

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.6 of 2011

1. J.Akbar
2. V.Devaraj
3. V.Murugesan
4. A.Jani Basha
5. V.Muniraj
6. Hanumantharaj
7. Thulasiammal
8. Saliammal
9. Thimmaraj
- 10.Ansar
- 11.Selvam
- 12.Pushpa
- 13.Perumal
- 14.Ellammal
- 15.Narayanan
- 16.Sikkandar
- 17.Kullappan
- 18.R.Govindaraj
- 19.Govindammal
- 20.Gayathri
- 21.T.Ravichandran
- 22.Muniyakkal
- 23.Vedi
- 24.Maheshwari
- 25.Ranjith
- 26.Shantha
- 27.Thimmi
- 28.Satheeswari
- 29.Venkatalakshmi
- 30.Chinna Venkattan

: Appellants/Respondents/Petitioners

WEB COPY

-vs-

1. The State of Tamil Nadu
District Collector
Krishnagiri
2. The District Forest Officer
Hosur Forest Division

3. The Forest Ranger
Forest Range Office
Royakotta

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Second Appeal under Order XLII, Rule 1 read with Section 100 of Civil Procedure Code, against the judgment and decree dated 6.7.2010 made in C.M.A.No.45 of 2007 on the file of the learned Principal District Judge, Krishnagiri, reversing the order passed by the Forest Settlement Officer, Krishnagiri in proceedings No.256 of 2006 dated 29.9.2006.

For Appellants :: Mr.P.Rajendran
For Respondent No.1 :: Mr.N.Manikandan, G.A
For Respondents :: Ms.Thangavadhana Balakrishnan
Additional Government Pleader

JUDGMENT

This civil miscellaneous second appeal has been directed against the impugned judgment and decree passed by the learned Principal District Judge, Krishnagiri in C.M.A.No.45 of 2007 dated 6.7.2010 setting aside the order passed by the Forest Settlement Officer, Krishnagiri dated 29.9.2006.

2. Learned counsel for the appellants, elaborating on the substantial question of law whether the restriction imposed under Section 2 of the Forest (Conservation) Act, 1980 can be invoked in the absence of any finding that the lands in occupation of the appellants have been permitted to be used for 'non forest' purpose, submitted that when the Forest Settlement Officer, Krishnagiri, pursuant to the order passed by this Court on 18.7.2006 in Writ Petition No.33412 of 2004, has passed the order dated 29.9.2006 giving a clear recommendation for issuance of patta in favour of the appellants, the learned Principal District Judge, Krishnagiri, wrongly setting aside the order passed by the Forest Settlement Officer as erroneous, inasmuch as the land is a forest land and without prior permission or approval of the Central Government, the Forest Settlement Officer has no locus standi to allow the encroachers to enjoy the Survey No.168/2, allowed the appeal filed by the respondents. When the appellants are in possession and enjoyment of the land covered in Survey No.168/2 for more than 40 years, the Forest Settlement Officer also in his order dated 29.9.2006 has clearly come to the conclusion that the land covered in Survey No.168/2 has not seen any tree or plant and the encroachers are enjoying the property from 1976 and on this basis, he also recommended for issuance of patta in favour of the appellants, overlooking the continuous and long possession

of the appellants in the land in question, the order passed by the Forest Settlement Officer cannot be held as an erroneous one. Referring to the provisions of the Tamil Nadu Forest Act, 1882, the learned counsel for the appellants submitted that the power to reserve forests has been given under Section 3 to the Government, for which the Government may constitute any land at the disposal of Government a reserved forest in the manner hereinafter provided in the Act. Section 4 deals with the power of the Government to issue notification whenever it is proposed to constitute any land a reserved forest, the Government shall publish a notification in the Official Gazette and in the Official Gazette of the district specifying as nearly as possible the situation and limits of such lands, then declaring that it is proposed to constitute such land a reserved forest and thereafter, the Government should come forward to appoint an officer to inquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person. Thereafter, under Section 6, a proclamation shall be made by the Forest Settlement Officer specifying as nearly as possible the situation and limits of the land proposed to be included within the reserved forests and thereafter under Section 16, publish a notification in the Official Gazette specifying the limits of the forest which it is intended to reserve and declaring the same to be reserved from a date to be fixed by such notification. Since the stage of publishing the notification in the Official Gazette specifying the limits of the forest has not reached, the respondents cannot expect the appellants to question the notification issued by the Government under Section 4 proposing to constitute any land a reserved land nor the proclamation issued by the Forest Department under Section 6. Moreover, when the appellants were able to succeed before the Forest Settlement Officer and obtained the order dated 29.9.2006 again making it clear that the appellants are in possession and enjoyment of the land in question and that they should be issued with the patta, there is no need for the appellants to challenge the said notification issued by the Government under Section 4 or the proclamation issued by the Forest Department under Section 6.

3. In reply, the learned Additional Government Pleader for the respondents submitted that the order passed by the Forest Settlement Officer is without any basis. When the appellants have claimed before the Forest Settlement Officer that they have been in possession and enjoyment of the land in question for more than 40 years, no document whatsoever was produced to prove their claim that they were at any point of time cultivating or using the land. Therefore, on the appeal preferred by the respondents before the learned Principal District Judge, Krishnagiri, it was found that the Forest Settlement Officer has passed an erroneous order. Even the Tahsildar, Krishnagiri also

as per his order dated 2.3.76 bearing Na.Ka.No.15715/75(A) has clearly stated that he allowed the encroachers and permitted their possession. Therefore, when the order passed by the Tahsildar, Krishnagiri made it clear that the Tahsildar had allowed the encroachers to encroach the property only in Survey No.167 and not in Survey No.168, the appellants have wrongly altered the Survey No.167 as Survey No.168/2.

4. It is at this stage, the learned counsel for the appellants submitted that it is not the appellants who altered, but only the respondents-Officers have altered from Survey No.167 to Survey No.168.

5. Be that as it may. In any event, the Government Gazette notice, which has been marked as Ex.A4, clearly shows that the land covered in Survey No.168/2 was declared only as forest land. Therefore, once any land is declared as forest land, the State Government or the authority has no power to make use of the land without the prior approval of the Central Government. Now the land has been declared as forest land and the Government also in the notification under Section 4 proposing to constitute the land in question as a reserve forest, have also issued a proclamation order as per Section 6. Since Section 17 of the Act clearly says that the right in respect of which no claim has been preferred under Section 6 shall thereupon be extinguished unless before the publication of such notification the person claiming them has satisfied the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6, in which case the Forest Settlement Officer shall proceed to dispose of the claim in the manner herein before provided, this Court is not able to find any merits whatsoever in the appeal. As highlighted above, the appellants are claiming that they have been in possession and enjoyment of the land in question for more than 40 years, but they are not able to produce any single document to show that they have been in possession and enjoyment of the land in question for any period of time. Secondly, when the notification was issued under Section 4, that has not been questioned. Even the proclamation order issued by the Forest Settlement Officer under Section 6 has not been questioned, as a result, the case of the appellants has to be closed by virtue of Section 17, which reads as follows:-

"17. Right in respect of which no claim has been preferred under Section 6 shall thereupon be extinguished, unless, before the publication of such notification, the person claiming them has satisfied the Forest Settlement Officer that he had sufficient cause for not preferring such claim within

the period fixed under Section 6, in which case the Forest Settlement Officer shall proceed to dispose of the claim in the manner herein before provided."

6. In the light of the above, the civil miscellaneous appeal fails and it is dismissed. Consequently, interim order stands vacated and the M.P.Nos.1 & 2 of 2011 are also dismissed. No costs.

Sd/-
Assistant Registrar(Admn-II)

// True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Krishnagiri
2. The District Collector, Krishnagiri
3. The District Forest Officer,
Hosur Forest Division.
4. The Forest Ranger,
Forest Range Office,
Royakotta.
5. The Forest Settlement Officer,
Krishnagiri.

+1cc to Mr.P.Rajendran, Advocate, SR.No.60875.
+1cc to Government Pleader(Forests), SR.No.59865.
+1cc to Government Pleader(CS), SR.No.60503.

SPD(CO)
CSR: 18.02.2020

C.M.S.A.No.6 of 2011