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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.29 OF 2003

1.The Forest Settlement Officer
Gudalur.

2.The District Forest Officer
Gudalur Division
Gudalur.

...Appellants/Respondents/Respondent

Vs.

Moyankutty

... 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.68 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.68 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 he has encroached upon 3 acres of land in S.No.303/1 of Devala Village. He had put up a thatched hut and raised plantain, pepper etc., in the said land, but has not paid any tax for the properties. The Forest Settlement Officer, on inspection, during his perambulation, has found that a thatched hut surrounded by old coffee plants and pepper plants were planted there. The total extent covered by



the thatched hut and surrounding area by old coffee etc., was only 0.05 acres. Considering the same, he exempted 0.05 acres in favour of the respondent / claimant and rejected the claim in respect of the remaining portion of the land. Aggrieved over the same, the respondent preferred an appeal and the same was allowed by the Lower Appellate Court. 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 materials available before this Court, it is seen that even though the respondent / claimant has not produced any documentary evidence in support of his claim, the Lower Appellate Court, while allowing the appeal preferred by the respondent / claimant, has observed as under:

"..... The learned Forest Settlement Officer has observed that the appellant has paid house tax for this portion from the periods prior to the 4(1) notification....."

6. The Lower Appellate Court would further rely on the statement of the respondent / claimant that he had paid house tax and pattam for the land occupied by him to Nilambur Kovilagam and thereby, exemption was granted to 2.95 acres. It is pertinent to note that Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969) came into force with effect from 01.06.1968. The persons / occupiers, who were in possession of the property, should have cultivated the land for three years immediately prior to the Act coming into force. In such an event, the respondent / claimant should have proved that he / his predecessors were cultivating the land continuously for the period between 1966-1969. The payment of pattam was not proved and the respondent has failed to produce the house tax receipt also before the Forest Settlement Officer. It is a clear case of the respondent / claimant that he has encroached upon 3 acres of the land.



7. An encroacher cannot be equated as an occupier defined under the Tamil Nadu Forest Act, 1882. Encroacher is a person who is in illegal possession of the land. A person who is in illegal possession is not entitled to any relief. If at all there is a claim, it should be supported by oral and documentary evidence. The Lower Appellate Court had proceeded on assumption and presumption, without any legal evidence there for. The Lower Appellate Court has grossly erred in reversing the finding of the Forest Settlement Officer. Since the claim is based on no evidence, this Court has no hesitation to set aside the order passed by the Lower Appellate Court. Accordingly, the questions of law are answered in favour of the appellants.

8. In fine, the judgment and decree dated 31.03.1995 passed in C.M.A.No.68 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.23155

C.M.S.A.NO.29 OF 2003

RSV(CO)

rrs 14/11/2018