

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

APPEAL SUIT Nos.1490 of 1996 and 1582 of 1997

APPEAL SUIT No.1490 of 1996

Between :

Voddapalli Anjaiah S/o.Yellaiah
and eleven another

... Appellants/Defendant Nos.13 to 24

AND

Shaik Sayeed S/o.Shaik Mohammad
and twenty one others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 19.08.2015

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTH

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

**HONOURABLE SRI JUSTICE M. SATYANARAYANA
MURTHY**

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+ APPEAL SUIT NOS.1490 of 1996 and 1582 of 1997

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% Dated 19.08.2015

Boddapalli Anjaiah S/o.Yellaiah and eleven others

.... Appellants

VERSUS

\$ Shaik Sayeed S/o.Shaik Mohammad and twenty one others.

... Respondents

! Counsel for Petitioner: Sri B. Vijaysen Reddy

^ Counsel for Respondents: Sri Y. Rama Rao for R.1

Sri V.Ravi Kiran Rao for R.3, R.6 &

R.6

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 1987 (2) ALT 46 (NRC)
2. AIR 2004 AP 167

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.Nos.1490 of 1996 and 1582 of 1997

COMMON JUDGMENT:

Defendant Nos.13 to 24 in O.S.No.162 of 1988 on the file of the Subordinate Judge, Karimnagar filed A.S.No.1490 of 1996 and defendant Nos.1 to 4 in O.S.No.162 of 1988 filed A.S.No.1582 of 1997, challenging the degree and judgment dated 13.02.1996 where under plaintiff No.1 is declared as distant kindred of late Abdulla Bin Musallam, who was the pattadar of the suit land and plaintiff Nos.3 to 7 are declared

as owners and possessors of the suit schedule land being purchasers from defendant No. 5, 6 and 8 to 11.

2. For convenience of reference, the ranks given to the parties in O.S.No.162 of 1988 before Subordinate Judge, Karimnagar, will be adopted throughout the judgment.

3. Plaintiff Nos.1 and 2 filed the suit for declaration that plaintiff No.1 is the heir of late Abdulla Bin Musallam, who was pattadar of suit schedule property, being the nearest distant kindred under the Muslim Law (Sunni) and Plaintiff Nos.3 to 7 as owner and possessors of the suit land and for grant of perpetual injunction restraining defendant Nos.1 to 4 from interfering with the possession and enjoyment of the suit schedule property by the plaintiffs alleging that late Abdulla S/o Musallam was the pattadar, owner and possessor of the agricultural land, which is more fully described in the schedule annexed to the plaint, situated at Reekurthi Village of Karimnagar Mandal and District, during his last days the said Abdulla Bin Musallam became imbecile and was not in a position to carry on agricultural operations nor he was not in a position even to attend his day-to-day affairs. He was admitted in mental hospital at Hyderabad, during his treatment in mental hospital, plaintiff No.2 was looking after and managing the estate of late Abdulla Bin Musallam.

4. Abdulla Bin Musallam died unmarried leaving no lenial descendant or residuaries to inherit his estate under Muslim Law. However, plaintiff No.2 continued in management of the entire estate of late Abdulla Bin Musallam and he has been paying land revenue on behalf of plaintiff No.1 as his distant

kindred. Defendant Nos.5 to 11 claimed to be the nearest heirs of late Abdulla Bin Musallam, they are widow and children of Ali, have executed registered sale deeds in favour of plaintiff Nos.3 to 7, who in turn become the owners and possessors of the suit land. Thus, plaintiff No.1 is the distant kindred and nearest relative of late Abdulla Bin Musallam and plaintiff Nos.3 to 7 being the purchasers of the suit schedule property from defendant Nos.5 to 11 became owners of the suit schedule land and they are in possession and enjoyment of the schedule property from the date of their purchase.

5. Late Abdulla Bin Musallam had only one brother by name Ali, who pre-deceased to late Abdulla Bin Musallam, leaving behind his wife and children, therefore, they are legal heirs and excluded from succession.

- a. Plaintiff No.1 is the great grand son of Mohasina Bee W/o.Shaik Abdul Rahman, who was paternal aunt of late Abdulla Bin Musallam. Consequently, plaintiff No.1, who is the nearest living distant kindred to the exclusion of remoter and as such he is entitled to claim rights in the estate of late Abdulla Bin Musallam.
- b. While the matter stood thus, plaintiffs came to know about issue of proceedings initiated by defendant No.1 under the Andhra Pradesh Escheats and Bona Vacantia Act, 1974 (for short, 'the A.P. Act of 1974) or under Section 60 of A.P.(T.A.) Land Revenue Act.
- c. In pursuance of the alleged proceedings, defendant No.3 issued memo bearing No.B1/2910 dated

02.07.1988 in pursuance of defendant No.1's proceedings No.B6/3074/87 dated 29.05.1987 directed defendant No.4 to take possession of the entire agricultural lands ie., suit schedule property of late Abdulla Bin Musallam.

6. The plaintiffs on coming to know about the alleged fact of taking possession of the property approached this Court by filing W.P.No.10179 of 1988. While disposing of the said writ petition by order dated 08.07.1988, this Court was pleased to direct the plaintiffs to take appropriate civil proceedings to establish their claims as legal heirs and directed defendant No.3 not to evict the plaintiffs from the land in question for a period of three months from the date of order.

7. In pursuance of the direction in the writ petition, the plaintiffs got issued a legal notice dated 18.07.1988 under Section 80 C.P.C. to defendant Nos.1 to 4, but no purpose was served. Inasmuch as the plaintiffs were not parties to the proceedings issued by defendant Nos.1 to 3 referred supra, no relief to set aside the proceedings was sought for. Hence, claimed the aforesaid reliefs by filing the suit.

8. Defendant Nos.1 to 3 filed written statement and resisted the claim alleging that late Abdulla Bin Musallam died unmarried and he was a lunatic and did not leave any heirs to succeed his estate. Therefore, the schedule property became escheat and vested on the Government. Plaintiff No.2 has no authority or power of authority for and on behalf of late Abdulla Bin Musallam to claim any right. Plaintiff No.2

was not a natural or legal guardian appointed by any Court or Authority or management of the estate of late Abdulla Bin Musallam. Moreover, the question of authorizing plaintiff No.2 does not arise as late Abdulla Bin Musallam was an imbecile.

9. Plaintiff No.1 is not the heir of late Abdulla Bin Musallam and plaintiff No.2 is not managing on behalf of any one of the legal heirs. Therefore, the defendants denied the claim of plaintiff No.1 being the alleged great grand son of late Mohasine-bee and that she was paternal aunt of late Abdulla Bin Musallam and plaintiff No.1 is living distant kindred, excluded all other remote heirs.

10. The defendants denied the relationship between late Abdulla Bin Musallam and his brother by name Ali, as late Abdulla Bin Musallam died leaving no heirs, his entire property became escheat vested on the Government. Therefore, defendant No.1 issued proceedings bearing No.136/3074/87 dated 29.05.1988 under Section 5 of the A.P. Act of 1974 and the possession of the property was taken by the Government and the Government is in custody. Therefore, the plaintiffs have no right whatsoever in the schedule property of late Abdulla Bin Musallam.

11. The plaintiffs have no locus standi to file the suit as they are not legal heirs and possessors of the property and that the property was undervalued.

12. The plaintiffs are neither in possession of the properties on the date of filing of the suit nor having any title to the suit property. Therefore, the suit for simple declaration without

any consequential relief is not maintainable and on this ground alone the suit is liable to be dismissed and prayed to dismiss the suit.

13. Defendant No.4 did not file any written statement.

14. Defendant Nos.5 and 6 filed separate written statement claiming that they are the legal heirs of late Abdulla Bin Musallam, being the nearest relatives. Plaintiff No.1 claimed to be a distant kindred of late Abdulla Bin Musallam as per Muslim Law and in fact, he is not entitled to claim any right in the property to the exclusion of defendant Nos.5 and 6.

15. Syed Bin Mohammed was blessed with two children, by name, Abdulla Bin Sayeed and Awad Bin Sayeed. Abdulla Bin Sayeed was blessed with two sons by name, Ali Bin Mohammad and Abdulla Bin Musallam. Defendant Nos.5 and 6 are the legal heirs of Ali Been Musallam, who is brother of late Abdulla Bin Musallam (the owner of the suit schedule property).

16. Defendant Nos.5 and 6 pleaded ignorance about the proceedings initiated by defendant Nos.1 to 3 under the A.P. Act of 1974 or under Section 60 of the A.P. (Telangana Area) Land Revenue Act and claimed right in the property as per Muslim Personal Law. Therefore, the suit is liable to be dismissed with costs.

17. Defendant No.13 filed independent written statement almost reiterating the contentions raised by defendant Nos.1 to 3. In addition to the above contentions, it is specifically contended that the suit is filed by plaintiff Nos.1 and 2 for declaration that plaintiff No.1 is the legal heir of late Abdulla

Bin Musallam and later colluded with defendant Nos.5 to 11 and set up a false claim to be the heirs of late Abdulla Bin Musallam during pendency of the suit and executed registered sale deed in favour of plaintiff Nos.3 to 7 individually and also Abdulla, who is the son of defendant No.2 Shaik Saheeda i.e., plaintiff No.3 is no other than the wife of plaintiff No.1. Plaintiff No.4 is closely related to plaintiff No.1. Plaintiff No.5 is the brother's wife of plaintiff No.1 and plaintiff No.6 is the son of plaintiff No.2. Plaintiff No.7 is the brother of plaintiff No.1. Plaintiff Nos.1 and 2 are the cousins as well as brothers-in-law. Plaintiff Nos.1 to 7 are interrelated and plaintiff Nos.3 to 7 are kith and kin of plaintiff Nos.1 and 2. The sale deeds were executed by defendant Nos.5 to 11 are collusive and on the strength of the said sale deeds, the plaintiffs are not entitled to claim any right in the property.

18. It is further contended that defendant Nos.1 to 4 after taking possession of the schedule property on 05.07.1988 under the proceedings initiated under the A.P. Act of 1974, granted eksal patta to defendant Nos.13 to 24 to the extent of about Ac.3.00 each under File No.B1/2788/91 dated 01.09.1991. Since the date of eksal patta, defendant Nos.13 to 24 have been in possession and enjoyment of the land and plaintiff Nos.1 and 2 did not produce any documents to prove their claim. Thereby, they are not entitled to claim any right in the schedule property. Defendant No.13 prayed to dismiss the suit.

19. Basing on the above pleadings, the trial Court framed the following issues.

- i. Whether the 1st plaintiff is a distant kindred of late Abdulla Bin Musallam?
- ii. Whether defendants 5 and 6 are the lenial defendants of late Abdulla Bin Musallam?
- iii. Whether defendants 5 and 6 are excluded from inheritance to inherit the properties of late Abdulla Bin Musallam?
- iv. Whether plaintiff No.2 is managing the landed properties of late Abdulla Bin Musallam during his life time and on his death on behalf of the 1st plaintiff?
- v. Whether the suit as framed is not tenable?
- vi. Whether the suit for bare declaration without the consequential relief of possession is not maintainable?
- vii. Whether the suit is under valued and court fee paid is insufficient?
- viii. Whether the plaintiffs have no locus standi to file the suit?
- ix. Whether the plaintiff No.1 is entitled for the declaration prayed for?
- x. To what relief?

20. The trial Court on 09.07.1993 framed the following additional issues:

- i. Whether late Abdulla is the owner of suit land, whether the 1st plaintiff is the distant kindred?
- ii. Whether the defendants 5 to 11 are the nearest heirs of Abdulla Bin Musallam who are the widow and children of Ali, the brother of late Abdulla?
- iii. Whether the Proceedings No.B6/3074/87 were properly initiated under A.P. Escheats and Bona Vacantia Act, 1974?
- iv. To what relief?

21. The trial Court on 01.03.1994 framed the following an additional issue:

Whether the suit is maintainable in view of the registered sale deed executed by the plaintiffs 1 and 2 in favour of the other plaintiffs?

22. During course of the trial, on behalf of plaintiffs, PWs.1 to 6 were examined, marked Exs.A.1 to A.17. On behalf of defendants, DWs.1 to 9 were examined, Exs.B.1 to B.5 are marked.

23. Upon hearing arguments of both the counsel and considering the oral and documentary evidence, the trial Court held that plaintiff No.1 is the distant kindred of late Abdulla Bin Musallam, who was the pattadar and declared that plaintiff Nos.3 to 7 are the owners and possessors of the suit land having purchased the property from defendant Nos.5, 6 and 8 to 11.

24. Aggrieved by the decree and judgment, defendant Nos.13 to 24 filed A.S.No.1490 of 1996 and raised several contentions challenging the decree and judgment passed by the trial Court.

a. The main contentions urged in the grounds of appeal are that defendant Nos.5 to 11 are not the nearest legal heirs of late Abdulla Bin Musallam and in view of the specific allegation made in the plaint that they are excluded from succession as plaintiff No.1 is alone distant kindred of late Abdulla Bin Musallam. But, contrary to it, the trial Court believed the claim of the plaintiffs and defendant Nos.5 to 11 and declared that plaintiff No.1 is the distant kindred of late

Abdulla Bin Musallam and plaintiff Nos.3 to 7 as owners of the property.

b. The trial Court did not consider the crucial admissions made by PW.1 in his evidence about the exact relationship with late Abdulla Bin Musallam. Similarly, the evidence of PW.3 inspires no confidence as he was convicted under Section 302 IPC. PW.4 is the brother's son of plaintiff No.1 and his evidence is not independent evidence. DW.4 is defendant No.6. DWs.5 and 7 are brothers, DW.8 is mother and DWs.9 to 11 are sisters of DW.4. When DW.4 claiming that defendant Nos.5 to 11 are alone entitled to claim right in the suit schedule property, plaintiff No.1 cannot be declared as distant kindred of late Abdulla Bin Musallam, on this ground alone, the suit is liable to be dismissed.

c. As Ali Bin Musallam, brother of late Abdulla Bin Musallam, pre-deceased to him, therefore, defendant Nos.5 to 11 cannot be said to be the heirs of late Abdulla Bin Musallam, but the trial Court on wrong appreciation of facts, erroneously decreed the suit.

d. Finally, it is contended that when the possession of the property was taken over by the Government by initiating proceedings under the A.P. Act of 1974 and granted eksal pattas in favour of defendant Nos.13 to 24, the plaintiffs are not entitled to claim any relief in the civil Court without challenging the proceedings initiated under the A.P. Act of 1974 and that the plaintiffs though out of possession did not seek relief of recovery of possession, on this ground also the suit is liable to be dismissed, but the trial Court did not

appreciate the facts with reference to law and committed an error in decreeing the suit, finally prayed to allow the appeal by setting aside the decree and judgment of the trial Court.

25. Whereas defendant Nos.1 to 4 filed A.S.No.1582 of 1997 and raising various contentions, the following are the specific contentions urged in the grounds of appeal:

a. Plaintiff Nos.1 and 2 initially filed suit for declaration that plaintiff No.1 is the heir (distant kindred) of late Abdulla Bin Musallam, but later on, in the year 1992 plaintiff Nos.3 to 7 were brought on record and claimed declaration that they are owners of the property. Therefore, the limitation starts from the date of their impleading, but the trial Court did not consider the limitation in proper perspective.

b. The trial Court totally relied on the evidence on record produced by the plaintiffs without considering the evidence regarding initiation of proceedings under the A.P. Act of 1974, taking possession of the property after due compliance of the provisions of the Act, 1974, grant of eksal patta in favour of defendant Nos.13 to 24, thus, committed a grave error in decreeing the suit in favour of the plaintiffs. Thus, the findings of the trial Court are vitiated by illegality and prayed to allow the appeal by setting aside the decree and judgment passed by the trial Court and dismiss the suit filed by the plaintiffs.

26. During course of arguments, the learned counsel for defendant Nos.13 to 24 mainly contended that they are in possession and enjoyment of the property as eksal patta holders by virtue of the proceedings bearing No.B1/2788/91

dated 01.09.1991. Unless they are duly evicted by due process of law, the plaintiffs cannot seek perpetual injunction and relief of declaration that they are in possession of the property. Therefore, the finding of the trial Court is erroneous on the face of record with regard to the maintainability of the suit. Apart from that there is a conflict between plaintiffs and defendant Nos.5 to 11 regarding heir-ship. Moreover, PW.1 himself admitted in evidence that defendant Nos.5 and 6 are the legal heirs of Ali Bin Musallam, elder brother of late Abdulla Bin Musallam. At best defendant Nos.5 and 6 being the residuaries are entitled to claim the estate of late Abdulla Bin Musallam. In such case, the trial Court ought not to have granted relief in favour of plaintiff No.1 declaring him as heir being the distant kindred, that apart, sale deeds executed in favour of plaintiff Nos.3 to 7 by defendant Nos.5 to 11 would not confer any title as those sales take place during the pendency of the suits. But, the trial Court did not appreciate the contention of defendant Nos.13 to 15 with regard to entitlement of the plaintiffs to claim any right in the schedule property.

27. The trial Court did not consider the limitation for filing a suit for declaration of title and committed an error and defendant Nos.13 to 24 requested this Court to re-appreciate entire evidence with reference to law and pass a decree and judgment dismissing the suit while allowing this appeal.

28. Learned Government Pleader in A.S.No.1582 of 1997 almost argued similar to argument advanced by the learned counsel for defendant Nos.13 to 24. In addition to that, it is

contended that the possession of the property was already taken by the Government, leased out to defendant Nos.13 to 24 by issuing eksal pattas and they are in possession and enjoyment of the property. Apart from that, defendant No.1 initiated proceedings under the A.P. Act of 1974 and after due compliance of the procedure contemplated therein, took delivery of possession. Unless the said proceedings are challenged, the plaintiffs are not entitled to claim any relief and prayed to dismiss the suit while allowing this appeal.

29. Considering rival contentions, perusing the material available on record including the decree and judgment, oral and documentary evidence, the points that arise for consideration are as follows:

1. Whether plaintiff No.1 is the distant kindred of late Abdulla Bin Musallam?
2. Whether plaintiff No.1 be declared as heir being the distant kindred of late Abdulla Bin Musallam?
3. Whether late Abdulla Bin Musallam died leaving no legal heirs to succeed his estate?
4. Whether plaintiff Nos.3 to 5, being the purchasers from defendant Nos.5 to 11, are entitled to claim relief that they are owners of the schedule property?
5. Whether the claim of plaintiff Nos.3 to 6 is barred by limitation?

POINT Nos.1 and 2:

30. Undisputed facts in this case are that late Abdulla Bin Musallam was the owner and possessor of the suit schedule property. Late Abdulla Bin Musallam and his brother of Ali Bin Musallam are the sons Abdulla Bin Sayeed and late Abdulla Bin Musallam is the grand son of Syed Bin Mohammed. Similarly, initiation of proceedings under the

A.P. Act of 1974 is also not equally in dispute. The dispute is only with regard to the death of late Abdulla Bin Musallam leaving no legal heirs and the relationship of plaintiff No.1 with late Abdulla Bin Musallam, so also, defendant Nos.5 to 11.

31. To prove that plaintiff No.1 is the heir being distant kindred of late Abdulla Bin Musallam, he himself was examined as PW.1. PW.1 in his examination-in-chief testified about his relationship with late Abdulla Bin Musallam and more specifically stated that his great grandmother is the paternal aunt of late Abdulla Bin Musallam, who died as imbecile and unmarried. Thus, PW.1 is the heir of late Abdulla Bin Musallam. Admittedly, the plaintiffs and defendant Nos.5 to 11 are covered by Hanafi Law of Inheritance. Plaintiff No.1 is not a sharer under Section 63 of the Hanafi Law of Inheritance. Section 67 of Hanafi Law of Inheritance defined distant kindred as follows:

Distant Kindred: (1) If there be no shares or Residuaries, the inheritance is divided amongst Distant Kindred.

(2) If the only sharer be a husband or wife, and there be no relation belonging to the class of Residuaries, the husband or wife will take his or her full share, and the remainder of the estate will be divided among Distant Kindred.

32. Again the Distant Kindred are divided into four classes under Section 68 of the Hanafi Law of Inheritance, namely:

(1) descendants of the deceased other than sharers and Residuaries;

(2) ascendants of the deceased other than sharers and Residuaries;

(3) descendants of parents other than sharers and

Residuaries;

(4) descendants of ascendants how highsoever other than Residuaries.

The descendants of the deceased succeed in priority to the ascendants, the ascendants of the deceased in priority to the descendants of parents, and the descendants of parents in preference to the descendants of ascendants.

33. Clause (2) of Section 68 of the Hanafi Law of Inheritance is the list of Distant Kindred comprised in each of the four classes:

34. Plaintiff No.1 is the Distant Kindred of late Abdulla Bin Musallam as per clause IV (6) of Section 68 of the Hanafi Law of Inheritance, who is entitled to priority over. Undisputedly, plaintiff No.1 is entitled to claim as a heir in the absence of sharers and Residuaries. Defendant Nos.5, 6 and 8 to 11 are the Residuaries under Section 65 of the Hanafi Law of Inheritance. In the cross-examination dated 25.01.1994 PW.1 admitted that late Abdulla Bin Musallam died on 04.12.1984 and his last rituals were performed by defendant Nos.5, 6 and others and late Ali Been Musallam was the elder brother of late Abdulla Bin Musallam. Defendant Nos.5 to 7 are the sons of Ali Bin Musallam. Defendant No.8 is the wife and defendant Nos.9 to 11 are daughters of late Ali Bin Musallam. PW.1 further admitted that defendant Nos.5 to 11 are the nearest heirs of late Abdulla Bin Musallam while denying that they looking after the properties of late Abdulla Bin Musallam during his last days. Strangely, PW.1 admitted that defendant Nos.5 to 11 are the nearest legal heirs and also defendant Nos.5 to 7 are

entitled to succeed the properties of late Abdulla Bin Musallam as his legal heirs and in the absence of defendant Nos.5 to 11, plaintiff No.1 is entitled to succeed the property left by late Abdulla Bin Musallam. Thus, crucial admissions in the cross-examination dated 25.01.1994 totally takes away the rights of plaintiff No.1 to succeed the estate of late Abdulla Bin Musallam. When defendant Nos.5 to 7 are nearest heirs of late Abdulla Bin Musallam, plaintiff No.1 is excluded from succession. Whereas, defendant Nos.5 to 7 being the sons of Ali Bin Musallam, elder brother of late Abdulla Bin Musallam, are alone entitled to claim right in the suit schedule property being Residuaries under Section 65 of the Hanafi Law of Inheritance.

35. It is equally an admitted fact that defendant Nos.5 to 7 executed sale deeds in favour of plaintiff Nos.3 to 7 marked as Exs.A.13 to A.17, whereunder they conveyed the suit schedule in favour of defendant Nos.3 to 6. Curiously, plaintiff Nos.1 and 2 and defendant Nos.5 to 7 entered into compromise during the pendency of the suit and filed compromise petition in I.A.No.1930 of 1992 dated 13.10.1992 and the compromise was recorded by the trial Court. Therefore, in view of the execution of Exs.A.13 to A.17, defendant Nos.5 to 7 ceased to be the owners and plaintiff Nos.3 to 6 became owners of the property by virtue of Exs.A.13 to A.17.

36. The trial Court recorded a finding that plaintiff No.1 is the heir of deceased late Abdulla Bin Musallam being the Distant Kindred. This finding is an apparent error in view of

the admission in the cross-examination of PW.1 dated 25.01.1994. The nearest heirs of late Abdulla Bin Musallam are defendant Nos.5 to 7 excluding plaintiff No.1 to succeed his property. In the absence of defendant Nos.5 to 7, plaintiff No.1 is alone nearest legal heir being Distant Kindred of late Abdulla Bin Musallam. When defendant Nos.5 to 7 sold the suit schedule property under Exs.A.13 to A.17 being the legal heirs of deceased late Abdulla Bin Musallam, plaintiff No.1 cannot be declared as heir being the Distant Kindred. Therefore, declaration of plaintiff No.1 as heir of late Abdulla Bin Musallam as Distant Kindred by the trial Court is erroneous and the same is liable to be set aside. Hence, point No.1 is held in favour of defendant Nos.5 to 7 and against plaintiff No.1. Accordingly, point Nos.1 and 2 are answered.

POINT No.3:

37. The contention of the plaintiff No. is that he is the nearest legal heir being Distant Kindred and impleaded defendant Nos.5 to 11, who are children and wife of deceased Ali Bin Musallam, who is elder brother of late Abdulla Bin Musallam, who are claiming to be the nearest legal heirs being Residuaries under Hanafi Law of Inheritance. The admission of PW.1 in his cross-examination coupled with the evidence of PWs.2 to 6 and established that defendant Nos.5 to 11 are the children and wife of deceased Ali Bin Musallam, elder brother of late Abdulla Bin Musallam. In the entire cross-examination of PWs.1 to 6 nothing was elicited to disprove the relationship between defendant Nos.5

to 11 and late Abdulla Bin Musallam, who died intestate. In the absence of any evidence to discredit the testimony of PWs.1 to 4, the trial Court had no option except to believe the testimony of PWs.1 to 4 regarding the relationship between defendant Nos.5 to 11 with the deceased late Abdulla Bin Musallam.

38. Turning to the evidence of DW.1, who was the Mandal Revenue Officer and according to his evidence, he is the in-charge of the file relating to case bearing No.B1/2788/91 and based on record he deposed before the trial Court. He deposed that he was directed by the Joint Collector's letter bearing No.JC's Spl./37/87 dated 28.10.1987, calling for report from him about the legal heirs of late Abdulla Bin Musallam. Accordingly, he submitted a report to the then Mandal Revenue Officer dated 03.11.1987 to send the same to the Joint Collector, Karimnagar. Thereafter, the Joint Collector conducted enquiry as per the provisions of the A.P. Act of 1974, passed final order on 29.05.1988 vide proceedings No.B6/3074/87, authorizing Mandal Revenue Officer to take possession of the property of late Abdulla Bin Musallam under Section 5 of the A.P. Act of 1974. Accordingly, Mandal Revenue Inspector took possession of the property under a panchanama dated 05.07.1988 in the presence of A. Ashanna, Parasharamulu and Kistaiah, whereas Sarpanch of Malkapoor Village is signed as witness. The Mandal Revenue Inspector by letter dated 06.07.1988 reported about taking possession of the property in the presence of panchas to the Joint Collector. After taking

possession of the property of Ac.36.01 gts., the land was handed over to 12 individuals under eksal pattas to defendant Nos.13 to 24 and they are in possession and enjoyment of the property. He did not testify anything that late Abdulla Bin Musallam died leaving no legal heirs. In the cross-examination, the plaintiffs questioned the very proceedings under the A.P. Act of 1974 and similarly, defendant Nos.5 to 11 also questioned the proceedings while suggesting that they are owners, legal heirs of late Abdulla Bin Musallam under Hanafi Law of Inheritance, but DW.1 pleaded ignorance of plaintiffs' right to claim the property being the nearest legal heirs of late Abdulla Bin Musallam.

39. The Deputy Inspector of Survey was examined as DW.2. His evidence is not relevant for deciding the present controversy regarding the death of late Abdulla Bin Musallam without leaving any legal heir. DW.3 is the Upper Division Revenue Inspector of Gangadhara Village and earlier he worked as Revenue Inspector in M.R.O. Office, Karimnagar, testified about taking possession of the suit property and his evidence is not relevant to decide legal heirs of late Abdulla Bin Musallam. DW.6 is defendant No.12 in the suit related to defendant Nos.5 to 11. According to his testimony originally the land belongs to his father Shaik Saleem. Shaik Saleh is the son of his father's elder brother and his sister is given in marriage to Shaik Saleh and his father had three brothers. One Abudalla was not having any legal heirs and he died unmarried. His brother-in-law Shaik Saleh own some property recorded in the name of late Abdulla Bin Musallam

for his selfish ends also to grab to the lands. At best the evidence of DW.6 is helpful to claim a right in the property of late Abdulla Bin Musallam as the property is an ancestral property. But, no iota of evidence is brought on record to claim that the schedule property is the ancestral property of DW.6. In fact, it was not the case of DW.6 in the pleadings and for the first time he started claiming right in the schedule property on the ground that the schedule property belongs to his ancestors. In the absence of pleading, it is difficult to believe the evidence of DW.6. Therefore, much credence cannot be attached to the testimony of DW.6.

40. Turning to the evidence of DW.7, who is the beneficiary of eksal lease, claiming to be the possessor of the property in view of the eksal patta granted in his favour along with others. DWs.8 and 9 are also beneficiaries of eksal patta, who claimed to be in possession of Ac.3.00 of land each. Their evidence is not relevant to decide late Abdulla Bin Musallam died without leaving heirs. In the entire cross-examination of PWs.1 to 4 nothing could be elicited by the counsel for the defendants, that apart, the evidence of DW.5 is also in support of plaintiffs' case. Therefore, by examining PWs.1 to 4 it is established that defendant Nos.5 to 7 are the nearest legal heirs being the Residuaries and sons of Ali Bin Musallam, elder brother of late Abdulla Bin Musallam. Hence, the contention that late Abdulla Bin Musallam died without leaving any legal heirs is false on the face of the record.

41. The trial Court after appreciating the evidence of PWs.1 to 4 coupled with the documentary evidence marked as

Exs.A.11 and A.12 concluded that defendant Nos.5 to 7 are the nearest legal heirs of late Abdulla Bin Musallam. This finding does not call for interference of this Court as I find no legal infirmity in the finding recorded by the trial Court. I, therefore, hold that defendant Nos.5 to 7 are the nearest legal heirs of late Abdulla Bin Musallam. Accordingly, this point is answered in favour of defendant Nos.5 to 7 and against plaintiff No.1 and defendant Nos.13 to 24.

POINT No.4:

42. Plaintiff Nos.3 to 6 claimed ownership over the property by virtue of Exs.A.9 and A.13 to A.17 executed by defendant Nos.5 to 7 in their favour. As per my finding on point Nos.1 to 3, defendant Nos.5 to 7 are the nearest legal heirs of late Abdulla Bin Musallam and defendant Nos.5 to 7 executed Exs.A.9 and A.13 to A.17 in favour of plaintiff Nos.3 to 6. When defendant Nos.5 to 7 are the legal heirs and conveyed the property in favour of plaintiff Nos.3 to 6, they will become absolute owners of the property.

43. The major contention of defendant Nos.1 to 4 is that the Government initiated proceedings under the A.P. Act of 1974 after following due procedure and took the possession of the schedule property, later on, granted eksal pattas in favour of defendant Nos.13 to 24 and they are in possession of the property. The plaintiffs questioned the very same proceedings initiated by defendant No.1 and taking possession by defendant No.4 on the ground that the procedure contemplated under the A.P. Act of 1974, was not followed. Therefore, the proceeding initiated under the A.P.

Act of 1974 is not valid and Exs.B.1 to B.5 are not enforceable under law.

44. Before adverting to the compliance of procedure as contended by the defendant Nos.1 to 4, the definition of 'bona vacantia' would serve useful purpose. Section 2(1) of the Act defined 'bona vacantia'.

'Bona vacantia' includes any property, situated in the State of which there is no rightful owner, but does not include an escheat on any immovable property and found in a public place.

Whereas, escheat is defined under Section 2(iv) of the Act.

'escheat' means 'any property the owner of which dies intestate and without leaving legal heir'.

45. According to the contention of defendant Nos.1 to 4 and 13 to 24, late Abdulla Bin Musallam died without leaving legal heirs. Therefore, the property is deemed to be an escheat as defined under Section 2(iv) of the Act. According to my findings in the earlier points, late Abdulla Bin Musallam though died intestate, but left behind him his legal heirs i.e., defendant Nos.5 to 7, who were the sons late Ali Bin Musallam, who was elder brother of late Abdulla Bin Musallam, predeceased to him. Therefore, the property cannot be said to be an escheat as late Abdulla Bin Musallam left behind him defendant Nos.5 to 7 as his legal heirs. Certain procedure is prescribed to declare a particular property as escheat or bona vacantia. Section 4 of the Act deals with general superintendence of escheat and bona vacantia. According to Section 6 of the Act, the Government is empowered to dispose of escheat or bona vacantia in the

manner prescribed therein. But, Section 7 prescribed an inquiry relating to escheat or bona vacantia by a local officer, under Section 5 of the Act is as follows:

“Whenever the local officer receives information from any source that any property of the nature of an escheat or bona vacantia is situated or lying within his jurisdiction, he shall cause an inquiry to be made in support thereof.

46. In view of the Section 7 of the A.P. Act of 1974, an inquiry is required to be made on mere notice by local officer, without enquiry directing delivery of possession of certain lands which were in possession of certain persons is not legal as held by this Court in **G. Narasimha Reddy & others**

v. State of A.P., ^[1]. In the present case, no inquiry was conducted as contemplated under Section 7 of the Act and no material is brought on record about strict compliance of Section 7 of the Act. Section 8 contemplates the procedure for instituting a suit for recovery of possession of escheat or bona vacantia where a person in possession. According to Section 9 of the Act, where the property of the nature of an escheat or a bona vacantia is not in the possession of any person or where the person in possession surrenders such possession when demanded, the local officer shall take the property into his custody and arrange for its care and maintenance until the claim is settled under Section 11 of the Act. The Rules framed under the A.P. Act of 1974 prescribed the procedure for taking possession of the property. Rule 3 of the Andhra Pradesh Escheats and Bona Vacantia Rules, 1975 deals with procedure for disposal of property declared

as escheat or bona vacantia and Rule 4 deals with management of escheat, bona vacantia handed over by court till its disposal.

47. According to Section 9 read with Section 11 of the Act, the possession of the property shall be taken under panchanama in the presence of five panchas. But, in the present case, the possession was allegedly taken in the presence of three panchas vide Ex.B.2. According to Section 10 of the A.P. Act of 1974, the local officer has to prepare on the site and in the presence of not less than five respectable persons of the locality, an inventory of the property taken into his custody under Section 9 Act and forthwith send a report in the prescribed form to the competent authority, together with a copy of the inventory; and where such property is an immovable property, the leasehold rights thereof shall be sold by public auction by such revenue authority and after following such procedure as may be prescribed and the sale proceeds shall be held in deposit etc., The report must be in Form-I prescribed under the Rules, disclosing the details contained in Form-I from 1 to 11 and shall be signed by a local officer with date along with remarks. After receiving report in Form-I under Section 10 of the Act, a notice (Form-II) under Section 11(1) of the Act is to be issued inviting objections calling upon the person, who has claimed to such property, to prefer his claiming to such property in the prescribed proforma within three months. Form-II is the proforma prescribed to make such claim within three months. In this case, no possession was taken under Section 9 of the

Act in the presence of five panchas as required under Section 10 of the Act when prepared on the site plan. But, the possession of the property was allegedly taken by the Mandal Revenue Inspector in the presence of three panchas viz., A. Ashaiah, V.Parashuram and K.Kistaiah and submitted report along with covering letter, which is marked as Ex.B.2. The panchanama dated 05.07.1988 marked as Ex.B.1 is totally in utter disregard of the procedure as contemplated under Section 10(1) of the Act. Since the possession was allegedly taken in the presence of three panchas, whereas the section provides the local officer shall prepare on the site and in the presence of not less than five respectable persons of the locality possession be taken. The Mandal Revenue Inspector-DW.3 after taking alleged possession of the property under Section 9 of the Act, he has to submit his report in Form-I under Section 10(1) of the Act containing the details mentioned therein. But, no such report was submitted to the competent Authority, except sending a panchanama. When no report was sent in Form-I under Section 10(1) of the Act, question of issuing notice in Form-II under Section 11(1) of the Act by the Mandal Revenue Inspector or Joint Collector calling for claims from the public does not arise. Defendant Nos.1 to 4 did not produce any material about the compliance of Sections 10(1) of the Act and in the absence of calling for objection, notice under Section 11(1) in Form-II, the question of the plaintiffs or defendants submitting their objections or claims about taking possession of escheat property does not arise.

48. Curiously, the witnesses examined on behalf of defendant Nos.1 to 3 made categorical admissions that no declaration as required Section 11 of the Act was issued. In view of the procedure under Section 11 of the Act, the local officer is under obligation to publish a notice in such manner as may be prescribed, calling upon the persons who may have any claim to such property under Form-II within three months from the date of publication of the notice. But, no such publication of notice was issued. Similarly, the local officer is under obligation to refer the claim to the Court for its decision as to whether or not the person making the claim is entitled to the property and the Court shall, after giving a notice to the local officer and the claimant, decide the reference, as if it were a suit. But, compliance of procedure under Section 11(3)(a) of the Act is totally absent in the present facts.

49. Further a declaration is required under Section 12 of the Act and according to it, as soon as a declaration is made by the local officer under sub-section (2) of Section 11 or by the Court under clause (b) of sub-section (3) of that Section, the local officer shall publish a notification thereof in the Andhra Pradesh Gazette and in a local newspaper of district where the property is situated or lies, and shall also cause an announcement of the declaration to be made by beat of drum in the village in which the property is situated or lies. Here, no declaration under Section 11(2) or clause (b) of sub-section 3 of Section 11 of the Act was issued. Thereby, the question of publication of declaration in the Andhra Pradesh Gazette and

local newspaper of the district where the property is situated and by beating of drum in the village does not arise.

50. Apart from the above procedural lacunas pointed out by the learned counsel for the plaintiffs, there is a direct interdict on the rights of the Government to dispose of the property as contemplated under Section 13. Section 13 of the Act created interdict to dispose any immovable property and according to it no immovable property, which is declared as escheat or bona vacantia shall ordinarily be alienated by sale or grant until it has been in the possession of the Government for twelve years. Therefore, it is obvious from Section 13 of the Act that from the date of taking possession under Section 9 and 11 of the Act, the Government shall continue in possession of the property for a period of not less than 12 years and after completion of 12 years period from the date of taking of custody of escheat property, it can be disposed of by sale or grant. In the present case, the custody of the property was allegedly taken under Ex.B.1 on 05.07.1988 and issued eksal pattas under Ex.B.3 in favour of defendant Nos.13 to 24 on 01.09.1991. Therefore, the issue of eksal pattas in favour of defendant Nos.13 to 24 is in utter disregard of bar under Section 13 of the Act.

51. Similar question came up before this Court **V.Lingamma and others v. Government of Andhra Pradesh**^[2]. This Court while discussing the procedure under the A.P. Act of 1974, more particularly, Sections 8, 9, 11 and 12 held in para 12: following the decision in G. Narasimha Reddy (1 supra),

“without conducting any enquiry as contemplated under [Section 12](#) of the Act, the authorities cannot just come to a conclusion that particularly property is an Escheat or Bona Vacantia. In view of the same, on the unilateral report procured, the Joint Collector cannot treat the property in question as escheat or Bona Vacantia without causing an enquiry under [Section 7](#) after due notice to the parties who put up their claims over the property or claiming to be the purchasers of the said property. If it is found that the property of the nature of an Escheat or Bona Vacantia is in the possession of a person who has no authority to claim over the property, the local officer after obtaining sanction of the competent authority institute a suit in a Court for declaration of the Government's right to the property for recovery of possession of such property and only after such declaration by the Court that the property is an escheat or bona vacantia, the local officer can obtain possession and issue notification. [Section 9](#) contemplates where the property of the nature of an escheat or a Bona Vacantia is not in possession of any person or where the person in possession surrenders such possession when demanded, the local officer shall take the property into his custody and arrange for its care and maintenance until the claim is settled under [Section 11](#), namely after taking possession of the property he can issue public notice in such manner as may be prescribed. The very nature of enquiry under [Section 7](#) does contemplate issuance of notice to the parties who are likely to be affected by such declaration. In view of the same, it is obligatory on the part of the respondents to conduct an enquiry before passing the impugned order”

52. In view of the principles laid down in the above judgment, unless an enquiry as contemplated under Section 7 of the Act and by following necessary procedure under

Sections 9, 10 and 11 of the Act, the property cannot be declared as escheat under Section 12 of the Act. But, in the present case except producing Exs.B.1 and B.2 as part of compliance of the procedure under Section 10(1) of the Act, nothing has been brought on record to establish the strict adherence of the procedure contemplated under the A.P. Act of 1974. In the absence of compliance of the procedure under the A.P. Act of 1974, it is difficult to hold that the possession of the property was taken by defendant Nos.1 to 4 and later on, the same was handed over to defendant Nos.13 to 24 by issuing eksal pattas. Even assuming for a moment that pattas were granted under Exs.B.3 and B.4 to defendant No.13 to 24, those pattas are only for a period of one year i.e., 1991-1992 and not renewed from time to time as required under law. Therefore, the eksal patta holders i.e., defendant Nos.13 to 24, if any, are liable to vacate and deliver possession of the property after expiry of one year period. Thus, defendant Nos.1 to 4 are totally violated the procedure as contemplated under Sections 9, 10, 11 and 12 of the Act and allegedly took possession of the property.

53. Curiously, in the present case, plaintiff Nos.1 and 2 filed W.P.No.10179 of 1988 which was disposed of at the stage of admission by order dated 08.07.1988, defendant No.3 is directed not to evict plaintiff Nos.1 and 2 from the land in question for a period of three months from the date of order. Thus, by the date of order, plaintiff No.1 is deemed to be in possession since defendant No.3 was directed not to dispossess him. Thereafter, plaintiff No.1 issued a notice

under Ex.A.3 stating that he is in possession of the property and filed the present suit in the year 1988. Thereby, the question of taking possession on 05.07.1988 under Ex.B.1 appears to be an artificial act of defendant No.13 and at best it is only a paper transaction of taking custody of the property. If really the custody of the property was taken on 05.07.1988, defendant Nos.1 to 3 would have issued a reply by disclosing the date of taking custody of the property to the notice Ex.A.3. Added to that when an injunction was in force under Ex.A.1 dated 08.07.1988 directing defendant No.3 not to dispossess the plaintiffs from the possession of the property for three months, the alleged taking custody or possession under Ex.B.1, if any, true is in clear violation of order of this Court. Hence, I hold that taking custody of the possession of the property under Ex.B.1 is vitiated by illegality and irregularity and it is only a paper transaction of taking custody of the property.

54. Though defendant Nos.13 to 24 contending that they are in possession of the property in pursuance of eksal pattas under Ex.B.3, nothing has been produced to prove that they are in possession of the property. Since taking custody of the property under Ex.B.1 is in utter disregard of order under Ex.A.1, their possession cannot be accepted as it is illegal possession even their possession is for one year. Considering all these facts and attending circumstances of the case, it is difficult to hold that defendant Nos.13 to 24 are in possession and enjoyment of the property on the date of injunction for three months granted by this Court under

Ex.A.1 and later the interim injunction was granted by the trial Court restraining defendants from dispossessing plaintiffs holding that the plaintiffs established that they are in possession of the property.

55. Plaintiff Nos.3 to 6 have purchased the property under Exs.A.9, 13 to 17 from the nearest legal heirs who succeeded the estate of late Abdulla Bin Musallam, they became owners of the property and they are entitled to claim declaration of title to the property. Accordingly, this point is answered in favour of plaintiff Nos.3 to 6 and against defendant Nos.1 to 4 and 13 to 24.

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POINT No.5 :

56. One of the contentions raised in the grounds of appeal is that the claim of plaintiffs is barred by limitation. Since the plaintiff Nos.3 to 6 have come on record in the year 1992 by virtue of the order dated 11.08.1992 in I.A.No.1106 of 1992 and they are deemed to have come on record only the date when they were impleaded. Undoubtedly, the limitation to claim declaration under Article 58 of the Indian Limitation Act is three years and the limitation starts from the date when the right to sue first accrued. In the present case, defendant Nos.5 and 6 were impleaded by order in I.A.No.2024 of 1998 dated 09.02.1990, plaintiff Nos.3 to 6 are claiming rights only through defendant Nos.5 to 7. When the alleged proceedings took place in the year 1988, assuming that the limitation starts from the date when Ex.B.1 panchanama was

prepared, allegedly taking custody of the property, the suit is still in time for the reason that plaintiff Nos.3 to 6 are claiming right only through defendant Nos.5 to 7. Therefore, the question of bar of limitation to claim declaration by plaintiffs under Limitation Act does not arise. No such contention was raised before the trial Court and no issue was framed but for the first time in the grounds of appeal raised the said contention without any factual foundation in the pleadings, though, limitation is mixed question of fact law. On overall consideration of entire evidence including the documentary evidence, I find that the claim of plaintiff Nos.3 to 6 is within time as they are claiming right through defendant Nos.5 to 7, who are already on record by 1990 i.e., within three years from the date of Ex.B.1. Added to that, defendant Nos.5 to 7 also claimed right in their written statement being the nearest legal heirs of late Abdulla Bin Musallam. I, therefore, hold that the suit claim of plaintiff Nos.3 to 6 is within limitation. Accordingly, this point is held against defendant Nos.1 to 4 and 13 to 24.

57. One of the contentions raised before the trial Court is that since defendant Nos.13 to 24 are in possession and enjoyment without seeking relief of recovery of possession, plaintiffs are not entitled to claim relief of declaration as discussed earlier in the earlier paras, defendants miserably failed to establish their possession over the property and on the other hand this Court while accepting possession of defendant No.1 directed defendants not to dispossess plaintiff No.1 from possession of the property under Ex.A.1

after issuing notice, plaintiffs filed the present suit and undisputedly defendant Nos.5 to 11 and plaintiff Nos.1 and 2 were compromised as per orders in I.A.No.1930 of 1992. Defendants also failed to establish that they are continuing in possession of the property, consequently the contention of the defendants that plaintiff Nos.3 to 6 are not entitled to claim relief of declaration of title, without seeking relief of recovery of possession is without any substance and this contention would stand to any legal scrutiny by this Court.

58. In view of my findings on point Nos.1 to 5, both the appeals are devoid of merits and deserves to be dismissed.

59. In the result, A.S.Nos.1490 of 1996 and 1582 of 1997 are dismissed, but without costs.

60. Miscellaneous Petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

19th August 2015.

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[\[1\]](#) 1987 (2) ALT 46 (NRC)

[\[2\]](#) AIR 2004 AP 167