

S.A.(MD)No.219 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.08.2025

CORAM

THE HONOURABLE MS.JUSTICE **R.POORNIMA**

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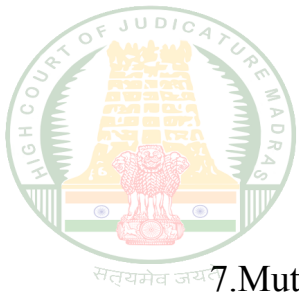
- 1.Forest Ranger,
Chinnamannur Range,
Chinnamannur.
- 2.The District Forest Officer,
Theni.
- 3.State of Tamil Nadu
represented by District Collector,
Madurai.

... Appellants/Respondents/Defendants

Vs.

- 1.S.Andi
- 2.A.Pothu
- 3.A.Muthaiya
- 4.P.Mayandi Thevar
- 5.Latshakkal
- 6.Chinnan

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7.Muthukaruppan

8.Raman

...Respondents/ Appellants/Plaintiffs

PRAYER : Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree in A.S. No.43 of 1991 on the file of the Subordinate Court, Periyakulam, dated 16.06.1993 reversing the Judgment and Decree in O.S.No.694 of 1988 dated 23.03.1990 on the file of the District Munsif Court, Periyakulam.

For Appellants : Mr.B.Ramanathan,
Additional Government Pleader

For Respondents : Mrs.Chamundi Bose

JUDGMENT

This Second appeal had been filed by the defendants in O.S.No.694 of 1988 on the file of the District Munsif Court, Periyakulam.

2. The suit in O.S.No.694 of 1988 had been filed by the plaintiffs against the defendants, seeking a Judgment and decree for permanent injunction.



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3. This suit came up for consideration before the learned District Munsif Court, Periyakulam, vide judgment and decree dated 23.03.1990, dismissed the suit against which 1st appeal has been filed in A.S.No.43 of 1991 by the plaintiff.

4. The 1st appeal in A.S.No.43 of 1991, filed by the plaintiffs came up for consideration before the Subordinate Court, Periyakulam. The first appellant Court by its judgment and decree dated 16.06.1993, allowed the appeal and set aside the judgment and decree in O.S.No.694 of 1998 and decreed the suit as prayed for. Challenging that judgment, the defendants had filed the present 2nd appeal.

5. The plaintiff's case in O.S.No.694 of 1998 in brief, is as follows:

(a) The suit properties are punja lands. The plaintiffs belong to different villages. The ancestors of the plaintiffs were migrated and settled at Kadamalaikundu Panchayat, Gandhigram Village. Later, the said Panchayat was bifurcated as Megamalai Panchayat and Kadamalaikundu



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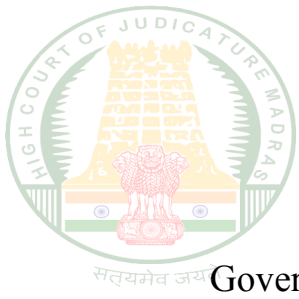
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Panchayat. During such bifurcation, the plaintiffs and their parents who were agricultural laborers occupied nearly 25 acres of land nearby their settlement and made the land fit for cultivation. The Revenue authorities took note of the same and issued B memo.

(b) The total area of Megamalai village land has been encroached upon, and the authorities have initiated legal action against the encroachers. The above lands were converted for agricultural use 20 years ago. The Revenue officials have also assessed the extent of unauthorized occupation and issued B-memos to the plaintiffs. The B-memos issued in the name of the plaintiffs are within Survey No.280 of Megamalai village, which covers an area of 1.21.5 hectares.

(c) However, Megamalai village Survey No.280 consists of thousands of acres and many of these lands have not been surveyed yet. Certain extents have been duly surveyed, and pattas have been issued. Taking advantage of the fact that the survey is not yet complete in Survey No.280, the Forest Department officials are intimidating the occupants and clearing the land to plant trees.

(d) A small group of land encroachers has requested the Tamil Nadu

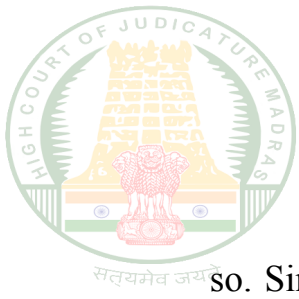


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Government to grant pattas to them for the lands occupied by them and cultivated. However, the Tamil Nadu Government has not yet taken a decision for the plaintiffs to grant patta. The plaintiffs are fighting for their rights. The plaintiffs have been cultivating their respective plots for the past 20 years and are entitled to continue doing so until they are evicted through due process of law. The 1st and 2nd defendants, who are camping in Aranmanai Pudur, have been forcing similar cultivators to vacate the land. Since 19.09.1988, the 1st and 2nd defendants have been taking steps to evict the plaintiffs through their Subordinate officials. The plaintiffs have submitted a petition to the 3rd defendant on 27.09.1988. The landowners on the Northern side of the suit property were granted pattas in the year 1973. The suit property have not been surveyed yet, and the plaintiffs are entitled to receive pattas for their lands. The 1st defendant has no documents to prove that the lands are belonging the Forest Department.

(e) The plaintiffs have filed this suit seeking a permanent injunction restraining the defendants from interfering with their possession of the lands until they are evicted through due process of law. The plaintiffs are cultivating adjacent plots of the suit lands and are entitled to continue doing



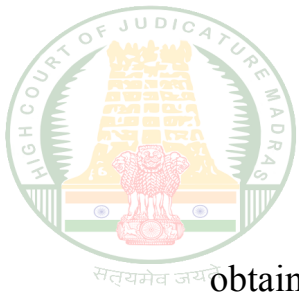
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so. Since the 1st defendant's threatened on 19.09.1998 to evict the plaintiffs from the suit land has caused a valid cause of action, and all the plaintiffs are jointly affected, they have filed this suit together. The 3rd defendant was added as a party to the suit, but no relief is claimed against them

6. The 2nd defendant has filed written statement, which has been adopted by the 1st and 3rd defendants. The brief facts of the written statement are as follows:

a) The suit is not maintainable. The suit properties are entirely vested with the Forest Department. The suit properties are part of the Megamalai Forest Block, which was notified as forest under Section 4 of the Tamil Nadu Forest Act, in G.O.(MS).No.141, dated 28.02.1978, necessary Government Orders have been issued by the Settlement Officer, Usilampatti Forest Department. However, the plaintiffs did not present their claim before the Forest Settlement Officer nor was the Settlement Officer impleaded as a party to the suit. The plaintiffs have no right to institute a civil suit without first raising their claim before the Forest Settlement Officer or the competent Revenue Authorities. In the absence of a patta



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obtained from settlement forum, the plaintiffs are not entitled to file a civil suit. The plaintiffs are only encroachers of the Forest area from the year 1987.

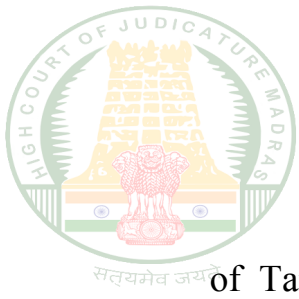
b) The plaintiffs should have claimed their rights before the Revenue authorities during the settlement proceedings. The lands in question are part of the Forest area, and the plaintiffs have no right to occupy or cultivate the forest lands. The plaintiffs have been prosecuted for encroaching the Government land, and some of them were convicted.

c) Totally 5 acres of land was encroached by the plaintiffs No.1, 4, 6, 7 and 8 and necessary O.R. were already booked and dealt within O.R.No. 133/87 and 91/87-88 and the actual extent of land occupied by them is different.

d) The suit lands were notified under section 25 of Tamil Nadu Forest Act, as per the G.O.(MS)No.2799 Feed and Agriculture, dated 16.09.1957 as the Grand Ex-Zamin Forests including this Megamalai Forest Block.

e) As per Board standing order 15-38-VII (issued as per G.O.No. 430 Revenue) Dated 20.02.1940 it has been clearly stated that under Section 26

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of Tamil Nadu Forest Act, except special sanction of collector no land should be assigned.

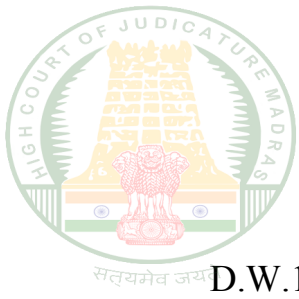
f) The Payment of kist as produced by the Plaintiffs are only the payment of Thandam Theervai (penalty payment) for the 'B' Memos rendered by the Revenue Department.

g) Further as per G.O. letter No.18380/FR III /85-22 dated 19.07.1988 once the lands are notified as Forest areas under sec4 the Tamil Nadu Forest Act, no B memo, patta to be issued. Hence, the defendants pray that the suit may be dismissed with costs.

7. On the basis of the rival pleadings, the learned District Munsif, Periyakulam, framed the following issues for consideration:

- 1. Whether the plaintiff entitled to the relief of permanent injunction as prayed for ?*
- 2. To what relief the plaintiff is entitled to ?*

8. During trial, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A.1 to A.38 were marked. On the side of the defendants



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D.W.1 and D.W.2 were examined and Exs.B1 to Exs.B7 were marked. Advocate Commissioner's report with plan and Survey Commissioner's report were marked as Ex.C1 to Ex.C4.

9. The Trial Court/ District Munsif Court, Periyakulam, has dismissed the suit in O.S.No.694 of 1988 dated 15.09.2004, against which the plaintiffs filed A.S.No.43 of 1991, with request to set aside the judgment in O.S.No.694 of 1988, whereas, the First Appellate Court / Subordinate Judge, Periyakulam has allowed the appeal, against which, the present Second Appeal has been filed by the defendants.

10. This Second Appeal was admitted on the following substantial question of law:-

1. Whether the suit as framed is maintainable in view of Section 5 of the Forest Act, 1882 ousting the jurisdiction of civil Court in any matter coming under the purview of Forest Laws ?



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11. For the sake of convenience, the parties are referred to herein, as their own ranking as before the Trial Court.

12. The term forest under the Tamil Nadu Forest Act, particularly, the Indian Forest Act, 1927 or Tamil Nadu Forest Act, 1882 is not explicitly defined the word forest. As per the landmark judgment in ***T.N.Godavarman Thirumul Pad Vs. Union of India***, reported in (1997) 2 **SCC 267**, the forest has defined as follows :

“The word “forest” must be understood, according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected, or otherwise. “Forest land” a part from including “forest”, as understood in dictionary sense will also include any area recorded as forest in Government record irrespective of ownership or classification.”

As per the dictionary meaning, forest means a large area covered with trees and under growth.



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13. The Indian Forest Act 1927, classify forest into three different types like

- a. reserved forest
- b. protected Forest
- c. Private forest

14. The trial Court dismissed the suit concluding that the plaintiffs had failed to prove their possession prior to the classification of lands as forest and also the fact that they had been proceeded against under the Forest Act for illegal occupation.

15. Though the first Appellate Court accepted that the plaintiffs were not in lawful possession of the forest land and applied Sections 5, 6, 7 of the Land Encroachment Act, 1905 and holding that no prior notice had been issued to a person encroached upon the Government land under section 6 of the Land Encroachment Act, and therefore plaintiff should not be evicted without following due process of law and granted injunction.



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16. The plaintiff did not dispute that they had encroached upon the forest land. Where a person has encroached upon forest land, the provisions of Land Encroachment Act are generally inapplicable as forest land is governed by special enactment rather than the general law relating to encroachments.

17. First of all, this Court need to decide whether the civil Court has jurisdiction to entertain the suit with respect to forest lands.

18. As per Section 5 of the Tamil Nadu Forest Act, 1882, -
Except as hereinafter provided, no civil Court shall, between the dates of publication of the notification under Section 4 and of the notification to be issued under Section 16, entertain any suit to establish, any right in or over any land or to the forest produce of any land included in the notification published under Section 4.

19. The defendants produced Ex.B1 to show that, Section 4 notification (classification of Forest land), came into effect on 28.02.1978.

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20. Section 6 of the Tamil Nadu Forest Act, 1882, lays down the procedure to be adopted, after a land has been notified as Forest under Section 4 of the Tamil Nadu Forest Act. When a notification has been issued under Section 4, the Government should publish a notification in the Official Gazette of the District -

(a) specifying, as nearly as possible, the situation and limits of the land proposed to be included within the reserved forests;

(b) setting forth the substance of the provisions of section 7;

(c) explaining the consequences which, as hereinafter provided, will ensure on the reservation of such forests; and

(d) fixing a period not less than three months from the date of publishing such proclamation in the Official Gazette of the district and requiring every person claiming any right referred to in section 4 either to present to such officer, within such period, a written notice specifying, or to appear before him within such period and state the nature of such right and in either case to produce all documents in support thereof.

The Forest Settlement Officer shall also serve a notice to the same effect on every known or reputed owner or occupier of any land included in or adjoining the land proposed to be



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constituted a reserved forest, or on his recognized agent or manager. Such notice may be sent by registered post to persons residing beyond the limits of the district in which such land is situate.

During the interval between the publication and proclamation and the date fixed by the notification no right shall be acquired.

21. Section 16 of Tamil Nadu Forest Act, indicates about the Notification declaring forest reserved as follows:

“16. Notification declaring forest reserved :- When the following events have occurred, namely :-

(a) the period fixed under Section 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest Settlement Officer; and

(b) if such claims have been made, the period fixed by sections 10 and 14 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate authority; and (section 10 deals with claims right of occupancy and ownership) (Sec 14 deals with sec appeal from order passed under sec 11,12 and 13)



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(c) all proceedings prescribed by section 10 have been taken and all lands (if any) to be included in the proposed forest which the Forest Settlement Officer has under section 10 elected to acquire under the [Land Acquisition Act, 1870 (Central Act X of 1870)] [See now the land Acquisition Act, 1894 (Central Act I of 1894).], have become vested in the Government under section 16 of that Act;

The [Government] [The words 'Provincial Government', were substituted for the words 'Governor in Council' by the Adaptation Order of 1937 and the word 'Provincial' was omitted by the Adaptation (Amendment) Order of 1950.] may publish a notification in the [Official Gazette] [Substituted for the words 'Fort St. George Gazette' by the Adaptation Order of 1937.], 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.

The Forest Settlement Officer shall, before the date so fixed, publish such notification in the manner prescribed for the proclamation under Section 6.

From the date so fixed, such forest shall be deemed to be a reserved forest.”



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22. As per Section 10 of the above Act indicates that in the case of a claim to a right in or over any land other than the following rights:-

- (a) a right of way;*
- (b) a right to a water-course, or to use of water;*
- (c) a right of pasture; or*
- (d) a right to forest produce ;*

the Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part

(i) Admitted Claims :- If such claim is admitted wholly or in part, the Forest Settlement-Officer may -

(1) come to an agreement with the claimant for the surrender of the right; or

(2) exclude the land from the limits of the proposed forests; or

(3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870 ;

For the purpose of so acquiring such land-

(i) the Forest-settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a



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notice given under Section 9 of that Act;

(iii) the provisions of the preceding Sections of that Act shall be deemed to have been complied with; and

(iv) the Forest Settlement Officer with the consent of the claimant, or the Court (as defined in the said Act) with the consent of the claimant and of the Collector of the District, may award compensation by the grant of right in or over land, or by the payment of money, or both.

23. First and foremost it must be determined whether the plaintiff has established that they have been in possession and enjoyment of the suit schedule for a period 20 years prior to date of filing. Upon verification it reveals that the suit was filed on 30.09.1988 and taken on the same day.

24. According to the plaintiffs, their father had converted the land into agriculture property and the plaintiffs has been cultivating the same for a period of 20 years.



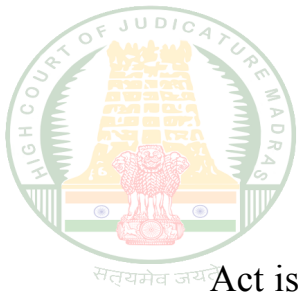
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25. Ex.B1 pertains to the proceedings issued for declaration of the land as reserve forest and the constitution of Megamalai block in Madurai as reserved forest. The said proceeding were issued on 28.02.1978. The District Forest Officer of Madurai was appointed to represent the Government on the enquiry prescribed under Chapter II of the Act. The Additional Personal Assistant to the Collector of Madurai District appointed to hear the appeals if any, from the orders passed under Sections 11, 12, 13 of the Act, 1882. However, it has not been established that the plaintiffs filed any claim before the Forest Settlement Officer.

26. Ex.B1 clearly establishes that the subject property was declared as reserved forest during the year 1978. Ex.B3 contains the Rules under Madras Forest Act. As per Rule 26 of the said Act, clearing of land for cultivation or any other purposes are expressly prohibited.

27. Subsequently, the Forest (Conservation) Act 1980, was enacted with the objective of conserving forests and restricting the diversion of forests land for non-forest purpose. One of the main feature of the said



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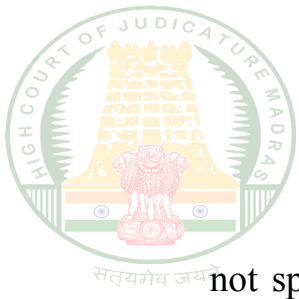
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Act is the restriction on the de-reservation of reserved forests and the use of forest for non-forest purposes.

28. The plaintiffs claimed to have been possession and enjoyment of the suit property, much prior to the declaration of the suit land as forest land. They asserted that they had been in such possession and enjoyment of the suit property for 20 years prior to the institution of the suit. Since the suit was filed on 30.09.1988 their alleged possession would if true date back to the year 1968 onwards.

29. However, the B memos issued by the Revenue Authority marked as Ex.A1 to Ex.A13, were produced to establish the plaintiff's occupation of the lands. These documents however pertains only to the year 1987 i.e., one year prior to filing of suit. Ex.A15 to Ex.A35 relate to the payment of fines for illegal occupation all of which pertains to the year 1988, the very same year in which the suit was filed.

30. Further, the receipt of fines produced by the plaintiffs do



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not specify any survey number to indicate that they were paid for the suit properties. Moreover, the Revenue Authority lacks the power or jurisdiction to issue B memos to individuals for encroachment or unauthorized occupation of forest land.

31. Ex.B5, this was proved by a letter issued by the Collector of Madurai to Revenue Divisional Officer, directing him to conduct an enquiry regarding the issuance of B memos to the plaintiffs and to take appropriate action against the responsible officer.

32. Further, the voter list marked Ex.P37, produced by the plaintiffs to show that the plaintiffs are resident of Tumma Kundu village, which does not support their claim of possession and enjoyment of the suit land.

33. On the other hand, the defendants proved that the suit properties were declared as reserved forest during the year 1978.



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34. Ex.B2 is the final report in C.C.No.705 of 87 filed against the plaintiffs No.4, 6 to 8 for commission forest offences of under Section 21 of the Tamil Nadu Forest Act, 1882. It established that during the year 1987, 1988, the plaintiffs No.4, 6 to 8 were involved in forests offence. The defendants took action against them. The plaintiffs admitted to the said offence and paid the fine accordingly.

35. Therefore, it is established that the plaintiffs are encroached upon the forest land only after the subject matter of land was notified as forest. Consequently they are not entitled to receive notice under Section 6 of the Tamil Nadu Forest Act. Further, in view of the statutory bar under Section 5 of Tamil Nadu Forest Act, the suit itself is not maintainable.

36. Mr.B.Ramanathan, learned Additional Government Pleader appearing for the State contended that the suit land is now declared as “Tiger Reserved Forest Land”. Injunction against the forests land is not legally sustainable as such the relief is contrary to law.



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37. It is proved that the plaintiffs are the encroachers and are in illegal occupation, they are not entitled for injunction against defendants. The Courts have repeatedly held that no injunction can be granted to protect illegal position over Government or forest land. Therefore, the prayer for injunction against the defendant is not sustainable. The judgment of the first Appellate Court is liable to be set aside. The decree and judgment of the trial Court is hereby confirmed. The substantial question of law is answered accordingly.

38. In the result, the Second Appeal is allowed with costs and the decree and judgment passed in A.S. No.43 of 1991 on the file of the Subordinate Court, Periyakulam, dated 16.06.1993 is set aside and the Judgment and Decree passed in O.S.No.694 of 1988 dated 23.03.1990 on the file of the District Munsif Court, Periakulam is hereby confirmed.

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To

- 1.The Subordinate Court,
Periyakulam.
- 2.The District Munsif Court,
Periyakulam.
- 3.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

RM

Judgment in
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