

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-02-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMSA No.45 of 2003

And

CMP No.15300 of 2003

- 1.S.Ganapathy
- 2.Mrs.K.Vijayalakshmi
- 3.Sivaswamy
- 4.V.Balan
- 5.R.Arumugham
- 6.Rajarathinam
- 7.Rasaiah
- 8.E.M.Varghese
- 9.A.M.Varkey
- 10.Nallathambi

... Appellants/Claimants 3 to 7,9 & 10 & 14 to 16

vs.

1.The District Forest Officer,
Gudalur,
The Nilgiris District. ...Ist Respondent

2.The Forest Settlement Officer,
Gudalur,
The Nilgiris District. ...IInd Respondent

- 3.Mr.Kandaswamy
- 4.Mrs.Mookkayee

5.Mr.P.V.Chacko

6.Mr.Rajamanickam

7.Mr.P.V.Poulose ... Claimants/Respondents/2,8,11 to 3 to 7, 13

PRAYER : Civil Miscellaneous Second Appeal is preferred under Section 10 of the Forest Act read with Section 100 of the Code of Civil Procedure against the judgment of the District Judge, Nilgiris at Ooty dated 13.03.2003 in CMA No.22 of 1998, reversing the order of the Forest Settlement Officer, Gudalur in Rc.A.No.53/91 dated 10.05.1998.

For Appellants : Mr.R.Damodaran

For Respondents-1&2 : Mr.S.Prabhu,
Additional Government Pleader
(Forest).

For Respondents-3&5 : Left

For Respondents-4&7 : Given up

For Respondent-6 : No Appearance

J U D G M E N T

The present Civil Miscellaneous Second Appeal is preferred against the judgment of the learned District Judge, Nilgiris at Ooty dated 13.03.2003 in CMA No.22 of 1998, reversing the order of the Forest Settlement Officer, Gudalur in Rc.A.No.53/91 dated 10.05.1998.

2. The Forest Settlement Officer passed an order on 10.05.1998 under the provisions of the Tamil Nadu Forest Act, 1882, declaring that the portion of the land claimed by the appellants was excluded from the proposed forest block. In view of the fact that the order was passed against the Forest Department, the District Forest Officer, Gudalur Division, preferred an appeal in CMA No.22 of 1998.

3. The learned District Judge, Nilgiris at Udthagamandalam elaborately adjudicated the facts and circumstances as well as the grounds raised. The learned District Judge considered the order passed by the Madras High Court in WP Nos.13624 to 13628 of 1999 and in the said order dated 17.08.1999, the High Court held that though the individual has claimed that he has occupied the lands of the Government and that such land occupied by encroachment cannot be treated as occupied land. The payment of penal levy will not regularise their occupation. In respect of the above decision rendered in the writ petitions, the Division Bench of the High Court in W.A.No.641 of 1996 passed an order, which reads as under:-

"We are of the view that in the District of Ooty encroachment of the forest land is increasing day by day. We cannot appreciate the apathy of the Government Officers and the Government in taking action against such encroachers. It is the safety and security of the forest that ensure the

ecological balance in the District of Ooty. Therefore, we direct the State Government to take appropriate action in accordance with law for eviction of encroachers". The Division Bench also directed that the Government should take action in respect of all such encroachments in accordance with law in the District of Ooty. Further, the Supreme Court's decision in Writ Petition (Civil No.202 of 1995 dated 07.05.1999) has passed a general order in I.A.No.400 etc., that no patta with regard to any forest land shall be granted nor shall by encroachment be regularised. In the decision, it is also further directed that both the Division Bench of the Hon'ble High Court as well as the Supreme Court held that the encroachment should not be regularised and no patta should be granted for the encroachers, on the contrary that the encroachers should be evicted. In view of the Apex Court's direction as well as the Hon'ble High Court's decision the respondents 2 to 16 are classified only as encroachers and paying the penal levy and that is not sufficient for exclusion from the notification. As there is no merit in the claim and the orders of the Settlement Officers is against the direction of the Apex Court, the orders passed by the first respondent is liable to be set aside and the appeal has to be allowed."

4. In view of the judgment of the High Court, both in writ petitions as well as in the Writ Appeal, the first Appellate Court allowed the appeal filed by the District Forest Officer and the order dated 10.05.1998 passed by the Forest Settlement Officer was set aside. Challenging the said first Appellate Court order, the present Civil Miscellaneous Second Appeal is filed.

5. Perusal of the grounds for appeal would reveal that no substantial question of law is raised for preferring the present Civil Miscellaneous Second Appeal.

6. Learned counsel appearing on behalf of the appellants also contending the grounds with reference to the facts and those facts already adjudicated before the Trial Court as well as before the first Appellate Court, cannot be adjudicated in the present Civil Miscellaneous Second Appeal.

7. It is needless to state that Section 100 of the Code of Civil Procedure, contemplates that substantial question of law is mandatory. In the absence of any substantial question of law, the appeal cannot be entertained by the High Court for the purpose of re-adjudicating or re-appreciating the facts already considered by the Trial Court as well as by the first Appellate Court.

8. In the present case, the grounds raised are relatable to the factual matrix of the case, which were already adjudicated and there is no substantial question of law raised.

9. This apart, the learned Additional Government Pleader appearing on behalf of the respondent-Forest Department also made a submission that the land was already declared as Reserve Forest under Section 4 of the Tamil Nadu Forest Act and now it is under the control of the Forest Department.

10. In view of the fact that the lands in dispute were already declared as Reserve Forest under the provisions of the Forest Act and there is no reason whatsoever now to interfere with the findings of the first Appellate Court.

11. In this view of the matter, the appellants have not able to put forth any acceptable substantial question of law for the purpose of further adjudication and accordingly, the judgment and decree dated 13.03.2003 passed in CMA No.22 of 1998 by the learned District Judge, Nilgiris at Udhamandalam stands confirmed and consequently, CMSA No.45 of 2003 is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The District Judge,
District Court,
Nilgiris at Udhamandalam.

2.The District Forest Officer,
Gudalur,
The Nilgiris District.

3.The Forest Settlement Officer,
Gudalur,
The Nilgiris District.

+1cc to the Special Government Pleader Sr.5525

C.M.S.A.No.45 of 2003

ssn[co]
srg 08/04/2021



WEB COPY