

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

IA No.3 of 2016 (ASMP No.2620 of 2016)
and AS No.1924 of 1995

JUDGMENT:

This appeal is filed questioning the judgment and decree dated 30.10.1995 in OS No.122 of 1981 passed by the Subordinate Judge, Eluru.

The suit OS No.122 of 1981 has been filed initially by one Smt. G. Kotamma against the defendants. Later, after the death of said Kotamma, her legal heirs have been added and they pursued the suit. The suit is filed for a declaration of title initially in favour of the plaintiffs and against the defendants. Later, a relief of recovery of possession from the defendants, costs of the suit and other reliefs including future profits from the date of the suit were added.

According to the averments of the plaint, the suit schedule land, which is an extent Ac.35.82 cents in Kamavarapukota village consisting of two bits Ac.19.13 and Ac.16.69 cents, belonged to local Zamindar, who in turn granted a patta to one Sri N. Bhogayya and his wife- Lakshmi Swarajyam in the year 1947. Later, the said Bhogayya and Lakshmi Swarajyam transferred the said property, through a sale deed executed in favour of the first plaintiff on 14.03.1967. The plaintiffs claimed to be

in possession and enjoyment of the properties since then and as the defendants have made some attempts to claim a right in the property and also to encroach into the same, the suit is filed for a declaration of title and for recovery of possession.

On the other hand, the defendants have denied the case set up by the plaintiffs. They state that the land in which the plaint schedule property is situated was donated by the Zamindar to the Sri Acharya Vinobhabhave Movement and that later the defendants and landless poor were allotted plots by the Zilla Sarvodaya Sangham; defendants also state that the plaint schedule property was not correctly described and they stated that each part of the land is under occupation of the separate defendants; they denied that the sale deed 14.03.1967 is a valid document; the plaintiffs were never in occupation and is possession of the land and that defendants have also perfected their title by adverse possession. They also questioned the various documents filed by the plaintiffs.

On the basis of these pleadings, the following seven issues were framed by the lower Court.

- i) Whether the plaintiffs are entitled for the relief of declaration and injunction prayed for?

- ii) Whether the plaintiffs are entitled to recover the possession of the suit schedule?
- iii) Whether the proceedings of the Board of Revenue dated 21.04.1977 are valid and binding on the defendants?
- iv) Whether the suit schedule land forms part of the lands donated to Bhudana Yegna, if so, the suit is not maintainable?
- v) Whether the defendants are perfected their title to the suit schedule properties by adverse possession?
- vi) Whether the Court Fee paid is not correct?
- vii) To what relief?

In the suit, on behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A.1 to A.31 were marked. For the defendants, DW.1 to DW.14 were examined and Exs.B.1 to B.7 were marked. Ex.X.1 to X.4 were also marked. Basing on this oral and documentary evidence and after hearing the submissions made by both the parties, the plaintiffs' suit was decreed. A declaration of title was given and the plaintiffs were also held to be entitled for recovery of possession of the property. Questioning the same, the present appeal has been filed.

This Court has heard Sri M.V. Durga Prasad, learned counsel appearing for the appellants/defendants and Sri K. Ananda Rao, learned counsel appearing for the respondents/plaintiffs.

The learned counsel appearing for the appellants/defendants in the suit took a lot of pain and drew the attention of this Court to various aspects of the case. The matter was argued at length. Elaborate submissions were also made on the merits of the suit. A written brief dated 17.08.2015 and a list of citations dated 30.07.2018 were filed and the same are taken on file.

As this is a first appeal and for the sake of convenience, the parties are referred to as the plaintiffs and defendants only.

The first and foremost point that is to be noted is that the land as described in the plaint schedule is situated in Kamavarapukota village. The first bit is measuring Ac.19.13 cents in Survey No.295/2 and the second extent is in Survey No.296 measuring Ac.16.69 cents. No boundaries are furnished for either extent or for the total land. It is also not really in dispute is that vast extents of land in this village belonged to the Zamindar of the local villages called Yelamarru and Penjendra. The said Zamindar is said to have alienated the property to the plaintiffs' vendors, as per the plaintiffs. The defendants on the other hand claim that the property was donated by the Zamindar to Sri Acharya

Vinobhabhave movement and that in turn the land was allotted to the defendants who are landless poor. Thus both parties trace their title to the said Zamindar only.

It is also to be noted that the suit is filed for a declaration of title and for recovery of possession. Therefore, as per the settled law on the subject, which need not be repeated, the burden of proving title and possession lies squarely upon the plaintiffs. The weaknesses of the defendants case or the infirmities in the defendants case will not entitle the plaintiffs for a decree. The plaintiffs will have to prove their case and also succeed or fail on the strength of their case only. In ***Sajana Granites, Madras v. Manduva Srinivasa Rao***¹ a Division Bench of this Court held in para-10 as follows:

“The Supreme Court in ***M.M.B. Catholics v. M.P. Athanasius*** (AIR 1954 SC 526), ***M.M.B. Catholics v. Taalo Avira*** (AIR 1959 SC 31) and this Court in ***C. Audilakshamma v A. Rama Rao*** (AIR 1973 AP 149) held that plaintiff in a suit for declaration of title, and for recovery of possession, can succeed only on the strength of his own title and that it is not obligatory on the defendants to plead and prove the possible defects in the plaintiffs title and so if the plaintiff fails to establish his title, even if the defendant fails to establish his own title, plaintiff must be non suited. In this case since appellants are seeking declaration of their title to the suit property they have to establish their title; and cannot expect relief on the basis of the

¹ 2002 (1) ALT 466

weakness of the case of respondents 1 and 2, or on the basis that the evidence adduced by respondents 1 and 2 does not establish their title to the suit property.”

As the suit is one for declaration of title and for recovery of possession, this Court is of the opinion that the lower Court committed an error in deciding the issue Nos.1 and 2 at the very end. The lower Court proceeded to decide the other issues first and then came to a conclusion that in view of the findings on issue Nos.3 and 4, the plaintiffs are entitled for a declaration and for recovery of possession. In view of the settled law on the subject; the alleged failure of the defendants in the suit (present appellants) to prove their title, possession and enjoyment will not entitle the plaintiffs for a declaration that they are the owners of the property and for a consequential relief of recovery. As mentioned in the earlier part of the judgment, the primary duty is cast upon the plaintiffs to plead and prove their title and possession of the property. The weaknesses of the defendants case or the failure of the defendants to prove their title and possession will not entitle the plaintiffs for a declaration. Hence, the first point to be decided is whether the plaintiffs proved their title. As a corollary to this, the second point is whether the plaintiffs are entitled to seek recovery of the possession.

To decide these two points, this Court is proceeding to look into the documents filed and the oral evidence adduced by both the parties. The submissions made by both the learned counsel during the course of hearing have also been briefly summarized and are again touched upon.

At the outset, the learned counsel for the appellants vehemently argued that the plaintiffs miserably failed to prove the existence of the property or their title, possession and enjoyment of the suit schedule property. In reply, the learned counsel for the respondents argued that they have filed the pattas of April 1947 followed by proof of possession, rough patta granted by the Government, apart from the sale deed. He also argued that proof of possession is borne out by the tax receipts.

Therefore, in order to appreciate the contentions of both the learned counsel, this Court has to analyze the oral and documentary evidence in this case. The first witness, who was examined on behalf of the plaintiffs, is the first plaintiff. Plaintiffs 2 and 3 are her sons. She has marked Exs.A.1 to A.28. According to the deceased/first plaintiff, the property was purchased by her mother-in-law, through a registered sale deed on 14.03.1967, which was marked as Ex.A.1. PW.1's

husband and the son of the owner of the property (as per the plaintiffs) died in the year 1983.

A reading of the cross-examination of this witness (PW.1) reveals that she does not know anything about the boundaries or the crops in the land. She does not know whether there are agricultural lands to the west of land. She does not know the details like boundaries, crops raised in the schedule land, if the vendors of deceased plaintiff purchased the schedule land from the Zamindar of Yelammaru Estate etc. She states that the 'sale deed' executed by Zamindar might be available with her mother-in-law. She does not know the patta number for the schedule land. She does not know the details of the documents filed by her. She never went to the land and she never saw it. She does not know whether the entire land is divided into small plots or it is not a single plot. She cannot give the names of the ryots adjoining the schedule land. She does not know about issuance of notice to the defendants in the proceedings under Ex.A.27. She does not know about filing of a Writ Petition by the defendants in the W.P.No.8077 of 1981 on the file of this Court. She does not know about Exs.A.15 and A.16. In Exs.A.15 and A.16, patta numbers are noted as '112 and 114'. In Ex.A.1, patta numbers are noted as

'761 and 762'. She does not know whether any document is filed to correlate the pattas and if the same relate to the suit schedule land. She however states that it is not correct to say that the tax receipts filed by her does not relate to the suit land. She does not know whether Ex.A.14 does not bear the signature of Tahsildar or his seals.

The second witness examined is one Sri N. Bhogayya. He states that he was the original pattadar of the land and that himself and his wife got pattas from the Zamindar. He deposed that Exs.A.15 and 16 are the pattas granted by the Zamindar to himself and his wife. He states that the land was delivered to him and his wife. He also states that he got the property along with his wife and another in Ex.A.1. In the cross-examination, PW.2 deposed that he does not remember the name of the person to whom he paid Najarana, that there was a person at Kamavarapukota working on behalf of Zamindar, but he cannot recollect the name. He does not remember who filled up columns in Exs.A.15 and A.16. The person deputed by the Zamindar used to collect cists from them but he does not remember his name. He has handed over the original rough pattas to the purchaser. He does not remember whether any fair patta was issued.

He does not remember whether he went to Settlement Officer at any time. Survey number for his land and his wife's land is '190'. He does not remember the boundaries of their land. He admits that there is no documentary proof for delivery of land by the Zamindar to himself and his wife. He does not have any account to show that he cultivated the land.

The next witness who examined is the attester of Ex.A.1. He was examined as PW.3. Apart from his evidence about the attestation of sale deed, he also states that the land was covered with shrubs and bushes by the date of the sale deed. He states that later the first plaintiff's son got the shrubs and bushes removed from the land and raised cashew-nut plants in the field for about 10 years. This witness in the cross-examination admits that land was donated to Sri Acharya Vinobhabhave and that a Cooperative Society was formed. He also admits that the land donated to Sri Acharya Vinobhabhave was distributed among the members of the said society. He also admits that he does not know the boundaries of the land purchased by the first plaintiff. However, in the cross examination, he stated that the southern boundary for the land is Kasanna Kunta, northern boundary is Vusirikaaya

baata, western boundary is the land of ryoths and eastern boundary is also baata. He also admits that the persons to whom the land was given have also raised the cashew nut plants in their plots. Apart from this, he admits that there is a patta for Ac.36.00 cents in the name of the original owner and his wife. According to this witness, there is a single patta in the name of Bhogayya and his wife, who are the vendors of Ex.A.1.

To summarize, a reading of the oral evidence shows that the first witness does not have any knowledge about the boundaries of the property, she has no knowledge about the details of land nor the crops raised. She also said that she never went to the land and never saw the land also. She admits that neither does she know the patta number of the schedule land or the details about the documents filed by her. In addition, she states that the 'sale deed' executed by the Zamindar might be available with her mother-in-law. She also agrees that in Ex.A.15 and A.16, patta numbers are noted as '112 and 114', whereas patta numbers in Ex.A.1 sale deed are noted as '761 and 762'. She does not know if they are co-related.

In addition to this, the second witness is the original owner as per plaintiffs. He deposed to the effect

that he does not remember the boundaries of the land. He admits that there is no documentary proof for the delivery of the land by the Zamindar to him and his wife and finally he states that he does not have any account to show that he cultivated the land. He states that the survey number of the land is '190'. He states that the survey number of the land is '190'. With regard to Ex.A.15 and A.16 he states that he does not know who filled up the column in the said document. The third witness is only an attester of the sale deed; these admissions are dealt with later on.

Therefore, a reading of the plaintiffs' evidence clearly shows that the witnesses who were examined did not have any personal knowledge about the documents or their contents and that they merely marked the documents. The submission of the learned counsel for the respondents/plaintiffs is however that there is a registered sale deed which is backed up by the other documents. Therefore, the presumption is that the contents of the document are valid as it is a registered document in favour of the plaintiffs in the suit. In reply thereto, the learned counsel for the appellants/defendants argued that the mere fact that the documents are marked cannot lead to a conclusion that they are

proved. He points out that there is a clear and categorical denial in the written statement about the sale deed marked as Ex.A.1. No documentary or other proof is filed and no oral evidence is introduced to show that the land was in fact allotted in 1947 or that it was cultivated and enjoyed either by the vendors or by purchasers under Ex.A.1. He points out that the entire oral evidence is silent about the title; possession and enjoyment.

This Court notices that the case of the plaintiffs is that the original allottees were given the land in April 1947. They have executed a sale deed in 1967. The suit was filed later in 1987. Thus there are two periods in this case: 1947-1967 and 1967-1987. In proof of title; possession and enjoyment for the period up to 1967, the plaintiffs have filed Exs.A.1, A.15 to A.24. All these documents are prior to 1967. Ex.A.1 is a certified copy of the sale deed. The original of the same is supposedly mortgaged to the land mortgage bank. The learned counsel for the appellants/defendants argued that the document cannot be received in evidence as it is secondary evidence and no foundation is laid in the plaint or in the evidence for receipt of the same. In addition, he submits that there is no proof to show that there is a mortgage created with the original of the sale

deed viz., Ex.A.1. The learned counsel for the respondents/plaintiffs on the other hand pointed out that when Ex.A.1 was marked, there was no objection and that therefore, no objection can be raised at this stage. This Court agrees that the submission of the learned counsel for the respondents/plaintiffs that when Ex.A.1 was marked no objection taken and the admissibility of the said document cannot be questioned now. However, this Court finds sufficient strength in the submission of the learned counsel for the appellants/defendants that the proof of the mortgage is not forthcoming. The document marked as Ex.A.2 does not disclose that the original of Ex.A.1 was actually deposited as a security for a loan and that a mortgage is subsisting. The details of the loan etc., are not forthcoming. Therefore, this Court does not have any material to a conclusion that the original of Ex.A.1 is deposited with the bank for a loan. No reasons are forthcoming why the original of Ex.A.1 is not marked.

Exs.A.15 and A.16 are the pattas issued in favour of the vendors of Ex.A.1. Both these documents are dated 02.12.1954. As pointed out by the learned counsel for the appellants/defendants, the pattas are granted for land in Maddukuru village. These pattas also relate to

one particular year, which is Fasli No.1364. They do not disclose that the lands were actually allotted or given earlier in the year 1947. The pattas admittedly are for one Fasli/year only. Exs.A.17 to A.23 are the tax/nazarana receipts, which are said to have been paid by the original pattadars. Exs.A.17 and A.18 are dated 11.04.1947. The rest are for different years. The learned counsel for the appellants relies upon the endorsement in Telugu at the bottom of all these receipts and states that only the receipts containing the seal/stamp of the estate will be valid. The endorsement on the document itself says that loose sheet receipts are not valid. The learned counsel points out that none of these exhibits contain the seal or the stamp of the estate. Therefore, the learned counsel submits that these documents cannot be relied upon for the purpose of proving that the vendors of Ex.A.1 were in possession and enjoyment of the suit schedule property from 1947 or even later. Exs.A.25 and A.26 are rough pattas and Ex.A.27 is an order dated 21.04.1977 passed by the Commissioner, Survey Settlements and Land Records. The learned counsel for the appellants/defendants submits that a rough patta is not a document of title. He relied upon a Division Bench judgment reported in **R. Elumalai Chetty v. R.**

Rathnavelu Chetty² wherein it is clearly held that a rough patta is only a notice issued to the holder of the land with a view to enable him to make his representation. In the process of carrying out the resettlement operations and only after hearing the objections, further grant of a regular patta is contemplated. The Division Bench clearly held that a rough patta does not have any bearing on the question of title, which can be decided by a Civil Court.

Coming to order under Ex.A.27, it is noticed that it is issued by the Government of Andhra Pradesh and by the office of the Commissioner of Survey, Settlement and Land Records on 21.04.1977. The ryothvari patta was directed to be issued to Kotamma and Venkateswara Rao for the lands in Survey Nos.295/2 and 296 of Kamavarapukota village. It is noticed that this document dated 21.04.1977 is the subject matter of a Writ Petition bearing No.8077 of 1981 and the said order was marked as Ex.B.1. The defendants in the suit have challenged the issuance of this order dated 21.04.1977. The Hon'ble High Court in Ex.B.1 order directed that the writ petitioner should obtain an appropriate relief in the pending suit and therefore, the writ petition was

² 1970 SCC Online AP 123 = (1971) 2 ALT 296

dismissed with that direction. In addition to this, Ex.A.28 is marked by PW.1 and it is a rough sketch of the suit schedule property. But in the cross-examination, it is clearly admitted that it is not signed by any officer.

The documents for the period after 1967 are Exs.A.3 - A.14. Of these; the receipts Ex.A.3 - A.9 are all dated 11.12.1976. The receipts Exs.A.12 - A.14 are dated 21.06.1981. They do not establish the possession and enjoyment from 1967-1981. In fact, Ex.A.12 and A.13 are paid about 8 days before the filing of the suit on 29.06.1981. Ex.A.10 and Ex.A.11 are notices issued to the plaintiffs' vendors Bhogayya and Swarajyam calling for objections about the lands mentioned therein. These documents are neither dated nor signed. Ex.A.14 is a ryot passbook. It is also not signed; stamped etc. It is not clear who issued the same or whom it was issued. PW.1 was specifically cross-examined on this and she said she does not know of Ex.A.14 does not bear the signature or seal of the Tahsildar.

The learned counsel for the appellants/defendants pointed out that an analysis of the documentary evidence makes it clear that the plaintiffs did not discharge their primary burden of proving their title and possession of the property. The learned counsel for the respondents on

the other hand pointed out that both the title and possession are proved. The learned counsel for the respondents/plaintiffs argued that as per the Act 26 of the Andhra Pradesh (Andhra Area) Estates (Abolition And Conversion Into Ryotwari) Act 1948, if a ryot was in possession of the property prior to 01.07.1945, the Government has a right to issue a patta in view of the pre-existing rights. Ex.A.15 and A.16 are the pattas issued by the Zamindar dated 02.12.1954 while Exs.A.17 and A.18 are the receipts of 1947. Therefore, the learned counsel contends that the plaintiffs in the suit have proved that their vendors were in possession and that therefore, they had valid title to the property.

In reply thereto, the learned counsel for the appellants/defendants argued that the plaintiffs have not proved that they were given a patta prior to 1947. The two receipts which are marked as Ex.A.17 and A.18, which bear the date 11.04.1947 do not prove the date on which the two persons named were put in possession. The two documents merely show payment of some tax. In addition, according to the learned counsel for the appellants/ defendants, the endorsement on the receipts is to the effect that the receipts should contain the seal and stamp and that loose sheet receipts cannot be taken

as valid. He pointed out that the very fact that the receipt itself contains this restriction makes it clear that the estate was conscious of the potential misuse and therefore prescribed that every receipt should be stamped with mohar/seal of the estate. Therefore, the learned counsel submits that Exs.A.17 and A.18 do not prove that the vendors of the plaintiffs have pre-existing rights. Even Exs.A.16 and A.18 are documents which show the patta granted for a particular year only viz., Fasli 1364 and these documents are actually issued in the year 1954 and are after the cut off date. Therefore, the contention of the learned counsel for the appellants/defendants is that there is no pre-existing right in favour of the plaintiff's vendors. This Court concurs with the said submission of the appellant/defendant. This Court holds that the burden cast upon the plaintiffs to prove their title has not been discharged.

The other point on the question of title is the plea of adverse possession raised by the defendants/appellants. The learned counsel for the respondents/plaintiffs argued that by raising the plea of adverse possession in para-13 of the written statement, the defendants have admitted the title of the plaintiffs. It is his submission that implicit in such a plea is the admission that the

opposite party was the initial owner of the property but the same was extinguished by the open; hostile possession with animus. Therefore, the learned counsel argued that nothing else needs to be proved by the respondents. The learned counsel for the appellants submitted that in addition to the pleading, the entire evidence should be seen to decide this submission. He states that the so called admission is satisfactorily explained.

This Court notices that the pleading in the written statement is silent about the date of the possession; about the animus and hostile intention etc., for the statutory period. The pleading of adverse possession is thus not as required by law. The defendants are also claiming title to the very same land from the Bhoodan/Vinobha Bhawe Movement. In addition, an examination of the oral evidence of DWs.1 to 10 and DW.13 shows that they have not deposed about adverse possession at all. They claim they were all allotted land under the Vinobha Bhawe Movement. Some like (DW.7/DW.10) do not even know the plaintiffs (Kotamma) or her claimed predecessors in title (N. Bhogayya or Swarajyam). Thus, in the oral evidence adduced the plea of adverse possession is not forthcoming at all. Only the

plea of independent title to the land and possession are asserted. The plea of adverse possession appears to be a legal plea raised without being aware of the actual consequences and implications. The appellants/defendants cannot be non-suited entirely on the basis of this plea in the written statement which was not at all followed up in the oral evidence. This Court also has a doubt if the defendants were actually aware of the concept of the plea of adverse possession. Besides, there is a dispute in this case about the actual extent, survey numbers and boundaries of the land in possession of the plaintiffs. The learned counsel for the appellants in the course of his submission and his written brief stated that the suit land is 'fictitious' and that identity is not proved. So 'adverse possession' of a definite land owned by a person but enjoyed by another with animus etc., over the statutory period is not proved.

Viewed in a total perspective, this Court therefore holds that the plea of adverse possession raised in this particular case is not enough to non-suit the defendants or to decree the plaintiffs case.

The next question that survives for consideration is the Bhoodan donation. It is a fact that it is clear from the record that certain land was donated by the

Zamindar to Vinobhabave movement. A xerox copy of A.P. gazette was marked as Ex.B.7. A part of this gazette notification No.43 dated 29.10.1970 was already marked as Ex.B.7 and some portion was not marked. The petitioners have filed an application when the matter was remanded to the lower Court. But as the remand was for a limited purpose, the lower Court did not rightly receive the document. Therefore, in the course of the hearing of appeal in July 2016, an application was filed in ASMP No.2620 of 2016 seeking permission of the Court under Order 41 Rule 27 CPC to receive a certified copy of the said A.P. Gazette notification. The same is obtained from the A.P. State Archives Department; as can be seen from the endorsement of the same. In view of the presumption under Section 81 of the Indian Evidence Act, this Court is of the opinion that the gazette notification is to be received as evidence. It is produced from the State Archives only as per the seal on the document. The appellants have also proved their due diligence and this Court is of the opinion that this document is also necessary for adjudication of this matter. The requisites of Order 41 Rule 27 CPC are fulfilled. This document is therefore received in evidence and is marked as Ex.B.8. This document shows that an extent of 539.64 cents of

land was donated by the Zamindar to Bhoodana Yegna. For this limited purpose alone, this document is received in evidence. Even PW.3 admits that land was donated to the movement.

The contention of the defendants is that the land which is mentioned in the plaint does not exist on the ground. In the written arguments filed, they call the land 'fictitious'. There is an entire block of about Ac.270 cents, out of which some of the defendants were allotted plots to an extent of Ac.4.00 cents and Ac.8.00 cents. A brief description of each of the plots is given in the written statement. The entire plot and its boundaries are described in para-17 of the written statement as East-pathway, North-pathway called Vusirikaya Baata, West-patta lands, South-Kasanna Kunta. As per PW.3, the southern boundary of the land donated to Vinobhabave is Kasanna Kunta. The northern boundary is Vusirikaya Baata. The eastern boundary is also baata and the western boundary is the land of the ryoths. Therefore, it is clear that the land donated to Vinobhabave under the Bhoodana movement and given to the defendants is as described in the written statement by the defendants and the boundaries are also confirmed in the plaintiff's evidence by PW3. DW.4 also deposed about the four

boundaries also and there is no cross-examination about the same.

This Court also notices and as was pointed out by the learned counsel for the respondents/plaintiffs that DWs.3 and 7 have stated that they are not claiming the land within the boundaries mentioned in Ex.A.1. DW.13 stated that he has nothing to do with the lands in Survey Nos.295/2 and 296. DW.1 also denied that he has knowledge of the pattas granted. The lower Court did not accept that there was an actual donation of the land in Survey No.60. The learned counsel for the respondents/plaintiffs argued that the order of the lower Court is a reasoned order and the Court noticed that Ex.A.1 does not show that the defendants land is actually situated within the boundaries of Ex.A.1 or if the same is the land in Ex.A.1. Therefore, the contention of the learned counsel for the respondents/plaintiffs is that even if there is some donation to the Bhoodan as the land does not tally on the ground, it cannot be said that the defendants have a better claim over the property. This Court after examining the plaintiffs' evidence and after hearing the submissions that were made across the bar about Vinobabave movement etc., which were discussed earlier in this judgment is of the opinion that the issues

that have to be decided primarily are issue Nos.1 and 2. Issue No.4 is an issue raised by the defendants.

This Court notices that the plaintiffs did not describe the property with certainty. The boundaries mentioned in Ex.A.1 are not reflected in the plaint with the suit schedule property. No reason is forthcoming why the plaintiffs have not described the suit schedule property with boundaries. The defendants have asserted that there was no delivery of possession under Ex.A.1 sale deed. The defendants have asserted that the plaintiffs were never in possession of the plaint schedule property. As noticed earlier, the original allotment of the land or the granting of patta in 1947 is not borne out by record. The only two documents that are filed are pattas and the same are marked as Exs.A.16 and A.17. These are for a specific year only and are issued in 1952. The receipts which are filed as proof of possession do not bear the seal or the stamp of the estate. The receipts themselves contain a note of caution that only the documents with the stamp and seal are considered as valid documents.

An examination of Exs.A.15 to A.24 which are for the period prior to Ex.A.1 sale deed do not demonstrate that the plaintiffs' predecessor in interest did have a valid

allotment in their favour and that they are in possession and enjoyment of the property. Even the original of Ex.A.1 is not filed. Although the certified copy is marked, no reason is forthcoming to show why the original is not marked. The tax receipts which are filed subsequent to 1961, like Exs.A.3 to A.9 are tax receipts relating to the year 1976 only. The receipts Exs.A.12 to A.14 are all dated 21.06.1981. The suit was filed on 29.06.1981. Therefore, the payment of tax with the impending legal proceedings in mind cannot be ruled out. Exs.A.29 to A.31 are again tax receipts. They are for the period subsequent to the filing of the suit and they are not being considered as they are 'post-litigation document'.

In the light of all of the above, this Court is of the opinion that the plaintiffs failed to discharge their primary duty of proving their title, possession and enjoyment of the suit schedule property. Admittedly, the defendants are in possession of the property as can be seen from the prayer for recovery of possession that is also made in the suit itself.

Both the learned counsel essentially concentrated on issues 1 to 4 only and advanced their arguments on the same. Therefore, this Court holds that the plaintiffs in the suit and the respondents herein have failed to

prove their title to the property or their possession and enjoyment of the same. The respondents in the appeal and the plaintiffs in the suit are not entitled to recover the possession of the property. In this view of the matter, the finding of the lower Court on issue Nos.1 and 2 are reversed. The plaintiffs have failed to prove their title, possession and enjoyment. Therefore, both the issues 1 and 2 are held against the plaintiffs/present respondents. Issue Nos.5 and 6 were not argued at all. This Court is also not considering the same.

Issue No.4 is whether the suit schedule land forms part of the land donated to Bhoodan movement. In the case on hand, a lot of arguments were advanced on this land being a part and parcel of the land donated to Bhoodan movement etc. The defendants have argued that the land was allotted to them under Bhoodan movement, but they could not prove the exact correlation between the suit schedule land and Bhoodan land. However, in the light of the evidence adduced by the plaintiffs, the existence of the suit schedule land on the ground and its definite boundaries itself are in doubt. The plaintiffs have not pleaded and proved with certainty, the existence of this land on the ground with the definite boundaries mentioned in Ex.A.1. Therefore, this Court is of the

opinion that the other issues relating to bhoodan land and the jurisdiction of the court to entertain the case do not arise for decision as it is not proved categorically that the defendants' land is a part and parcel of the property donated by the Zamindar to the Bhoodan movement. Although a lot of arguments were advanced on this issue, this Court has taken the view that once the plaintiffs have failed to discharge the primary liability of proving title; possession etc., the rest of the issues pale into insignificance. Issues 4 and 5 do not arise for actual consideration, in view of this Court's findings on issues 1 and 2.

In this view of the matter, this Court is of the opinion that the respondents/plaintiffs in the suit have failed to prove their case.

In addition, certain additional grounds were also raised after the matter was remanded to the court. Ex.A.32 is a Will executed by the first respondent. She died during the course of the case. Her legal representatives wanted to come on record. The matter was then remanded to the lower Court to give a finding on the correctness of the Will dated 01.03.1984 propounded by the plaintiffs 2 and 3/present respondents 2 and 3.

The lower Court came to a conclusion after examining PW.4 (second plaintiff) and the scribe-PW.6 that the Will is validly executed. A submission was made on the alleged suspicious circumstances. The lower Court analyzed the evidence and noticed that the Will has been lying in the Court since 1988 when it is filed by the legal representatives. The fact that the Will is also registered lead the Court to the conclusion that the Will is validly executed. This Court finds no reason to interfere with the said finding.

The last point is about the Commissioner's Report. An Advocate Commissioner was appointed in this case to inspect the property. He visited the site and also filed his report. However, his report was not marked in evidence. The original report is not in the appeal case papers as the same was not a part of the evidence. The learned counsel for the appellants submitted case law that this report should be received and considered while the respondents objected to the same. The matter was reopened and it was pointed out the original Commissioner's Report is not available; that only a copy of the same was available in the paper book filed by the appellants. The learned counsel stuck to their respective stands.

This Court after considering the submissions made is of the opinion that the report cannot be considered now as it was not formally proved and marked in evidence. The time tested method of filing objections; examining the Commissioner etc., are to be followed before it can be urged that the report should be considered as formally admitted into evidence. Hence, this Court is not considering the copy of the Commissioner's Report filed with the papers.

Finally, this Court is of the opinion that the appellants/defendants have made out a case for interference by this Court. Accordingly, the appeal is allowed and IA No.3 of 2016 (ASMP No.2620 of 2016) is also allowed. The judgment and decree dated 30.10.1995 in OS No.122 of 1981 passed by the Subordinate Judge, Eluru are set aside. In the circumstances of the case, there shall be no order as to costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 19.12.2018
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