

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

—
Second Appeal No.51 of 2015

JUDGMENT:

The unsuccessful defendants preferred this appeal under Section 100 of the Code of Civil Procedure ('the Code' for brevity) assailing the decree and judgment dated 18.12.2014 of the learned II Additional District Judge, Karimnagar at Jagtial passed in AS.No.30 of 2014 whereby the learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 28.04.2014 of the learned Senior Civil Judge, Jagtial in OS.No.95 of 2005 filed by the plaintiffs/respondents herein against the appellants/defendants 1 and 2 for a declaration that the plaintiffs are owners of the agricultural dry land admeasuring Ac.3.03 gunats in Sy.No.110 more fully described in the schedule and plan annexed to the plaint.

2. I have heard the submissions of the learned counsel for the appellants/defendants ('the defendants' for brevity) and the learned counsel for the respondents/plaintiffs ('the plaintiffs' for brevity). I have perused the material record.

3. In the memorandum of objections, the defendants had raised the following three questions stating that the said questions are substantial questions of law involved in this appeal.

1. **Whether the courts below are justified in decreeing the suit filed by the respondents/plaintiffs, particularly when the appellants/defendants are in possession and enjoyment of the suit land?**
2. **Whether the Courts below are justified in deliberately not considering the material evidence adduced by the appellants/defendants establishing**

their possession over the suit land?

- 3. Whether the courts below applied their minds properly in deciding the issues in controversy?**

[reproduced verbatim]

3.1 By way of SAMP.No.309 of 2015, the defendants also raised further following four questions stating that they are also the substantial questions involved in this second appeal.

- (i) Whether the courts below are justified in decreeing the suit of the respondents/plaintiffs, particularly when the certificate under Section 38-E of A.P (TA) Tenancy and Agriculture Lands Act does not show the boundaries of the land admeasuring Ac.3.30 guntas out of Ac.12.13 guntas in S.No.110 of Yamapur village?**
- (ii) Whether the courts below are justified in decreeing the suit of the respondents/plaintiffs, when the pahani Ex.B12 relied upon by respondents/plaintiffs does not contain the names of the plaintiffs?**
- (iii) Whether the courts below are justified in decreeing the suit of the respondents/plaintiffs, particularly when the suit is barred by limitation?**
- (iv) Whether the courts below are justified in decreeing the suit of the respondents/plaintiffs, particularly when they failed to produce the original certificate issued under Section 38-E of A.P (TA) Tenancy and Agriculture Lands act on which the respondents/plaintiffs claimed their possession over the suit land?**

[reproduced verbatim]

4. The learned counsel for the defendants while submitting that the before mentioned substantial questions of law are involved in this second appeal had contended as follows: “The Courts below are not justified in decreeing the suit when admittedly the defendants are in possession and enjoyment of the property and had perfected their title by their long possession and when the exhibit A1-certificate, which was said to have been issued under Section 38E of the Andhra Pradesh (Telangana Area) Tenancy And Agricultural Lands Act, 1950 (‘the Act’ for short), does not

contain boundaries and that in the absence of mentioning of the boundaries in the said document, the plaintiffs could not establish that it relates to the land admeasuring Ac.3.30 guntas mentioned in the schedule of the plaint and that the Courts below are not justified in decreeing the suit when exhibit B-12 pahani relied upon by the plaintiffs does not contain the names of the plaintiffs and that the Courts below had failed to take note that the suit is barred by law of limitation and that the Courts below did not properly appreciate the facts and the evidence on record and had further failed to follow the principles of law applicable to facts of the case.”

4.1 On the other hand, the learned counsel for the plaintiffs while supporting the concurrent decrees and findings in the judgments of the Courts below had *inter alia* contended as follows: “Exhibit A1 is a certified copy of the certificate under Section 38E of the Act issued in favour of Sunke Narsimha @ Narsimhulu, who is no other than the father of the plaintiffs 4 to 6, and one late Sunke Pedda Lingam, who is the husband of the 3rd plaintiff and the father of the 1st plaintiff. The said certificate has become final and binding since not challenged in accordance with the provisions of the said Act. The plaintiffs having succeeded to the property under the said certificate are the absolute owners thereof and that the defendants had filed a writ petition in 1429 of 1991 before this Court questioning the notice issued by the MRO, Ibrahimpatnam and that this Court by an order dated 12.06.1991 in the said writ petition had directed the defendants to approach the MRO, Ibrahimpatnam, but, the defendants for the reasons best known to them did not avail the said opportunity and did not approach the MRO and that later the MRO had conducted a panchanama and delivered possession of the subject property in pursuance of exhibit A1 certificate and that panchanama was exhibited as exhibit A12 and that exhibit A4 is the certified copy of the pahani of the year 1997-98 wherein the names of

plaintiffs were shown as pattadars and possessors in respect of the subject land and that exhibit B17 sale deed dated 10.02.1987 being relied upon by the defendants which is a simple sale deed is void under Section 38 of the Act and that the Courts below having accurately considered the facts and properly appreciated the evidence declared the title of the plaintiffs and decreed the suit for recovery of possession and that none of the grounds raised are pure questions of law much less substantial questions of law and the questions raised are not involved in the second appeal and that the second appeal is devoid of merit and is not fit for admission.”

4.2 The learned counsel placed reliance upon the following decisions.

(i) **Bodupalli Sathaiah and others v. Koppula Pedda Linga Reddy and others** [\[1\]](#);

(ii) **Ramulu and others v. Sumitra Bai (died) by LRs** [\[2\]](#);

5. Now it is to be examined as to whether the questions raised are substantial questions of law and are involved in this second appeal. I have bestowed my attention to the facts and I have noted the submissions of the learned counsel for both the sides.

6. To adjudicate the lis and arrive at a just decision in this second appeal, it is necessary to refer to the cases pleaded by both the sides.

6.1 The plaintiffs 1 to 6/respondents 1 to 6 herein originally brought the suit against the appellants/defendants 1 and 2 for declaration of title and recovery of possession of the property, the relevant details of which are mentioned in the introductory paragraph of this judgment. During the pendency of the 1st appeal, the 4th plaintiff had died and his legal representatives were brought on record. They are the respondents 7 to 12 herein.

6.2 The case of the plaintiffs is this: 'Sunke Narasimhulu, the father of the plaintiffs 4 to 6 and one late Sunke Pedda Lingam, was a protected tenant of the plaint schedule land of the land holder K.Narsing Rao. The plaintiffs 1 and 2 are the children and the 3rd plaintiff is the wife of the said Sunke Pedda Lingam, who is the eldest son of the said Narasimhulu. Subsequently, the Sub Collector, Jagtial-cum-Agricultural Lands Tribunal issued a certificate under Section 38E of the Act in favour of the said Narasimhulu on the deposit of land price and vide proceedings dated 25.06.1983 it was declared that Narasimhulu is the purchaser of the said land. Thus, Sunke Narasimhulu had become the owner and possessor of the subject property. The certified copy of the said certificate is exhibited as exhibit A1. On his death about 16 years prior to the suit, the plaintiffs who are his legal heirs had inherited the plaint schedule property. Thereafter, for recovery of possession of the property from the defendants, by virtue of the said certificate, the plaintiffs had filed a petition before the Mandal Revenue Officer, Ibrahimpatnam. On that the said MRO had issued notice dated 10.07.1990 to the defendants. The aggrieved defendants had filed a writ petition in 1429 of 1991 before this Court questioning the notice issued by the MRO, Ibrahimpatnam and in that writ petition they had urged that they had purchased the property from Sunke Narasimhulu in the year 1975 and that they are in possession of the said property. However, this Court by an order dated 12.06.1991 passed in the said writ petition had directed the defendants to approach the MRO, Ibrahimpatnam. But, the defendants for the reasons best known to them did not avail the said opportunity and did not approach the MRO. The 1st defendant had, however, filed before the Court of Junior Civil Judge of Metpally, a suit O.S.No.578 of 1991 in November 1991 against the plaintiffs and Sunke Linganna in respect of Ac.1.22 guntas in Sy.No.110 stating that they had purchased the said land from C.N.Gangaram and C.Ashanna through

simple sale deed dated 10.02.1987. The said suit was resisted by filing a written statement. The 1st plaintiff, who was the 1st defendant in the said suit had left for Gulf countries in the year 1993 and Sunke Linganna had died in the year 1997 and the other plaintiffs, who are not aware of the suit, did not pursue their defence and that suit was decreed *ex parte* in March 1998. The 2nd defendant had also filed before the said Court the suit O.S.No.579 of 1999 in November 1991 in respect of Ac.4.10 guntas in Sy.No.110 against the plaintiffs and Pedda Linganna and on resistance the said suit was dismissed. The Mandal Revenue Inspector surveyed the land as directed in the orders of the MRO dated 11.09.1992 and possession was restored to Sunke Pedda Linganna and the plaintiffs vide panchanama dated 15.10.1992 by carving out a sub division no.2 in Sy.No.110. Thus, the MRO having got conducted a panchanama had got delivered the possession of the subject property in pursuance of exhibit A1 certificate to the plaintiffs and Sunke Pedda Linganna and that panchanama with sketch map was exhibited as exhibit A12. When the defendants managed the revenue authorities and got entered their names in the year 1997-98 and had forcibly dispossessed the plaintiffs from the schedule property on 18.01.2005 under the guise of *ex parte* decree in O.S.No.578 of 1991, the plaintiffs are constrained to file the instant suit.'

6.3 The defence of the defendants, in brief, is this: "Sunke Narasimhulu, the protected tenant, surrendered his tenancy rights in schedule lands on 14.08.1968 under Section 19 of the Tenancy Act before the Deputy Tahasildar, Metpally and to that effect an order was passed. The plaintiffs are claiming to be the legal heirs of the said Narasimhulu and therefore, they have no locus standi, right, title and interest to the property to seek the relief of declaration of title and recovery of possession. The defendants having first filed a writ petition before this Court had later filed two separate suits before the Court of Judicial Magistrate of First Class, Metpally and out of the two suits; the

1st defendant's suit was decreed. The 1st defendant purchased Ac.1.22 guntas of land under simple sale deed dated 10.02.1987 from C.N.Gangaram and C.Ashanna and since then, he had continued in possession and perfected title by adverse possession and the said land is a part of the suit land. The 2nd defendant purchased Ac.4-10 guntas from the pattedar K.Narsinga Rao in the year 1986 and the said land was mutated in the name of the 2nd defendant as owner and possessor. The plaintiffs were never in possession. Thus, the defendants are only in possession and enjoyment of Ac.1.22 guntas and Ac.4.10 guntas respectively and their names are entered in revenue records. Therefore, they prayed for dismissal of the suit."

6.4 The trial Court had framed the following principal issues:

- (i) Whether Sunke Narasimhulu @ Narasimha has surrendered his tenancy rights over Sy.No.110 on 14.08.1968 and the said surrender was accepted by the Tahasildar?**
- (ii) Whether plaintiffs 4 to 6 and the father of plaintiffs 1 and 2 inherited the suit schedule land under Section 40 of the A.P (T.A) Tenancy & Agricultural Land Act, 1950?**
- (iii) Whether the father of the plaintiff No.1 and plaintiffs 4 to 6 were never in possession and enjoyment of the suit land at any time?**
- (iv) Whether the plaintiffs are entitled to declaration of title in respect of the suit land?**
- (v) Whether the plaintiffs are entitled to recover possession of the suit land from the defendants?**

At trial, the 1st plaintiff and the supporting witnesses were examined as PWs.1 to 5 and exhibits A1 to A12 were marked on the side of the plaintiffs. The 1st defendant and the 2nd defendant were examined as DWs 1 and 5 and including them in all seven witnesses were examined on their side and exhibits B1 to B38 were marked. On merits, the trial

Court decreed the suit of the plaintiffs as prayed for and granted three months time from the date of the decree to the defendants to vacate and deliver vacant possession of the suit land to the plaintiffs. In the 1st appeal preferred by the aggrieved defendants, the first appellate court, which is the last court of fact, had framed the following points for consideration:

- (i) **Whether the Sunke Narsimhulu @ Narsimha surrendered his tenancy rights in Sy.No.110 at Yamapur on 14.08.1968 under Section 19 of the Tenancy Act before Deputy Tahsildar, Metpally as contended by appellants?**
- (ii) **Whether the purchase of Ac.1.22 guntas of land in Sy.No.110 by the 1st appellant under a simple sale deed on 10.02.1987 from Chedelu Nadipi Gangaram and Chedelu Ashanna is true?**
- (iii) **Whether the 2nd appellant purchased Ac.4.10 guntas of land in that Sy.No.110 from its pattadar namely Kalvakuntla Narsinga Rao and if it is true, then, the mutation of that Ac.4.10 guntas of land in the name of 2nd appellant as owner and possessor basing on the decree in OS.No.1223 of 1986 dated 23.02.1987 on the file of District Munsiff at Metpally can be said as valid one?**
- (iv) **Whether the respondents No.1 to 6 as the legal heirs of late Sunke Narsimhulu @ Narsimha, the protected tenant can be declared as owners of the suit land and if the answer is affirmative then whether they are entitled for the recovery of possession?**
- (v) **Whether the judgment and decree of trial Court warrants any interference?**
- (vi) **To what relief?**

Having regard to the facts and the evidence, the court of first appeal had answered the said points in favour of the plaintiffs. Therefore, the aggrieved defendants are before this Court.

6.5 I have gone through the material record including the evidence

brought on record. The defendants are not disputing that Sunke Narasimhulu, the predecessor-in-interest of the plaintiffs was the protected tenant of the schedule land. Though they had pleaded that he had surrendered his tenancy rights in the year 1968 before the Deputy Tahasildar, Metpally, they could not establish the said plea. On the other hand, the plaintiffs having filed exhibit A1, certificate issued under Section 38(E) of the Act had established that Sunke Narasimhulu was the declared owner and possessor of the suit land. By virtue of the said certificate, the plaintiffs, who are admittedly the legal heirs of the said Narasimhulu had filed a petition before the Mandal Revenue Officer of Ibrahimpatnam, seeking recovery of possession of the property from the defendants. The said MRO had issued a notice dated 10.07.1990 to the defendants. The aggrieved defendants had filed a writ petition in 1429 of 1991 before this Court questioning the notice issued by the MRO, Ibrahimpatnam and in that writ petition they had urged that they had purchased the property from Sunke Narasimhulu in the year 1975 and that they are in possession of the said property. However, this Court by an order dated 12.06.1991 passed in the said writ petition had directed the defendants to approach the MRO, Ibrahimpatnam as the matters are pending before the MRO. The copy of the writ petition and the copy of the order in the writ petition are exhibits A2 and A3. The plaintiffs had filed and exhibited the pahani patrika of the year 1997-98 (exhibit A4) besides the pleadings, the decree and the judgment in O.S.No.578 of 1991 and exhibit A12, the certified copy of panchanama and sketch map, where under the suit schedule property was delivered by the revenue authorities on 15.10.1992 to the plaintiffs. If really, the said Sunke Narasimhulu had surrendered his tenancy rights as contended by the defendants, the defendants ought not to have claimed in the writ petition that they had purchased the property in the year 1975 from the said Narasimhulu. They did not even plead and prove in this suit that they had purchased the property in the year 1975 from the said Narasimhulu.

Therefore, the courts below are justified in holding that the plea of surrender of tenancy rights by Sunke Narasimhulu raised by the defendants is not established.

6.6 Be that as it may. In the present suit, the defendants have taken a plea contrary to their stand in the writ petition and had alleged that the 1st defendant purchased Ac 1-22 guntas under a simple sale deed from C.N.Gangaram and C.Ashanna and that 2nd defendant purchased Ac.4.10 guntas from the original pattedar K.Narsinga Rao despite the fact that Section 38E certificate under exhibit A1 was issued in favour of Narasimhulu, the predecessor-in-interest of the plaintiffs. Suffice to state that under the alleged simple sale deeds, the defendants did not acquire any right, title and interest in the said properties. The plaintiffs who had obtained possession of the suit lands pursuant to the orders and the proceedings and panchanama of the MRO on 15.10.1992, had claimed that they were in possession till they were dispossessed in the year 2005 as stated in the plaint. The evidence on record shows that the name of Sunke Narasimhulu appeared as pattedar in the records till 1999. Even the name of Sunke Linganna, the eldest of Son of Narasimhulu, appeared as possessor and was also recorded in the revenue records as is evident from exhibits B2 and B3. Thus, the evidence on record sufficiently established the title of Sunke Narasimhulu over the suit land and that of the plaintiffs who had succeeded to the said property on the death of Sunke Narasimhulu, being the successors-in-interest and legal heirs of the said Narasimhulu. Mere entries in revenue records relied upon by the defendants in regard to possession are of no avail when they have no right, title and interest in the property and on the contrary when the right and title of the plaintiffs stood established by virtue of exhibit A1 38 E certificate. It is now well established that entries in the revenue records would not confer any right nor would take away any right existing in a

rightful owner.

6.7 In Bodupalli Sathaiah and others v. Koppula Pedda Linga

Reddy and others (1 supra) the facts are as under:

The ancestors of respondents 1 to 12, were declared as protected tenants, in respect of Acs.3-34 gts. in Sy. No. 1445, under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short "the Tenancy Act"). They were also issued certificates, under Section 38-E of that Act on 30.10.1975. One Smt. Bharathi Bai challenged the certificates issued in favour of the predecessor-in-title, by filing an appeal before the Joint Collector. The appeal was rejected, and thereupon, she filed CRP No. 2636 of 1985, before this Court. The revision was also dismissed on 8.4.1993. Despite the same, she claimed ownership rights over an extent of Acs.3-34 gts. in Sy. No. 1445. She has also executed a sale deed in favour of the petitioners therein, on 16.8.1996. On the basis of the claim made by Bharathi Bai and the sale deed executed by her, the Mandal Revenue Officer, R.13, had affected mutation in the revenue records, and issued pattadar pass books. On coming to know the same, the petitioners approached the Mandal Revenue Officer. He, in turn, replied through Memo dated 25.11.1997, stating that the dispute is civil in nature, and they have to seek redressal from appropriate Court. Respondents 1 to 12 filed an appeal before the Revenue Divisional Officer, Nalgonda, R.14, against the memo dated 25.11.1997, issued by R.13. The appeal was dismissed on 5.3.1999. Thereupon, respondents 1 to 12 filed a revision before the Joint Collector. The revision was allowed through the impugned order.

In the aforementioned factual background of the cited case this Court held as follows:

“The rights that have accrued under the protected tenancy certificate, or the consequential certificates issued under Section 38-E, cannot be defeated, except by having recourse to the steps under the Tenancy Act. In fact, the transferor of the writ petitioners has initiated such steps, viz; by filing appeal before the Joint Collector, and thereafter a revision before this Court; but was not successful. Thereby, the certificate under Section 38-E, issued in favour of the ancestors of respondents 1 to 12, became final.

Any entry in the revenue records, that is made contrary

to the certificate issued under Section 38-E, per se, is illegal and untenable, even if one goes by Section 3A of 1971 Act. The then Mandal Revenue Officer had committed a blatant illegality in making entries contrary to the 38-E certificate issued in favour of the ancestor of the petitioners. Further, when an objection was raised to it, he required respondents 1 to 12 to approach the Civil Court. There cannot be any greater instance of misuse of power, than this. The appellate authority also chose to put a premium on such blatant illegality. The Joint Collector has undertaken extensive discussion, went to the genesis of the dispute, and had rendered justice to respondents 1 to 12. The petitioners are only the purchasers from Smt. Bharathi Bai. They have to stand or fall on the strength of the rights possessed by their transferor. It has already been pointed out that Bharathi Bai failed in her effort to cancel the 38-E certificate, issued in favour of the ancestor of the petitioners. Therefore, the transfer made in favour of the petitioners, does not confer any right upon them.”

The ratio in the decision applies on all fours to the case on hand. The exhibit A1 - the 38 E certificate in favour of the Narasimhulu, the predecessor in interest of the plaintiffs, has become final and binding not having been challenged by having recourse to the provisions under the Act. The defendants having claimed that they had purchased the property could not establish that their vendors had valid right and title over the properties; and even the sale deeds of the defendants are simple unregistered sale deeds and therefore, the defendants did not get any valid title to the property under their said sale deeds. In the decision in **Ch.S.Hanumantha Rao and others v. R.Sainath and others**^[3] this Court held that the transfer of immovable property cannot be affected only by means of an instrument which requires to be registered and that unless a transfer *inter vivos* has been affected under a valid instrument no legal title will be conferred upon the transferee. In the face of exhibit A1, the mere entries in revenue records are illegal and are of no avail to the defendants. The plaintiffs, who have title and right to enjoy the

property by virtue of 38 E certificate, had first approached the MRO for restoration of possession to them from the defendants pursuant to the said certificate. Possession was restored to them. Since the defendants had forcefully dispossessed the plaintiffs from the property in the year 2005, they had approached the Civil Court by filing the present suit. The defendants did not dispute the maintainability of this Civil suit. Even otherwise, there is no scintilla of doubt about the maintainability of this suit as well. In the decision in **Ramulu and others v. Sumitra Bai (died) by LRs. (2nd supra)** from the facts of the case it was clear that after the grant of Section 38E certificate, the possession was restored to the petitioners therein by the Revenue Inspector under panchanama on 06.06.1978. They were disposed later and hence, they had approached the Civil Court by filing a civil suit. In this backdrop a learned single judge of this Court has held as under:

In my opinion, once the tenants, in whose favour ownership certificate has been issued under Section 38E of the Act, have been put in possession of the property, they cannot approach the Tahsildar again and again for restoration of possession whenever they are dispossessed for, they no longer continue to be under protection of the provisions of the Act as they have evolved into full-fledged owners with the issuance of the ownership certificate under Section 38E of the Act. If they are subsequently dispossessed, they can only approach the competent civil Court by way of a suit. This view of mine is fortified by the judgment of this Court in Jupudi Bhushanam Vs. Joint Collector, Khammam and others. [1997 (1) ALT 627].

6.8 Thus it is clear that the plaintiffs established their title and also the maintainability of the suit for recovery of possession. In **Indira**

v. Arumlugam^[4], the Apex Court held as follows:

“In a suit based on title for possession where title was established on the basis of relevant documents, plaintiffs cannot be non-suited unless defendant proves adverse possession for prescriptive period and the provisions of Article 142 of the Limitation Act, 1908 wherein plaintiff had to prove not only title but also

possession within 12 years of the date of the suit had undergone a metamorphic sea change in view of Article 65 of the present Limitation Act, 1963.”

In **Md. Mohammad Ali v. Jagadish Kalita**^[5], the Apex Court pointed out:

By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession.

This position has again been reiterated in **Saroop Singh v. Banto**^[6] holding as under:

So under the 1908 Act, the plaintiff not only had to prove his title but also had to prove his possession within twelve years preceding the date of institution of the suit in order to recover possession of immovable property. But under the 1963 Act, there has been a change in law and in a suit attracting Article 64 and 65 of the said Act, the plaintiff has only to prove his title and it is for the defendant to prove acquisition of title by adverse possession.

In the decision in **Chatti Konati Rao v. Palle Venkata Subba Rao**^[7] it is held that mere possession however long does not necessarily mean that it is adverse to the true owner and that adverse possession really means the hostile possession which is expressly or impliedly in denial of the title of the true owner and that in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner and that the classical requirements of acquisition of title by

adverse possession are that such possession in denial of the true owners title must be peaceful, open and continuous. In fact, having pleaded title, it is not permissible for the defendants to plead adverse possession as both pleas are mutually inconsistent. Thus, there is no dispute with the legal proposition that when a suit is filed for recovery of possession based on title the plaintiff has only to prove his/her title. It is for the defendant to prove acquisition of title by adverse possession. The plaintiff need not prove her possession within twelve years preceding the suit to recover possession, though in the case on hand, such possession is established by the plaintiff. In the absence of plea of adverse possession, the issue as to suit being barred by limitation does not arise for a decision. Therefore, the defence based on adverse possession does not sustain as the said plea also was not pleaded and proved as required under law. Further, the plea of bar of limitation is not open to the defendants in the facts and circumstances of the case. Moreover both these questions being mixed questions of fact and law the High Court need not go into those questions in view of the concurrent findings recorded by the Courts below on all the issues involved in the suit.

6.9 The last contention of the defendants is that the exhibit A1-certificate, which was said to have been issued under Section 38E of the Act does not contain boundaries and that in the absence of the boundaries in the said document, the plaintiffs could not establish that it relates to the land admeasuring Ac.3.30 guntas mentioned in the schedule of the plaint. Before the Court below the identity of the subject property is not in dispute and this contention does not find place in the defence that was pleaded; and, no evidence was adduced to sustain the defence that the schedule property in the certificate is not the suit property. This contention, which was raised for the first time in this second appeal without any foundation in the pleadings and also any evidence in support of the said contention, is untenable and

unsustainable and is, therefore, rejected.

7. To sum up, the defendants admit that the Narasimhulu was the protected tenant of the property. They also admit the relationship of the plaintiffs with the said late Narasimhulu. The defendants having pleaded that the said Narasimhulu had surrendered his tenancy rights before the Deputy Tahasildar in the year 1968 had failed to prove the said defence. On the other hand the plaintiffs, who are the legal heirs and successors in interest of the said Narasimhulu, having claimed that they had succeeded to the suit property under exhibit A1-38 E certificate had sufficiently established their title. Further, when the plaintiffs sought restoration of the possession from the defendants through the revenue authorities, a notice was issued to the defendants by the MRO. On that the defendants had admittedly filed a writ petition challenging the said notice. The said writ petition was dismissed by this Court directing the defendants to approach the MRO. The defendants for the reasons best known to them did not pursue the remedies available to them under the Act and had failed to approach the revenue authorities. Instead the 1st defendant had filed a suit for Ac.1.22 guntas and that suit for perpetual injunction was decreed *ex parte*. The 2nd defendant's similar suit for Ac.4.10 guntas was dismissed. The question of title was not gone into and was not decided in the suits. Possession of the land was restored to the plaintiffs in the year 1992 under a Panchanama as per the orders of the MRO. According to the plaintiffs, the defendants had forcefully dispossessed them and had trespassed into the property in the year 2005 and hence, they were constrained to file the present Civil Suit for declaration of their tile and recovery of possession. The exhibit-A1 certificate issued under section 38 E has become final and binding not having been challenged as per the procedure established by law. In the writ petition the defendants had claimed that they had purchased the property from Narasimhulu in the year 1975 and had later given a go by

to the said plea. By taking a totally inconsistent stand, the defendants had claimed in this suit that the 1st defendant had purchased Ac 1-22 guntas under a simple sale deed from C.N.Gangaram and C.Ashanna and that the 2nd defendant had purchased Ac.4.10 guntas from the original pattedar K.Narsinga Rao despite the fact that Section 38E certificate under exhibit A1 was issued in favour of Narasimhulu, the predecessor-in-interest of the plaintiffs. The defendants, thus, could not establish that their vendors had got title to property. The law is well settled that no one can convey a better title than what he has. And, furthermore, the sale deeds of the defendants, which were obtained from persons having no title, right and interest, being unregistered the defendant have not acquired any valid title to the suit property or parts of suit property being claimed by them. They did not plead and establish the defence of adverse possession as required under law and the plea of limitation is not available to them in the facts and circumstances of the case, as already held. Having looked at the facts and the evidence in an analytical manner, this Court held supra that the revenue entries made ignoring the 38 E certificate are illegal and that when once the title is established and the defendants had failed to prove adverse possession or any other right to remain in possession, the plaintiffs are entitled to the relief of recovery possession.

8. Having thus given detailed and earnest consideration, this Court finds that there is no substance in any of the questions raised. Therefore, it follows that no substantial questions of law are involved in this second appeal. Based on the oral and the documentary evidence, the Courts below had recorded concurrent well reasoned findings of fact that the plaintiffs have established their ownership and that the defendants have trespassed into the property in the year 2005 and that, therefore, the plaintiffs are entitled to a decree as prayed for, for declaration of title and recovery of possession. In the light of the

concurrent findings of fact recorded by the Courts below, which are found to be justified and sustainable and as no substantial questions of law arise for exercising jurisdiction under Section 100 of the Code, this Court holds that there are no grounds made to either admit or allow this appeal and that the appeal is devoid of merit.

9. In the result, the Second Appeal is dismissed. Nonetheless, the appellants/defendants are granted two (2) months time from the date of receipt of a copy of this judgment to vacate and hand over vacant peaceful possession of the suit schedule property to the plaintiffs. On failure to do so, the plaintiffs are at liberty to recover possession by following the procedure established by law. No costs.

Miscellaneous petitions, pending if any, in this second appeal shall stand closed.

JUSTICE M. SEETHARAMA MURTI

05th June,, 2015
Vjl

[\[1\]](#) 2008(5) ALD 311

[\[2\]](#) 2013(1) ALD 215

[\[3\]](#) 1999(6) ALD 308

[\[4\]](#) AIR 1999 SC 1549

[\[5\]](#) (2004) 1 SCC 271

[\[6\]](#) AIR 2005 SC 4407

[\[7\]](#) (2010) 14 SCC 316