



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.28 OF 2003

1.The Forest Settlement Officer
Gudalur. The Nilgiris District.

2.The District Forest Officer
Gudalur Division
Gudalur.

...Appellants/Respondents/Respondent

Vs.

Thangamma

... 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.65 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.

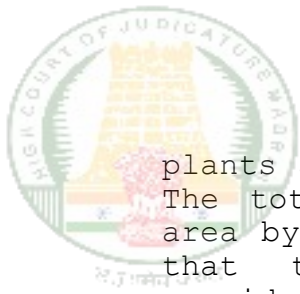
For Appellants : Mr.M.Santhana Raman
Addl. Government Pleader (Forest)

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.65 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 claimed that she has encroached upon 3 acres of land in S.No.303/1 of Devala Village. She had put up a thatched hut and raised coffee, pepper, silver oak etc., in the said land. She was evicted by the Forest Department in the year 1981 and that she has paid house tax for the thatched hut put up in the above said land, in the name of one Unni Krishnan. The Forest Settlement Officer, on inspection, during his perambulation, has found a thatched hut surrounded by old coffee



plants and pepper plants aged about 20 years were planted there. The total extent covered by the thatched hut and surrounding area by old coffee etc., was only 2.00 acres. He has also found that the respondent was a Srilankan Repatriate. After considering the totality of the circumstances, the Forest Settlement Officer rejected the claim of the respondent. On appeal, the Lower Appellate Court observed that the Forest Settlement Officer having found the existence of thatched hut and that the respondent raised coffee, pepper and silver oak, ought to have held that the possession of the respondent / claimant is proved. Further, relying on the observation of the Forest Settlement Officer that there was no development in the 2 acres of the land which is under the possession of the respondent and age old coffee and pepper plants of 20 years, has allowed the appeal partly. Challenging the same, 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. From a perusal of the order passed by the Lower Appellate Court, this Court is of the considered view that the same is patently illegal and perverse. The Lower Appellate Court has turned blind eye in respect of eviction made by the Forest Department in the year 1981. Further, payment of tax was also made in the name of a third party. Only because the land was lying as a waste land, the Lower Appellate Court has decided the case in favour of the respondent / claimant that the waste land to an extent of 2 acres was admittedly in her possession, such a finding, without any legal evidence, is absolutely perverse. 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. The respondent / claimant has not proved her claim by way of any oral and documentary evidence. It is an admitted case of encroachment of land. In such circumstances, the respondent / claimant cannot be equated with an occupier as defined under the Tamil Nadu Forest Act, 1882. An encroacher is not entitled to any relief.

5. The Hon'ble Supreme Court in 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.

6. In the instant case, absolutely there is no oral or documentary evidence in favour of the respondent / claimant. The substantial questions of law raised by the appellants are correct and justified and accordingly, they are answered in the affirmative.

7. In fine, the judgment and decree dated 31.03.1995 passed in C.M.A.No.65 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.35154

C.M.S.A.NO.28 OF 2003

RSV(CO)

rrs 14/11/2018