2020:APHC:9933

IN THE HIGH COURT OF ANDHRA PRADESH

***

A.S.No.193 of 2008

Between:

#1. Pydah Subramanya Jagannadha Satya Prasad S/o. Late Sri Rama Krishna Murthy, H.No.3-16B-106, Shanthinagar, Kakinada, East Godavari District.

2. Pydah Rama Kumar S/o. Late Satyanarayana Murthy, R/o. H.No.36-8-36, Tilak Street, Kakinada, East Godavari District.

3. Pydah Viswanadha Kumar, S/o. Late Sri Rama Krishna Murthy,, R/o. 1-4-15, Sri Ram Nagar, Kakinada, East Godavari District.

4. Maremalla Rupa, W/o. Ashok Kumar, D/o. Late Sri Rama Krishna Murthy, R/o. 3/5, Arundalpet, Guntur Town and District.

… **APPELLANTS**

AND

$ 1. Pyda Sathiraju, S/o. Late Pyda Nookaraju, R/o. D.No.5-193, Ravindra Nagar, Turangi, Kakinada, East Godavari District.

2. Tadi Adinarayana Reddy, (died per LRs RR 3 to 5)

3. Tadi Bala Kumari, W/o. Late Tadi Adinarayana Reddy, R/o. Palagurtha, Anaparthi (M) East Godavari District.

4. Tadi Sangi Reddy, S/o. late Tadi Adinarayana Reddy, R/o. Palagurtha, Anaparthi (M) East Godavari District.

5. Pulagam Prasanna Lakshmi, W/o. Pulagam Venkata Krishna Reddy, D/o. Late Tadi Adinarayana Reddy, R/o. Yeleswaram, Yeleswaram Mandal, East Godavari District.

… **RESPONDENTS**

Date of Judgment pronounced on : 18.06.2020

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

+ A.S.No.193 of 2008

% Dated:18.06.2020

Between:

#1. Pydah Subramanya Jagannadha Satya Prasad S/o. Late Sri Rama Krishna Murthy, H.No.3-16B-106, Shanthinagar, Kakinada, East Godavari District.

2. Pydah Rama Kumar S/o. Late Satyanarayana Murthy, R/o. H.No.36-8-36, Tilak Street, Kakinada, East Godavari District.

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5. Pulagam Prasanna Lakshmi, W/o. Pulagam Venkata Krishna Reddy, D/o. Late Tadi Adinarayana Reddy, R/o. Yeleswaram, Yeleswaram Mandal, East Godavari District.

... **RESPONDENTS**

! Counsel for appellants : Advocate General
Mr. E.V.V.S.Ravi Kumar &
Mr. T.Sridhar

^Counsel for Respondents : Mr. Vedula Venkata Ramana
Mr. Bolla Venkata Rama Rao

<GIST :

>HEAD NOTE:

? Cases referred:

1. (2003) 2 SCC 330
2. AIR 2008 SC 2033
3. 1994 (1) ALT 673
4. 2004 (4) ALD 109
5. 2006 (5) ALD 697
6. 2008 (3) ALD 4
7. 1971 (2) An.WR 193
8. 2008 (6) ALD 788
9. AIR 1966 SC 605
10. 2011 (4) ALD 734
11. (2004) 1 SCC 769
12. AIR 1972 SC 2299
13. AIR 1995 SC 441
14. 2019 (5) ALT 165 (SC)
15. 2015 (2) ALT 177
16. AIR 1993 AP 292
17. AIR 1965 SC 1477
18. AIR 1922 PC 269
19. AIR 1965 SC 1477
20. (2013) 6 ALD 359 (DB)

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

APPEAL SUIT No.193 of 2008

ORDER :

This is an appeal, by the defendants in the suit, against the judgement and decree dt.22.02.2008 in O.S.No.8 of 2007, in the Court of IV Additional District Judge, East Godavari, Kakinada.

2. The parties in this appeal are referred to as they were arrayed in the suit.

3. The case of the plaintiffs is that, the 1st Plaintiff's father Late Sri Pyda Nookaraju had been given Ac.20.00 cents of land by the Maharaja of Pithapuram, on account of his services to the said Maharaja, in old survey No.157/2 and 157/4 of Turangi Village, Kakinada which were renumbered as survey Nos.211 and 213. Subsequently, these survey numbers were converted into town survey numbers 1450 and 1452.

4. The family of the 1st plaintiff consisted of his father, mother, elder brother and the 1st plaintiff. The mother of the 1st plaintiff pre-deceased her husband and the father of the 1st plaintiff died in the year 1968. Later, his elder brother Mr. Venkat Rao, who was looking after the land died in the year 1972 as a bachelor, leaving behind only the 1st plaintiff as the sole legal heir and owner of the above Ac.20.00 of land, which subsequently got reduced to Ac.12.96 cents in view of road widening, encroachments etc. The 1st plaintiff claims that the patta granted by the Maharaja of Pithapuram is ruined and is not available. However, there is an entry in the Adangal for the year 1994 (Fasli 1404) for survey Nos.211 and 213 (marked as Ex.A.1) showing the name of the

father of the 1st plaintiff as the owner of the said Ac.12.96 cents which is hereinafter referred to as the suit land. The certified copy of the Adangal is marked as Ex.A.1.

5. Plaintiff No.1 further claims that he had entered into an agreement dt. 02.01.2007 (marked as Ex.A.2) with the plaintiff No.2 to develop the suit land by making a lay out of the land and the Plaintiff No.2 had commenced clearing work on the land when he was obstructed by defendant Nos. 1 and 2 on 04.01.2007.

6. In view of the interference of defendant Nos. 1 and 2, a complaint was made to the concerned police station. However, the Station House Officer informed the plaintiffs that no action would be taken as the defendants were influential people and advised them to approach the civil court for protection. The plaintiffs, thereupon, approached the civil Court by way of a suit for injunction restraining the defendants from interfering with the possession of the plaintiffs over the suit land.

7. The defendant No.2 filed a Written Statement, which appears to have been adopted by all other defendants. In the said Written Statement, the case of the defendants was that their family consisted of Pyda Satyanarayana Murthy, who had two sons, the younger son being the 2nd Defendant Pyda Rama Kumar and the elder son being Late Srirama Krishna Murthy, who has passed away leaving behind his sons-- Defendant Nos. 1 and 3 and a daughter, who is Defendant No.4. The defendants claim that Ac.10.87 cents of land in Sy.No.157/02 and Ac.2.09 cents of land in Sy.No.157/4 aggregating to Ac.12.96 cents was purchased by Sri Pyda Satyanarayana Murthy in a Court auction held on 25.09.1930 in E.P.No.3/30 in O.S.No.12/2008 which was confirmed on 30.10.1930

and a sale certificate dt. 30.10.1930 was also issued by the Sub Court and possession was handed over. Subsequently, on the enactment of the Andhra Pradesh (A.A.) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as the Abolition of Estates Act), a claim was made for Ryotwari patta by Sri late Pyda Satyanarayana Murthy and a competing claim was made by some other persons, which resulted in the claims of both parties being rejected by the Assistant Settlement Officer by his order dt.20.03.1960. Aggrieved by this order, late Pyda Satyanarayana Murthy approached the District Judge-cum-Tribunal under the Abolition Act and the said Tribunal allowed the appeal of Pyda Satyanarayana Murthy granting patta over the land admeasuring Ac.12.96 cents to Sri Pyda Satyanarayana Murthy by Order dt.08.03.1961. Subsequently, the members of his family partitioned their properties, including the suit land, by way of a registered deed of partition dt. 17.03.1966 registered as document No.1171/1966. Under this partition deed, the suit land had fallen to the share of D.2 and his brother late Sriramakrishna Murthy, father of D.1, D.3 and D.4. Apart from this, late Pyda Satyanarayana Murthy had also executed a Will, which was registered as document No.56/1967 giving this suit land to his two sons on condition of them performing the marriages of their sisters. The defendants also relied on the proceedings of the Government of India which took a part of the land in 1945 under the Defence of India Rules, the lay out proceedings of the Kakinada Municipality bearing L.P.No.5/1996, which had been issued on the basis of applications made by the defendants and the suit filed by the defendants against the municipality in relation to levy of municipal tax in the year 1972, as well as other suits and proceedings under the Land Grabbing Act.

8. The defendants claimed that all these documents, which are public documents, show that it is the defendants, who are the owners of the suit land and they were in possession of the suit land and the claim of the plaintiffs is based on a solitary manipulated document being the Adangal for the year 1994 and no credence can be given to the claim of the plaintiffs. The defendants also claimed that Survey No.157/2 and 157/4 in which the suit land was situated were converted to Sy.Nos.1450 and 1452 and there was no scope for new survey numbers 211 and 213 to have come into existence in the place of old Sy.Nos.157/2 and 157/4.

9. As far as the claim of the 1st plaintiff is concerned, the defendants took the stand that he was a stranger to the land and denied that either the 1st Plaintiff or his father had any claim on the basis of a stray entry in the revenue record which was corrected subsequently by the authorities rounding off the name of Sri Pyda Nooka Raju, the father of the 1st plaintiff and the corrected fair Adangal has also been filed by them in court. The defendants also stated that they were from a community which is different from the 1st Plaintiff, who was using a similarity in the surname to make this claim.

10. On the basis of these pleadings, the learned trial judge framed the following issues:

1) Whether Pyda Satyanarayana Murthy, father of 2nd defendant and paternal grand father of defendants 1,3 and 4, originally purchased the plaint schedule property in court auction sale held on 25.09.30 in E.P.No.3/30 in O.S.No.12/28 on the file of the Subordinate Judge's Court, Kakinada ?

2) Whether there was partition between Sri Satyanarayana Murthy and his two sons—Sri Ramakrishna Murthy and 2nd defendant and their mother-Andalamma ?

3) Whether the plaint schedule lands are included in the notice dt.20.09.50 issued by the Municipality to late Satyanarayana Murthy?
4) Whether T.A.No.59/60 is in respect of plaint schedule lands?
5) Whether the plaint schedule lands are divided into plots as per lay out L.P.No.5/66 approved by the Director of Town Planning, Hyderabad?
6) Whether the defendants are owners of the plaint schedule property, and if so, whether they have been in possession and enjoyment of the said property since more than 76 years?
7) Whether the plaint schedule property is merged in Kakinada Municipality and was given T.S.No.1450 and 1452 respectively?
8) Whether the plaint schedule property is the ancestral property of the 1st plaintiff, and if so, whether the plaintiffs are in possession and enjoyment of the property by the date of filing of the suit?
9) Whether the plaintiffs are entitled for permanent injunction as prayed for?
10) To what relief?

11. After the trial, in which the plaintiffs examined four witnesses and marked Exs.A.1 to A.5 and the defendants examined DWs 1 to 8 and marked Exs.B.1 to B.53, and Documents X.1 to X.4 were marked by the Court, the learned trial Judge was pleased to allow the suit and granted permanent injunction restraining the defendants from interfering with the peaceful possession and development of the suit land said to be in the possession of plaintiff No.1 and under development by Plaintiff No.2.

12. Aggrieved by the said Judgment and decree, the defendants are in appeal before this Court.

13. The appellants and the respondents were heard over 5 afternoon sessions exhaustively and thereafter, they have filed Written Arguments. I have gone through the said Written Arguments.

14. The Defendants have filed written arguments running to 46 pages and have cited, apart from the judgements cited during oral submissions, more than 70 judgements in the written arguments. The Defendants have also raised the objection that their written arguments were not considered by the Trial Judge and cited two judgements on the need to consider written arguments.

15. The parties are given an opportunity to file written arguments to summarize and organize their oral submissions and to fill in lacunae that may have crept in. Written arguments are for the purpose of assisting the court, not a license to parties to add to the burden of the court by running riot with facts and citations which are either a repetition of the same principle or irrelevant to the facts of the case. The Court, in the course of oral submissions is in a position to ensure that the submissions are restricted to relevant issues. In the case of written arguments, the court trusts the discretion of the Counsel to restrict themselves to relevant issues and principles of Law. It becomes the responsibility of the Counsel to uphold that trust. The trend of filing long winded arguments in the form of written submissions and the indiscriminate citation of large number of relevant and irrelevant citations has to be deprecated. Prolixity does not strengthen an argument, it only diffuses the focus.

16. After hearing both sides, the issues that need to be raised and answered in this appeal are as follows:

ISSUES:

1) Whether the documents marked by the defendants relate to the suit land?

2) Whether the Issue of title to the land should be gone into in this case?

3) If so, who has title and possession?
4) Whether the Plaintiffs are entitled to a Permanent injunction as prayed for?
5) Whether the Judgment of the trial Court has to be confirmed or set aside?
6) Whether the Defendants are entitled to restitution?

ISSUE NO.1:-

17. Sri Vedula Venkataramana, learned Senior Counsel for the Plaintiff, submitted that the plaint schedule clearly defines the land in dispute by way of specific boundaries and none of the documents produced by the defendants show boundaries which match the boundaries set out in the plaint schedule. Exs.B.1 and B.3 which are primary documents of title of the defendants do not contain any boundaries, and as such, all documents of title or possession produced by the defendants do not make out any case of title or possession over the suit land and relied upon a judgment of the Supreme Court in the case of ***Pratibha Singh Vs Shanti Devi Prasad***[1]. He further contends that Ex.B.14 which again gives boundaries clearly shows that the land identified and claimed by the defendants does not tally with the suit land claimed by the plaintiffs.

18. The learned trial Judge also considered each of the documents produced by the defendants to hold that none of the documents correspond to the schedule land as these documents either mentioned survey numbers, which did not tally with the survey numbers

[1] (2003 (2) SCC 330)

set out in the plaint and in the schedule, or were documents which did not contain any survey numbers.

19. The Learned Advocate General, appearing for the Appellants, submits that the boundaries set out in the schedule to the plaint are arbitrary boundaries set down by the plaintiffs without reference to any document and, as such, the said boundaries have no sanctity. Learned Advocate General would also point out that Ex.A.1, which is the primary source of title and possession to the plaintiff No.1, also does not contain any boundaries. Apart from this, the boundaries set out in Ex.A.2-Development Agreement said to have been executed, a few days prior to the filing of the suit, do not match with the boundaries set out in the schedule to the plaint, and as such, no sanctity can be given to the said boundaries set out in the schedule to the plaint. The defendants relied upon the following judgments in the Written Arguments for the proposition that the boundaries by themselves are not the definite way of identifying a land.

1. ***AIR 1963 SC 1879—Sheodhyan Singh and Others v. Sanichara Kuer and others.***

2. ***2001 (5) ALD 102—Mahendra C. Mehta and Others v. Kousalya Cooperative Housing Society Limited, Hyderabad and others.***

3. ***2015 (6) ALD 591—Yarlagadda Yugandhar and Others v State of Andhra Pradesh and others.***

4. ***2010 (6) ALD 697—Venkatramaiah and others v Madam Sarojanamma.***

5. ***2019 (3) ALD 266—Silver Jubilee Club v The State of Telangana and others.***

<u>FINDINGS</u>:

20. In the event of any dispute in relation to any immoveable land, the court would have to first ascertain the location and extent of the land in dispute. For this purpose, Order 7 Rule 3 of CPC specifically requires:

> "that when the subject matter of the suit is immoveable property, the plaint shall contain a description of the property which will be sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries"

21. This was reiterated by the Hon'ble Supreme court in the case, cited by the learned senior counsel for the plaintiffs, in **Pratibha Singh Vs Shanti Devi Prasad** (1 supra) at paragraph 15, in the following words:

> "In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such Boundaries or numbers."

22. The judgement goes on to observe, in that case, that the boundaries given there were not sufficient for identifying the property and the lack of a plan hindered the courts in executing the decree. In the present case, a plan has been annexed , but the said plan may not result in a conclusion different from the conclusion that is being drawn here.

23. The only document of title available and produced by plaintiff No.1 is the entry in the revenue record, Ex.A.1—Adangal for the year 1994. This Adangal does not show any boundaries. However, this Adangal states that the entire extent of land in survey number 211 is Ac.10.87 cents and the entire extent of land in Sy.No.213 is Ac.2.09 cents,

aggregating to Ac.12.96 cents. A perusal of Exs.B.1 and B.3 would show that the lands said to have been sold to Sri Pyda Satyanarayana Murthy, the ancestor of the defendants, is an extent of Ac.10.87 cents in Sy.No.157/2 and Ac.2.09 cents in Sy.No.157/4. The plaintiffs in the plaint had pleaded that old survey numbers 157/2 and 157/4 were new survey numbers 211 and 213 converted to T. S. Nos. 1450 and 1452.

24. In view of the above pleadings, it is clear that the land being claimed by both the plaintiffs and the defendants is the entire extent of land in old survey numbers 157/2 and 157/4 which are new survey numbers 211 and 213, converted into T.S. Nos 1450 and 1452. Applying the above observation of the Apex court, it would have to be held that the land being claimed by both sides is the same land in view of the extent and survey Number being the same.

25. The principle that, boundaries prevail over the extent, comes into play only where there is confusion about the location or extent of the land. However, this principle would not be applicable in view of the fact that, in the present case, the mention of the survey numbers is sufficient to identify the land and there is no wrong mention of survey Numbers or door numbers.

26. Even if boundaries are to be taken into account, a comparison of the boundaries and the weight that can be given to such boundaries would have to be examined.

The Plaint Schedule shows the following boundaries:

i) East—Komalivari Veedhi (Property in possession of Nalla Subbarao and others belongs to Plaintiff No.1)

ii) South—Kabala Road.

iii) West—Property in occupation of Mandapati Tatarao belongs to Plaintiff No.1 and Yanam Road.

iv) North—J. Ramarao Peta Road with all easementary rights.

27. A plan has also been annexed to the plaint showing these boundaries. The plaint schedule and the rough sketch were signed by the plaintiffs on 05.01.2007. The boundaries shown in Ex.A.2 Development Agreement, said to have been signed by plaintiff No.1 on 02.01.2007, are:

i) East—Land in occupation of Nalla Subbarao, Municipal Road.

ii) West—Property in occupation of K. Veerababu, Kakinada-Yanam road.

iii) North--Land under occupation of community hall (Kalyanamandapam), remaining land in J. Ramaraopet road.

iv) South: Power Station Road, Kabala Road Yard along with all easmentary rights.

28. The extent of land in the plaint schedule land is Ac.12.96 cents while the extent of land shown in Ex.A.2 is Ac.10.50 cents on the ground that Ac.2.46 cents is under illegal occupation by others. The variation in the description of the boundaries of the land in the schedule and the variation in the extent of the land, itself shows that the plaintiffs themselves are not sure of the Boundaries and extent of land that is the subject matter of the suit. It would be unsafe to rely on the boundaries and description given by the Plaintiffs in the Plaint, for identifying the land which is in dispute in the suit. Further, as rightly pointed out by the learned Advocate General, the boundaries given in the schedule of the plaint are not based on any documentary evidence, and as such, would not be a safe guide to identify the land in dispute.

29. As far as comparing the boundaries set out in Ex.B.14 and the schedule in the plaint is concerned, Ex.B.14 was executed in the year

1967, while the plaint was prepared and signed in 2007. It is a fact of life that the description of boundaries will change over time and to compare boundaries in documents which are separated by 50 years may not be appropriate.

30. Ex.B.53 is a more contemporary document. The defendants herein had filed LGOP 257 of 1997 against Sri M. Tata Rao and others, complaining that the Respondents therein had encroached and occupied a part of the suit land. In this LGOP, the Advocate Commissioner appointed in I.A. No. 1554 of 2005 to note the physical features of the petition schedule land had conducted a survey of the said land on 11.12.2005, with the assistance of surveyors, and submitted a report into the LGOP court. A certified copy of the said report was marked, in this suit, as Ex.B.53, through DW6, who was the Advocate commissioner in I.A.No.1554 of 2005 in LGOP 257 of 1997. The plaintiff reported 'Nil' cross examination in relation to this witness. In view of the non contest to the marking of the report and lack of cross examination of the witness, it would have to be taken that plaintiffs have accepted the veracity of the contents of the said report. The boundaries of the land, claimed by the defendants herein, set out in the said report are:

> "**East**: 150 thatched houses and one asbestos shed, small temple (Ammavaru).
>
> **South**: Road
>
> **West**: New R.S.No.210 with 9 thatched houses and nearly 5' to 25' back yard of several houses are in T.S. No.1450
>
> **North**: Road"

31. A perusal of the boundaries given in all these documents would go to show that the land is bounded on the north and south by

road and there are encroachments/ houses on the eastern and western sides of the land with roads abutting such encroachments/ houses. The variations are in the manner of describing the said encroachments rather than the actual boundaries. It would also have to be noted that the LGOP was filed against Mr. Tata Rao and others who are shown to be in illegal occupation of the land on the western side and the plaint also states that Mr. Tata Rao and others are in illegal possession of the land on the western side in the schedule given in the Plaint.

32. In these circumstances it cannot be said that the Boundaries in the Plaint schedule are different from the boundaries of the land being claimed by the Defendants.

33. Coming to the finding of the trial Judge that the land described in various exhibits marked by the defendants does not tally with the suit land because of the difference in the survey numbers is concerned, the said finding is not correct for the reasons set out while discussing the judgement of the Trial judge.

34. Hence, it has to be held that the documents produced by the defendants relate to the suit land and the issue is held against the Plaintiffs.

ISSUE NO.2:

35. Sri Vedula Venkataramana, learned Senior Counsel, appearing for the Plaintiffs would submit that the suit being a suit for injunction simpliciter, the principles laid down by the Hon'ble Supreme Court in the case of ***Anathula Sudhakar v P. Buchi Reddy (Dead) by***

L.Rs and others[2] would be applicable and relied on paragraph No.17 of the said Judgment, which is extracted below:

> "To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:
>
> (a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.
>
> (b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.
>
> (c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

[2] AIR 2008 SC 2033

> (d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

and submits that title cannot be gone into in the present case.

Findings:

36. The Hon'ble Supreme Court in the same judgement extracted above had also held in Paragraph 14 as follows:

> "But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows Title. If two persons claim to be in possession of a vacant site , one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to vacant site is only for mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding De Jure possession. In such a situation where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of De Jure possession even though the suit is for mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that the parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the

remedy of a full fledged suit for declaration and consequential reliefs."

37. This would, in fact, result in the suit of the Plaintiff being dismissed for not including the necessary reliefs in the suit. However, it may be in the interests of justice to see if there could be an alternative.

38. In the present case, the Plaintiff pleaded Title and possession in the Plaint. The defendants also pleaded Title and possession of the suit land. Issues 6 and 8 are issues framed for deciding title and ownership of the suit land. Issues 1 to 5 and 7 are issues relating to correlating various documents of title with the suit land. Evidence has been let in by both Plaintiff and Defendants in relation to their respective claims of title to the suit land. It must also be remembered that the present appeal has been filed by the defendants and not the Plaintiff who had no objection to the manner in which the Trial in the suit was conducted.

39. Apart from the above, the suit land is vacant land spread over 12.96 acres. One of the tests, relating to the question of possession in the case of large vacant lands, is the application of the principle "Possession follows Title". In the present case the title of the Plaintiff is to be decided on the basis of one document and the title of the Defendants is kept in issue only on the ground that the Survey nos.157/2 and 157/4 do not find place in the schedule to the land. As such a very elaborate enquiry is not really necessary.

40. In view of these facts, the observations in paras (b) (c) and (d) in the above judgement would squarely apply and the issue of Title can be gone into in this case and this issue is accordingly answered.

ISSUE No.3:

41. Sri Vedula Venkataramana submits that Ex.A.1 shows the name of Sri Pyda Nooka Raju, who is the father of Plaintiff No.1 in the Adangal. In such a situation, Section 6 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the ROR Act'), raises a presumption in favour of Plaintiff No.1, that he is the owner and possessor of the land and the burden of proof has been discharged by the plaintiff on the basis of Ex.A.1 and relied upon the judgment of this Hon'ble Court in the case of **Chanumolu Nirmala And Ors. vs Chanumolu Indira Devi[3],** and further contended that the said presumption would continue in view of the judgements in ***Ambika Prasad Thakur and others Vs. Ram Ekbal Rai (AIR 1966 SC 605)*** and ***Tekkolu Sidda Reddy Vs. Shaik Manaboob Bi and ors (2011 (4) ALD 734*** (para 15) for demonstrating both Title and possession of the 1st plaintiff.

42**.** Learned Senior Counsel would also submit that reliance on Ex.B.36, the Adangal produced by the Defendants, is misplaced as the said Ex.B36 does not displace Ex.A.1—Adangal inasmuch as the rounding off of the name of late Pyda Nookaraju in Ex.B.36 is not supported by any proceeding number or signature or stamp of any officials showing that the said rounding off has been done in a manner known to law.

43. Learned Senior Counsel also submits that, in any event all documents of title, produced by the Defendants, before the Estate Abolition Act would be washed away and only documents after the said Act would have to be considered. In which case, Ex.B.22, which is the decision of the District Judge under the Estate Abolition Act, directing

[3] 1994 (1) ALT 673

grant of patta to late Pyda Satyanarayana Murthy would not in any manner enure to the benefit of the defendants as the said order was not followed up and no patta has been shown to have been issued after the said order. In the absence of such a patta, it cannot be held that Ex.B22 created any title in favour of late Sri Pyda Satyanarayana Murthy and through him to the defendants.

44. As far as possession is concerned, the Learned senior counsel for the Plaintiffs would point to the pleading of the Defendants in the written statement, where it was stated at the end of Paragraph 4 of the written statement:

> "The defendants were never in possession of the schedule property by the date of the suit." The plaintiffs also relied on the photographs marked as Ex.A.4 to show that their names are painted on the walls of the sheds in the suit land and their men and machines are working there."

45. Learned Advocate General submitted that the defendants are the owners of the suit land and were in possession of the land till the date of the filing of the suit. He reiterated the averments in the Written Statement wherein the defendants traced their title and possession through various documents and took me through the exhibits marked in the trial. Ex.B.1 is the certified copy of the Sale Certificate in E.P.No.3/1930 in O.S.No.12 of 1928 on the file of Subordinate Judge, Kakinada, Ex.B.2 is the copy of the suit register extract in O.S.No.12 of 1998, Ex.B.3 is the certified copy of the delivery receipt in O.S.No.12 of 1928 on the file of Principal Subordinate Judge, Kakinada, which goes to show that Pyda Satyanarayana Murthy had purchased Ac.10.87 cents in survey number Nos.157/2 and Ac.2.09 cents in survey number 157/4 of

Turangi village and had been put in possession of the suit the date of the by process of the court. Exs.B.4, B.5, B.7 to B.9 are the copies of Muchilaka (lease deeds) executed between late Pyda Satyanarayana Murthy and various tenants in the period 1931 to 1957, Ex.B.6 is the Requisition Order issued under the Defence of India Act to Pyda Satyanarayana Murthy for requisition of a part of the suit land in the year 1945, Ex.B.10 is the copy of the Plaint in S.C.No.652/1957 on the file of District Munsif Court, Kakinada, showing that late Sri Pyda Satyanarayana Murthy was in possession of the suit land. Exs.B.11 and 12 are the certified copies of the Adangals for the Fasli Nos.1358-1359 corresponding to 1948 and 1949, showing the name of late Sri Pyda Satyanarayana Murthy, Ex.B.14 is the Registered Partition Deed dt.17.03.1966 under which late Sri Pyda Satyanarayana Murthy and the members of his family partitioned the family properties including the suit land, Ex.B.15 is the registered Will of Late Sri Pyda Satyanarayana Murthy bequeathing the suit land to his sons, Ex.B.21 is the order of the settlement officer rejecting the claim of Sri Pyda Satyanarayana Murthy for Ryotwari patta for the suit land under the Estate Abolition Act, Ex.B.22 is the orders of the Appeal Tribunal under the Abolition of Estates Act, granting Patta to the suit land to Late Sri Pyda Satyanarayana Murthy, Ex.B.23, is the copy of rough patta issued in favour of late Pyda Satyanarayana Murthy in relation to the suit land,

46. Ex.B.25 dated 27.06.1966, is the layout approved plan issued by the Municipal Engineer and Secretary in charge, Kakinada Municipality, in relation to the suit land, Exs.B26 to 28 being the Tax payments relating to the suit land.

47. Ex.B.31, the endorsement dated 19.12.1968, and Ex.B.32, the endorsement dated 20.1.1969, addressed to the 2nd Defendant by the Secretary, Municipal Office, Kakinada informing about the reduced assessment on capital value of the suit land. Ex.B.33 being the copy of the Judgment in O.S.No.88/1972 and 91/1972 dt.22.07.1975 under which the claim of the defendant no.2 and the father of the defendants 1, 3 and 4 for refund of municipal tax paid on the suit land was rejected. Ex.B.34 is the judgment of the 1st Addl. Junior Civil Judge, Kakinada, in O.S. No. 106 of 1986 against the 1st Defendant herein filed by K. Venkata Lakshmi and Others for an injunction against the 1st defendant in relation to a part of the suit land which was under the occupation of the plaintiffs therein. Ex.B.35 being the copy of the petition in LGOP No.257/1997 on the file of III Additional District Judge, Kakinada, filed by the defendants against various encroachers in relation to the suit land, Ex.B.36 being the certified copy of Fair Adangal issued by the M.R.O., Kakinada Rural, in relation to the suit land dt. 29.01.2007 wherein the name of late Pyda Nookaraju was rounded off. Ex.B.41 being the certified copy of suit register extract in O.S.No.403 of 1995 and Exs.B.42 to 52, the photographs taken at various times showing the Defendants' presence on the suit land in the period prior to filing of the suit. Ex.B.53 being the report of the Advocate Commissioner, in LGOP 257/97 giving a description of the suit land.

48. Learned Advocate General submits that all the aforesaid documents would clearly show that title and possession in the land vested in the defendants and the claim of the plaintiff that Plaintiff No.1 is the owner of the suit land is incorrect and cannot be accepted. He also submitted that the sentence in the written statement relied upon by the

Plaintiffs was a typographical mistake and had been corrected, though I could not find any such correction in the written statement.

49. Coming to the title of Plaintiff No.1, the learned Advocate General submitted the following to negative the claim of the plaintiffs:

"Plaintiff No.1, in the course of his deposition, stated that he was born in the year 1964 and his father had died in the year 1968. The claim of the plaintiff that the land was given by the Maharaja of Pithapuram to his father is said to be based upon his father informing plaintiff No.1 about the said grant. Learned Advocate General submits that it is not clear as to how a child of four years would be able to assimilate such information and remember the said information into his adulthood; plaintiff No.1 also stated that his elder brother had passed away in the year 1972 when plaintiff No.1 was 8 years old and the claim of the plaintiff that he was looking after the entire land of Ac.20.00 cents from the age of 8 years is clearly unbelievable; the plaintiff states that the original extent of land allegedly belonging to plaintiff No.1 in survey numbers 157/2 and 157/4 was Ac.20.00 cents which got reduced to Ac.12.96 cents by virtue of various encroachments, construction of roads etc., However, Ex.A.1—Adangal, which is the basis of the claim of Plaintiff No.1 itself shows that entire extent of land available in these two survey numbers is Ac.12.96 cents and the 1st plaintiff could not have owned Ac.20.00 of land in these survey numbers. This contradiction is sufficient to show that the claim of Plaintiff No.1 is false; the claim of plaintiff No.1 that the grant of Maharaja of Pithapuram being lost, the entry in the Adangal for the year 1994 is sufficient proof, is not acceptable inasmuch as the said Adangal is of the year 1994, which is 14 years prior to the filing of the suit and is in the name of a dead person, and as such, is not

sufficient to demonstrate either title or possession of the land; the plaintiffs have not produced any contemporaneous document to show that plaintiff No.1 continues to have any semblance of a right over the land or possession of the land; the Adangal-Ex.A.1, which is the basis of the claim of Plaintiff No.1 has now been overturned by Ex.B.36, which is the Adangal issued for the year 1994 showing the name of late Pyda Nookaraju, the father of Plaintiff No.1, being rounded off. The defendants relied on the judgements of this court in the cases of ***State of A.P. and Ors Vs Mohd. Jalauddin Akbar and Ors***[4] and ***Pendoti Lingaiah Vs Chintha Muthaiah and Ors***[5] for the proposition that a stray entry in the revenue records is not sufficient to make out a case of possession and title, especially when it was not contemporaneous."

50. As far as the contention of the plaintiffs that the defendants had not perfected their title by virtue of the order in the Estate Abolition Act proceedings is concerned, it is submitted that the defendants did get a rough patta which has been marked as Ex.B.23. The learned Advocate General relied on the judgment of this Court in the case of ***S. Muni Venkatamma and others V the Commissioner of Survey and Settlements and others***[6] (para Nos. 6 and 7) to the effect that a rough patta was an important document which recognizes the rights of an individual to be granted ryotwari patta.

51. According to the Learned Advocate General, the documents produced and marked in evidence by the defendants would be sufficient to prove title and the contradictions relating to the title of Plaintiff No.1 as

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[4] 2004 (4) ALD 109

[5] 2006 (5) ALD 697

[6] 2008 (3) ALD 4

well as lack of any documents or other evidence to show title and possession would be sufficient to non suit the plaintiffs.

Findings on Title:

52. The Plaintiff No1 claims title and possession of the suit lands on the ground that his father was given a patta by the Maharajah of Pithapuram, which was lost/destroyed, but his father's name continues to figure in the revenue record evidenced by the Adangal for the year 1994 which is marked as Ex.A.1.

53. However, the following discrepancies have arisen in the course of the Trial, in relation to the documents and oral evidence:

A. The only document of title produced by the Plaintiff is the Adangal of the year 1994, marked as Ex.A1, as the patta issued by the Maharajah of Pithapuram was, as per the pleading in the Plaint, "ruined and it is beyond trace". In the chief examination, the Plaintiff No.1 as PW1 states :

B. "The relevant records pertaining to my plaint schedule property ruined in fire accident during my father and brother's life".

In the cross examination he states that –

> "The fire accident took place twice and one time during the life time of my father and another time during the life time of my brother. I do not know whether I got mentioned the above fact in my plaint or not. Revenue record unburnt in the fire accident is remained. It is Ex.A.1."

Similarly, the second Plaintiff as PW.2, in his cross examination stated:

> "I got acquaintance of 1st plaintiff since two years prior to Ex.A2" " I have gone through the documents pertaining to the plaint schedule , when the 1st Plaintiff was introduced to me . The documents are filed into court. Ex.A.1 is the document I have seen. The 1st Plaintiff obtained it from concerned department".

However, a perusal of Ex.A.1 will show that Ex.A.1 was obtained from the revenue department on 6/01/2007, which is actually a day after the plaint had been signed by the 1st Plaintiff and Ex.A.1-Adangal copy was not in existence at the time when the Plaintiffs claim to have been in possession or had seen it.

C. The above evidence also shows that there are two different versions about the alleged destruction of the patta given by the Maharajah of Pithapuram. The version in the Plaint says it is in ruination and is beyond trace, while the version in the evidence is that it was lost in a fire accident.

D. The 1st Plaintiff, in his evidence, claims that he was told by his father that the land was given by the Maharajah of Pithapuram. However, it is the evidence of the 1st plaintiff himself that his father died when he was 4 years old and it is hard to believe that matters such as title to property were remembered by the 1st plaintiff in such vivid detail when he is unable to answer what his father's occupation was.

E. The pleading in the Plaint was that the father of the 1st Plaintiff was given 20 acres of land in old S. No. 157/2 and 157/4 new Survey No 211 and 213 which got reduced to Ac.12.96 cents due to formation of roads and encroachments. However, the Adangal

Ex.A.1 shows that the entire extent of land in these two survey numbers is only 12.96 acres.

F. Even assuming that there was a grant of patta by the Maharajah of Pithapuram, the said rights would require to be revalidated by appropriate proceedings under the Estate Abolition Act. The 1st Plaintiff admits in his cross examination that he did not undertake any such exercise.

G. The Adangal Ex.A.1 shows the name of Sri Pyda Nooka Raju, who the Plaintiff No.1 has claimed is his father. This fact has been denied by the Defendants and they had also made suggestions to that effect in the course of cross examination of the 1st plaintiff. However, the plaintiffs have not adduced any proof to show that the 1st plaintiff is the son of Sri Pyda Nooka Raju, which would lead to the conclusion that the entry in Ex.A.1 may not enure to the benefit of the 1st plaintiff.

All the above discrepancies/contradictions render the entire version of the Plaintiffs, about the source of title of the Plaintiff No.1, highly suspect.

54. The Defendants have produced Exs.B.1 to B.53 to demonstrate their title and possession over the suit land. However, to my mind only Exs.B.1 to B.3, B.22 and B.23 would be documents of title and the rest of the exhibits are documents in which the defendants are proceeding on the basis that they have title and possession. A perusal of Ex.B.1 to B.3 would show that a zamindari patta of Pithapuram estate had devolved on Neelam Tirupathirayudu and then on one Sri Neelam Seetharama Swamy Naidu for Acres 10.87 cents in Survey No. 157/2 and

Acres 2.09 cents in survey No. 157/4 of Turangi village and the same was purchased by Sri Pyda Sathyanarayana Murthy in a court auction and possession was delivered to him under Exhb B3, in January, 1931. The contents of Ex.B1, would also mean that the persons holding the Zamindari patta from the Maharajah of Pithapuram were Neelam Tirupathirayudu and then Sri Neelam Seetharama swamy Naidu, not Late Sri Pyda Nookaraju, the father of the Plaintiff No.1. This fact is also corroborated by Ex.X.4, which is the copy of the Town Survey register for T.S.No.1452 produced in court by DW.8, who was a junior assistant in the Kakinada Municipal Corporation, shows the name of Neelam Tirupathirayudu as the owner and possessor of land in T.S.No.1452.

55. Ex.B.22 is the order of the Estates Abolition Tribunal in appeal No. 59 of 1960 whereby the rights of sri Pyda Sathyanarayana Murthy were recognized and it was held that he was entitled to a ryotwari patta for Acres10.87 cents in Survey No. 157/2 and Acres 2.09 cents in survey No. 157/4. Ex.B.23 is the rough patta given to Late Sri Pyda Satyanarayana Murthy.

56. The contention of the learned senior counsel that Ex.B.22 order of the appeal tribunal is not sufficient as no patta was given may not hold in view of Ex.B.23, which is the rough patta given by the authorities. The learned Advocate General cited the judgement of this Court, in the case of ***S. Muni Venkatamma and Ors Vs The Commissioner of Survey and Settlements and Ors***. 2008 (3) ALD 4 :: 2008 (4) ALT 204., to contend that a rough patta was sufficient proof of title.

57. The effect of a rough patta issued in the course of the proceedings under the Estate Abolition Act has been considered, in two earlier Division bench judgements of this Court in the cases of ***E. Elamalai Chetty Vs. R. Rathnavelu Chetty alias Ratna Chetty***[7] ***and Mandal Revenue Officer, Visakhapatnam (Rural) Vs Kanchubriki Parvathamma***[8].

58. The provisions of the Estate Abolition Act stipulate that, upon the notification of the abolition of an estate, every ryot would be entitled, under section 11, to a ryotwari patta to all ryoti lands which should be included in his holding. For this purpose an enquiry is to be conducted and then the Ryot is to be given a Ryotwari patta to such lands.

59. In the case of ***Elamalai Chetty***, the contention of the Plaintiff was that he was given a rough Patta for the land in dispute and as such the validity of the Rough Patta could not be challenged before a Civil Court as the validity of such pattas could be challenged only before the Tribunals set up under the Estate Abolition Act. The Division Bench noticed the fact that the said rough patta was given without the conduct of any enquiry under the Estate Abolition Act and went into the statutory basis for the issue of a rough patta. After an analysis of the statutory provisions, the Division Bench held that the provisions relating to issue of rough patta was, provided under BSO 27 and 28, for settlement and resettlement proceedings and the said procedure had been imported wholesale into the Estate Abolition Act and rough pattas are not granted

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[7] 1971 (2) An.WR 193

[8] 2008 (6) ALD 788

under section 11 of the Estate Abolition Act and as such cannot be treated to be on par with a regular ryotwari patta given under section 11 of the Estate Abolition Act. In view of this finding, the Division Bench had held that such a rough patta could be challenged in a civil court. One of the factors that went into arriving at this conclusion was the fact that, no enquiry contemplated under the Estate Abolition Act was conducted, prior to the issue of Rough Patta. However, the Division Bench also considered an unreported judgement of a division bench of this Court, dated 19.4.1969 in A.S.No.352 of 1964 in the case of ***Kodali Pani Vs Kothi Venkateswara Rao*** and extracted an observation therein which is reproduced below:

> "The changes that are brought about consequent on the issue of a patta, leave unaffected the core of the title and the incidents of ownership enumerated above. Prior to the notification of the estate, the common law right of ownership was associated with a particular type of tenure, i.e., tenure under the permanent settlement. When the tenure was terminated as a result of the abolition of an estate, the State became entitled to provide a different pattern for the mutual relationship between it and the subject who was entitled to a species of ownership de hors the estate land act and without reference to the provision of that Act. It is only to regulate the new pattern of relationship between the State and the owner in regard to the terms on which that land is to be held, the, Section 11 as also some of the other provisions of the Act had been devised. The issue of Patta under Section 11 by the settlement officer is an integral part only of the conversion of tenure and does not impair the substantive right or title to the land which may be described as the ownership of the property".

60. This observation could also lead to the conclusion that the original Zamindari grant itself gives rights of ownership which are being merely reiterated and changed to fit the new form of tenure. In which

case, it is the order of the appeal tribunal, recognizing the right of Late Sri Pyda Satyanarayana Murthy to a ryotwari patta, after due enquiry under the Abolition of Estates Act, which would be the source of title with a Patta under Section 11 being a formality.

61. However, one need not venture into this territory as another division bench in the case of ***Kanchubriki Parvathamma (8 supra)***, noticed the judgement in ***Elamalai's*** case (7 supra) and also took note of G.O.Ms. No. 36, Revenue, dated 21.11.1956, which had not been considered in ***Elamalai's*** case, which stipulated a limitation for filing revisions against the orders in section 11 and also to objections in relation to rough pattas. In view of the said G.O., the Division Bench held that the old procedure with regard to the issue of rough pattas has been assimilated into the procedure to be followed under section 11 and 22 of the Estate Abolition Act. In view of the aforesaid finding, it was held that the judgement in ***Elamalai's*** case would not apply to cases of rough pattas, especially in those cases where the rough pattas have been issued quite some time back and settled positions cannot be unsettled.

62. In view of the above judgements, I must hold that the Court auction sale proceedings marked as Exs.B.1 to B.3, the order of the Appeal tribunal marked as Ex.B.22 along with the Rough patta marked as Ex.B.23 is sufficient proof of title granting ownership over the entire land in Survey No. 157/2 and 157/4 of Turangi village to Late Sri Pyda Satyanarayana Murthy and through him to the Defendants.

63. The presumption created under Section 6 of the Andhra Pradesh record of Rights in Land Act, 1971 is to hold till the contrary is proved and as such would be a rebuttable presumption. In the present

case, the documents produced by the defendants demonstrate the title of the defendants and such presumption has been rebutted by the Defendants. In the said circumstances the contention of the learned senior counsel for the plaintiff that there is a presumption of ownership in favour of the plaintiff would not be available. Consequently, the principle of continuation of such presumption enunciated in the two judgements in ***Ambika Prasad Thakur and others Vs. Ram Ekbal Rai***[9] ***and Tekkolu Sidda Reddy Vs. Shaik Manaboob Bi and ors***[10] would not arise. Apart from the fact that the said principle of continuation of presumption cannot be stretched to a solitary entry in the revenue record 13 years prior to the relevant year.

64. In view of the discrepancies and contradictions in the documents and oral evidence produced by the Plaintiffs, and in view of the evidence produced by the defendants, I hold that the Defendants are the owners of the suit land and the issue is held against the Plaintiffs and in favour of the defendants.

Findings on possession:

65. The claim of the 1st Plaintiff is that he was living in the area and left the land unattended due to his tender years and subsequent occupation of dealing in furniture. This claim of the Plaintiff No.1 that he was living in the area was contested by the Defendants by producing the voters list and certificate from the panchayat secretary to the effect that the Plaintiff No.1 was not residing in the address shown in the Plaint.

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[9] AIR 1966 SC 605

[10] 2011 (4) ALD 734

However, this may not have any implication on the possession of the land and I am not discussing this issue in detail.

66. The 1st Plaintiff himself states that various parts of the suit land has been encroached upon by different people and that he had not taken any steps to protect the possession of the land. He admits that a community hall was built for the fishermen of the area by the local MLA in the year 2004. The 1st plaintiff also states in his cross examination that he was unaware of the advocate commissioner, in LGOP No.257 of 1997, entering the land along with some of the defendants to note the physical features of the land and to localize it in the year 2005. The inaction and ignorance of the 1st plaintiff about all these developments on the suit land would go against the plaintiffs in claiming that the 1st plaintiff was in possession of the suit land. The clear assertion that he was living on the land from Sankranthi of 2007 (which would be January 14th onwards) would also mean that the 1st plaintiff is claiming to be on the land only after the filing of the suit.

67. The Plaintiffs are primarily relying on the photographs marked as Ex.A.4, showing the name of the Plaintiffs on the sheds in the suit land, to demonstrate possession over the land. It must be noted that, the Plaint was prepared on 5.1.2007 and I.A.No.212/2007 was filed along with the suit. A temporary injunction appears to have been granted in this application on 22.01.2007. However, no photographs were filed at that point of time. The Photographs marked as Ex.A.4 were filed only on 22.2.2007. The delay in filing the photographs leaves any amount of doubt about when the photographs were taken. It has been alleged by the defendants that the plaintiffs after obtaining the orders in I.A. No.212 of 2007 had entered into the suit land and the same would be dealt with

under the issue of restitution. In view of the admitted fact that the Plaintiffs had come into possession of the land, at any rate, after the filing of the suit, the photographs marked as Ex. A4 cannot be accepted as proof of the fact that the plaintiffs were already in possession by the time of the filing of the suit.

68. The Plaintiffs relied on the judgement of the Apex court in the case of ***Ambika Prasad Thakur and others Vs. Ram Ekbal Rai*** reported in AIR 1966 SC 605 (9 supra) and the judgement of this court in the case of ***Tekkolu Sidda Reddy Vs. Shaik Manaboob Bi and ors*** reported in 2011 (4) ALD 734 (10 supra), for the proposition that once possession is shown at any point of time there would be a presumption of continuance of that possession.

69. In the first case, the Hon'ble Supreme Court was considering the question of whether the presumption of future continuance noticed in Illustration (d) to section 114 of the Evidence Act would operate retrospectively also. The Hon'ble Supreme Court after reviewing the existing judgements had held that the presumption of continuance would be available with retrospective effect also. The Hon'ble Supreme Court, however, struck the following note of caution in paragraph 15:

> "The presumption of continuity weakens with the passage of time. How far the presumption may be drawn both backwards and forwards depends upon the nature of the thing and the surrounding circumstances".

70. The view of this Court in the second judgement was that there is a presumption of continuance. There can be no quarrel with the said proposition, However, the said presumption is a rebuttable presumption and in view of the circumstances in this case, the said

presumption is not available due to the evidence placed by the defendants, which is discussed below.

71. The Defendants have produced Ex.B3, which is the possession receipt under which the court bailiff had put Late Sri Pyda Satyanarayana Murthy in possession of the suit land in January, 1931. In view of the possession receipt it would have to be taken that the ancestor of the defendants had been put in lawful possession of the land and nothing has been produced to show that they were dispossessed at any time before the filing of the suit.

72. In fact, the various documents produced by the defendants show that they have been receiving notices from Government authorities or had been interacting with government authorities in relation to the suit land or had been undertaking various litigations to protect the land and have been dealing with this land and have been trying to protect the land right from 1930s till the time of the filing of the suit. The documents are not being detailed here as they have already been noted in the earlier part of this judgement. The photographs marked as Exhibits showing their involvement in the function relating to the construction of the Kalyana mandapam on a part of the suit land and the steps taken to appoint an Advocate commissioner to survey the land etc., all go to show that they, at the very least, have been present on the land till a short time before the filing of the suit.

73. The contention of the Learned Senior Counsel that the pleading of the Defendants at the end of Paragraph 4 of the written statement – "the defendants were never in possession of the schedule property by the date of the suit", is an admission of the defendant that

they are not in possession of the land at all, cannot be accepted as the entire tone and tenor of the written statement and more particularly Para 4 of the written statement is to the contrary and it is obvious that the said statement contains a Typo being the word "defendants" instead of "plaintiffs". Solitary sentences in pleadings cannot be relied upon in isolation and without reading the context in which they have been made. I am not prepared to read the said sentence as an admission of being out of possession by the Defendants.

74. As held by the hon'ble Supreme Court in the case of Anathula Sudhakar, in paragraph 14, extracted above, the suit land is vacant land and once the defendants are found to be the persons holding title, it would have to be held that they have De Jure possession of the suit land.

75. A conspectus of the facts and circumstances can only lead to the conclusion that the defendants had been in possession of the suit land even as on the date of the filing of the suit.

ISSUE NO. 4:

76. Learned Senior Counsel also relied on the judgment of the Hon'ble Supreme Court in the case of ***Rame Gowda (dead) v M. Varadappa Naidu***[11], and more specifically paragraph No.8 of the said judgment which was to the effect that settled possession or effective possession of a person without title would entitle the said person to protect his possession even as against the true owner and would be permitted to use even reasonable force to keep out a trespasser and a

[11] (2004) 1 SCC 769

rightful owner who has been wrongfully dispossessed of land may retake the possession if he can do so and peacefully without the use of unreasonable force.

77. Learned Senior Counsel also relied on the Judgment of the Hon'ble Supreme Court in the case of **M. Kallappa Setty vs M.V. Lakshminarayana Rao**[12] at para No.5.

Findings:

78. Both the judgements cited by the learned Senior Counsel for the Plaintiffs would be applicable where there is a finding that there is an occupant in settled possession and who is sought to be dispossessed by the rightful owner or otherwise. In the present case, the Plaintiffs have been held not to be in possession of the land on the date of the filing of the suit. In the circumstances the said judgements are of no avail to the plaintiffs.

79. The Defendants have cited a large number of judgements to the effect that a trespasser cannot be protected from the rightful owner. These judgements would also not be necessary to be cited as the finding of this Court is that the Plaintiffs were not in possession on the date of the filing of the suit.

ISSUE NO. 5

80. It is the contention of the learned Advocate General that a perusal of the issues itself would go to show that the trial Judge mis-directed himself from the inception. He submits that Issue Nos.1 to 6 are

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[12] AIR 1972 SC 2299

the issues calling upon the defendants to prove their title rather than the plaintiffs proving that Plaintiff No.1 has title to the land.

81. Learned Advocate General faulted the trial Judge for holding that the land claimed by the defendants and the land claimed by the plaintiffs are two different properties on the ground that the boundaries given in the schedule of the plaint and the boundaries given in the various documents produced by the defendants do not tally. It is the contention of the learned Advocate General that the trial Judge grossly mis-directed himself by holding that variation in the boundaries in the documents of the defendants and the boundaries given in the plaint is sufficient to hold that the land claimed by the defendants is not the land set out in the plaint schedule. The finding of the trial Judge that since the defendants did not prove their title, it must be taken that the plaintiff No.1 is in possession, is a finding, which could not have been arrived at by any Court of law inasmuch as the burden of proving their title and possession would be on the plaintiffs and it is only upon discharge of such burden that the defendants have to set out their title and possession.

82. Sri Vedula Venkataramana would submit that the findings given by the Trial judge do not require any interference. He further relied on the judgement of the Apex Court in AIR 1977 SC 747, to the effect that the scope of appeal depends upon a question of whether the relief sought is a discretionary relief or non discretionary relief and the relief given by the trial court cannot be interfered with.

Findings:

83. The judgement suffers from a fundamental misconception of law. The finding that since the defendants had not made out a case of

ownership and possession, it would have to be presumed that the Plaintiffs are the owners and possessors of the land, is in direct contravention of the settled principle of law that the plaintiff has to demonstrate his case and the weakness of the case of the defendant cannot be the basis to pass any judgement.

84. The learned trial Judge undertook an elaborate exercise to reject the documents of the defendants to arrive at a finding that the exhibits marked by the defendants did not relate to the suit land as the survey numbers mentioned in the exhibits marked by the defendants were S. No.157/2 and 157/4 and did not correspond to Town Survey Nos. 1450 and 1452 of Sy.Nos.211 and 213 mentioned in the schedule in the plaint.

85. This elaborate exercise undertaken by the Trial Judge to reject the documents of the defendants was wholly unnecessary and misplaced in view of the following pleadings in the Plaint:

> "The father of Plaintiff Pyda Nookaraju used to be with Rajas family and as he worked for them the maharaja gave 20 acres of land in Old Sy.No.157/2 and 157/4, New Sy.No.211 and 213 whereby, 1st plaintiff became entitle for entire 12-96 cents situated in Sy.No.211 and 213, T.S.No.1450 and 1452 of Turangi Village".

86. Once the Plaintiffs themselves had admitted that survey numbers 157/2 and 157/4 were renumbered as 211 and 213 and subsequently as T.S.No. 1450 and 1452, the trial judge could not have rejected the claims of the defendants on the ground that the defendants were unable to correlate survey nos. 157/2 and 157/4 with Sy.Nos.211 and 213 or Town survey Nos.1450 and 1452.

87. The trial judge, proceeded to decide the case on the premise that Ex.A.1 along with the photographs in Ex.A.4 demonstrated the ownership and possession of the plaintiffs and that the failure of the defendants to demonstrate their ownership and possession of the suit land was sufficient to hold that Plaintiffs were in possession of the land and that since the defendants were not the real owners of the land the suit would have to be decreed in favour of the Plaintiffs.

88. As discussed above, the entire judgement was based on the above two fundamental misconceptions and cannot stand.

89. For these reasons and also on the basis of the findings given above that the defendants are the owners of the suit land and were in possession of the land as on the date of the filing of the suit, the judgement and decree of the Trial judge, dated 22.02.2008 , in O.S. No. 8 of 2007 is set aside and this issue is decided in favour of the defendants.

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90. At the conclusion of his opening arguments, learned Advocate General submits that the plaintiffs had obtained interlocutory orders of temporary injunction during pendency of the suit against the defendants. In view of the said Orders of temporary injunction, the defendants were unable to go into the land and taking advantage of the said fact, the plaintiffs are in occupation of the suit land today. Learned Advocate General would point out a suggestion made to PW1 that the defendants were stopped from entering into the suit land by virtue of the orders of the Court. Learned Advocate General would submit that in view of demonstrating the title and possession of the land by the defendants prior to filing of the suit and subsequent occupation of the land by the

plaintiffs, it would be necessary in the interest of justice to not only allow the appeal but also order restitution of the land to the defendants.

91. Learned Advocate General also relied on the judgment of the Apex Court in the case of ***Mrs. Kavita Trehan and another v Balsara Hygiene Products Limited***[13] at para Nos. 13 and 15, in the case of ***Goa State Cooperative Bank Limited v Krishna Natha***[14] and the judgment of this Court in ***Nallapati Pandu Ranga Rao V Vempati Venkateshwar Rao and another***[15] and in the case of ***Cheni Chenchaiah V. Shaik Ali Saheb and others***[16] (para No.17) to contend that this is a fit case for grant of restitution on the principles set out in the above judgments.

92. Learned Senior Counsel for the Plaintiff, while replying on the issue of restitution submitted that Section 144 of the Code of Civil Procedure, which would be applicable to the case, requires an application to be filed in this Court and in the absence of such an application, the Appellants cannot make a claim for restitution. He further goes on to submit that Section 144 (2) of CPC stipulates that no suit would be maintainable unless an application had been filed earlier and this would mean that no further proceedings can be initiated under Section 144 CPC or on the ground of restitution inasmuch as an application could have been filed indicating the date of dispossession and in the absence of such an application, the question of restitution would not arise.

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[13] AIR 1995 SC 441
[14] 2019 (5) ALT 165 (SC)
[15] 2015 (2) ALT 177
[16] AIR 1993 AP 292

Findings:

93. Section 144 of C.P.C reads as follows:

> (1) Where and insofar as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.
>
> (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

94. A reading of the Section 144 (2) does not support the interpretation of the Learned senior counsel for the Respondents. Sub section (2) bars the filing of a suit for restitution where such restitution can be obtained by filing an application before the Court. In any event, for the reasons set out later in this judgement, the present case would not fall within the ambit of section 144 of C.P.C. and as such the said restriction may not be available to the Respondents.

95. A Constitution Bench of the Hon'ble Supreme Court in ***Mahjibhai Mohanbhai Barot Vs Patel Manibhai Gopalbhai & Ors***[17], while considering the question whether an application under Section 144 of the Code of Civil Procedure is an execution Petition for the purposes of Limitation, had reviewed the law relating to restitution vis a vis Section 144 of CPC. The relevant paragraphs would be:

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[17] AIR 1965 SC 1477

"21. The legal position under Section 583 of the Code of Civil Procedure, 1882, may be stated thus: The benefit accrued to a party under an appellate decree could be realized by him by executing the said decree through the Court which passed the decree against which the appeal was preferred. The appellate Court which set aside or modified the decree of the first Court could give a direction providing for restitution. Even if it did not expressly do so, it should certainly be implied as the appellate Court could not have intended otherwise. The setting aside of the decree itself raised the necessary implication that the parties should be restored to their original position. Be that as it may, Courts understood the provision in that light and held that such a decree was executable as if it contained such a direction. Such an application was governed by Article 179 of the Limitation Act, 1887, corresponding to Article 182 of the present Act. No suit lay for the relief of restitution in respect of such a benefit, the same being held by the Privy Council to be barred by Section 244 of the Code of Civil Procedure, corresponding to the present Section 47 of the Code. But the terms of the section were only confined to a party entitled to a benefit by way of restitution or otherwise under a decree passed in an appeal and not under any other proceeding.

22. With this background the Legislature in passing the Code of Civil Procedure, 1908, introduced Section 144 therein. The said section is more comprehensive than Section 583 of the Code of 1882. Section 144 of the present Code does not create any right of restitution. As stated by the Judicial Committee in *Jai Berham* v. *Kedar Nath Marwari* [(1922) LR 49 IA 351, 355] ,

"It is the duty of the Court under Section 144 of the Civil Procedure Code to place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved."

The section, to avoid the earlier conflict, prescribes the procedure, defines the powers of the Court and expressly bars the maintainability of a suit in respect of a relief obtainable under this section. The section does not either expressly or by necessary implication change the nature of the proceedings. Its object is

limited. It seeks to avoid the conflict and to make the scope of the restitution clear and unambiguous. It does not say that an application for restitution, which till the new Procedure Code was enacted, was an application for execution, should be treated as an original petition. Whether an application is one for execution of a decree or is an original application depends upon the nature of the application and the relief asked for. When a party, who lost his property in execution of a decree, seeks to recover the same by reason of the appellate decree in his favour, he is not initiating any original proceeding, but he is only concerned with the working out of the appellate decree in his favour. The application flows from the appellate decree and is filed to implement or enforce the same. He is entitled to the relief of restitution, because the appellate decree enables him to obtain that relief, either expressly or by necessary implication. He is recovering the fruits of the appellate decree. Prima facie, therefore, having regard to the history of the section, there is no reason why such an application shall not be treated as one for the execution of the appellate decree.

23. Now let us consider the arguments pressed on us for taking the contrary view. It is said that when an appellate Court makes a decree setting aside the decree of the first Court without providing for restitution, there is no executable decree for restitution. But this argument concedes that if the appellate Court provides for restitution, an application for restitution will be an application for execution of a decree. Even if it is an execution application, the procedure to be followed and the power of the Court to order a restitution would be confined to Section 144 of the Code. Therefore, an execution application for restitution would be governed by Section 144 of the Code of Civil Procedure. If the argument of the learned counsel for the appellant be accepted, it will lead to inconsistent positions depending upon whether the appellate decree gave a direction for restitution or it did not. If it did not, the application would become an original petition; if it did, it would be an execution application. This inconsistency can be avoided, if such a direction for restitution be implied in every appellate decree setting aside or modifying the decree of the lower Court, even if it does not expressly give such a direction.

96. The defendants were in possession of the suit land as on the date of the filing of the suit. However, the photographs marked as Ex.A.4 show that the Plaintiffs are in possession. The Learned Advocate General, on instructions also submitted that the Plaintiffs are in possession of the suit land, albeit, coming into possession on the basis of the injunction of the Trial Court. This can only lead to the irresistible conclusion that the Plaintiffs taking advantage of the order of temporary injunction, obtained on 22.1.2007, had taken illegal possession of the suit land.

97. Section 144 of CPC would be applicable in cases where one of the parties has suffered a detriment by virtue of a court order or decree and subsequently the order or decree is varied or reversed by the same court, any other court or a superior court. The scope of Restitution under section 144 has been restricted to this narrow compass by various judgements of the apex Court, other High courts as well as this Hon'ble Court.

98. We are now faced with the situation where the plaintiffs taking advantage of the injunction orders of the trial court on 22.1.2007, have entered into possession of the suit land. This is not a case of the Court putting the plaintiffs in possession but a case of the plaintiffs taking advantage of the orders of the court to take over possession of the suit land from the defendants. In the circumstances, it must be held that the provisions of section 144 would not be available to the defendants.

99. That now brings up the question, whether the principle of restitution is restricted to section 144 of CPC or whether this Court can exercise the inherent powers of the court under section 151 of CPC to order restitution.

100. The Hon'ble Privy Council, in the case of ***Jai Barham and Ors Vs Kedar Nath Marwari and Ors***[18], while citing ***Rogers v. The Comptoir d'Escompte de Paris*** (L.R. 3 PC 465) had held as follows:

> It is the duty of the court under section 144 of the civil procedure code, "to place the parties in the position which they would have occupied but for such decree or part thereof which has been varied or reversed". Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly, according to the circumstances, towards all parties involved. As was said by Cairns, L.C., in *Rogers* v. *The Comptoir d'Escompte de Paris* (L.R. 3 PC 465). "One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression 'the act of the Court,' is used, it does not mean merely the act of the primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

101. This principle has been followed and the inherent power of the Court, under section 151 of CPC, has been invoked to order restitution where the provisions of Section 144 were inapplicable (***Kavita Trehan and another Appellants V Balsara Hygiene Products Ltd., Respondent*** (AIR 1995 SC 441), ***Pandrangi Lingeswara Rao & Ors Vs Dukkipati Venkata Subba rao & Ors*** (1966 (2) An. WR 144), ***State Govt of Andhra Pradesh Vs Manikchand Jeevraj & Co & Anr*** (AIR 1973 AP 27), ***T. Penchalaiah Vs Jaladanki Saroja & Ors*** (2006 (60 ALT 411), ***Nallapati Panduranga Rao Vs Vempati Venkateswara Rao*** (2015 (2) ALT 177), ***Cheni Chenchaiah, Petitioner Vs Shaik Ali Saheb and others, Respondents*** (AIR 1993 AP 292).

[18] AIR 1922 PC 269

102. In ***Goa State Co-operative Bank Ltd Vs Krishna Nath A. (Dead) through LRs & Ors*** (14 supra), the Hon'ble Supreme Court reiterated as follows:

> "The principle of restitution enjoins a duty upon the courts to do complete justice to the party at the time of final decision, and to do away with the effect of interim order in the fact situation of the case. In ***South Eastern Coalfields Ltd Vs State of M.P. and others*** (2003) 8 SCC 648, it was observed that no party can take advantage of litigation, it has to disgorge the advantage gained due to delay, in case lis is lost".

103. In ***Mahjibhai Mohanbhai Barot Vs Patel Manibhai Gopalbhai & Ors***[19], the Hon'ble Supreme Court held that Restitution can be ordered by the Appellate Court itself. The inherent power of the court under section 151 of CPC is not circumscribed by the limitations and conditionalities of section 144 of CPC and as such the observations of the Hon'ble Supreme Court would apply equally to directions for restitution under section 151 of CPC also.

104. In ***Tanmai Jewels Pvt. Ltd. Hyderabad & Anr Vs Sreesaila Kumari***[20], this court acting in it's appellate jurisdiction had ordered restitution. In ***Kavita Trehan and another Appellants V Balsara Hygiene Products Ltd., Respondent*** (AIR 1995 SC 441), the Hon'ble Supreme Court was considering the case of a learned single judge of the High court directing deposit of sale proceeds while reversing an injunction order granted in interlocutory proceedings by the trial judge. Answering the contention that such an order could not have been passed

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[19] AIR 1965 SC 1477

[20] (2013) 6 ALD 359 (DB)

as the said situation does not fall within the parameters of Section 144, the Hon'ble Supreme Court held thus:

> "22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words : "Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, …." The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."

105. On one hand the Defendants have not pressed any application nor filed any pleading about their dispossession from the suit land till the hearing of this appeal. On the other hand, it is also clear that the Plaintiffs do not have any title over the suit land and were not in possession of the land by the time of the filing of the suit and have entered into possession of the suit land under the guise of the interim injunction granted to the plaintiffs in January 2007. In these circumstances, this court has two alternatives, to relegate the defendants to the trial court to work out their remedies by way of a suit or application or such remedy as they are advised to get back possession of their land or to order restitution by directing the Plaintiffs to hand over peaceful physical possession of the suit land.

106. Once this Court has come to a conclusion, that the Plaintiffs have misused the Interim injunction and have dispossessed the Defendants after the filing of the suit, it is the bounden duty of this court to undo the damage caused by the interlocutory order of the Trial court.

This Court cannot turn a blind eye to the facts on the ground and, as enjoined by the Hon'ble Supreme Court in In ***Goa State Co-operative Bank Ltd Vs Krishna Nath A. (Dead) through LRs & Ors*** (14 supra), has to do complete justice in the matter. It would be inequitable to relegate the Defendants to a fresh round of litigation which will again stretch into decades. The only course open to this Court is to direct the Plaintiffs, by way of restitution, to redeliver possession of the suit land to the defendants.

107. In the circumstances , the appeal is allowed with costs, setting aside the Judgement and decree of the Trial Court dated 22.02.2008, with a further direction to the Respondents/Plaintiffs to hand over peaceful, physical possession of the Suit land to the Appellants/Defendants, within 8 weeks from the date of this judgment, failing which, the Appellants/Defendants are entitled to obtain possession of the suit land from Respondents/Plaintiffs by way of execution of this Judgment and consequential Decree.

Consequently, miscellaneous application, if any, shall stand closed.

JUSTICE R. RAGHUNANDAN RAO

18th June, 2020.

Eha/Js.

2020:APHC:9933

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

<u>AS No.193 of 2008</u>

18th June, 2020.

Eha/Js.