

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

APPEAL SUIT No.953 of 2004

JUDGMENT : (per Hon'ble Sri Justice A. Shankar Narayana)

This Appeal Suit, under Section 96 of C.P.C., by the plaintiffs, arises out of the judgment and decree dated 21.10.2003, in O.S.No.43 of 1998, rendered by the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, whereby and whereunder the suit for declaration of their title over the plaint schedule property, consisting of Acs.5.10 guntas of land in Sy.Nos.250, 251 and 254 of Bowrampet Village, Quthbullapur Mandal, Ranga Reddy District, within specific boundaries and for possession thereof, was negatived.

2. The appellants herein are plaintiffs and the respondents herein are defendants in the O.S.No.43 of 1998. For the sake of convenience, the parties are referred to as they were arrayed in O.S.No.43 of 1998 before the Court below.

3. The material facts for the purpose of this appeal, shortly, are as follows:

Plaintiff Nos.1 and 2 are brothers and plaintiff No.3 is their sister. Initially, plaintiff Nos.1 and 2 and their brother-in-law – late P.R. Gurunatham, who is the husband of plaintiff No.3, have taken the plaint schedule property in an

extent of Acs.5.10 guntas of land in Sy.Nos.250, 251 and 254 of Bowrampet Village, Quthbullapur Mandal, Ranga Reddy District, on lease and started developing it as a Farm Garden, 2 years next before they started purchasing distinct extents under separate registered Sale Deeds on 30.07.1990. Each of them purchased an extent of Ac.1.00, from Shambipuram Bagaiah, defendant No.35. Prior thereto, plaintiff No.1 purchased an extent of Ac.1.20 guntas from one N. Mallesh, under a registered Sale Deed dated 30.03.1990. Another extent of Ac.0.30 guntas from D.35, under a registered Sale Deed dated 30.10.1996. The plaintiffs claim that they were put in possession and have been in continuous possession and enjoyment of the plaint schedule property without any let or hindrance from anyone. They laid a fence all around the entire area and constructed a house and a shed, after obtaining due sanction from the Gram Panchayat, sunk three bore-wells, planted 700 fruit-bearing trees, including coconut, obtained Electricity Service connection, paid consumption charges and, on their application, mutation was also done in the Revenue records, bringing their names in respect of the said lands.

4. The plaintiffs state that they verified and found their vendor's name – Bagaiah, as the absolute owner and possessor of the property, and the father's name of Sri Bagaiah, in the Khasra Pahani for the year 1954-55 and there were no encumbrances, as evidenced from the Certificate

obtained for the years from 01.01.1967 to 18.12.1997, and thus, according to them, there was no protected tenant in respect of the suit property.

5. In para-7 of the plaint, they expressed their dismay on seeing the contents of a copy of notice dated 31.12.1997, got issued by defendant Nos.1 to 33, through their Advocate, to defendant No.35, informing that they are purchasers from the protected tenant, which was supported by a judgment dated 02.12.1994, passed in L.G.C.No.20 of 1994 by the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (for brevity "the Special Court") against defendant No.35, which was confirmed by the order dated 09.12.1997, passed by this Court in W.P.No.10734 of 1995, demanding defendant No.35 to put them in possession of the suit property. The plaintiffs state that they got issued a reply notice dated 12.01.1998, and a corrigendum dated 19.01.1998.

6. In para-8 of the plaint, they state that, on enquiry, they came to know that one Sri Venkaiah, who is defendant No.34 in the suit, claiming himself to be the protected tenant of the suit property and possesses a Certificate under Section 38-E of the A.P. (Telangana Area) Tenancy and Agricultural Land Act, 1950 (for brevity "the Tenancy Act"), from whom defendant Nos.1 to 33 alleged to have purchased the suit property, approached the Special Court against defendant No.35 and an exparte judgment dated 02.12.1994, in

L.G.C.No.20 of 1994 was passed, as defendant No.35 did not contest the matter. The plaintiffs assign reasons therefor, stating that defendant Nos.34 and 35 are close relatives, as defendant No.34 is the husband of the sister of defendant No.35. The plaintiffs claim that they were never informed about the said *exparte* judgment and the order passed by this Court in W.P.No.10734 of 1995 and, as they were not made parties to the said proceedings, the said judgment and order do not bind them.

7. In para-9 of the plaint, the plaintiffs state that the Sale Deeds, under which defendant Nos.1 to 33 said to have purchased the suit property, were unregistered and, therefore, they are reflected in the Encumbrance Certificate and, thus, they do not confer any title on defendant Nos.1 to 33, and hence, they cannot be looked into. The plaintiffs even claim that defendant Nos.34 and 35, by colluding together, played fraud and obtained Certificate under Section 38-E of the Tenancy Act.

8. During pendency of the suit, by introducing an amendment, the plaintiffs projected that, even, while an order of *status quo* passed by this Court on 04.05.1999, in CMA.MP.No.5548 of 1999 in CMA.No.652 of 1999, was existing, the defendants, unjustly, interfered with their possession on 16.05.1999, causing damage to the property and, again on 05.03.2000, the defendants alleged to have

brought Bull-dozers and other heavy equipment and moved down the entire Farm Yard, and hence, they were constrained to issue a telegram dated 05.03.2000, besides lodging a complaint. Thus, the plaintiffs state that the defendants are liable to compensate them. In the concluding portion of said paragraph, in the context of seeking the relief of recovery of possession, the plaintiffs state thus:

“..... Further, since the defendants under the guise of unsustainable panchanama claimed to have given into the possession of the property, but have no such possession as per their claim as a more abundant precaution not to prolong any further litigation. The plaintiffs claim recovery of possession as a consequential of the declaration.”

9. The plaintiffs, thus, seek the relief of declaration of title to the plaint schedule property, along with yet another declaratory relief, to declare the judgment in L.G.C.No.20 of 1994, dated 02.09.1994, passed by the Special Court under the Land Grabbing Act, and the Order dated 09.12.1997, passed by this Court in W.P.No.10734 of 1995, as not valid and binding on them, besides seeking two more reliefs (i) for perpetual injunction restraining the defendants from interfering with their possession over the plaint schedule property, and (ii) to pay a compensation of Rs.19,00,000/- towards damages.

10. A common written statement was filed by defendant Nos.4 to 6, 8, 9, 19, 21, 23, 26 and 27, resisting the reliefs sought for by the plaintiffs.

11. Defendant Nos.1 to 3, 7, 11, 20, 22, 24, 25 and 28 to 33 have filed a Memo, adopting the common written statement filed by the other set of defendants.

12. Defendant Nos.34 and 35, since, did not enter appearance, were set exparte.

13. In the said common written statement, the defendants expressed their ignorance in regard to the relationship of the plaintiffs, inter se, and purchase of various extents under different Sale Deeds, as referred to by the plaintiffs.

14. The defendants denied the allegation that the plaintiffs were put in possession of the lands, stating that the very purchase was illegal and void and claim that the Mutation Registry does not confer any right or title over the property to the plaintiffs and that the Civil Court cannot go into the correctness of the Certificate of Ownership issued in the name of Shapuram Venkaiah. Controverting the allegations made in para-7 of the plaint, the defendants state that the Special Court, after examining all the documents, held that Shapuram Bagaiah, who is defendant No.35 and vendor of the plaintiffs, was a land grabber and this Court in W.P.No.10734 of 1995 held that the plaintiffs also perpetuated the land grabbing activity and, therefore, the plaintiffs cannot seek declaration, since the judgment dated 02.12.1994, passed in L.G.C.No.20 of 1994, and the order

dated 09.12.1997, passed in W.P.No.10734 of 1995, operate as *resjudicata*.

15. Adverting to the allegations made in paras-8 and 9 of the plaint, the defendants state that the orders passed in L.G.C.No.20 of 1994 and W.P.No.10734 of 1995 have since become final, cannot be re-opened and the Civil Court cannot go into the question as to the protected tenancy and it is for the Revenue Authorities to decide the said issue, more particularly, when Section 38-E Certificate issued in favour of Shapuram Venkaiah attained finality.

16. Stating that the plaintiffs have no cause of action and not entitled to any of the reliefs and the present suit is filed only to harass them (defendants), who are all employees of HAL and poor people, the defendants sought to dismiss the suit.

17. Basing on the said pleadings, the Court below, originally, settled the following four (4) issues:

- (1) Whether the plaintiffs are entitled for declaration of their title over the plaint schedule lands?
- (2) Whether the sale deeds obtained by the plaintiffs from the defendant No.35 are binding on the other defendants?
- (3) Whether the Civil Court has jurisdiction to decide the title of the plaintiffs over the suit lands in view of the Judgment in L.G.C.No.20 of 1994?
- (4) To what relief?

18. On amendment of the plaint, introducing the relief of recovery of possession, the following additional issue was settled:

“Whether the plaintiffs are entitled for possession prayed for?”

19. To substantiate their claim, plaintiff No.1 examined himself as P.W.1, besides examining four (4) other witnesses, as P.Ws.2 to 5, and exhibited as many as fifty four (54) documents, as Exs.A.1 to A.54. In order to condemn the case of the plaintiffs, defendant No.9 examined himself, as D.W.1, and exhibited sixty five (65) documents, as Exs.B.1 to B.65.

20. The Court below, on appraisal of evidence on record, both, oral and documentary, let in by the rival parties, while observing that the plaintiffs failed to establish that their vendor, defendant No.35, held title over the plaint schedule property, tendered finding on Issue Nos.1 and 2, having taken up together, against the plaintiffs and defendant No.35.

21. The Court below, while dealing with issue No.3 along with additional issue and referring to the relevant provisions of the Tenancy Act, recorded a finding that the orders rendered by the Special Court and this Court and the findings recorded therein, since, became final, and that in view of the bar contained under the provisions of Section 99 of the Tenancy Act, the Civil Court has no jurisdiction to decide the validity of the Ownership Certificate granted under Section

38-E of the Tenancy Act, and thereby, held both the issues against the plaintiffs and defendant No.35, and thus, declined to grant compensation of Rs.19,00,000/- towards damages to the plaintiffs and, consequently, dismissed the suit, vide judgment and decree dated 21.10.2003. Aggrieved by the said judgment and decree, the plaintiffs preferred the present appeal suit.

22. In challenge to the aforesaid judgment and decree, the appellants – plaintiffs have agitated as many as seventy (70) grounds, which, of-course, are unnecessary to refer to, except that are essential for disposal of the present appeal suit. We, therefore, would like to refer to the main grounds, thus:

- (1) The appellants – plaintiffs would state that the purchase of extents by respondent – defendant Nos.1 to 33 is neither genuine nor bonafide, as on the date of passing of the order under Ex.B.1 by the Joint Collector, the defendant No.34 did not have any title and, therefore, he could not have transferred any better title, which, the Court below has side-lined;
- (2) The appellants – plaintiffs state that the Court below ought to have found that Ex.B.62 is a got-up document for the purpose of the case, as it does not find place in the sale documents in favour of respondent – defendant Nos.1 to 33, more particularly, in view of admission of D.W.1, in that regard.
- (3) The appellants – plaintiffs also state that the Court below ignored Exs.A.12 and A.16, which would prove

the possession of the plaintiffs, and even Exs.A.1 to A.38 and Exs.A.48 to A.54, without any basis.

- (4) Basing on the typographical error in mentioning defendant No.35, instead of defendant No.34, in connection with claiming the issue of Protected Tenancy Certificate, the appellants – plaintiffs would contend that the Court below misunderstood the controversy between the parties, stating that it was defendant No.34, who claims Protected Tenancy Certificate, and not defendant No.35.
- (5) The appellants – plaintiffs would state that the Court below wrongly laid burden on defendant No.35 to state that he should have challenged the Ownership Certificate under Section 38-E of the Tenancy Act issued to defendant No.34 and failed to see that the material placed before the Court would make it clear that neither defendant No.34 nor his father were shown as Protected Tenants in the Original Register and the Certificate under Ex.B.1 is sham and bogus and cannot be taken up for the purpose of conferring any title on defendant No.34, though, Exs.A.29 and A.30 – Khasra Pahanis would categorically show the name of the father of defendant No.35 as a tenant.
- (6) The appellants – plaintiffs would state that the Court below ought to have seen that a document, which is not binding on the parties, need not be challenged and can be set up as a defence in any collateral proceedings, as to its legality and validity, and, thus, Ex.B.1 is binding between defendant No.34 and the Pattadars and not against others, more particularly, Ex.B.1 is neither original nor certified copy and ought not to have acted upon.

- (7) Touching Ex.B.1, they would agitate that the Court below rested its decision on Ex.B.6 without comprehending that the appellants – plaintiffs were not parties to Ex.B.6 order and, thus, they were condemned unheard and, therefore, the Court below ought not to have decided the rights of the appellants – plaintiffs basing on the observations in Ex.B.6.
- (8) The appellants – plaintiffs would state that the judgment in L.G.C.No.20 of 1994 is an ex parte order and passed behind their back, and failed to notice that the Special Court went wrong in upholding the Occupancy Certificate, despite the fact that the same was not in issue before it.
- (9) The appellants – plaintiffs would state that the Court below ought to have held that they were the bonafide purchasers for value without the knowledge of any litigation.
- (10) The appellants – plaintiffs would state that the Court below misconstrued the provisions of Section 3 of the Transfer of Property Act and wrongly noted that they (plaintiffs) have got constructive notice of the suit on the alleged sale deeds in favour of respondent – defendant Nos.1 to 33.
- (11) The appellants – plaintiffs would state that the Court below assumed that there was an injunction against defendant No.35, when he grabbed the property, though, the record would not reflect the same.
- (12) The appellants – plaintiffs would state that somehow, the Court below did not appreciate that even the land that was purchased from Sri N. Mallesh, through whom respondent – defendant

Nos.1 to 33 do not claim any right or entitlement or derivative title and ignored it, despite the fact that the said extent was purchased under a separate document under Ex.A.4 and does not constitute part of the property claimed by respondent – defendant Nos.1 to 34.

(13) The appellants – plaintiffs would state that the claim of respondent – defendant Nos.1 to 33 in L.G.C.No.20 of 1994 was for an extent of Acs.7.00, while the total extent of all the sale deeds, covered by Exs.B.16 to B.42 and Exs.B.59 to B.61 do not total up to more than Acs.2.00, and thus, the claim of the respondents – defendants is wholly misconceived as against them (plaintiffs), which, the Court below failed to appreciate and also the fact of the cumulative purchase of all the plots by them (plaintiffs) was Acs.5.37 guntas, including an extent of Ac.1.20 guntas under Ex.A.4 from the said N. Mallesh, as a third party.

(14) The appellants – plaintiffs also contend that the Court below somehow did not appreciate evidence let in by them through P.Ws.2 to 5, as to the fencing the lands and developing it since 1998, which is evidenced by Ex.B.2, and did not assign any reason for rejecting or ignoring evidence of P.Ws.2 to 5.

(15) Touching evidence of P.W.5, the appellants – plaintiffs state that the original Protected Tenancy Register brought by P.W.5 – MRO, shows neither the name of defendant No.34 nor his father's name mentioned, but the Court below ignored the evidence of P.W.5.

(16) The appellants – plaintiffs state that the Court below ought to have held that respondent –

defendant Nos.1 to 33 are not the bonafide purchasers, despite admission of D.W.1 that Exs.B.15 and B.16 do not bear the signatures of any of the executants granting any power to the GPA Holder.

(17) The appellants – plaintiffs attacked Exs.B.7 and B.13 on the ground that the contents therein are mutually contradictory and susceptible in nature and ought to have been rejected.

(18) The appellants – plaintiffs state that Ex.B.7, *exfacie*, reflects existence of buildings and standing trees, but, the categorical denial of D.W.1 were not properly considered by the Court below and leaned in favour of respondent – defendant Nos.1 to 34.

(19) The appellants – plaintiffs would state that the Court below ought to have appreciated that the possession of property was delivered to respondent – defendant Nos.1 to 33 during the pendency of the suit and, therefore, the issue of the appellants – plaintiffs having been in possession of all earlier points of time validly, ought to have been properly considered and so also the loss that occasioned to them to the extent of Rs.19,00,000/-, as borne out by record, and ought to have decreed the suit.

(20) Finally, the appellants – plaintiffs would state that the findings recorded by the Court below are wholly illegal, perverse and unjust.

23. We have heard Sri V. Hari Haran, learned counsel for the appellants – plaintiffs, and Sri A. Ramakrishna for respondents Nos.1, 4, 5, 8 to 11, 16, 18, 19 and 23 to 25; and

Sri Ghanta Rama Rao and Sri Manne Hari Babu, learned counsel for respondents Nos.2, 3, 6, 7, 12, 15, 17, 20, 21, 26, 27, 32, 36 and 37. Though, service was completed on respondent Nos.28 and 33 to 35, none appears for them. Service was not completed on respondent Nos.22, 29, 30 and 31, though, sent to the same address that was mentioned in the cause title of the suit. However, their absence is of any significance to decide the controversy herein.

24. Learned counsel for the appellants – plaintiffs, while reiterating the grounds agitated, would submit that the Khasra Pahanis under Exs.A.29 and A.30 would clinchingly establish the title of defendant No.35, since the name of his father is shown as one of the occupants, whereas, the name of the father of defendant No.34 or defendant No.34 did not, at all, find place and that itself is sufficient to view that defendant No.34, somehow, managed to get Ex.B.1 – Ownership Certificate and that it would only bind the parties thereto and would not bind the appellants – plaintiffs and, therefore, even the order of the Joint Collector, the judgment of the Special Court in L.G.C.No.20 of 1994, and the order of this Court in W.P.No.10734 of 1995 would not bind the appellants – plaintiffs. It is his submission that the Khasra Pahani constitutes the basic Record of Right prepared by the Board of Revenue of A.P., for the year 1954-55 and, therefore, it constitutes the document of title. To fortify the said submission, the learned counsel relies on a ruling of the

Hon'ble Supreme Court in **Government of Andhra Pradesh v. Pratap Karan**¹. It is, therefore, his submission that the Court below has not properly appreciated evidence on record and tendered findings in favour of respondent – defendant Nos.1 to 34 and hence, the same are liable to be set aside.

25. *Per contra*, learned counsel for both the sets of respondents would contend that the vendor of the appellants – plaintiffs i.e., defendant No.35, did not have any Ownership Certificate issued under Section 38-E of the Tenancy Act and, therefore, he cannot claim any title over the plaint schedule property and the conveyance in favour of the appellants – plaintiffs by defendant No.35 is without any valid title being conveyed to him.

26. The learned counsel also would submit that despite the vendor of the appellants – plaintiffs, consistently, failing before the Revenue authorities and the Special Court and becoming unsuccessful in the writ petition before this Court in challenge to the judgment of the Special Court, still, the appellants – plaintiffs made an attempt by filing a claim petition before the Special Court (and becoming unsuccessful), even during the pendency of the suit in O.S.No.43 of 1998, from which, the present appeal suit arises, would all reflect the conduct of the appellants –

¹ AIR 2016 SC 1717

plaintiffs that, somehow, or other they want to harass and defeat the title of respondents – defendant Nos.1 to 33.

27. The learned counsel would submit that the main dispute between the parties to the suit being, that defendant No.34 was a Tenant or not, is in the domain of the Tenancy Court and, therefore, the appellants – plaintiffs could not maintain a suit in a Civil Court. In support thereof, the learned counsel would place reliance on a judgment of the Supreme Court in **R. Ravindra Reddy v. H. Ramaiah Reddy**².

28. We have perused the record, both the pleadings and the evidence.

29. The plaintiffs, in fact, sought two declaratory reliefs with a consequential relief of perpetual injunction and the relief for payment of compensation of Rs.19,00,000/- towards damages, besides the relief of recovery of possession, which was added by introducing an amendment.

30. The two declaratory reliefs relate to, (i) to declare the title of the plaintiffs over the plaint schedule property, and (ii) to declare that the judgment passed by the Special Court in L.G.C.No.20 of 1994 and the order of this Court in W.P.No.10734 of 1995 are not valid and binding on them. Out

² (2010) 3 SCC 214

of these two, the second relief is based on the plea that defendant Nos.1 to 35 colluded together and by playing fraud obtained the judgment in L.G.C.No.20 of 1994 and the order in W.P.No.10734 of 1995.

31. A comprehensive reading of the plaint averments would, in our view, reflect that the entire case of the plaintiffs rests on the plea of collusion and fraud attributed to defendant Nos.1 to 34 and also the collusion between defendant Nos.34 and 35, being brothers-in-law, in obtaining the judgment and decree of the Special Court in L.G.C.No.20 of 1994. Thus, the said plea of collusion and fraud constitutes the basis for searching out for a cause of action to lay the instant action.

32. The written statement, filed by one set of defendants and adopted by the other set of defendants by filing a Memo, would give a definite impression that the defendants were controverting the plaint allegations, mainly basing on the Ownership Certificate under Ex.B.1, litigation before the Special Court in L.G.C.No.20 of 1994, and the order of this Court in W.P.No.10734 of 1995, when they say that the Special Court cannot go into the correctness of Ownership Certificate issued under Section 38-E of the Tenancy Act in the name of defendant No.34. Of-course, they did mention that the judgment in L.G.C.No.20 of 1994 and the order in W.P.No.10734 of 1995 would bar the present suit by operation of the principle of *resjudicata*.

33. Incidentally, we would like to state that the Court below did not settle the issue touching the material allegation of fraud and collusion in obtaining the judgment and order alleged by the plaintiffs, when specifically denied by the contesting defendants. Somehow, the Court below, at both the stages i.e., at the inception stage of settlement of original issues or additional issue, and at the time of disposal of the suit, before pronouncing the judgment, omitted to frame the relevant issue.

34. However, as could be comprehended from the pleadings of the parties and evidence let in by them, the parties went for trial on the assumption that such an issue was occurring. Therefore, an omission to frame an issue thereon, in our view, is of no significance in adjudicating upon the controversy in the present appeal suit.

35. On a consideration of the pleadings, the grounds of appeal and the submissions made by the learned counsel for parties, the following points would arise for determination in the present appeal suit:

- (1) Whether the plea of collusion and fraud in obtaining a judgment from the Special Court and the order from this Court, as alleged by the plaintiffs, is proved and whether the judgment and decree dated 02.12.1994, passed in L.G.C.No.20 of 1994 and the order dated 09.12.1997, passed by this Court in W.P.No.10734 of 1995 are not binding on the plaintiffs?
- (2) Whether the plaintiffs are entitled to declaration of title and possession of suit land?

(3) Whether the judgment and decree of the Court below can be sustained?

(4) To what other relief, if any?

In re. Point No.1 :

36. We opined in the above that the whole basis, on which the reliefs sought for by the plaintiffs rests, is the alleged collusion and fraud. Averments in paras-7 to 9 of the plaint would reflect that the plaintiffs, in an attempt to succeed, have been attacking the validity and binding nature of the judgment of the Special Court in L.G.C.No.20 of 1994 and the order of this Court in W.P.No.10734 of 1995 on the ground of collusion and fraud. Their stand is two-fold. In the first instance, they attribute collusion between defendant Nos.34 and 35. Second, they allege collusion and fraud amongst defendant Nos.1 to 35 in obtaining judgment and decree in L.G.C.No.20 of 1994. We would like to examine, how far the plaintiffs are successful in establishing the alleged collusion and fraud. Even, at the outset, we would like to express that the plaintiffs are wholly unsuccessful in proving the said allegation. Except the bald allegations in the plaint and vague assertions in his chief-examination by P.W.1, concrete material on record is conspicuously absent to prove the said allegation. On the other hand, the probabilities that arise from the proved facts would completely condemn their stand, which, we would like to refer to hereafter.

37. Ex.B.1 – Ownership Certificate was issued by the Revenue Divisional Officer on 26.12.1979. It reflects that defendant No.34 was the protected tenant of the land belonging to Sri B.V. Prakash Reddy and by virtue of G.O.Ms.No.3, Revenue-G Department, dated 01.01.1973, the Certificate issued under Section 38-E of the Tenancy Act, ownership of the land stood transferred to defendant No.34 and that defendant No.34 shall be deemed to be the owner of the dry land in an extent of Acs.5.36 guntas, located in Sy.Nos.250, 251 and 254 of Bowrampet Village. Precisely, the plaintiffs are claiming the very same property, though, they contend that they did purchase Ac.1.20 guntas from one N.Mallesh, the protected tenant, they do not indicate the location of that extent within specific boundaries in the plaint schedule. Therefore, the very identity of that particular extent said to have purchased by them, cannot be localised in order to support the ground agitated therefor in the present appeal suit.

38. Ex.B.1 was issued on 26.12.1979, of-course, slightly more than seven months prior to the purchase of extents by plaintiff Nos.1 and 2 and the husband of plaintiff No.3. However, the said Sri B.V. Prakash Reddy did not rest there. He challenged Ex.B.1 by moving the Joint Collector, who is the appellate authority, who passed the order dated 20.08.1990, under Ex.B.11. It is true, the legal representatives of the said Sri B.V. Prakash Reddy, who are

wife and daughter, have entered into compromise and filed a petition on 31.10.1989, under Order 23 Rules 1 and 3 r/w. Section 151 C.P.C., and withdrew the appeal against the respondents therein and the same was recorded by the Joint Collector, but, an important aspect of the case cannot be lost sight of. The application filed by defendant No.35 herein under Order 1 Rule 10 r/w. Section 151 C.P.C., was pending by that date. There was a reference to the said application and its disposal by the Joint Collector, holding that, on a perusal of records, the Joint Collector found that neither defendant No.35 nor his father was a party/respondent, either in that case or before the lower Court and moreover, since the applicants therein have filed a withdrawal Memo, there will not be any case and, therefore, he did not allow the impleading petition. It is no doubt true, defendant No.35 did not carry the matter further, but, that does not mean that he, then itself, intended to give up the claim, in active connivance with defendant No.34. The fact that he resisted L.G.C.No.20 of 1994 by getting the witnesses cross-examined, itself is sufficient to belie the allegation of collusion and fraud attributed to defendant Nos.34 and 35. We would like to mention that by the date of order under Ex.B.11, the plaintiffs have already purchased Acs.3.00 of land, as their purchase was on 30.07.1990. So, it cannot be said that they were absolutely ignorant of the proceedings that were pending before the Joint Collector, including the impleading

application filed by defendant No.35. The stand taken by the plaintiffs in an attempt to substantiate that they are bonafide purchasers, since the Encumbrance Certificates obtained by them did not disclose any encumbrances in respect of the said land, is of no avail, for the reason that the purchase of extents by defendant Nos.1 to 33 from defendant No.34 was under registered sale deeds, marked as Exs.B.16 to B.42. The plaintiffs have taken a definite stand that the conveyances in favour of defendant Nos.1 to 33 by defendant No.34 were through unregistered instruments. Therefore, the inference is otherwise, as it cannot be ruled out that the plaintiffs, somehow, obtained the Encumbrance Certificates, getting the names of defendant Nos.1 to 33 omitted, which, thus, would not rule out that the plaintiffs managed to obtain such Encumbrance Certificates, reflecting their conduct. The Registered Conveyance Deeds of defendant Nos.1 to 33 were all dated 06.04.1984 itself. Thus, this circumstance completely belies the alleged collusion and fraud between defendant Nos.34 and 35.

39. The second circumstance is, the very resistance offered by defendant No.35 in L.G.C.No.20 of 1994, which was filed by defendant Nos.1 to 33, originally before the District Court, Ranga Reddy District, in the year 1991 itself, asking the relief of possession as well as declaration to declare defendant No.35 as a land grabber under the A.P. Land Grabbing (Prohibition) Act, 1982, which was later made-over to the

Special Court. Ex.B.2 is the judgment dated 02.12.1994, passed in L.G.C.No.20 of 1994. The plaintiffs termed it as an exparte judgment and thereby contended that it does not bind them, while attributing collusion and fraud among all the defendants herein. In fact, Ex.B.2 would reflect that defendant No.35, in his counter, has taken a specific plea that defendant No.34 obtained Ex.B.1 by playing fraud on the Revenue officials and, therefore, defendant Nos.1 to 33 herein, who were applicants in L.G.C.No.20 of 1994, cannot take shelter under Section 41 of the Transfer of Property Act. That apart, evidence on record was appreciated by the Special Court and tendered finding on each of the issues, and held that defendant No.35 was a land grabber and directed to deliver possession, affirming Ex.B.1, Ownership Certificate issued in favour of defendant No.34.

40. Third, filing of I.A.Nos.1504 and 1505 of 1994 by defendant No.35 making a request to set aside the said decree and the application to stay the proceedings during pendency of application in IA.No.1504 of 1994, which were dismissed on 22.02.1995. An elaborate order was passed by extracting relevant portions of the affidavit filed in support of the I.A. by defendant No.35 and the relevant docket proceedings in L.G.C.No.20 of 1994, commenting on the conduct of defendant No.35, disbelieved the ground taken by defendant No.35. This circumstance also completely belies the allegation of collusion and fraud pleaded by the plaintiffs.

41. Further, the circumstance that defendant No.35 did not stop there, but, carried the matter to this Court by filing W.P.No.10734 of 1995 requesting to set aside the judgment in L.G.C.No.20 of 1994, wherein, certain observations made by this Court would, in fact, clinch the issue herein, in the context of alienations made by defendant No.34 in favour of defendant Nos.1 to 33 and others. This Court recognised the legal right of defendant No.34 over the lands in question and, in the context of additional counter affidavit averments, this Court found that defendant No.35 had hurriedly and unlawfully executed registered sale deeds, alienating the land in Sy.Nos.250, 251 and 254 of Bowrampet Village, and such sale deeds will not confer any rights on such parties, in whose favour the sale deeds have been executed. It is pertinent to mention here that the said sale deeds relate to Exs.A.1 to A.3 and A.5 herein executed by defendant No.35 in favour of the plaintiffs herein. The writ petition was dismissed, but, the fact that defendant No.35 challenged the judgment under Ex.B.2 passed by the Special Court, without allowing it to attain finality, again completely falsifies the allegation of collusion and fraud.

42. The plaintiffs herein, having instituted the suit on 04.04.1998, still, attempted to resist the process of delivery of possession to defendant Nos.1 to 33, pursuant to the judgment dated 02.12.1994, passed in L.G.C.No.20 of 1994. They filed a claim petition before the Special Court in

I.A.No.419 of 2000 in I.A.No.866 of 1998. I.A.No.866 of 1998 relates to the execution proceedings filed by defendant Nos.1 to 33. In the affidavit filed in support of the said application, they have taken all the grounds, which are nothing, but, almost replica of the plaint averments, except to the extent that the relief sought for by the plaintiffs in I.A.No.419 of 2000 was to restore possession of the subject property in L.G.C.No.20 of 1994. The said application was filed under Order 21 Rule 99 r/w. Section 151 C.P.C. Thus, the said application was filed during the pendency of the present suit. The Special Court, having elaborately discussed the matter, held that the interests of justice and fair-play do not appreciate the procedure of prosecuting two parallel proceedings, one in the shape of a suit in the Civil Court, and the other in the shape of a claim petition in the Special Court. The Special Court, observing further, that since, already a comprehensive suit for title and possession is filed by the plaintiffs, if law permits, they may establish their title and recover possession, dismissed the relief of recovery of possession and the claim for grant of compensation of Rs.19,00,000/- towards damages.

43. The plaintiffs herein have not challenged the said order, but, sought recovery of possession by amending the plaint, though, not admitting specifically that the possession was handed over to defendant Nos.1 to 33, as could be seen from the portion extracted in paragraph No.8 in the above.

44. Even the conduct of plaintiffs is worth of commenting in the context of going to the extent of initiating contempt proceedings in C.C.No.867 of 1999 before this Court, complaining the alleged breach of the order dated 04.05.1999 of this Court in CMA.MP.No.5548 of 1999 in C.M.A.No.632 of 1999. The breach complained relates to the *status quo* order passed by this Court and C.M.A.No.632 of 1999 arises out of the suit, from which the present appeal arises, wherein, this Court, while dismissing the contempt case, gave liberty to the plaintiffs to take appropriate steps for seeking any redressal arising out of the so-called breach of the *status quo* order, by claiming damages, etc.

45. Thus, the cumulative effect of the above probabilities is that the plaintiffs completely failed to establish the allegation of collusion and fraud pleaded by them.

In re. Point No.2 :

46. Not much discussion is needed to answer this point. In our view, so long as Ex.B.1 stares at defendant No.35, he (defendant No.35) cannot claim absolute right, title or interest over the suit land or the land covered by Ex.B.1. Admittedly, as rightly held by the Court below, defendant No.35 has never opted or attempted to obtain Certificate under Section 38-E of the Tenancy Act and he did not assign any reasons therefor, though, he claims that his father's name is shown as a tenant

in Khasra Pahani, on which the entire case of the plaintiffs rests. No doubt, they made an attempt to condemn the conveyance deeds in favour of defendant Nos.1 to 33 by defendant No.34, basing on the entries in the Encumbrance Certificates under Exs.A.36 and A.38, but, in view of our observations made hereinbefore, certainly, Exs.A.36 and A.38 would, instead of improving their case, stand adverse to their case, in view of the omission of the names of defendant Nos.1 to 33 in the presence of regular registered Conveyance Deeds.

47. Learned counsel for the plaintiffs, no doubt, refers to the ruling of the Hon'ble Supreme Court in **Pratap Karan's** case (supra 1), contending that the Khasra Pahani constitutes the basic record of right prepared by the Board of Revenue and as per Regulation No.13, any entry in the said Record of Rights shall be presumed to be true, until contrary is proved, but, we are of the view, that, in the absence of Ex.B.1 in favour of defendant No.34, certainly, the entries in Exs.A.29 and A.30 would have gained precedence, but not so, where Ex.B.1 stops them to claim the benefit of entries in the Khasra Pahanis based on presumptive evidence. Therefore, the finding recorded by the Court below, giving priority to Ex.B.1 and rejecting the stand of the plaintiffs, cannot be faulted. The other documentary evidence exhibited on behalf of the plaintiffs, such as the Electricity connection along with bills, issue of Pattadar Pass Books under Exs.A.10 to A.16, the land Title Deed Book under Ex.A.17, in our view, would

not improve the case of the plaintiffs. Even the evidence of P.Ws.2 to 5 is of any use to grant the reliefs sought for by the plaintiffs.

48. Incidentally, we would like to mention that, since the plaintiffs sought the relief of declaration that the judgment in L.G.C.No.20 of 1994 and the order in W.P.No.10734 of 1995 do not bind them, on the ground of collusion and fraud alleged against defendant Nos.1 to 35, it cannot be said that the suit is not maintainable. To that extent, the finding recorded by the Court below is incorrect. At the same time, we would like to express that we are not inclined to enter into the arena of validity of Ex.B.1, as it is within the domain of altogether a different Forum.

In re. Point No.3 and 4 :

49. On our intrinsic examination of the findings recorded and the conclusion arrived at by the Court below, we find that the findings recorded on issue Nos.1 and 2 and the additional issue are well reasoned, based on proper appreciation of evidence on record, and do not suffer from any legal infirmity. Therefore, no interference is warranted.

50. In view of our findings recorded in the above on Point Nos.1 and 2, we find no merit in the present appeal suit and the same is liable to be dismissed.

51. We, therefore, dismiss the appeal suit, confirming the judgment and decree dated 21.10.2003, in O.S.No.43 of 1998, passed by the Court below. We shall make no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE A. SHANKAR NARAYANA

11.11.2016.
Msr



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.953 of 2004



11.11.2016
Msr

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

P.D. JUDGMENT IN
APPEAL SUIT No.953 of 2004

(per Hon'ble Sri Justice A. Shankar Narayana)

