clear that it is based on no evidence and thus, patently illegal. Unless a person who claims to be in occupation of the land proves his possession, he is not entitled to any relief. Once the land is declared as forest land, nobody can acquire title over the same except by succession or by a grant through written contract from the Government or from a person who has vested right. In the instant case, it is categorically proved that the respondent / claimant was not having any documentary evidence. In the absence of documentary evidence, it shall be construed that the claimant is an encroacher, for, the Janmis or lessees of Janmis or occupiers who were otherwise in possession were granted patta as per Janmam Act. Even persons who were in occupation before the date of notification without documentary evidence and those who came into occupation after the date of notification are treated as encroachers. To prove otherwise, documentary evidence shall be produced. The Lower Appellate Court proceeded on assumption and



presumption, without any legal evidence therefor. Mere existence of trees and plants is not enough, but it should be proved that they were raised by the occupant long before notification. In such circumstances, this Court has no hesitation to declare that the judgment of the Lower Appellate Court is illegal and perverse. Accordingly, the substantial questions of law are answered in favour of the appellants.

6. In fine, the judgment and decree dated 31.03.1995 passed in C.M.A.No.71 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(CS IX)

//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, S.R.No.23153

C.M.S.A.NO.27 OF 2003

RSV(CO)

rrs 14/11/2018