

(2010) 05 MAD CK 0017

In the Madras High Court

Case No : W.A. No. 1810 of 2001 and C.M.P. No's. 14880 of 2001, 5214 and 1198 of 2002

M. Christopher

APPELLANT

Vs

The Forest Range Officer, Azagia Pandipuram Range

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Forest Act, 1882 — Section 68A

Citation : (2010) 05 MAD CK 0017

Hon'ble Judges : R. Banumathi, J;M. Venugopal, J

Bench : Division Bench

Advocate : A.R.L. Sundaresan for Al. Gandhimathi, for the Appellant; S. Ramasamy, A.A.G. assisted by S.N. Kirubanandam, Spl. G.P. (Forest), for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This Writ Appeal arises out of the order of learned single Judge dated 23.8.2001 made in W.P. No. 15251 of 2001

dismissing the Writ Petition and refusing to interfere with the order of the Respondent dated 3.8.2001 ordering removal of encroachment made in

the forest land adjacent to the patta land of the Appellant.

2. Before we set out the case of the Appellant, we may briefly refer to the background facts and the various litigations. The subject matter in

dispute is the property adjacent to Survey No. 2898/1 of Azhagia Pandipuram village, Kanyakumari District. The case of Appellant is that Survey

No. 2898/1 of Azhagia Pandipuram village originally is comprised of 115.79 acres of old coffee, cardamom and tea area granted in title deed Nos.

37 and 94 by the erstwhile Travancore Government in favour of the ancestors of

one C.H. Simpson. C.H. Simpson has inherited the said property from his ancestors as last heir and he had full ownership over the suit property along with the other properties granted in the title deed Nos. 37 and 94 and the said C.H. Simpson and his children were in possession and enjoyment of the suit property and other properties in their own right. On 30.11.1973, C.H. Simpson and his children have executed a sale deed in favour of one K.V. Joy and T.P. Phillippose. From those two persons, the Appellant purchased the property by the sale deed dated 16.6.1978 within the boundaries stated therein. Case of Appellant is that though an extent of 37.94 acres has been stated in the said sale deed, what he actually purchased was Ac. 65.21 cents and that he has been in possession and enjoyment of the same.

3. O.S. No. 98 of 1980:- The Plaintiff/Appellant and 4 others filed O.S. No. 98 of 1980 before the Subordinate Judge, Nagercoil for declaration and permanent injunction against the Forest Department in respect of 37.94 acres. The said suit was decreed on 18.12.1982. The Forest Department is said to have preferred Appeal and the said Appeal also came to be dismissed. The Second Appeal preferred against the said Judgment in S.A. No. 1146 of 1984 also came to be dismissed. It is pertinent to note that O.S. No. 98 of 1980 pertains to only 37.94 acres. In the Plaint Schedule in O.S. No. 98 of 1990, the Appellant had given the description of the property along with boundaries.

4. The case of Appellant is that the extent within the above boundaries is Ac. 65.21 cents and the Appellant, having obtained the decree for the property within the said boundaries, is entitled to Ac. 65.21 cents and while so his possession cannot be termed as an encroachment. It was further submitted that having suffered a decree and being unsuccessful in the Appeal, the Respondent cannot direct the Appellant to remove the encroachment and hand over vacant possession. The above contention does not merit acceptance. As pointed out earlier, in the Plaint Schedule in O.S. No. 98 of 1980, the Appellant has stated the extent only as 37.94 acres and the Appellant cannot claim right and title beyond the said extent.

5. W.P. No. 12129 of 1986: - Based on the decree in O.S. No. 98 of 1980, earlier the Appellant filed Application before the Tahsildar, Thovalai Taluk for issuance of patta for Ac. 65.21 cents. Since that Application was

rejected, the Appellant had filed W.P. No. 12129 of 1986 seeking for a direction to the Tahsidar for issuance of patta to the said extent of 65.21 acres. In the said writ petition, the Appellant contended that the boundaries shall prevail over the extent. The Court dismissed the Writ Petition observing that the Appellant is entitled to only 37.94 acres and that if at all there was any mistake in the decree, the Appellant should only seek an amendment of the decree or clarification of the decree.

6. O.S. No. 1046 of 1986:- Appellant and 3 others had again filed O.S. No. 1046 of 1986 for a permanent injunction restraining the Forest

Department from interfering with their possession and also from destroying or removing the existing wall. In O.S. No. 1046 of 1986, in the

description of property, it was stated that even in the decree in O.S. No. 98 of 1980, the extent is stated as 15 Hectares and 6 Square meters, but

he is having more extent as per lie and boundaries, viz., 65 acres and 21 cents. In the said suit, O.S. No. 1046 of 1986, issues were framed and in

the said suit, it was held that the said contentious issues between the parties were already decided in O.S. No. 98 of 1980. The Court further held

that as per the sale deed and as per the decree in O.S. No. 98 of 1980, the Appellant and 4 others are entitled to only 37.94 acres and that they

cannot claim right and title beyond the said extent i.e. Ac. 65.21 cents and that they cannot seek for issuance of patta. The Principal District

Munsif's Court, Nagercoil dismissed the suit in O.S. No. 1046 of 1986 on the following findings:

VERNACULAR (TAMIL) PORTION OMMITTED

As against the dismissal of the suit - O.S. No. 1046 of 1986, the Appellant filed A.S. No. 2 of 1991 on the file of Sub-Curt, Nagercoil and the

same also came to be dismissed by the Judgment dated 31.10.1995. Referring to decree in O.S. No. 98 of 1980, the learned Appellate Judge

also reiterated the findings of trial Court that in the decree in O.S. No. 98 of 1980, the Appellants/Plaintiffs therein are entitled to only 37.94 acres

and that the Appellant had not taken steps for getting clarification of the decree.

7. In the above factual backdrop, the Respondent issued eviction notice u/s 68A of Tamil Nadu Forest Act stating that the Appellant had

committed encroachment in the land in S. No. 2898/1 of Azhagia Pandipuram village and calling upon the Appellant to show cause as to why he

should not be evicted. The Appellant and 2 others had filed the objections. On receipt of the Objections, Forest Department called upon the

Appellant on 8.2.2001 to produce the documents - (1) Copy of the sale deed executed by V. Joy and T.P. Phillippose dated 16.6.1978; (2) The

Order in W.P. No. 1229/86; (3) Second Appeal Judgment of the High Court against A.S. No. 2 of 1991 dated 4.3.1996; (4) Particulars about

the amendment to the decree; (5) Any other document supporting the Appellant's case. The Appellant did not produce the documents, but only

replied stating that he is not bound to send reply. Upon consideration of the objections filed by the Appellant, the Respondent passed the

impugned order on 3.8.2001 stating that Government has issued the patta for 37.94 acres of land and the same has been demarcated as Survey

No. 786 of Azhagia Pandipuram village and the said area has definite and well demarcated boundaries and the Appellant is only in possession of

the same. In the impugned order, Respondent called upon the Appellant:- (i) to vacate from the encroachment made in the forest land adjacent to

his patta land in S. No. 786 of Azhagiapandipuram village; (ii) to remove all standing commercial crops and the shed constructed therein.

8. Challenging the order of the Respondent, the Appellant has filed W.P. No. 15251 of 2001. The learned single Judge held that with reference to

the claim of the Appellant to a larger extent of land, the Forest Department has come forward with a specific finding to the effect that by virtue of

certain action initiated by the Government authorities, the extent of land to which the Appellant is legally entitled viz., 37.94 acres in S. No. 2898/1

came to be re-surveyed and new Survey No. 786 has been allotted to the Appellant to an extent of 37.94 acres. The learned single Judge further

held that re-survey having been made and new Survey Number having been assigned to the Appellant's land, there is no scope for holding that the

Appellant would still be entitled to remain in the excess land over and above 37.94 acres in S. No. 2898/1.

9. Assailing the order of learned single Judge, the learned Senior Counsel for Appellant Mr. AR. L. Sundaresan contended that without

demarcation of the appellant's lands in S. No. 2898/1 the Appellant cannot be evicted from the property. It was further submitted that for the very

same extent, the Appellant has obtained the decree and the property in respect of which decree was granted by the Civil Court in O.S. No. 98 of

1980 cannot be stultified by issuing eviction notice and passing orders for removal of encroachment. The learned Senior Counsel further submitted

that when the Appellant has obtained the decree for a larger extent in O.S. No. 98 of 1980 the Appellant cannot be said to be an encroacher and

notice ought to have been given for two different portions to enable the Appellant to file his submissions.

10. The learned Additional Advocate General Mr. Ramasami submitted that the land in possession of Appellant was already demarcated and new

Survey Number has been assigned as S. No. 786 of Azhagia Pandipuram village and merely because the Appellant has put up shed and raised

some crops it would not clothe him with any right to be in possession of the property. The learned Additional Advocate General would further

submit that the Appellant is entitled to only 37.94 acres in Survey No. 786 and while so, by one order or other, the Appellant has been squatting

on the property for several decades and after affording opportunity the Respondent has rightly directed removal of encroachment.

11. The main contention of the Appellant is that the description of the suit property in O.S. No. 98 of 1980 within the stated boundaries is over

and above 37.94 acres. In O.S. No. 98 of 1980, description of the property is stated as under:

37 acres and 94 cents and 15 Hectare - 35 acres and 6 sq. Metres of land and boundaries:

East: Sy. No. 2898/1, 2870 and 2890/1

North: Sy. No. 2898/1, Olivers Estate

West: Sy. No. 2902/1 and 2903/2

South: Sy. No. 2865/1, 2866, 2867, 2868.

12. According to the Appellant, the extent within the above boundaries is 65.21 acres and while so the Appellant having obtained decree in O.S.

No. 98 of 1980 and the Department having been unsuccessful cannot seek to evict the Appellant. The main contention of the Appellant is that by

issuing eviction notice the respondent is only trying to upset the decree passed by the competent Civil Court. As pointed out earlier, in the Writ

Petition in W.P. No. 12129 of 1986, the learned Judge Justice Mohan (as His Lordship then was) held that it is for the Appellant to get

clarification from the Civil Court by moving an Application for amendment of the

decree or getting the decree clarified. The order in W.P. No.

12129 of 1986 is as under:

... In other words, according to the petitioner, the boundaries shall prevail over the extent, that is the settled law. I am afraid the settled position of

law will have no appellation in construing a decree. (emphasis supplied). Certainly, that is not the function of a writ court. If the petitioners here

(sic. have) not been able to get patta for the extent which they want, the proper remedy is to pursue the matter in the civil court and seek an

amendment of the decree, if so advised, that does not mean that they could come by way of writ petition under Article 226 and contend that the

Tahsildar had committed a mistake in construing the scope of the decree

...it is seen that in effect and in substance what the petitioners want an amendment of the decree or clarification of the decree to the effect that the

boundaries shall prevail over the extent. This certainly is beyond the power of a writ Court under Article 226.

13. From the impugned eviction order as well as from the submissions of the learned Advocate General, it comes to be known that the property in

the possession of the Appellant i.e., 37.94 acres of the Appellant was already surveyed and demarcated and a new Survey No. 786 was assigned.

14. The learned Senior Counsel for Appellant submitted that when the extent of 37.94 acres is comprised in the larger extent in Survey No.

2898/1 without demarcating the lands to which the Appellant is entitled, the eviction cannot be ordered. It was further submitted that from out of

the larger extent, the extent in which the Appellant is in possession has to be correctly surveyed and demarcated and only then the eviction could

be ordered in this Writ Appeal.

15. In this Writ Appeal, a Commissioner was also appointed and the Commissioner has filed a detailed report running to nearly 100 pages along

with photographs. The Respondent has also filed a detailed objections running to several pages to the Commissioner's report. The learned Senior

Counsel for the Appellant laid much emphasis on the Commissioner's report and urged us to examine the Commissioner's report. As pointed out

earlier, extent of 37.94 acres to which the Appellant is entitled was already subdivided, demarcated and a new survey number viz., S. No. 786

was assigned. While so, it cannot be contended that the lands to which the

Appellant is entitled is yet to be surveyed and demarcated. Since we do not propose to go into the elaborate report of the Advocate Commissioner, suffice to note that while exercising jurisdiction under Article 226, the Writ Court cannot go into the factual aspects and the factual disputes arising between the parties. This is all the more so when already the competent Civil Court held against the Appellant that the Appellant is entitled only to 37.94 acres and not beyond that. It is relevant to note that so far the Appellant has not taken any steps to get the decree amended or get clarification to substantiate his contention.

16. A feeble argument was advanced contending that before passing the impugned order there was no sufficient opportunity given to the Appellant and that there was violation of principles of natural justice. Section 68A of Forest Act deals with summary eviction of unauthorised occupation of land. Section 68A reads as under:

68-A. Liability of person unauthorisedly occupying any land in reserved forest etc.: to summary eviction: - Any person unauthorisedly occupying any land in reserved forest or any land at the disposal of Government may be summarily evicted by an officer of Forest Department not below the rank of Forest Ranger or an Officer of the Revenue department not below the rank of Tahsildar having jurisdiction over area in which such land is situated, in such manner, as may be prescribed and any crop or other product raised on such land, shall be liable to forfeiture any building or other construction erected or anything deposited thereon shall also be liable to forfeiture. Forfeiture under this section, shall be adjudged by the officer referred to above and any property so forfeited, shall be disposed of in such manner as may be prescribed.

Provided that no eviction or adjudication under this section adversely affecting a person shall be made or adjudged, unless

(a) such person has been given a notice in such manner as may be prescribed; and

(b) the representation if any received in pursuance of such notice has been duly considered by such officer concerned?

17. There is no substance in the contention that no opportunity was afforded to the Appellant and that there was violation of principles of natural justice. As pointed out earlier, eviction notice was issued to the Appellant on

19.10.2000 to which the Appellant has filed detailed objections.

Thereafter on 8.2.2001, a notice was issued to the Appellant calling upon him to furnish documents as stated in paragraph No. 7. The Appellant

did not respond to the same, but he has sent the reply stating that the Forest Department is also a party in A.S. No. 2 of 1991 and other earlier

litigations and that the Court Judgment and decree and other material documents are binding upon the Forest Department and that he cannot be

called upon to produce the documents. When the Appellant has not chosen to produce the documents it is not open to the Appellant to raise the

plea of violation of principles of natural justice. It is a clear case of abuse of process of Court that the Appellant remains in possession by obtaining

one order or other by moving the Court. Pointing out that new Survey Number 786 was allotted to the extent of 37.94 acres to which the patta

was issued to the Petitioner, the learned single Judge rightly held that there is no scope for holding that the Appellant is entitled to remain in the

excess land over and above 37.94 acres. We do not find any reason warranting interference with the order of the learned single Judge.

18. In the result, the Writ Appeal is dismissed with costs. The Respondent is at liberty to take appropriate action for recovery of damages, if any.

Consequently, the connected miscellaneous petitions are closed.