

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

L.P.A.No.169 of 2002

Between: _____
_____ Yarlagadda Yugandhar and another.
_____ ...Appellants.

And: _____ State of A.P.represented by the District Collector,
Visakhapatnam and others.
_____ ...Respondents.

DATE OF JUDGMENT PRONOUNCED: Dated 22-7-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE

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

HONOURABLE SRI JUSTICE RAMESH RANGANATHAN
HONOURABLE SRI JUSTICE S.RAVI KUMAR
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! Counsel for the appellants : SRI P.SRI RAGHU RAM

^ Counsel for respondents : G.P. FOR
APPEALS.

< GIST:

>HEAD NOTE:

? Cases referred:

- 1) 1984 (1) APLJ 113
- 2) AIR 1986 SC 794
- 3) AIR 1958 AP 100 (VOL.45, C.31)

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JUDGMENT: (Per Honourable Sri Justice S.Ravi Kumar).

This appeal is preferred under Clause 15 of the Letters Patent aggrieved by the decree and judgment in Appeal No.2253 of 1986 dated First February, 2002 of this Court.

Appellants herein filed O.S.No.343 of 1982 seeking relief of declaration of title over the plaint schedule property and for a consequential permanent injunction against the respondents herein.

According to plaintiffs, plaint schedule property is a dry land measuring 0-725 hectors (Ac.1.80 cents) in S.No.46/4 of Kurmannapalem village and it originally belonged to one Shaik Meera. According to plaintiffs, Shaik Meera and his ancestors have been in possession and enjoyment of the suit land for more than 70 to 80 years and after the death of Shaik Meera, his wife Sattar Bibi and his only daughter Rahamat Bibi enjoyed the said property till it was sold on 21-2-1966.

According to plaintiffs, legal representatives of Shaik Meera sold away the plaint schedule property to one Sri P.V.Bapiraju under a registered sale deed dated 21-2-1966. Plaintiffs contended that Bapiraju was in possession and enjoyment of the suit schedule property and paid taxes to the Government and subsequently, sold away the said property to plaintiffs on 28-3-1981 through a registered document. According to plaintiffs, at the time of execution of sale deed, second plaintiff was unmarried and therefore, her name was referred in the sale deed as Kumari Koneru Girija Kumari, daughter of Prabhakar Rao and subsequent to her marriage, her surname is changed as Vallabhaneni. According to plaintiffs, ever since the date of purchase, they have been in possession and enjoyment of plaint schedule property. According to plaintiffs, second plaintiff is residing at Vijayawada with her husband and first plaintiff is looking after his business at Visakhapatnam. While so, in the 3rd week of December, 1982, first plaintiff on being informed by his friend that the plaint schedule land was sold away by Tahsildar, Visakhapatnam in public auction on 15-12-1982, he made enquiries and could trace a notice in Eenadu Daily dated 12-12-1982. According to plaintiffs, first plaintiff came to know that 3rd defendant purchased the suit schedule property in the auction at the rate of Rs.45,000/- per acre and that the second defendant has no right whatsoever over the plaint schedule land and thereby, cannot sell it in auction. According to plaintiffs, they and their predecessor having in possession and enjoyment of the suit property for more than 60 years, have perfected their title by adverse possession and any rights of erstwhile Estate Holder and Government have become time barred. According to plaintiffs, Tahsildar or the District Collector has no power to declare a particular land as Government or Poramboke and even Settlement Officer has no jurisdiction to declare the same. According to plaintiffs, no right is vested with the Government, to auction the lands and the said auction is a malafide one with an intention to defeat the rights of plaintiffs. It is further contended that the motive of defendants is malafide and intended to cause loss to plaintiffs to help others and therefore, they are seeking reliefs of declaration and injunction.

First defendant filed written statement and it was adopted by second defendant and according to these defendants, plaint schedule property is a banjar land and vested with the Government on abolition of Estate. According to defendants, Shaik Meera or his ancestors were never in possession and enjoyment of the suit land and so also, Venkata Bapiraju and the plaintiffs were never in possession and enjoyment of the plaint schedule property. According to defendants, sale deed dated 28-3-1981 is not true valid and not binding on the Government. According to defendants, Government has been in possession and enjoyment of the plaint schedule land till it was sold in the auction. Defendants further contended that in the auction conducted by Tahsildar on 15-12-1982, D.3 became highest bidder and purchased the same and the auction was confirmed by the District Collector vide his proceedings in Rc.No.7053/82 B-2 dated 28-12-1982 and that D.3 was put in possession of the suit schedule property. According to defendants, plaintiffs have no right or locus standi to question the auction conducted by Tahsildar and confirmed by the Collector as the suit lands are banjar lands. According to defendants, suit without issuing Section 80 C.P.C., notice, is not maintainable. According to defendants, Civil Court has no jurisdiction to entertain the suit and the plaintiffs' remedy is to apply for a patta under the Estate Abolition Act and the Settlement Officer alone has got the jurisdiction.

Subsequently, defendants 1 and 2 amended their written statement and as per the amended written statement, their case is that the property was subsequently purchased by A.P.C.C. Employees Housing Society, Visakhapatnam in the auction and the society was put in possession of the schedule property.

Third defendant filed written statement contending that he is nothing to do with the suit schedule property and he has no interest in the property and he was unnecessarily added as a party for the reasons best known to the plaintiffs. He contended that he participated in the auction conducted on 15-10-1982 and became highest bidder in respect of part of suit schedule property but the auction in his favour was not confirmed by the District Collector and the property was sold to another party by the Government and the plaintiffs are fully aware of the said

facts but intentionally impleaded him only to harass.

Plaintiffs filed rejoinder contending that the action of the Collector in issuing proceedings dated 28-12-1982 are after service of notice in the suit and therefore, it would amount to changing the status quo as on the date of the suit and the defendants are liable for punishment and that the plaintiffs are taking separate steps for that.

On the above pleadings of both parties, trial court framed the following issues for trial and additional issue, for trial.

ISSUES:

- 1) *Whether the plaintiffs are entitled to declaration of their title to plaint schedule property?*
- 2) *Whether the plaintiffs are entitled for injunction?*
- 3) *Whether the sale deed in favour of the plaintiff is binding on the defendants for any of the reasons stated in the plaint?*
- 4) *Whether the suit land is Government Bazar?*
- 5) *Whether the third defendant was put in possession of plaint scheduled property as pleaded by D-1, D-2 or whether he has nothing to do with it as pleaded by D.3?*
- 6) *Whether Civil Court has no jurisdiction to try this suit?*
- 7) *Whether the plaintiffs are not entitled to question the auction held on 15-2-1982?*
- 8) *To what relief?*

ADDITIONAL ISSUE:

Whether the suit is bad for non-joinder of necessary party viz., A.P.C.C.Employees House Building Society, Visakhapatnam?

During trial, five witnesses are examined and five documents are marked on plaintiffs' side whereas one witness is examined and three documents are marked on defendants' side. On an overall consideration of oral and documentary evidence, trial court dismissed the suit holding that the plaintiffs are not entitled for the relief of declaration and injunction and that the sale deed in favour of plaintiffs marked as Ex.A.3 is not binding on defendants 1 and 2 and that plaintiffs are not

entitled to question the auction conducted by Tahsildar on 15-12-1982 and that the civil court has no jurisdiction in view of the provisions of A.P.(Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as "the Act"). Aggrieved by the judgment of the trial court, plaintiffs preferred A.S.No.2253 of 1986 before this court and a learned single Judge of this court on consideration of the submissions of both sides and on a consideration of material on record and on further consideration of decision of this court in *MANDALA JAYA SYAMALA RAO vs. SRI RADHAKANTHASWAMI VARU OF MADUGULA* (^[1]) held that Civil Court has no jurisdiction to entertain the suit in respect of properties covered under the Act and accordingly, dismissed the appeal. Aggrieved by the dismissal of the first appeal, present Letter Patent Appeal is filed.

Heard both sides.

Learned Senior Counsel appeared on behalf of appellants argued at length and has drawn our attention to both oral and documentary evidence and to the findings of the trial court. He mainly contended that learned single Judge has not followed the procedure contemplated under Order 41 Rule 31 C.P.C. He further submitted that as per the above referred provision, the judgment of the appellate Court shall be in writing and shall state a) point for determination, b) decision thereon (c) reasons for decision, but a perusal of judgment of the learned single judge would show that points a,b,c have not been adhered to.

Learned Senior Counsel contended that if a suit is filed questioning grant of ryotwary patta, then only a civil suit is barred but here the relief claimed by plaintiffs is to declare their title against the defendants and such a relief is not barred under the provisions of the Act and therefore, the trial court was wrong in holding that civil Court has no jurisdiction. He further submitted that trial court followed a judgment which is implicitly overruled and findings of the trial court with regard to jurisdiction is absolutely incorrect, and the learned single judge without examining the material dismissed the appeal on the sole point of jurisdiction. Learned Senior Counsel further contended that the findings of the trial court with regard to classification of land is not at all correct and the word 'gayalu' as per "Glossary of

Judicial and Revenue Terms” is land left uncultivated, neglected and therefore, it cannot be treated as a banjar. He contended that once it is not a banjar land, it will not automatically vest with the Government by virtue of provisions of “the Act” and the plaintiffs’ title is duly established through documents Exs.A.1 to A.3 which are registered documents and their enjoyment is further established with the entries in Exs.B.1 and A.6, but the trial court on an erroneous interpretation of word ‘gayalu’, negated the claim of plaintiffs over the suit schedule property. He further submitted that when the sale deed in favour of plaintiffs is duly proved which is supported by the earlier sale deed Ex.A.1, trial court ought to have granted a decree but the trial judge refused relief to plaintiffs by taking the entries in Exs.B.1 and A.6 into consideration by interpreting that ‘gayalu’ means banjar. He further submitted that this word ‘gayalu’ is only recorded in remarks column, but if the other columns are read closely, one can come to a conclusion that property covered under Exs.B.1 and A.6 cannot be treated as banjar because Government collected taxes on this land for some time. He further contended that the trial court has taken the correction of survey number in Exs.A.1 and A.2 very seriously but even it is accepted for the argument sake that there is a correction in the survey number it has no bearing when there is no dispute with regard to identity of property and boundaries of the property are tallied. He further submitted that correction of survey number cannot be treated as material alteration when the boundaries do tally and identity is not disputed.

On the other hand, learned Government Pleader contended that though learned single judge has not framed any point for determination and not dealt the matter in accordance with Order 41 Rule 31, yet he arrived at a right conclusion. He further submitted that civil court has got jurisdiction and to that extent, he would concede that the trial court went wrong. He further submitted that the plaintiffs have not established either title or possession or enjoyment over the suit schedule land and the trial court has elaborately dealt, with each and every aspect and came to a right conclusion. He further submitted that according to Dictionary meaning of ‘gayalu’, it is a land unfit for cultivation and even in “Glossary of Judicial and Revenue

Terms, the same meaning was given and the meaning referred to by the learned Senior Counsel is in respect of Marathi word but equal meaning for Telugu word as per Glossary of Judicial and Revenue Terms is land unfit for cultivation” which can be classified as banjar. He further contended that when plaintiffs sought relief of declaration, the burden is heavy on them to prove their title including title of their vendor, but plaintiffs have miserably failed in establishing the same and the trial court rightly dismissed the suit. He further argued that there is a clear manipulation of survey number in the registered documents and when such manipulation is apparent, burden is much heavier on plaintiffs and they have to clear every doubt to accept those documents for declaring their title. He further submitted that absolutely there is no material on record to show that either the plaintiffs or their predecessor-in-title were in possession and enjoyment of the suit schedule property.

Learned Government pleader has drawn our attention to paras 9, 11, 12, 23 and 24 of the judgment of the trial court and submitted that trial judge has dealt each and every aspect of the matter and rightly denied the relief and that there are no grounds to interfere with the findings of the trial court in respect of relief of declaration and injunction.

Now the points that would arise for our consideration in this appeal are:

- 1) Whether the jurisdiction of Civil Court is ousted in terms of provisions of the Act?
- 2) Whether the plaintiffs are entitled for declaration and injunction as prayed for in respect of plaintiff schedule property?
- 3) Whether the trial court committed any error in appreciating evidence on record or in giving findings on the issues framed in the suit?
- 4) To what relief?

POINT No.1:

One of the plea raised on behalf of defendants in their written statement is that the civil Court has no jurisdiction and the remedy of the plaintiff is to approach Settlement Officer for their redressal as per the provisions of the Act. On the other

hand, it is the contention of the learned Senior Counsel representing plaintiffs that civil Court has got jurisdiction and that there is no express bar prohibiting a suit of this nature, therefore, as per the provisions of Section 9 of C.P.C., a civil suit is maintainable.

Both trial court and the learned Single judge were of the view that civil Court has no jurisdiction and the remedy of the plaintiffs is to invoke provisions of the Act. It may be appropriate to read the provisions of the Act prohibiting jurisdiction. Section 65 of the said Act deals with jurisdiction and the said Section reads as follows:

- “(1) No suit or other proceeding shall lie against the Government for any act done or purporting to be done under this Act or any rule made thereunder.*
- (2) (a) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act or any rule made thereunder, without the previous sanction of the Government.*
(b) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of the duties, or the discharge of the functions imposed by or under this Act.
- (3) No suit, prosecution, or other proceeding shall be instituted against any officer or servant of the Government for any act done or purporting to be done under this Act or any rule made thereunder, after the expiry of six months from the date of the act complained of.”*

A plain reading of the above provision would indicate that a suit or proceeding is barred challenging the act done or purporting to be done by the Government under the provisions of the Act, or against any Officer or the Government servant who has done the act or purported to be done under the provisions of the Act.

Admittedly, the present suit is not filed challenging any act done by the Government or purporting to be done in pursuance of the provisions of the Act. As already referred supra, learned

GP fairly conceded that civil Court has jurisdiction and the findings of the trial Court and learned single judge to that extent are not correct.

Learned Senior Counsel appearing on behalf of plaintiffs has drawn our attention to *STATE OF TAMILNADU Vs.. RAMALINGA SAMIGAL MADAM* (^[2]).

In that case, the question before the Honourable Supreme Court was whether a civil Court has jurisdiction to determine the nature of land in respect whereof a Ryot has sought a ryotwari patta under Section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, the facts in that case are as follows:

“One Ramalinga Samigal Madam, a religious Math through its trustee Sutha Chaitanya Swamigal filed a suit (O.S.No.184 of 1959) in the Court of District Munsif at Manamadurai for declaration of its title to the suit land admeasuring 3.55 acres being a portion of Survey No.114 and for an Injunction restraining the State of Tamil Nadu. (Defendant-Appellant) from interfering with its possession and enjoyment of the same. The Plaintiff Madam claimed title to the suit land on the basis of its long and uninterrupted possession since prior to 1938 as also under an Order of Assignment (Ex.A-1) dated 29-1-1938 issued in its favour by the Zamindar of the erstwhile Sivaganga. Estate whereby the Kudi right (i.e., right to cultivate) in that land was granted to it subject to the payment of a nominal nuzzur of Re.1/- per acre and an annual rent of Re.1/- per acre beside cesses and a Teervapat Cowie Patta was directed to be issued in favour of its trustee Sutha Chaitanya Swamigal. It appears that the plaintiff-Madam applied on 25-11-1953 for a Ryotwari Patta in respect of this land after the abolition of the Sivaganga Estate under the Act and the Additional Settlement Officer merely informed the plaintiff-Madam that its petition would receive consideration when S.11 inquiry would be taken up. But subsequently, without reference to the plaintiff-Madam the Additional Settlement Officer passed an order (Ex.B-4) on 25-6-1954 that Survey No.114 was not a ryoti land on the notified date but had been registered as a Poramboke (village communal land) and, therefore, no one was entitled to Ryotwari Patta in respect of it. Aggrieved by the order the plaintiff-Madam filed the suit for a declaration of its title and right to continue in possession and enjoyment of the suit land, subject to payment of Ryotwari or other cess to be imposed by Government without any interference from the Government. The State of Tamil Nadu resisted the suit or merits by contending that the suit land was communal land

and that the assignment or grant by the Zamindar in favour of plaintiff-Madam was invalid as well as by raising a technical plea that the decision of the Additional Settlement Officer that the suit land was Poramboke and not ryoti land was final and the Civil Court's jurisdiction to decide that question was barred under S.64-C of the Act. The Trial Court as well as the sub-Judge in appeal accepted the plaintiffs case on merits by holding that the suit land was a ryoti land and that the assignment of Kudi right therein by the Zamindar in plaintiffs favour was valid; the technical plea of want of jurisdiction was negatived and the suit was decreed by granting the necessary declaration and injunction protecting plaintiffs possession and enjoyment of the suit land. In second appeal preferred by the State of Tamil Nadu to the High Court the lower Courts' decision on the merits of the plaintiffs claim was not challenged but the technical plea of the lack of jurisdiction on the part of the Civil Court in the light of S.64C of the Act was pressed. In view of the importance of the question the learned Single Judge referred the case to the Division Bench who negatived the contention and dismissed the appeal. The Division Bench took the view that there was no provision under S.11 read with proviso to cl.(d) of S.3 of the Act for the ascertainment of the character of the land (whether it was ryoti land or communal Land) and that the decision of the Settlement Officer whether the land is ryoti or not is an incidental one merely for the purpose of granting the Ryotwari patta and Civil court's jurisdiction to adjudicate upon the nature of the land when that aspect is specifically put in issue, is not taken away under S.64-C of the Act; and what is more the Division Bench further held that the plaintiffs suit was not for obtaining a ryotwari patta in its favour (which matter lay within the powers and jurisdiction of the Settlement Officer) but the suit was for injunction restraining the defendant from disturbing plaintiff's possession and enjoyment of the suit land on the basis of its title and long and uninterrupted possession and such relief the Civil Court could obviously grant."

The Honourable Supreme Court while confirming the view of the Division Bench of Madras High Court, observed as follows:

"In other words since the Settlement Officer has no power to do what Civil Court would normally do in a suit it is difficult to imply ouster of civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order under S.64-C of the Act."

In *DHULIPALLA RAMAYYA AND ANOTHER v. KOTA BRAHMAYYA AND OTHERS* (^[3]), this Court held as follows:

"It is well settled that the exclusion of the jurisdiction of

the Civil Courts is not to be readily inferred, but such exclusion must either be explicitly expressed or clearly implied. Secretary of State v. Mask and Co., AIR 1940 PC 105 at p.110 (B), Section 15 of Act 26 of 1948 must be read along with S.3 (d) from which it appears that the purpose of deciding whether a ryotwari patta should be granted is to determine whether the Government may take possession of the land. If the relief sought does not bear on the Government's right to take possession it cannot be said that the jurisdiction of the Civil Courts is impliedly barred."

According to advocate for appellants, there is no express bar of civil Court's jurisdiction.

Civil Court jurisdiction is dealt under Section 9 of C.P.C. and it may be useful to read that section which reads as follows:

"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

Explanation: (I) As suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

(Explanation (II) : For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.)

As per the above provision of C.P.C., it confers jurisdiction on civil courts to try all civil suits unless they are barred whether expressly or impliedly.

As rightly pointed out by both learned Senior Counsel and learned GP, a Settlement Officer under the Act, cannot grant the relief of declaration so also injunction. What is barred under Section 65 of the Act is to challenge the action of Government or its officers that was taken or purported to be taken under the provisions in the Act and present suit is not questioning any action of the Government or its officers, therefore, that bar cannot be applied here. When the bar under Section 65 of the Act is not applicable to the case on hand, there is no other express or implied bar prohibiting a civil court to entertain a suit of this nature.

In the explanation to Section 9 C.P.C., it is clarified that

right to property or right to an office is of a civil in nature.

So, from a combined reading of Section 65 of the Act and Section 9 of C.P.C., along with two decisions referred to above, we have no hesitation in holding that the civil court has got jurisdiction to entertain the present suit and both trial court and first appellate court erred in holding that civil court has no jurisdiction and that the said finding is liable to be set aside. The point is accordingly answered.

POINT Nos.2 and 3:

It is specific case of plaintiffs that they have purchased plaint schedule property under Ex.A.3 sale deed from P.W.2 as GPA Holder of Bapiraju. It is also their case that said Bapiraju purchased suit property under Ex.A.1 from the legal representatives of Sheik Meera. As already referred supra, the suit property is Ac.1.80 cents of land in S.No.46/4 of Kurmanna Palem village.

Plaintiffs contended that Government through public auction sold this property to D.3 but D.3 filed written statement contending that though he became highest bidder, proceedings were not confirmed in his favour but they were confirmed in favour of APCC Employees House Building Society and he is nothing to do with the suit property. In spite of such a specific plea from D.3, plaintiffs have not taken any steps to implead APCC Employees House Building Society though an objection was raised, that presence of APCC Employees House Building Society is necessary and it is a proper party for deciding the issues. But the trial court has not accepted that objection and overruled it on the ground that a suit cannot be dismissed for not impleading a necessary party. That finding was not challenged by the defendants and it has become final.

Plaintiffs having asserted that they are owners of plaint schedule property and sought declaration, it is for them to prove the same. To substantiate their claim, they relied on oral evidence of P.W.1 to P.W.5 and documentary evidence Exs.A.1 to A.6.

P.W.1 is 1st plaintiff, P.W.2 is G.P.A.Holder of Bapiraju from whom, plaintiffs claims to have purchased suit property, P.W.3 and P.W.4 are nearby land owners who are examined to prove that vendor's vendor of plaintiffs enjoyed this land and

P.W.5 is daughter of Shaik Meera, who along with her mother executed Ex.A.1 sale deed. So far as documents are concerned, Ex.A.1 is sale deed dated 21-2-1966 through which P.V.B.Raju said to have derived title, Ex.A.2 is G.P.A. executed by P.V.B.Raju in favour of P.W.2 who executed sale deed in favour of plaintiffs; Ex.A.3 is sale deed in favour of plaintiffs; Ex.A.4 is auction notice dated 03-12-1982; published in Eenadu Daily dated 12-12-1982; Ex.A.5 is xerox copy of notice under Section 5 of Land Acquisition Act by Special Deputy Collector, L.A.UDA, Visakhapatnam and Ex.A.6 Extract of survey and Settlement Registrar of the village of Kurmannapalem in Pedagali tahana, Vizianagaram Samsthanam.

Learned Senior Counsel contended that plaintiffs title is established through Ex.A.1 to A.3 and there is no document to show that the suit land is a Government land and as plaintiffs have better title than defendants their title has to be declared. It is further contended that the declaration now sought would only bind defendants and not anybody. According to appellants' counsel the trial court has not given any weight to Exs.A.1 to A.3, thereby committed error. On the other hand, it is the contention of learned G.P. that burden is on the plaintiffs to prove their title having come to court and it is not for the defendants to prove their title. He further contended that on abolition of Estate suit land vested in Government and if Shaik Meera had any right, he ought to have approached Settlement Officer for grant of patta and there is no reference in Ex.A.1 as to how Shaik Meera derived title. He further contended that there is a clear interpolation of S.No. both in Exs.A.1 and A.2 which is a strong circumstance against the plaintiffs and trial court rightly considered this aspect in refusing the relief to plaintiffs. In answer to the above submissions, learned counsel for plaintiffs contended that correction or interpolation of S.No. in Ex.A.1 and A.2 has no bearing because, there is no change of boundaries. He contended that when there is variation of extent or S.No. boundaries shall prevail is the settled principle therefore, correction or interpolation of S.No.is insignificant.

Now we shall examine Exs.,A.1 to A.3 documents with reference to above contentions and rival contentions of both

sides. P.W.1 in his evidence stated that suit property originally belonged to one Shaik Meera and P.V.B.Raju purchased suit land from legal representatives of Shaik Meera. To trace title of plaintiffs, Ex.A.1 is starting document. In Ex.A.1 there is a correction of S.No. which is not disputed. Ex.A.1 is of the year 1966. The same correction in S.No. is also carried out in Ex.A.2 G.P.A. which is of the year 1980.

P.Ws.1, 2 and 5 are examined to speak about Exs.A.3,A.2 and A.1, respectively. P.W.1 stated in his evidence that since about 100 years, suit property has been in possession of his vendor and his predecessors and they paid cist. He categorically stated that he paid cist after purchase of property and prior to that Bapiraju and prior to that muslims paid cist but not even a single cist receipt is filed to support his version with regard to payment of cist to the land. He further deposed that he has not filed any cultivation account showing his possession or possession of third plaintiff or possession of his predecessors-in-title. He admitted that he has not filed any document to show that he enjoyed the property from the date of his purchase.

Admittedly, the suit land was in the estate of Vijayanagaram samstanam and Estate was abolished in the year 1949. According to P.W.1, Shaik Meera got this property as a gift from Vijayanagaram samstanam but there is absolutely no material to support his version. Even P.W.1 admitted in his evidence that there is no document to show that this property was gifted to Shaik Meera by the Erstwhile samstanam of Vijayanagaram. He further asserted that there is no document to show that he raised crops in the suit land.

P.W.2 who executed the sale deed in favour of P.W.1 on behalf of P.V.B.Raju deposed in his evidence that he has not taken any title deeds from Muslim people from whom, the property was purchased. He further deposed that he cannot say as to how those muslims acquired the suit property. He admitted in his evidence that there are no documents to show that their vendor got title or possession. He further deposed that he has not obtained any Encumbrance Certificate relating to the suit land at the time of purchase, and that he has not verified any documents relating to suit land. P.W.2 assertively

stated that he has not personally satisfied with the title of muslims but believing the version of karanam, he purchased the same. He further deposed that he has seen the land but he can not give the boundaries. He deposed when he saw it, the land was a banjar land and there were no crops. He further stated that S.No.was corrected from 46/1 to 46/4 and it was made prior to registration. He deposed that he cannot say whether karanam made correction in ex.A.2 also relating to S.No. at the time of writing Ex.A.3. He deposed that he came to know about correction in Exs.A.1 and A.2 for the first time during course of cross-examination when those documents were shown to him. He deposed that he does not know whether the land was a Government land and he cannot say whether he obtained any patta from settlement authorities after purchasing the land. He deposed that he has not handed over any documents to his vendee except Ex.A.1. He also deposed that he does not have any tax receipt and that he never obtained any such receipts. P.W.5 is one of the executant of Ex.A.1 and she deposed that she does not know how the land was enjoyed and by whom during the life time of her father and that she never saw title deed relating to the suit land at any time. She deposed that her father died about 30 years back and after her father's death, her mother raised crops in the land and thereafter, sold the property to son of P.W.2. She further deposed that her father got this property from her grand father.

From a perusal of evidence of P.Ws.1,2 and 5, it is clear that they did not have any documents to show enjoyment of the suit property either by Shaik Meera or P.V.B.Raju or plaintiffs. Except these three documents i.e., Exs.A.1 to A.3, there is no other document of any kind to support the pleading of enjoyment of suit property by plaintiffs and their predecessors for more than 50 years.

It is evident from a perusal of Exs.A.1 and A.2, there is a correction in the survey number which in fact is admitted by P.W.2 in his evidence that 46/1 is corrected as 46/4. Both Exs.A.1 and A.2 are original documents and there is no certification of these corrections on both these documents. One of the arguments of learned Senior Counsel on behalf of appellant is, as there is no change of boundaries, this correction

of S.No. is insignificant. To appreciate his submission, it maybe necessary to verify the sale deeds Exs.A.1 and A.3. On perusal of these two documents, we noticed in Ex.A.1, no boundaries are given and the same is recorded specifically in the document. But in Ex.A.3, specific boundaries are given and it is not known how these boundaries are arrived. So, from a comparison of documents Exs.A.1 and A.3, the argument of the counsel for the appellants cannot be accepted for the simple reason that no boundaries are given in Ex.A.1, therefore, the principle of boundaries will prevail where there is a variation of survey number is no way applicable to the case on hand.

It is the submission of advocate for appellants that this being a civil claim, court should consider preponderance of probabilities and strict proof is not necessary unlike in a criminal case. According to learned Senior Counsel uncontroverted sale deed in favour of plaintiffs (Ex.A.3) is a strong probability in favour of plaintiffs, which document is linked with Ex.A.2 and A.1 in establishing plaintiffs' vendor's title. According to counsel for appellants as trial court has not discarded, these three documents, refusing relief of declaration is not warranted.

We have examined evidence of P.Ws.1,2 and 5 and Exs.A.1 to A.3. On a scrutiny of above evidence, it is clear that there are no documents to show that Sk.Mera, P.V.B.Raju and plaintiffs enjoyed this property over a period of more than 50 years; there is also no record to show that Shaik Meera and his father enjoyed this property during the estate period or after the estate was taken over; and P.W.2 from whom plaintiffs obtained Ex.A.3 sale deed assertively stated that he himself is not satisfied with the title of Shaik Meera or his legal representatives.

The above are the circumstances against plaintiffs. Added to the above, there is a correction of S.No. both in Exs.A.1 and A.2. From a close scrutiny of the entire material on record, it can be safely inferred that correction of S.No.was made only at the time of execution of Ex.A.3. This is a very strong circumstance against the plaintiffs version. According to P.W.2 without verifying any documents this property was purchased for his son who was working as officer in a Nationalised Bank. His approach in purchasing property is

quite contra to normal human conduct particularly when an employee was parting with money. These aspects were dealt in detail by trial judge. We do not find any wrong appreciation of any of the aspects by trial court for holding the issues relating to title against plaintiffs.

With regard to enjoyment, plaintiffs relied on the evidence of P.W.3 and P.W.4 but when the main witnesses have not asserted about possession and enjoyment, which was not supported by any documentary evidence, version of P.Ws.3 and 4 which is corroborative in nature has no evidentiary value without there being any substantive piece of evidence.

One of the contentions of plaintiffs is that trial court erred in holding that the suit land is a banjar land and thereby vests with the Government. It is the contention of the learned Senior Counsel representing plaintiffs that the word 'gayalu' is wrongly interpreted by trial court and if a correct meaning is taken, the suit land cannot be termed as 'banjar'. In support of his argument, he has drawn our attention to Glossary of Judicial and Terms. In this, for Telugu word 'gayalu' the meaning was given as land unfit for cultivation. Trial court judge by taking Brown's Telugu Dictionary meaning, gave a finding that the 'gayalu' land can be treated as banjar or waste land or "beedunela". Learned GP in reply to this, has drawn our attention to Telugu to English Dictionary of P.Shankaranarayana in which, meaning of 'gayalu' is given as land unfit for cultivation. So, the cumulative effect of all these expressions, 'gayalu' land has to be treated as land unfit for cultivation.

This contention is raised on the ground if the land is not banjar land, it has to be treated as private land thereby do not vest in Government on account of Estate Abolition. It may be relevant to examine Section 3 of the Act, 1948 to know the meaning of vesting.

This Section 3 reads as follows:

"With effect on and from the notified date and save as otherwise expressly provided in this Act—

- (a) *the Andhra Pradesh (Andhra Area) Permanent Settlement Regulation, 1802, the Estates Land Act, and all enactments applicable to the estate as such except the Andhra Pradesh (Andhra Area) Estates Land (Regulation of Rent) Act, 1947,*

shall be deemed to have been repealed in their application to the estate;

- (b) the entire estate (including [minor imams (post-settlement or pre-settlement) included in the assets of the zamindari estate at the permanent settlement of that estate, all communal lands and porambokes] other non-ryoti lands; waste lands, pasture lands; lanka lands; forest; mines and minerals; quarries; rivers and streams; tanks and irrigation works, fisheries; and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances; and the Andhra Pradesh (Andhra Area) Revenue Recovery Act, 1864, the Andhra Pradesh (Andhra Area) Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate;
- (c) all rights and interests created in or over the estate before the notified date by the principal, or any other land holder, shall against the Government cease and determine;
- (d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to that estate which the Government may require for the administration thereof:

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta—

- (i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;
- (ii) if such person is a landholder pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta;
- e) the principal or any other landholder and any other person whose rights stand transferred under clause (b) or cease and determine under clause (c) shall be entitled only to compensation from the Government as provided in this Act;
- f) the relationship of landholder and ryot shall as between them, be extinguished;
- g) ryots in the estate and persons holding under them shall, as against the Government, be entitled only to such rights and privileges as are recognized or conferred on them by or under this Act, and any other rights and privileges which may have accrued to them in the estate before the notified date against the principal or any other landholder thereof shall cease and

determine and shall not be enforceable against the Government or such landholder.”

A plain reading of above provision indicates that entire estate vests with the Government but the persons who are in possession of land whether in the capacity of landholder or ryot is protected from dispossession and such persons shall apply for ryotwari patta.

Examination of nature of land in respect of estate land is within the purview of Settlement Officer who is expected to examine history of land also. During enquiry, he will determine the status of the person in possession of the property as on the date of taking over of estate. If the person in possession is a Land Holder or ryot cultivating the land on behalf of land owner, a patta will be issued as per the status of that person. Much is argued on the aspect of nature of land with reference to Exs.B.1 and A.6. Learned Senior Counsel for appellant submitted that when the entries in these two documents would show “assessed waste” and disclose collection of cist, the land has to be treated as private land and it cannot be a Government land. He further contended that no cist will be collected in respect of Government land and this aspect would support the version of plaintiffs that they are the owners.

We have examined Exs.B.1 and A.6. No doubt in Ex.B.1, it is recorded as “assessed waste” against survey No.46/4 but the name of pattadar or inamdar is not recorded against S.No.46/4. This document can be considered if the plaintiffs could establish that they have got land in S.No.46/4. As already observed above, there is a clear interpolation of survey number, both in Exs.A.1 and A.2 and it is not known in which survey Number Sheik Meera owned land. Now we are concerned only with survey number 46/4 and when the plaintiffs failed to correlate documents Ex.A.1 and A.2 to the suit S.No.with convincing evidence, submissions with regard to nature of land or Government assessing it as “assessed waste” is of no relevance. As seen from Ex.A.6, there are no sub-divisions and survey number 46 is shown for an extent of Ac.9.24 cents and name of pattadar or inamdar is not at all recorded against this survey Number. In Ex.B.1, some muslim names are recorded against survey numbers 46/3 and 46/2 and it is not known

whether those muslim persons are the same persons who acquired lands from Vizianagaram samstanam.

One of the contentions of the advocate for appellants is transactions between parties in respect of immovable property, some times constitute the only evidence available and in this case, Ex.A.1 and A.3 are the only documents available and on the basis of those documents, plaintiffs title has to be declared. He contended that State claimed title by way of statutory right under Section 3 of the Estates Abolition Act and when plaintiffs could show that the land is not vested with Government, then plaintiffs have got better title than the Government and therefore, their title has to be declared.

Learned counsel relied on a decision of Madras High Court in *RAMA IYENGAR v. MANNAR IYEN, KASINIVENDA AIYANGAR* (S.A.No.287 of 1911 16th August, 1912), for the proposition that some times transactions dealing with the property constitute the only evidence available. Learned counsel may be right in saying that sometimes courts have to consider the only evidence available and this principle with reference to Exs.A.1 to A.3 can be applied provided transaction under these two documents are convincing. We are of the view that the same can not be applied in favour of the plaintiffs for following reasons.

- * Firstly, there is a alternation of survey number, both in Exs.A.1 and A.2 which is visible to a naked eye and factum of correction is not disputed.
- * Secondly in Ex.A.1, source of title to Shaik Meera was referred to as ancestral property of Shaik Meera but in evidence, the version put forth is that this land was gifted to the predecessors of Shaik Meera by Vizianagaram samstanam, this discrepancy is not clarified.
- * Thirdly, it is doubtful from a perusal of the entire material whether Shaik Meera has really got property in survey No.46/4 or in the other sub-division of the same survey number.

* Fourthly, no boundaries are given in Ex.A.1 sale deed in the

absence of which the property under Ex.A.1 cannot be correlated to the property covered by Ex.A.3.

* Fifthly, name of Shaik Meera or his legal representatives are

not recorded both in Exs.A.6 and B.1 in respect of survey

No.46/4.

* Sixthly, the fact that plaintiffs sought declaration of title

would indicate that there is a cloud over title, in such circumstances it is the burden of plaintiffs to remove every suspicion to clear the cloud for which they miserably failed.

* Lastly, plaintiffs have not filed any cist receipts though

pleaded specifically that the property was under enjoyment

of Shaik Meera, his predecessors in title prior to Ex.A.1 and

after Ex.A.1, B.V.Raju and after Ex.A.3, plaintiffs over a period of more than 50 years. On the other hand, as seen

from the material, like pleadings and evidence, the plaintiffs were not in possession as on the date of the suit and the property was auctioned and third party was inducted in pursuance of the auction proceedings.

Though the suit is filed seeking relief of title, the entire pleadings of plaint are only in respect of action of the Government in conducting auction and its right in conducting such auction. Entire plaint is only questioning the auction proceedings and its validity and only in the concluding portion, the pleading is that plaintiffs were advised to seek a declaration of title.

Trial court has examined every aspect minutely and

considered both oral and documentary evidence of both parties and appreciated it in a right way. We do not find any incorrect findings or wrong appreciation on any aspects concerning Exs.A.1 to A.3.

One of the arguments advanced on behalf of appellants is that the learned Single Judge has not followed the procedure under Order 41 Rule 31 C.P.C. and for that reason, judgment of the learned Single Judge has to be set aside.

No doubt, the procedure contemplated under Order 41 Rule 31 C.P.C. is not followed by learned Single Judge, as we have already dealt every issue, we are not proposed to dwell into that aspect.

For these reasons, we are of the considered view that plaintiffs have miserably failed in proving their title over the plaint schedule property and that the point is accordingly held against them.

POINT No.4:

In view of our findings and observations on points 1 to 3, it is held that there are no merits in the appeal and the findings of the trial court as accepted by the learned single judge are upheld so far as all the issues are concerned, except on the issue of jurisdiction.

Accordingly, this appeal is dismissed with costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE RAMESH RANGANATHAN

JUSTICE S.RAVI KUMAR

Dated 22-7-2015.

Note:

LR copy to be marked.

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Dvs

HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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L.P.A.No.169 of 2002
Dated 22-7-2015

Dvs

[\[1\]](#) 1984 (1) APLJ 113
[\[2\]](#) AIR 1986 SC 794
[\[3\]](#) AIR 1958 AP 100 (VOL.45, C.31)