

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.No.2768 OF 1996

JUDGMENT:

The unsuccessful plaintiffs in O.S.No.101 of 1987 preferred this appeal challenging the decree and judgment dated 30.07.1996 passed by the Subordinate Judge's Court, Bapatla, wherein the suit filed by the plaintiffs for declaration of title and for delivery of possession was dismissed.

For convenience of reference, the ranks given to the parties in the Original Suit by the Subordinate Judge's Court, Bapatla will be adopted through out the judgment.

The plaintiffs filed suit for declaration of title and for recovery of possession alleging that the Government assigned the suit schedule property to one Kavula Veeraiah in 1923 after observing necessary formalities. The said Kavula Veeraiah was in uninterrupted possession and enjoyment of the same. On 24.06.1943, the said Veeraiah sold the plaint schedule property to the father of the plaintiffs under a registered document. During the life time of father of the plaintiffs, he enjoyed the suit land till 1970. After death of their father, the plaintiffs were in possession and enjoyment of the schedule property till 1976.

While the matter stood thus, the revenue authorities all of sudden dispossessed the plaintiffs and granted patta in favour of third defendant without following the necessary procedure. The defendants 1 and 2 issued a proclamation in view of the conflict between the plaintiffs and the third defendant under Section 144 of C.P.C., restrained the plaintiffs from entering into the plaint schedule property.

The plaintiffs filed an application before the Tahsildar, Ponnur under Land Encroachment Act. The Dy.Tahsildar, Ponnur after enquiry dismissed the petition on

07.09.1977. Aggrieved by the order of the Dy.Tahsildar, the plaintiffs carried the matter in appeal to Sub-Collector, Tenali. But the Sub-Collector dismissed the appeal confirming the order passed by the Dy.Tahsildar vide order dated 09.07.1996.

The third defendant is a farm servant of the then Sarpanch, Ramaiah. In view of dismissal of the appeal by Sub-Collector, Tenali, the plaintiffs got issued a notice under Section 80 of C.P.C. claiming patta, questioning the assignment granted in favour of third defendant and for resumption of the land while claiming mesne profits @ Rs.3,000/- per year for a period of three years prior to the filing of the suit.

The 1st defendant filed written statement denying material allegations *inter alia* contending that on 16.12.1923 the Government assigned land of an extent of Ac.1.18 cents in favour of Kavula Veeraiah as Depressed Class grant. Subsequently, the said Veeraiah executed registered sale deed in favour of Yadla Vinukonda Ankaiah in 1943. But the person really purchased is one Gorijavolu Ramakotaiah. The suit land fell to the share of Gorijavolu Veerabhadraiah in partition among the family members.

The Tahsildar, Bapatla on 13.02.1976 after issuing notice to the title holder and original grantee, after due enquiry resumed possession of the plaint schedule property and subsequently after following necessary formalities assigned the land to the third defendant on 25.02.1976 and since then the third defendant is in possession and enjoyment of the property.

The plaintiffs though filed petition before Tahasildar, appeal before Sub-Collector, Tenali, failed to prefer any revision against the order passed by Sub-Collector. Therefore, the order attained finality and now the same order was challenged before the Civil Court, the plaintiffs have no *locus standi* to file the suit and the suit is liable to be dismissed for want of mandatory notice under Section 80

of C.P.C. and the suit is liable for dismissal on this ground alone besides the other ground of non-joinder of necessary parties and prayed to dismiss the suit.

The third defendant filed written statement contending that the original assignee Kavula Veeraiah was the resident of Karampudi of erstwhile Guntur Taluk. One Gorijavolu Ramakotaiah is the resident of Kondaboluvaripalem own land in Kondaboluvaripalem, H/o Kollimarla where the suit schedule is situated. The original assignee Kavula Veeraiah and Ramakotaiah exchanged lands. The father of the plaintiffs Yadla Vinukonda Ankaiah, was a faithful farm servant of the said Ramakotaiah and he obtained the sale deed in the name of Yadla Vinukonda Ankaiah which is a benami transaction. Either the plaintiffs or their father was never in possession of the suit property and the suit property fell to the share of Gorijavolu Veerabhadra Rao the third son of the said Ramakotaiah in the family partition. Thus, the sale transaction in favour of father of the plaintiffs Yadla Vinukonda Ankaiah is a benami transaction.

The Tahsildar, Bapatla having come to know about the allegation in violation of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 issued a notice to all persons concerned, resumed the grant as the plaintiffs are not landless poor and the sale deed dated 24.06.1943 is void in view of the A.P.Act 9 of 1977 and that the Civil Court has no jurisdiction, since, the plaintiffs failed to exhaust their statutory remedies available under the relevant statute under A.P.Act 9 of 1977 and prayed for dismissal of the suit.

Basing on the above pleadings, the trial Court framed the following four issues:

1. Whether the plaintiffs are entitled for declaration as prayed for?
2. Whether the plaintiffs are entitled for possession of the suit property?
3. Whether the plaintiffs are entitled for mesne profits?

4. To what relief?

During course of trial, the second issue was recasted by the trial Court as follows:

Whether the plaintiffs are entitled to the possession of the suit property?

During the course of trial, on behalf of plaintiffs, PWs 1 to 7 were examined and marked Exs.A.1 to A.10. On behalf of the defendants, DWs 1 to 3 were examined and marked Exs.B.1 to B.16.

Upon hearing argument of both the counsel, considering the material including oral and documentary evidence available on record, the trial Court dismissed the suit holding that the sale in favour of the father of the plaintiffs Yadla Vinukonda Ankaiah is a bemani transaction and it was purchased for the benefit of Gorijavolu Ramakotaiah negating all the reliefs claimed by the plaintiffs. Aggrieved by the impugned decree and judgment of the trial Court, the unsuccessful plaintiffs preferred this appeal on various grounds mainly contending that the said Yadla Vinukonda Ankaiah was a Depressed Class person who purchased the property under a sale deed dated 24.06.1943 (marked as Ex.A.1) and after his death, the plaintiffs succeeded the schedule property. Thus, the plaintiffs are only the successors of a person belonging to Depressed Class and thereby they are entitled to continue in possession. It is further contended that father of the plaintiffs, during his lifetime and after his death the plaintiffs were in continuous possession and enjoyment of the property without any interruption. But suddenly the Tahsildar without following the procedure, initiated proceedings and resumed the possession of plaint schedule property and assigned the same to the third defendant herein. But the trial Court did not consider the alleged violation of provisions of A.P.Assigned Lands (Prohibition of Alienation) Act 9 of 1977.

It is further contended that the sale transaction in favour of Yadla Vinukonda

Ankaiah was not for the benefit of Gorijavolu Ramakotaiah and the plaintiffs were in possession and enjoyment of the property till they were dispossessed by the Tahsildar, Ponnur and unless necessary requirements to construe the transaction as benami transaction, the finding of the trial Court that the transaction is benami transaction and the beneficiary under Ex.A.1 is Gorijavolu Ramakotaiah is not acceptable and finally prayed to allow the appeal setting aside the decree and judgment of the trial Court in O.S.No.101 of 1987 and pass a decree in favour of the plaintiffs declaring that the plaintiffs are the owners of the schedule property and for recovery of possession and mesne profits both past and future.

During argument, the learned counsel for the unsuccessful plaintiffs, Sri Rajareddy Koneti, would contend that the finding of the trial Court that the transaction covered by Ex.A.1 is for the benefit of Gorijavolu Ramakotaiah and that in the absence of proof of requirement of benami transaction, relevant consideration to establish that transaction covered by Ex.A.1 is a benami transaction, the finding of the trial Court cannot be sustained and prayed to set aside the decree and judgment of the trial Court passing a decree in favour of the plaintiffs as claimed.

Per contra, the Government Pleader for Appeals would contend that the said Gorijavolu Ramakotaiah was in possession and enjoyment of the property though Ex.A.1 which was obtained in the name of Yadla Vinukonda Ankaiah and the voluminous documentary evidence produced by the trial Court marked as Exs.B.5 to B.16 would establish that the transaction in favour of the plaintiffs' father Yadla Vinukonda Ankaiah is only for the benefit of Girajavolu Ramakotaiah and it is benami transaction and Yadla Vinukonda Ankaiah is not a person belonging to Depressed Class. Therefore, the resumption of possession of the property by the second defendant is legal and valid and finally prayed to dismiss the appeal confirming the decree and judgment.

None appeared for the third defendant.

Considering rival contentions of the counsel for the appellants and respondents, perusing oral and documentary evidence and judgment and decree of the trial Court, the points that arise for consideration are as follows:

1. Whether the transaction covered by Ex.A.1 is a benami transaction for the benefit of Gorijavolu Ramakotaiah? If so, the alienation of property by the original grantee Kavula Veeraiah is in contravention of provisions of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977? If so, the resumption of possession of the land by second defendant/second respondent is valid and legal?
2. Whether the plaintiffs are entitled for declaration of the title and recovery of possession of schedule property, and for future and past mesne profits?

POINT NO.1:

One of the major ground for dismissal of the suit by the trial Court is that the transaction covered by Ex.A.1 is a benami transaction entered into by Gorijavolu Ramakotaiah with Kavula Veeraiah the original grantee but obtained the sale deed marked as Ex.A.1 in the name of Yadla Vinukonda Ankaiah, father of the plaintiffs. Later, in the partition among the legal heirs of Gorijavolu Ramakotaiah, the property was allotted to the share of Gorijavolu Veerabhadraiah. Therefore, it is a benami transaction and the trial Court accepted this contention and dismissed the suit on the ground that the alienation is in contravention of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977.

Undisputedly, patta was granted in favour of Kavula Veeraiah, as he belongs to a Depressed Class and assigned the schedule property; On execution of Ex.A.1 by Kavula Veeraiah in favour of Yadla Vinukonda Ankaiah marked as Ex.A.1. The only

question is whether the transaction covered by Ex.A.1 is for the benefit of Gorijavolu Ramakotaiah and the said Yadla Vinukonda Ankaiah is a benamidar for Gorijavolu Ramakotaiah. The trial Court recorded a finding in last five lines of para 13 of the judgment that the transaction covered by Ex.A.1 equivalent to Ex.B.4 is a benami transaction. Therefore, the plaintiffs are not entitled to either for declaration or possession of suit property. The reason for such conclusion is that the plaintiffs have not filed 10(1) account, a single land revenue record, to establish that they are in possession and enjoyment of the land. However, Exs.B.5 to B.15 produced by the defendants are subsequent to Ex.B.3. Therefore, those documents are of no assistance to prove their possession and enjoyment of the property.

Before appreciating the contention of the plaintiffs, it is necessary to advert to the definition of Benami Transactions as defined under the Benami Transactions (Prohibition) Act, 1988 Section 2(a) reads as follows:

“Benami transaction” means any transaction in which property is transferred to one person for a consideration paid or provided by another person”.

To term a transaction as a benami transaction, it is the duty of the person who is contending that a particular transaction is benami transaction has to prove that the consideration for acquiring the property was paid by a person other than the purchaser. Here, according to the defendants, the property was purchased by Gorijavolu Ramakotaiah, who obtained the document in the name of Yadla Vinukonda Ankaiah, under the original of Ex.A.1 equivalent to Ex.B.4. The consideration paid under Ex.A.1 is only Rs.400/- and as per the recitals of Ex.A.1 the consideration was paid by Yadla Vinukonda Ankaiah. No other evidence is produced before the trial Court or before Tahasildar that consideration was paid by Gorijavolu Ramakotaiah for purchase of the schedule property in the name of Yadla Vinukonda Ankaiah. To decide whether a transaction is a benami transaction, the

prime consideration is payment of sale consideration by Gorijavolu Ramakotaiah and obtaining document in the name of Yadla Vinukonda Ankaiah. Several tests are laid down by various High Courts to find out whether the transaction is a benami transaction or not. In **Rama Rao v Srikrishna Murti**, this Court laid down the following tests to decide whether a document is benami or not:

1. Motive for taking the sale deed in the name of another,
2. Custody of the sale deed the connected vouchers,
3. Passing of consideration; and
4. Possession of the property

In **Kedranath v Prahalad Rai** held the Apex Court that to decide whether a particular transaction is benami or not, the source of money always will be a very valuable test. If the definition of the benami transaction contained under Section 2(a) of the Benami Transactions (Prohibition) Act, 1988 coupled with the guidelines laid down by this Court and the Apex Court are considered, the main test to determine the transaction as benami is payment of consideration. But the defendants did not produce any iota of evidence to establish that the transaction covered by Ex.A.1 equivalent to Ex.B.4 is benami transaction except the evidence of DW.1. In the examination in-chief, DW.1 testified that Depressed Class patta in Dis No.25/DK/33 was granted in favour of Kavula Veeraiah on 06.12.1923 and he was in possession and enjoyment of the property till 1943. Subsequently, the said Kavula Veeraiah executed a registered sale deed in favour of Yadla Vinukonda Ankaiah in the year 1943. But PW.1 had no personal knowledge. Moreover, he testified basing on the record available in the office and according to him the record discloses that the real purchaser under the registered sale deed is one Gorijavolu Ramakotaiah of Kondabalavaripalem village who is a rich and influential person and not entitled to assignment of any land and that the said land is in possession and enjoyment of

Ramakotaiah till fasli 1384 and that the schedule property fell to the share of Gorijavolu Veerabhadraiah, S/o Ramakotaiah in the partition. At the end of page, testified that since, Yadla Vinukonda Ankaiah died and therefore no notices were served by opposite party in the suit land by the then village head fixed a notice to poll. However, the land was assigned to D.3 by way of assignment on 25.02.1976. In the further examination in-chief he testified about the further proceedings like filing of petition before Tahsildar filing an appeal before Sub-Collector, Tenali by the plaintiffs and initiating proceedings under Section 144 of C.P.C. In the first sentence of cross examination of D.3 counsel, DW.1 accepted that Gorijavolu Veerabhadraiah is in possession and enjoyment of the suit schedule property as it was allotted to his share in the partition and it was purchased by his father in the name of his farm servant Yadla Vinukonda Ankaiah. D.W.1 admitted that Ex.A.2 10(1) account adangal/cultivation account is in the name of Yadla Vinukonda Ankaiah and it is further admitted that on 10.09.1975 Revenue Inspector, Kakumanu inspected the suit land along with the then village Karnam of Kollimerla, the village Karanam stated that one Gorijavolu Ramakotaiah is in possession and enjoyment of the suit property. But the revenue records do not disclose that Yadla Vinukonda Ankaiah is in possession and enjoyment of the suit land and that the CC grant register disclosed that D.3 is in possession and enjoyment of the suit land and it is followed by a suggestion that the register was marked as Ex.B.1 was brought into existence and got denial of the same. The entire evidence of D.W.1 is silent as to who paid consideration for obtaining Ex.A.1. In the absence of proof of passing of consideration from Gorijavolu Ramakotaiah, which is a major test to determine the transaction as benami, it is difficult to believe that the transaction covered by Ex.A.1 is benami transaction and consideration was paid by Gorijavolu Ramakotaiah and obtained document in the name of his farm servant Yadla Vinukonda Ankaiah who is a member of Depressed Class.

Apart from failure to prove payment of consideration by Gorijavolu Ramakotaiah,

Ex.A.2 established that 10(1) account (adangal) of Kollimerla village for the fasli 1384 shows that Yadla Vinukonda Ankaiah cultivated the land by raising paddy crop in the suit schedule property. But strangely a type written endorsement was made on Ex.A.2 to the effect that on inspection, the Revenue Inspector found that Depressed Class grant is in the occupation of Sri Kancherla Veeraiah Harijan of Kondaboluvaripalem though the grant was made in favour of Kavula Veeraiah. The Depressed Class grant made to Sri Kavula Veeraiah has to be cancelled since there is a violation of condition in view of its alienation firstly to Yadla Vinukonda Ankaiah and in turn alienated the land to Gorijavolu Veerabhadraiah. This endorsement was due to inspection on 19.08.1975, but whereas, the entries in 10(1) adangal were prepared long prior to said inspection. 10(1) adangal original of Ex.A.2 was prepared by Village Revenue Officer during his regular inspection of cultivation. Therefore, unless the Revenue Inspector or the Village Karanam is examined as witnesses before the Court, it is difficult to accept that the suit schedule property was in occupation of Gorijavolu Veerabhadraiah as endorsed in the original of Ex.A.2. If the entries in Ex.A.2 are taken as it is, the land was in possession of father of plaintiffs, Venkaiah and the defendants failed to establish the possession of Gorijavolu Veerabhadraiah which amounts to violation of terms and conditions of the grant by examining any witness and to rebut the entries in Ex.A.2. That apart the sale deed was in possession of the plaintiffs alone and if really it is a benami transaction, the possession of the title deed will be with the beneficiary. However, the original title deed was produced by the defendant and copy of the document was produced by the plaintiffs which is marked as Ex.A.1. But the defendants did not establish how Ex.B.4 came into their possession. If the transaction is benami, the said Gorijavolu Ramakotaiah is supposed to be in the custody of the title deed having paid consideration under Ex.A.1. In the absence of source of possession of Ex.B.4, it is difficult to believe that the transaction covered by Ex.A.2 is benami. Even otherwise, the possession of the property was with the plaintiffs' father during his

lifetime and later the plaintiffs are in possession of the property the same is substantiated by Ex.A.2 Certified copy of adangal for the fasli 1384. Similarly Exs.A.3, A.4, A.5 and A.6 also establish that for the fasli Nos.1383, 1385, 1386 Yadla Vinukonda Ankaiah, father of the plaintiffs, alone is in possession of the property. The defendants produced Exs.B.5 to B.15 to establish that the third defendant paid land revenue but these documents are subsequent to proceedings marked as Ex.B.1. Hence, Exs.B.5 to B.15 are of no use to establish the possession of the property with Gorijavolu Ramakotaiah and subsequently with Gorijavolu Veerabhadraiah, S/o Ramakotaiah. Ex.B.16 is the certified copy of decree in O.S.No.34 of 1975. The said suit was filed by Gorijavolu Kameswari and two others against Alapati Raja, Gorijavolu Veerabhadraiah, Gorijavolu Seetharavamma and others. Copy of decree in O.S.No.34 of 1975 on the file of Subordinate Judge, Bapatla is of no avail for the reason that the suit schedule property of an extent of Ac.1.18 cents in D.No.294/5A was not part of any of the schedules in the plaint even to accept the contention that the suit schedule property was allotted to the share of Gorijavolu Veerabhadraiah as contended by the defendants. But an extent of Ac.1.00 in D.No.294/5-B is included in 'F' schedule as item No.6. Therefore, item No.6 of 'F' schedule is no way connected with suit schedule property. Hence, the alleged allotment of the suit schedule property in the partition to the share of Gorijavolu Veerabhadraiah cannot be accepted.

Taking into consideration of all the circumstances, it is evident that the defendants, who contend that the transaction covered by Ex.A.1 is a benami transaction for the benefit of Gorijavolu Ramakotaiah, failed to establish by producing cogent and satisfactory evidence that the transaction covered by Ex.A.1 is a 'Benami' basing on the relevant tests lay down by this Court and Apex Court. Therefore, the contention that the transaction covered by Ex.A.1 is benami transaction is disbelieved and the

finding that the transaction covered by Ex.A.1, recorded by the trial Court is reversed. Accordingly, the finding of the trial Court is hereby set aside holding that the point in favour of the plaintiffs and against the defendants.

POINT No.2:

Though the defendants contended that the Civil Court has no jurisdiction and that the suit is not maintainable in the absence of Gorijavolu Veerabhadraiah and others the trial Court did not frame any issue with regard to non-joinder of necessary parties and did not record any finding. However, the trial Court recorded a finding that the Civil Court has got jurisdiction and negated the contention of the defendants. The said finding is not challenged before this Court by filing cross objections or by a separate appeal. Therefore, it is wholly unnecessary to go into the legality of the finding of the trial Court with regard to inherent jurisdiction of the trial Court.

Similarly, the trial Court recorded a finding that the provisions of A.P.Assigned Lands (Prohibition) & Transfer Act, 1977 is applicable to both the alienations that took place before and after commencement of the Act and it is not challenged before this Court by the plaintiffs, raising any specific ground in the argument. Hence I need not disturb the finding of the trial Court with regard to applicability of provisions of A.P.Act 9 of 1977.

The main endeavour of the plaintiff's counsel is that the suit schedule property was purchased by Yadla Vinukonda Ankaiah under Ex.A.1 who belongs to a Depressed Class and thereby it does not amount to violation of terms and conditions of the grant. Whereas, the defendants' contention is that the sale is a benami transaction. However, I have recorded a specific finding that the defendants failed to establish that the transaction covered by Ex.A.1 is benami transaction. If the contention of the defendants is accepted, certainly it is a violation of the terms and conditions of the grant, since the alienation is prohibited in favour of a person who does not belong to Depressed Class or a landless poor in view of the provisions of AP Act 9 of 1977.

But as seen from the order of the Deputy Collector, the father of the plaintiffs Yadla Vinukonda Ankaiah, belongs to Depressed Class vide, last four lines of para 8 of Ex.B.3. In view of this finding of Deputy Collector under Ex.B.3 the father of the plaintiffs is a member of Depressed Class and entitled to purchase the property; purchase of property by a Depressed Class person from another Depressed Class person is not in violation of terms of the grant and provisions of the Act. When I adverted to Ex.B.1, the file relating to resumption proceedings, the reason assigned by the second defendant for resumption is that it is in violation of para 41 of BSO No.15 which says that if patta granted to a Depressed Class person is alienated to any person, other than Depressed Class person, within a period of ten years from the date of grant either by way of sale/gift/ grant or lease of any kind or, after that period to any person who is not a member of Depressed Class or if it is ceased to be owned by original grantee or his legal heirs, the grant will be liable for cancellation. Accordingly, by following para No.41 of BSO NO.15 the grant was cancelled. If that is the condition for cancellation, when Yadla Vinukonda Ankaiah belongs to Depressed Class as per the finding of Deputy Collector in para No.8 of Ex.B.3 and the alienation took place after ten years, the alienation in favour of Yadla Vinukonda Ankaiah is not a violation of para No.41 of BSO No.15, if the Yadla Vinukonda Ankaiah further alienates the property to any person than Depressed Class it amounts to violation. In the instant case, the said Yadla Vinukonda Ankaiah did not alienate the property to any person in contravention of para 41 of BSO No.15. Therefore, the resumption of land for violation of para No.41 of BSO No.15 is not in accordance with law. Since, the defendants failed to establish that the sale covered by Ex.A.1 is equivalent to Ex.B.4 is a benami transaction for the benefit of Gorijavolu Ramakotaiah, the plaintiffs being the legal heirs of deceased Yadla Vinukonda Ankaiah are entitled to declaration of their title to the schedule property.

One of the major attacks on the proceedings of resumption of the land is that the

defendants did not follow the procedure prescribed under the Act, while resuming possession of the property and when the defendants violated the procedure prescribed under the Act the resumption is not valid and thereby the resumption itself is illegal. According to Section 4 of the A.P. Act 9 of 1977 the District Collector or any other person not below the rank of M.R.O. authorized by him in his behalf if satisfied that the provisions of Sub-Section 3 have been contravened in respect of assigned land he may order to take possession of the assigned land after vacating the person in possession in such manner as prescribed and restore the assigned land other than these lands as notified by the Government from time to time in public interest and for public purpose to the original assignee, if he is eligible as per the guidelines fixed in this behalf, as on the date of restoration for one time or assigned to the other eligible landless poor persons. But in the present facts of the case, the plaintiffs are sons of Depressed Class person Yadla Vinukonda Ankaiah and there is no evidence to conclude that they do not belong to Depressed Class being the legal heirs of Yadla Vinukonda Ankaiah. If violation is for the first time, the plaintiffs are entitled to such assignment, the property can be assigned to the plaintiffs invoking power under Section 4(2)(a) of the Act but the Government resumed possession of the property canceling the patta in favour of Veeraiah without any notice. According to Rule 3 of Rules framed under Act 9 of 1977. The District Collector or authorized Officer shall before taking action under Sub-Sections (a) and (b) of Section 4 of the A.P. Act IX, has to issue notice in form No.1 to the person who acquired and land in contravention of Sub-Section 2 or Section 3 of the Act, notice shall be served by delivering a copy to him or to some adult male member of the family at his usual place of abode or to his authorized agent or by affixing a copy thereof at the place of residence. After the expiry of 15 days specified in the notice to District Collector or authorized Officer shall consider the representation, if any, with reference to the said notice and pass such orders as if thinks fit and proper.

In Narapareddy Bujamma Vs. District Collector, Nellore and others this

Court held that before taking an action under Section 4 of the Act, the authorized Officer shall issue notice to a person who acquire the assigned land in contravention of the provisions of Section 3 of the Act and it is mandatory. Service of notice under Rule 3 of the Rules framed under A.P.Act 9 of 77 is mandatory but in the present case DW.1 admitted in his evidence that no notice was served, strictly in compliance of Rule 3 of the Rules framed under the Act. On this ground alone the resumption proceedings can be invalidated, since no notice was served on the legal heirs of Yadla Vinukonda Ankaiah or their benamidar Girajavolu Ramakotaiah. Therefore, the resumption of the land by the defendants 1 and 2 is against the provisions of the law.

According to the plaintiffs, after resumption of the land, patta was granted in favour of D.3. When once the resumption is invalid, and in violation of Rule 3 of Rules framed under the Act, and against the principles of natural justice, grant of patta in favour of D.3 is illegal. Therefore, the possession of the D.3 in the schedule property is illegal and the plaintiffs are entitled to recover possession under Section 5 of the Specific Relief Act.

The relief claimed by the plaintiffs is that they are the owners of the schedule property and the relief claimed by them is within the ambit of Section 34 of the Specific Relief Act. According to Section 34, when the legal rights of the plaintiffs were denied or created any cloud, the Court in its discretion may grant declaration exercising its power judiciously. In the present case the plaintiffs being the legal heirs of Yadla Vinukonda Ankaiah who belongs to a Depressed Class are entitled to continue in possession of the property irrespective of their financial status. Since the resumption is in contravention of Rule 3 of the Rules framed under the Act and that the original grantee or the father of the plaintiffs did not violate para 41 of BSO No.15, the resumption of the land after cancellation of the original grant in favour of Kavula Veeraiah is illegal and arbitrary. In such case, this Court can exercise

discretion to grant a declaratory relief under Section 34 of the Act in favour of the plaintiffs. The trial Court only on the assumption that the transaction covered by Ex.A.1 is a benami transaction, without insisting the defendants to establish that the transaction is benami, applying the test laid down by this Court and Apex Court, erroneously concluded that the transaction covered by Ex.A.1 is benami transaction. As such, the finding of the trial Court is erroneous on the face of the record. Hence the finding of the trial Court is set aside holding that the plaintiffs being the legal heirs of Yadla Vinukonda Ankaiah who belongs to Depressed Class, who purchased the property under Ex.A.1, are the owners of the schedule property. Therefore, the plaintiffs are declared as owners of the schedule property.

As the resumption of possession of the land cancelling patta is invalid and illegal, contrary to Rule 3 of the rules framed under the Act and principles of natural justice, the possession of third defendant under the patta granted in favour of the father of the plaintiffs is illegal. Thereby the plaintiffs are entitled to recover possession of the property under Section 5 of the Specific Relief Act. Hence, I hold that the plaintiffs are the owners of the schedule property and entitled to recover possession of the property.

The plaintiffs also claimed past and future mesne profits, but mesne profits would arise only when possession of D.3 is wrongful, but in the present facts D.3 is continuing in possession in view of patta granted to him by revenue authorities, hence, his possession cannot be said to be wrongful but illegal. Hence, D.3 is not liable for payment of mesne profits similarly D.1, D.2 are admittedly not in possession thereby not liable to pay mesne profits. Hence, the plaintiffs are disentitled to recover both past and future mesne profits. Accordingly, point No.2 is answered in favour of the plaintiffs and against the defendants.

In view of my finding on Point No.1 and 2, the decree and judgment are liable

to be set aside.

In the result, the decree and judgment dated 30.07.1996 passed in O.S.No.101 of 1987 by Subordinate Judge, Bapatla is set aside passing a decree in favour of the plaintiffs declaring that the plaintiffs are the owners of the schedule property and they are entitled to recover possession of the schedule property while deciding to grant past and future mesne profits. There shall be no order as to costs.

Consequently, miscellaneous applications, if any, pending in this appeal, shall stand disposed of.

M.SATYANARAYANA MURTHY, J

Dt. 6-02-2015

PNV