

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHTY

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CITY CIVIL COURT APPEAL No.166 OF 1997

JUDGMENT:

This City Civil Court Appeal, under Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') is preferred by the appellants/defendants challenging the judgment and decree, dated 21.11.1995, in Original Suit No.328 of 1986 passed by the VI Additional Judge-cum- Additional Judge, City Small Causes Court, Hyderabad (for short, 'the trial Court').

2. For convenience of reference, the ranks given in O.S.No.328 of 1986 by the trial Court will be adopted through out the judgment.

3. Plaintiff by name Rani Anasuya Devi, W/o. Late Raja Venkat Murali Manohar filed the aforementioned Original Suit seeking declaration that the forest growth in Acs.310.00 Gts., of land in Ralley village of Adilabad District is of the period subsequent to the grant of patta in favour of the predecessor-in-title of the plaintiff.

4. The factual matrix of the case is as follows:

The plaintiff's ancestor Late Venkata Srinivasa Rao was granted "Ijara" of 21 villages situated at Luxitpet of Chennur Taluk of Adilabad District. After expiry of said "Ijara", patta for the land in those villages was granted as per the Rules in force. Regarding lands in Ralley village of Luxitpet Taluk, Khalsa patta was granted for the land about Acs.1797-00 Gts., after cutting and removing the forest growth therein.

In the year 1970, the plaintiff filed an application for grant of transit permits so as to cut and remove the forest produce in an extent of Acs.1593-17 guntas of the said patta land, since the trees were grown in the said land after grant of patta. The defendants instead of granting permit, raised an illegal demand for

payment of Rs.5,42,586.63 paise under the impression that it was the value of the trees grown prior to grant of patta. The plaintiff challenged the said demand of defendants in Writ Petition No.1654 of 1978. The same was allowed on 30.11.1978 by ordering further enquiry with regard to validity of the said demand. In pursuance of the directions, the defendants conducted further enquiry and issued Memo No.12889/FOR/UUU/79/5, dated 17.05.1979 while rejecting the request of the plaintiff and made illegal demand for payment of the said amount.

Aggrieved by the memo, the plaintiff filed Writ Petition No.4634 of 1979 to quash the Government Memo, dated 17.05.1979 referred supra, sought for an interim direction to defendant Nos.2 and 3 to issue transit permit. The said request was granted vide Order, dated 09.08.1979 in W.P.M.P.No.6000 of 1979. The defendants filed Writ Appeal No.336 of 1979 against the said order. However, on hearing both the parties, the writ petition was allowed and consequently no orders were considered necessary in the writ appeal.

Plaintiff being the owner is entitled to cut and remove the trees grown in the patta lands. In respect of trees grown subsequent to the grant of patta, the Government is not entitled to recover any amount as no condition was imposed while granting patta reserving right to remove the trees existing as on the date of grant of patta. However, payment of any amount for issuing transit permit is not a condition precedent, since, the plaintiff has right over the trees grown subsequent to grant of patta.

In pursuance of the directions given in W.P.No.4634 of 1979 and W.A.No.336 of 1979, dated 07.11.1979, the 3rd defendant issued proceedings in R.C.No.5025/1978-H4, dated 14.03.1980 demanding payment of Rs.7,38,900/- to the Government as a condition precedent for issue of permit to sell the trees in an area of Acs.310-00 Gts., of patta land in Ralley village. The said proceedings of defendant No.3 are contrary to the judgment of this Court, dated 07.11.1979. Thereupon, the plaintiff filed W.P.No.2147 of 1980 for issuance of appropriate order declaring that the defendants have no right to assess the value of the trees grown as on 07.11.1979 and they have also no right to claim any value as a condition precedent for grant of transit permit. The plaintiff is not liable to pay any amount as per the decision dated 07.11.1979 referred above.

The said writ petition was dismissed on 05.12.1980. Thereupon, Writ Appeal No.726 of 1980 was preferred. This Court, in the appeal, appointed Sri C.V.K. Reddy, I.F.S., a retired Chief Conservator of Forests, as Commissioner to inspect the area in the presence of the parties and send his report. The forest growth over Acs.310-00 Gts., was cut under order of this Court in Writ Appeal M.P.No.182. The Commissioner selected sample plots out of Acs.310-00 Gts., of land with consent of both the parties and prepared enumeration registers. According to the enumeration registers, the percentage of teakwood trees of 60 years of age or above is 1.1%. There were only four non-teak trees of 60 years age and above. The said enumeration registers were signed by the Government officials and representatives of the plaintiff. The Commissioner sent his report on 18.06.1982 after noting down the particulars contrary to the age of the trees recorded in the enumeration registers. This Court held that the civil Court was the appropriate Forum for recording evidence of the Commissioner and the plaintiff also informed that she intends to pursue remedy by way of civil suit. Recording the submissions of the plaintiff, this Court disposed of the appeal on 19.02.1986 while directing the defendants not to collect any amount from the plaintiff for 10 weeks. Thereafter, the plaintiff filed the present suit for the relief stated in the earlier para.

5. Defendant No.3 filed a written statement denying the material allegations *inter alia* contending that the villages with nominal population are deserted villages as per “Dastur-UI-Amal” of desert villages and the same was promulgated in 1292 Hijri providing for grant of lands in favour of villagers on specially favourable terms and the same was in force till 1909 A.D. The Ralley village was granted “Ijara” for a period of 30 years from 1288 Fasli. At the end of said Ijara, there was settlement of rights of “Ijaredar” and consequently a patta to an extent of Acs.2247-00 Gts., in Ralley village was granted in favour of late Venkata Srinivasa Rao. Out of said extent, an extent of Acs.654-23 Gts., was proposed for considering as reserve forest.

The plaintiff sought for transit permit involved with ownership dispute, as such the matter was taken up to the High Court in W.P.No.4634 of 1979. The plaintiff applied for grant of transit permit to enable her to cut and remove forest growth from the said patta lands, as the trees were grown in the patta lands after the

grant of patta. Since the plaintiff is a defaulter of "Begawan" arrears amounting to Rs.5,42,586.63 paise in respect of 21 Ijara villages including Ralley villagee, a demand notice for payment of the said amount was issued to her. The plaintiff challenged the said demand in W.P.No.1654 of 1978 and the same was allowed by ordering further enquiry into the demand. When the matter was referred to the Government, the Government in G.O.Ms.No.12889/FOR/III/79-5, dated 17.05.1979 ordered that transit permit would not be granted until the question of liability of the plaintiff with regard to payment of "Begawan" amount was finally settled by the enquiry officer Sri Bhoomarajan, the then Conservator of Forests.

The plaintiff filed W.P.No.4634 of 1979 questioning the decision in the memo, dated 17.05.1979 referred supra. The said writ petition was disposed of with certain directions. In W.P.M.P.No.6000 of 1979 in W.P.No.4634 of 1979 the defendants were directed to grant permit over an area of Acs.1593-17 Gts., within four (04) weeks. Thereupon, the State of Andhra Pradesh preferred W.A.No.336 of 1979 against W.P.No.4634 of 1979. W.A.No.336 of 1979 was disposed of on 07.11.1979 with certain directions. In pursuance of the directions of this Court, defendant No.3 issued proceedings in R.C.No.5024/78-H4, dated 14.03.1980 demanding the plaintiff to pay Rs.7,38,900/- towards the value of the trees grown over an extent of Acs.310-00 Gts., of Ralley village.

Defendant No.3 denied the ownership of the plaintiff over an extent of Acs.1593-17 Gts., of Ralley village while contending that permit was already granted in the name of the plaintiff for an extent of Acs.841.02 Gts., including Acs.310-00 Gts. The revenue records disclosed mutation for an extent of Acs.274.03 guntas in the name of others. The plaintiff filed W.P.M.P.No.2174 of 1980 seeking clarification of judgment rendered in W.P.No.4634 of 1979. However, the same was dismissed on 11.04.1980.

It is specifically contended by the 3rd defendant that after expiry of "Dastur-Ul-Amal 1292 Hijri", grant of fresh lease was prohibited. The lands situated in 21 villages were covered by thick forest and the timber yielding trees are deemed to be the property of the Government after 1292 Hijri. Clearance of forest growth had to be made with the permission of the forest department. Provisions of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli (for short, 'the Act') have neither expressly nor impliedly repealed the deserted

villages, "Ijara Dastur-UI-Amal 1292 Hijri" and the standing orders, as such the disputes arising out of Ijara leases will have to be settled under the law relating to Ijaras. All the property rights over the forests vest with the Government under the law relating to Ijaras and the same was held in W.P.No.4634 of 1979. Therefore, the plaintiff is bound to pay value of the trees grown and standing as on the date of grant of patta as per judgment dated 07.11.1979 and modified by order, dated 18.01.1980 in W.A.No.336 of 1979. Hence the plaintiff cannot question the demand raised by the Government, which is just and that the value of the trees grown was assessed at Rs.7,38,900/-, thereby the plaintiff is bound to pay the amount demanded.

It is further contended that Divisional Forest Officer, Mancherial inspected patta lands in dispute and observed that the tree crop consists, predominantly of teak along with its associates. The tree crops at the time of grant of patta from the stumps of trees existing mostly of trees were older. The other associates of teak are still older having larger girths. The present stock of teak is of those trees, which were in existence on the date of grant of patta. In the circumstances the value as determined by the Government at Rs.7,38,900/- was based on the Commissioner's report, who is a retired Chief Conservator of Forest and the same cannot be said to be arbitrary or illegal. Therefore, the plaintiff is not entitled to any declaration as claimed.

The suit is bad for want of mandatory notice under Section 80 CPC, and on this ground alone the suit is liable to be dismissed.

The suit is not properly valued and the Court fee paid is not correct and finally they prayed to dismiss the suit with costs.

6. Defendant Nos.1, 2 and 4 filed a memo adopting the written statement of defendant No.3.

7. On the basis of the above pleadings, the trial Court framed the following issues (extracted herein):

"1. *Whether the plaintiff is entitled to the declaration as prayed for?*

2. ***Whether plaintiff is entitled to permanent injunction?***
3. ***Whether the suit is bad for want of notice under Section 80 C.P.C.?***
4. ***Whether the suit has not been properly valued for the purpose of Court Fee?***
5. ***To what relief?"***

8. During the course of trial, on behalf of the plaintiff, PW.1 was examined and Exs.A.1 to A.4 were marked. On behalf of the defendants, DW.1 was examined and Exs.B.1 to B.13 were marked.

9. Upon hearing argument of both the counsel and considering oral and documentary evidence, the trial Court held that the suit was valued properly and the notice under Section 80 CPC was dispensed with under Section 80(2) of CPC vide orders in I.A.No.475 of 1986 and that the trees existing on the ground were grown subsequent to grant of patta or even otherwise if the trees were grown before grant of patta, the deceased Venkata Srinivas Rao was the ijaredar. Therefore, trees were grown either during the subsistence of ijara lease or subsequent to grant of patta, therefore, in view of Sections 28 and 29 of Hyderabad Land Revenue Act No.VIII of 1317 F. decreed the suit.

10. Aggrieved by the judgment and decree of the trial Court, defendants in O.S.No.328 of 1986 preferred the present appeal raising various contentions. One of the major contentions in the appeal is that evidentiary admission of PW.1 is sufficient to conclude that the defendants are entitled to collect the value of forest growth standing as on the date of grant of patta and in the absence of any positive evidence establishing that the forest growth was subsequent to grant of patta, the finding recorded by the trial Court is erroneous. Even otherwise the observations of Commissioner in Ex.B.11 established that most of the trees are more than 60 years old. Therefore, the plaintiff is not entitled to claim declaratory relief or consequential relief and the trial Court on erroneous appreciation of evidence with reference to law, committed an error in granting decree and finally prayed to set aside the decree

with costs.

11. During the course of arguments, learned Government Pleader for Appeals (Telangana) would submit that the present dispute is only with regard to rights of the parties to sell the forest produce and it is governed by the law relating to “ijaras” and the same was the observation of this Court in W.P.No.4634 of 1979. But, the trial Court on erroneous application of law decreed the suit in favour of the plaintiff and committed an error. Finally it is contended that if the land under dispute is governed by the law relating to ijaras, the plaintiff is not entitled to claim any relief and prayed to set aside the judgment and the decree of the trial Court.

12. None appeared for the respondent herein despite service of notice.

13. Considering the contentions of the defendants-appellants in the grounds of appeal, perusing oral and documentary evidence, the point that arises for consideration is:

Whether the defendants denied the right of the plaintiff to enjoy the forest produce in an extent of Acs.310-00 Gts., of land in Ralley village for the years subsequent to the grant of patta in favour of late Venkata Srinivasa Rao, predecessor-in-title of the plaintiff? If so, is the plaintiff entitled to a declaration that she is entitled to enjoy the forest growth after grant of patta, in favour of Late Venkata Srinivasa Rao, predecessor-in-title and for consequential injunction?

14. **POINT:**

Undisputedly ijara was granted to late Venkata Srinivasa Rao for an extent of Acs.2247.00 Gts., in Ralley village. Initially the villages were classified as desert villages having nominal population as per “Dastur-Ul-Amal” promulgated in 1292 Hijri providing grant of ijara on specially favourable terms, which were in force till 1909 A.D. Therefore, Ralley village was granted in favour of plaintiff’s predecessor as ijara for a period of 30 years from 1288

Fasli i.e., equivalent to the agricultural year 1878. However at the end of said ijara i.e., after expiry of ijara for 30 years, there was settlement of rights of ijaredar and in the settlement operations a patta for an extent of Acs.2,247.00 Gts., in Ralley village was granted in favour of late Venkata Srinivasa Rao. Out of said extent, Acs.654.23 Gts., was proposed for reserved forest. Thus, undisputedly, ijara was granted in favour of late Venkata Srinivasa Rao and later, in the year, 1908 after expiry of ijara period during settlement operations patta was granted in favour of late Venkata Srinivasa Rao for the desert village of Ralley as per "Dastur-UI-Amal". The plaintiff being the successor of original pattadar has been continuing in possession of the property and she applied for transit permit for felling trees and transport the same in an extent of Acs.310.00 Gts., of Ralley village, but the defendants demanded for payment of Rs.5,42,586.63 paise towards "Begawan" arrears, the same was challenged and this Court in W.P.No.1654 of 1978 ordered further enquiry. But even after further enquiry, a fresh demand was issued calling upon the plaintiff to pay Rs.7,38,900/- and later, it was challenged both by filing writ petition and the appeal etc., referred in the earlier paras. Appointment of a Commissioner vide orders in W.P.M.P.No.6000 of 1979 on filing of report under Ex.B.11 is also not in dispute. The only dispute is with regard to rights of the plaintiff to enjoy the trees grown in an extent of Acs.310.00 gts., in Ralley village of Adilabad District.

15. One of the contentions of the defendants is that the defendants are entitled to recover the amount if trees grown in an extent of Acs.310.00 Gts., of Ralley village of Adilabad District were in existence by the date of grant of patta in 1908. If that is accepted, the defendants are entitled to recover the demand. Undoubtedly, there is evidentiary admission in the testimony of PW.1 with regard to defendants entitlement to recover the amount. Even according to the plaintiff, if the growth was subsequent to grant of patta, the plaintiff is not liable to pay any demand to the Government and if the growth was existing in the land by the date of grant of patta, then the Government is entitled to recover the amount demanded. Therefore, it is for the defendants to establish the existence of trees either teak or non-teak by the date of grant of patta. Strangely, it is the case of both the parties that initially ijara was granted for 30 years prior to 1909

as per promulgation in 1292 Hijri and iajra was granted for 30 years from 1288 Fasli i.e., equivalent to the agricultural year 1878, which was expired by 1908. The grant of patta is continuation of ijara granted in favour of ancestors of late Venkata Srinivasa Rao. But, there is a gap of one year due to settlement operations. During the settlement operations after expiry of ijara for 30 years, the forest land was vested with the Government. Still it is for the defendants to establish the existence of trees in the land by the date of grant of patta, which undisputedly granted in favour of Late Venkata Srinivasa Rao by the defendants. The defendants examined DW.1. He supported the case of the defendants in all respects with regard to existence of teak and non-teak trees by the date of grant of patta. In fact, there was no condition in the patta, reserving right of the Government to collect any amount towards value of the trees existing on the date of grant of patta during settlement operations after expiry of ijara of 30 years granted in favour of ancestors of Late Venkata Srinivasa Rao. Of-course, the patta was not brought on record for perusal of the trial Court or by this Court to find out whether any such condition was incorporated while making a grant by issue of patta and it is not the case of the defendants that such condition was incorporated in the patta issued in favour of Late Venkata Srinivasa Rao. In the absence of patta, rights of the pattadar are governed by the Act, which came into force from 1st Azur 1318 Fasli extending to whole area of Telangana in the State of Andhra Pradesh. It applies to all lands including the lands defined under Section 2(1-b) of the Act, and it defined the 'land' as follows:

““land” includes all kinds of benefits pertaining to land or things attached to the earth, or permanently fastened to things attached to the earth and also includes shares in, or charges on, the revenue or rent which are or may be levied on villages, or other defined areas”.

Thus, taking into consideration the definition of the 'land', forest land is also included within the definition of the land. According to Section 24 of the Act, all public roads, lanes, paths, bridges, ditches, dikes, rivers, streams, tanks, ponds, canals, lakes, and flowing water and all lands, wherever situated, together with all rights appertaining thereto are the property of the Government excepting those belonging to persons or class legally capable of holding property and to the extent so far as their such rights are established; and those

in respect of which any other order under any law may have been given.

16. According to Section 24 of the Act, all public lands would vest with the Government excepting the land, which was granted in favour of third persons under any law for the time being in force before commencement of this Act. According to Section 28 of the Act, Trees Irsali or Ghairi on land held by Pattadar within the limits of the land held by a pattadar remains with the pattadar of that land.

17. Sections 28 and 29 of the Act deal with the rights of pattadars over the trees grown on the patta land before or after commencement of this Act. For better appreciation of law, I find that it is appropriate to extract Sections 28 and 29 of the Act and accordingly, they are extracted here:

“28. Trees Irsali or Ghairi on land held by Pattadar:- The Pattadar shall have full right over “Irsali” “Ghairi” trees within the limits of land held by a pattadar, so long as he remains the pattadar of that land, as also over the trees which may, after obtaining the patta have grown up naturally or have been planted or have cropped up from the roots of trees but by the Forest Department. But the trees over which the [Government] may have retained its proprietary right by notification shall be excluded from the ownership of the pattadar.

29. Right of pattadar to trees planted on occupied land prior to his occupation:- Trees Irsali or Ghairi in land in the occupation of pattadar which may have been planted or by the pattadar or by the persons of whom the present pattadar is a successor; or the ownership of which may have been acquired by the pattadar or his predecessors by other lawful means, shall belong to the present Pattadar and remain at his disposal by all means and the Government shall have no right of any kind thereto; but the Pattadar shall have full rights over such trees as have not been planted by the Pattadars or by his ancestors or by a former Pattadar whose successor he is and to which the right of the [Government] may be subsisting, if they have not been filled by the Forest Department or sold by fixing the price to the present pattadar under rules made by the [Government] by notification.”

A bare reading of Section 28 of the Act it is clear that the trees grown up naturally or have been planted or have cropped up from the roots of the trees after grant of patta in favour of the pattadar, those trees belong to the pattadar

and the pattadar is entitled to enjoy the produce, but the trees over which the Government have retained its proprietary right by issuing notification would not vest on the pattadar and the pattadar is not entitled to claim ownership over the trees. In the instant case, no evidence is brought on record about issuance of any notification by the Government disabling the pattadar i.e., the plaintiff, the successor of the original pattadar Venkata Srinivasa Rao, to claim ownership over the trees grown or planted or naturally grown in the patta land. In the absence of any notification, Section 28 of the Act enables the pattadar to claim ownership over the trees grown on the patta land.

18. Section 29 of the Act deals with the right of pattadar over the trees planted on occupied land prior to his occupation. Even according to this Section, the trees in the land in occupation of pattadar planted by pattadar himself or by his predecessor from whom the pattadar succeeded and the pattadar or his predecessor acquired patta by lawful means, those trees shall belong to the present pattadar and remain at his disposal by all means and the Government shall have no right of any kind thereto, but subject to an exception to claim such rights. If the pattadar have full rights over such trees as have not been planted by pattadar or his ancestors or by a former pattadar whose successor he is and to which the right of the Government may be subsisting, the forest Department is entitled to sell the trees by fixing price to the present pattadars as per the Rules passed by the Government by notification.

19. A combined reading of Sections 28 and 29 if the trees were in existence before the pattadar came into occupation by lawful means, the Government is entitled to sell the forest produce to the present pattadar as per Rules in force by then. It is not the case of the defendants that they intend to sell the trees to the pattadar as per Rules, but claimed certain amount by issuing memos one after the other. The question of demand for payment of money towards cost of trees by the Government would arise only if the defendants are able to establish existence of trees by the date of grant of patta. Both the parties relied on Ex.B.11-report of the Commissioner, the retired Forest Chief conservator C.V.K.Reddy. A perusal of Ex.B.11 report, 1.1% trees are more than 60 years

of age. He made his own estimations by following necessary procedures for assessment of age of the trees felled by the plaintiff. He adopted his own method of calculation. Para No.4 in page No.2 of the report shows that to assess the age of the crop, which has been felled and removed, he had to rely on the left over stumps. The adjoining standing tree growth in the reserved forest is generally of III quality i.e., average height of 16 metres at maturity. He specified the method of calculation in Para No.5 and observed that in case of teak, which exhibits annual growth rings, the age of the tree can be determined by count of the annual rings on the cut stumps, but most of the miscellaneous species which are associates of teak in that forest do not exhibit such annual growth rings and in all such cases, the approximate age of the 'trees' has to be assessed only from the girth of the trees measured at the site in case of standing trees or of the stumps of the felled trees. However, he assessed the age of the trees which are more than 60 years old as 1.1% on sample basis and in para No.9 of the report, he came to the following conclusion:

"In all the sample plots, teak trees of the older age class are 1139 in number, as against 1104 trees of below 60 years, which constitutes about 51% and 49% respectively. Similarly in case of Non-teak trees, the number of trees of the older age class i.e., about 60 years is 183 as against 361 trees of age below 60 years, which works out to about 34% and 66% respectively."

Thus, it is clear from the report of the Commissioner that there are few trees of more than 60 years old. The Commissioner inspected the land in the year, 1982. If 60 years is calculated backwards it comes to 1922, but whereas patta was granted in 1908 or 1909 as per the admitted facts. Even assuming for a moment that part of the trees are aged more than 60 years, still the growth of trees will be only after grant of patta i.e., in the year 1908 or 1909 during settlement operations after 30 years ijara granted in favour of plaintiff's predecessor in title. Ex.B.11 report does not disclose the actual age of the trees. If the age of the trees is more than 70 years, then by exercising power under Section 29 of the Act, the Government is entitled to claim price of the trees, which were in existence by the date of patta and grown on the land given to Late Venkata Srinivasa Rao, who is the original pattadar, and subsequently succeeded by the plaintiff. In the absence of proof of exact age of the trees

felled and removed by the plaintiff by the date of inspection by the retired Forest Chief Conservator, it is difficult to conclude that the defendants have title and made demand for payment of price of the trees as estimated by the Forest Chief Conservator under Ex.B.12 and other memos levying demand for Rs.5,42,586.63 ps., and 7,38,900/-. Even, otherwise grant of patta is continuation of ijara in favour of late Venkata Srinivasa Rao, trees if grown during "ijara" period, still the defendants are not entitled to claim any right under Section 29 of the Act.

20. However, it is evident from the material on record that the trees were grown in Acs.310.00 Gts., which was granted in the settlement operations in favour of late Venkata Srinivasa Rao succeeded by the plaintiff herein. But, in the absence of determination of age of the trees felled and removed by the plaintiff, it is difficult to conclude that the trees were in existence by the date of grant of patta and later grown to demand any amount from the plaintiff. Therefore, Ex.B.11 is of no assistance to the defendants to prove that trees were in existence by the date of grant of patta in 1908 or 1909. Ex.B.11 is silent about the age of any of the trees felled and removed that they are more than 70 years by the date of his inspection. In other words, if there is existence of trees on the date of grant of patta, the plaintiff alone is entitled to enjoy the usufruct of the land that is grown in the land in an extent of Acs.310.00 Gts., of Ralley village of Adilabad District in view of Section 28 of the Act.

21. The trial Court basing on Ex.B.11 only concluded that though 1.1% trees, which are aged more than 60 years of age, felled and removed by the plaintiff, the defendants failed to prove that any trees were in existence at the time of grant of patta of the land in extent of Acs.310.00 Gts., of Ralley village of Adilabad District in favour of predecessor of the plaintiff and by applying Sections 28 and 29 of the Act, granted declaration.

22. One of the contentions of the defendants in the appeal is that PW.1 admitted about right of defendants to collect value of produce, the evidentiary admission is not conclusive proof of fact, the admission is not un-equivocal.

Therefore, on the strength of admission it is difficult to accept the contention of the defendants.

23. On close analysis of the material on record, when the plaintiff applied for transit permit to transit the forest produce grown in the patta land, the Forest Department made a demand for Rs.5,42,586.63 ps., by issuing Memo, dated 17.05.1979 towards cost of the trees grown in the land, which were allegedly existing as on the date of grant of patta and later the demand was enhanced to Rs.7,38,900/- by issuing Memo, dated 14.03.1980 and thereby denied the right of the plaintiff creating a cloud on the right of the plaintiff to enjoy usufruct of Acs.310.00 Gts., of land being the pattadar.

24. According to Section 34 of the Specific Relief Act, 1963, any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title, to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief. It is clear from Section 34 of the Specific Relief Act, 1963 that grant of declaratory relief is purely discretion of the Court. To claim such discretionary relief the plaintiff has to approach the Court with clean hands disclosing all the facts. In the instant case, the plaintiff approached the Court seeking discretionary relief of declaration that she is entitled to enjoy usufruct of Acs.310.00 Gts., of land of Ralley village of Adilabad District since her right to enjoy the usufruct was denied by issuing Memos dated 17.05.1979 and 14.03.1980 claiming Rs.5,42,586.63 ps and Rs.7,38,900/- respectively. Thus, the defendants denied her right to enjoy the usufruct of the land i.e., trees grown in the land. As there is no dispute regarding grant of patta in settlement operations in the year 1908 or 1909 and in the absence of proof of existence of trees as on the date of patta by any cogent and specific evidence by the defendants, by virtue of Sections 28 and 29 of the Act, the plaintiff being the successor of original pattadar alone is entitled to enjoy the usufruct of the land, though denied by the defendants without any basis. In such a case, the Court can exercise its discretion judiciously to grant discretionary relief. Accordingly, the trial Court rightly granted discretionary relief in favour of the plaintiff. Therefore, the judgment and decree of the trial Court under challenge in this appeal is free from any

legal infirmities calling for interference by this Court. Hence, I find no ground warranting interference by this Court in the judgment and decree passed by the trial Court.

25. Hence, the finding of the trial Court declaring that the plaintiff is entitled to enjoy the forest growth in Acs.310.00 Gts., of land situated in Ralley village for the period subsequent to grant of patta in favour of her predecessor in title is on proper appreciation of evidence on record.

26. In view of my foregoing discussion, the plaintiff is entitled to the declaratory relief claimed by her and the trial Court did commit no error in recording finding. Hence the point is held in favour of the plaintiff and against the defendants. I, therefore, find that the appeal is devoid of merit and deserves to be dismissed.

27. In the result, the City Civil Court Appeal is dismissed confirming the judgment and decree of the trial Court. However, in the circumstances, each party do bear their own costs in this appeal. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 20.02.2015

INL