
(1988) 08 MAD CK 0035
In the Madras High Court
Case No : A.A.A.O. No. 45 of 1982

N. Susilammal

APPELLANT

Vs

The District Forest Officer

RESPONDENT

Date of Decision : 18-08-1988

Acts Referred:

Tamil Nadu Forest Act, 1882 — Section 10

Citation : (1988) 08 MAD CK 0035

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : E. Padmanabhan, for the Appellant; E.D. Dakshinamoorthy, for the Respondent

Final Decision : Allowed

Judgement

Abdul Hadi, J.—This civil miscellaneous second appeal arises out of a claim petition by the appellant under S.10 of the Tamil Nadu Forest Act, 1882 for deletion from the notified area of reserve forest under the Act, of an extent of 13.88 acres in S.No 1342 of Agamalai village. The forest settlement officer allowed the petition in entirety; but, on appeal by the district forest officer in C.M.A. No. 23 of 1982 on the file of the district judge, Madurai North, the order of the forest settlement officer was set aside and the claimant has preferred this civil miscellaneous second appeal. The learned counsel for the appellant initially argued that the first appellate court, having observed in paragraph 3 of its order that so far as 1.76 acres comprised in S.No. 1342/2 out of the said entire 13.88 acres in S.No. 1342/2 is concerned, it is conceded by the respondent that the ryotwari patta was granted to the appellant in the earlier proceedings under Tamil Nadu Estates Abolition and Conversion into Ryotwari Act, 1949 and that hence it should not be included in the above said notified area, erred in setting aside the order of the forest settlement officer in respect of the entire 13 88 acres. This argument is correct and the learned counsel appearing for the respondent concedes this point even now. Hence S.No. 1342/2 to the extent of

1.76 acres has to be deleted from the notified area, and accordingly the order of the lower appellate court has to be modified.

2. With reference to the rest of the land, i.e., 12.12 acres in S.No. 1342/1, the claim of the appellant for ryotwari patta was negated by the Board of Revenue in its order Ex.A9 dated 2-2-1973 in the very same above referred-to-earlier proceedings under Tamil Nadu Act 26 of 1948. That order has also become final and conclusive, since the appellant did not take any further step to establish her alleged right in the said land. So, the point urged by counsel for the appellant before me with reference to S No. 1342/1 fails. The unreported judgment of this Court (cited by the respondent's counsel) Mohammed Hanifa v. The District Forest Officer, Madurai See 1988-2-L.W. 202, dated 9-3-1988 in C.M.S.A. No.12 of 1981 following the earlier judgment dated 1-9-1987 in C.R.P. No.248 of 1983, Sangili Thevar (died) Sanniammal and others v. The District Forest Settlement Officer Dindigul reported at 1990-2-L.W. 491 supra, also supports this view. The appellant's counsel also urged that the earlier patta proceedings were not under the Estates Abolition Act. But it is admitted that the lands in question are zamin lands, and if at all, patta could be applied for only under that Act.

3. In the circumstances, I see no reason to interfere with the finding of the lower appellate court with reference to the said 12.12 acres in S.No.1342/1. However, as stated above, with reference to 1.76 acres in S.No. 1342/2, the judgment and decree of the lower appellate court is hereby modified and the said land has to be deleted from the above said notified area. The appeal is allowed partly with reference to 1.76 acres in S.No. 1342/2 only. No costs. However, in the above referred to judgment, in C.M.S.A. No. 12 of 1981, the appellant therein was given liberty to file a suit to establish his alleged title to the property. Likewise, in the case also the appellant therein will have four months, time from this date to file such a suit in respect of S.No. 1342/1 and until then the respondent is directed not to disturb her possession if she is in actual possession. The appellant claims alternatively a right of way for S.No. 1342/2 over R.S.No.1342/1 on the ground that there is no other access to R.S.No.1342/2. If the appellant so desires, this plea also can be gone into in the proposed suit.