

(1988) 12 MAD CK 0003

In the Madras High Court

Case No : Appeal against Appellate Order (C.M.S.A.) No. 24 of 1983

Pitchai Naidu

APPELLANT

Vs

The District Forest Officer, Madurai (South) Madurai

RESPONDENT

Date of Decision : 14-12-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 80

Citation : (1988) 12 MAD CK 0003

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : V. Natarajan, for the Appellant; E.D. Dakshinamoorthy, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Natarajan, J.—This appeal is directed by the unsuccessful claimant before the lower appellate court. The facts which are necessary

for the disposal of this appeal can be briefly stated as follows: The Government of Tamil Nadu in their notification No.1192/FRF-I/4060/77 issued

under S.4 of the Tamil Nadu Forest Act and published in the Tamil Nadu government gazette dt. 31-8-1977 and in the district gazette on 8-1-

1978 notified that Sirumalai west forest block is a reserve-forest. Under S. 6 of the forest act, proclamation was issued and published in the

Madurai district gazette dated 8-4-1978 and 15-5-1978 calling for claims, if any, over the said land or produce thereof. The appellant herein

claimed exclusion of 4.42 acres in S.No.768/2 of Sirumalai Village on the ground that it is a ryoti land and that he has been in occupation of the

property for a sufficiently long period and has been raising crops. The district forest officer, Madurai (South) resisted the said claim on the ground

that the land is the forest land and that the appellant has no right to the same. Thereupon the forest settlement officer rejected the said claim on the basis of the evidence adduced before him. The appellant preferred C.M.A. No.158 of 1979 and also filed certain documents as additional evidence in I.A. No.239 of 1980 under O.41, R. 27 C.P.C. The district judge set aside the order and remanded the matter to the forest settlement officer for fresh disposal after giving opportunity to both sides to adduce further evidence, both oral and documentary. In pursuance of the said order of remand, the forest settlement officer, Dindigul, allowed the parties to adduce further evidence passed an order to the effect that S.No 768/2 should be deleted from the notification as forest land, under S. 10 (ii) of the Madras Forest Act, 1882, on the ground that the said area is in the possession and cultivation of the appellant for about 15 years and that it cannot be converted into forest land. Further, the forest department would not be in a position to extinguish all the fruit-bearing trees in the land so as to maintain it as a reserve forest area. Aggrieved by the same, the district forest officer, Madurai (South) preferred appeal C.M.A.No.34 of 1982 before the district judge of Madurai North at Dindigul. The district judge allowed the appeal on the ground that the said land was notified as "forest poramboke" by the assistant settlement officer in his order Ex.A12 dated 3-12-1964, that the said classification has become final and conclusive as the appellant had not taken the matter further and established his title to the suit land and that it is not open to him to contend in this proceedings that it is a ryoti land. Further, from the mere fact that the suit land is now fully developed, it cannot be said that the forest department would not be in a position to extinguish the fruit-bearing trees on land so as to maintain it as reserve forest. The district judge also found that once the suit land is established to be the government land, the government have got every right to notify it under the Forest Act and that they can destroy the trees on the suit land and convert it into a reserve forest. Aggrieved by the same, the present second appeal was filed and it was admitted on the following substantial question of law:

Whether the lands in question are ryotwari lands and whether the principle that once a ryotwari is always a ryotwari would not be applicable to the facts of the present case?

Learned counsel for the appellant, Mr. V. Natarajan, mainly submitted that the documents filed by him were not properly considered by the district

judge and as such the matter should be remanded to the district judge for fresh enquiry. According to the learned counsel, in view of the finding of

the forest settlement officer that the appellant has been in possession of the land for the past 15 years, the district judge ought not to have allowed

the appeal. On the other hand, the learned counsel for the respondent submitted that when the claim of the appellant was negated even during the

settlement proceedings and patta was not granted, and when the appellant has not established adverse possession for more than the statutory

period, it is not open to him to say on the basis of recent possession which is short of adverse possession that he is entitled to ask for deletion and

as such, no interference is called for in this appeal. In this connection the learned counsel drew ray attention to the decision rendered by M.N.

Chandurkar, C.J. in (Sangili Thevar (deceased) and 7 others v. The District Forest Settlement Officer, having his office at Dindigul) C.R.P. No.

248 of 1983; See 1990-2-L.W. 491. In similar circumstances, it was observed in that case:

Both the authorities have held that the proceedings which were taken by the original claimant for getting a ryotwari patta in respect of the land in

question have been unsuccessful since such a claim made by the original claimant was rejected by the Additional Collector, Madurai, on 23-4-

1978. This order was confirmed by the Board of Revenue while dismissing a revision petition on 26-9-1978. This order was confirmed by the

Board of Revenue and a further revision petition to the State Government also came to be dismissed. It is only after these proceedings that

possession was taken by the Forest Department.

It was also observed:

The authorities have held that the request for ryotwari patta for the land outside the scope of Act 26 of 1948 having been finally rejected, the land

was consequently notified as forest land. They, therefore, took the view that it was not open to the petitioners-Claimants to claim that the said land

was a ryoti land from inception and that it was included or ought to have been included in the holding of a ryot.

The learned Chief Justice further observed as follows:

While challenging the order, the contention raised is that notwithstanding the earlier rejection of the claim for a ryotwari patta, it is even now open

to the claimants-petitioners to urge that the land belongs to them and that since they are the owners, the land could not be classified as forest land.

There is no substance in this contention. It is an admitted position that the demand for ryotwari patta has been rejected as originally made by the

original claimant. In so far as Act 25 of 1948 is concerned, the second proviso of S. 19 clearly provides that a person who has been admitted into

possession of any ryoti land on or after the 1st day of July, 1945 shall be entitled to no rights in respect of such lands except where the

Government otherwise direct As a consequence of Act 26 of 1948, the lands in the estate on which Act 26 of 1948 operated, vested in the State

The ryotwari patta claim having been earlier rejected, the owner of the property in question must be deemed to be the State. Consequently, it is

obvious that the present claimants can have no rights in respect of the land in question much less on the footing that they are the owners of the

property. Their claim to have these lands deleted from the records with regard to the forest land was, in my view, clearly misconceived. Both the

authorities were, therefore, right in rejecting the claim of the claimants.

The ratio laid down in the above case is in all fours applicable to the facts of this case. In the instant case, it is seen that the appellant claimed patta

originally from the settlement officer, Then the suit land was classified as waste dry. Again the assistant settlement officer rejected his claim and the

claim to ryotwari patta was negated, as the land was classified as forest poramboke. Thus, that order has become final, Even at the time of the

final enquiry, the appellant has not established as to how he is entitled to ryotwari patta and his land should be deleted from notification. There is

absolutely nothing to show on the available materials that the appellant has established his possession for more than the statutory period so as to

entitle him to claim patta at all. There is absolutely nothing to show that the documents produced by him establish his claim over the suit land as

against the forest department. For all these reasons. I am of the view that the order passed by the lower appellate court is correct and that no

interference is called for in this court.

2. However, the learned counsel for the appellant drew my attention to the

decision reported in Mohammed Haninfa v. District Forest Officer

1988-2 L.W. 202 and submitted that there is no bar for him to file a regular suit to establish title on the basis of the documents even though he was

unsuccessful before the settlement officer. In the said case, Sivasubramaniam, J., observed:

Learned counsel for the appellant submits that as the appellant has to file a suit against the Government, a statutory notice will have to be given and

meanwhile his possession should not be disturbed. The learned counsel for the Government submits that the appellant is not in actual possession.

Considering these contentions, the appellant will have four months" time from today, to file the suit; Until then, the Government is directed not to

disturb his possession if he is in actual possession now.

In view of the above decision, the learned counsel submits that the government may be directed not to disturb his possession till he files a suit

eventhough the appeal is dismissed.

In the above circumstances, the appeal is dismissed. However, it is open to the appellant to file a suit after giving notice under S. 80, C.P.C.

against the government, if so advised. Since it requires some time for him to issue notice and file suit, it is hereby made clear that if the appellant is

in actual possession of the property, his possession should not be disturbed by the government for a period of four months from to-day as laid

down in the above decision. No order as to costs in this appeal.