

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

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

+ A.S.Nos.149 & 239 of 2015

% 27-06-2018

A.S.No.149 of 2015 & A.S.No.239 of 2015

BETWEEN:

Mrs. Noorunnisa Begum W/o. Shujath Ali Khan,
R/o. Shivareddy Pet, Vikarabad Mandal,
Ranga Reddy District, rep. by her power of
Attorney holder Mr. Mohammed Rasool,
S/o. Mohammed Haji, R/o. H.No.9-4-86/237,
Salarjung Colony, Hyderabad.

... Appellant/Plaintiff

Vs.

1. Raj Kumar Chand S/o. Mahesh Chand
 2. Anuradha Chand S/o. Mahesh Chand
 3. Trilok Chand S/o. Mahesh Chand
 4. Ranjana Chand S/o. Mahesh Chand
 5. Moti Chand S/o. Mahesh Chand
- (All are residents of H.No.7-1-95/2, Ameerpet, Hyderabad.)

... Respondents/defendants

! Counsel for the Appellant : Mr. M.V.S. Suresh Kumar,
Senior Counsel

^ Counsel for Respondents : Mr. Rakesh Sanghi

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 1981 P&H 130
- 2) AIR 1995 A.P. 351
- 3) (2004) 1 SCC 551
- 4) AIR 1917 Privy Council 6

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

A.S.Nos.149 & 239 of 2015

COMMON JUDGMENT: *(per V. Ramasubramanian, J)*

These appeals arise out of a judgment and decree of the Additional District Court, Vikarabad, dismissing the suit filed by the appellant, but decreeing the counter claim made by the respondents.

2. Heard Mr. M.V.S. Suresh Kumar, learned Senior Counsel appearing for the appellant/plaintiff and Mr. Rakesh Sanghi, learned counsel appearing for the respondents/defendants.

3. The appellant herein filed a suit in O.S.No.8 of 2013 on the file of the Court of Additional District Judge, Vikarabad, seeking a declaration that she is the absolute owner of the land of an extent of Ac.17.35 guntas in Survey Nos.60, 61, 62, 66, 71 and 72, situated at Sivareddypet village, Vikarabad Mandal, Ranga Reddy District, and for recovery of possession of the said property and for a further direction to the revenue authorities to make necessary corrections in the revenue records by deleting the names of the defendants and entering the name of the plaintiff. The defendants filed a written statement along with a counter claim seeking a decree of permanent injunction restraining the plaintiff from interfering with their peaceful possession and enjoyment of the suit property. After trial, the Court below dismissed the suit filed by the appellant, but decreed the counter claim filed by the defendants. Hence, the present appeals.

Case in the Complaint:

4. The case of the appellant in her complaint was that the suit schedule property was originally owned by one Nawab Rais Yar Jung; that his name was found recorded as pattadar and possessor, in respect of a larger extent of land including the suit property in the Khasra Pahani of 1954-55; that the said Nawab Rais Yar Jung had two sons and two daughters by name Mir Fazilath Hussain, Mir Mujtaba Hussain, Shahjahan Begum and Fakhr Jahan Begum; that out of them, the first son Mir Fazilath Hussain died leaving behind his widow Azamunnisa Begum and she became entitled to 8.31% share; that the second son Mir Mujtaba Hussain died leaving behind his widow Basheerunnisa Begum and two daughters Muneerunnisa Begum and Sarfaraz Jahan; that the wife being entitled to 5.75% and each of the daughters entitled to 20.05%; one daughter Shahjahan Begum died leaving behind a son and daughter by name Shahryar Ali Khan and Noorunnissa Begum (the appellant/plaintiff), who became entitled respectively to 15.28% and 7.64%; that the other daughter Fakhr Jahan Begum died leaving behind one daughter by name Afsar Riza Qizilbash, who became entitled to 22.92% share; that the plaintiff, who was the daughter of Shahjahan Begum, thus became entitled to 7.64% share in the estate of Nawab Rais Yar Jung; that on account of the shares to which the children became entitled, the Mandal Revenue Officer, Vikarabad issued pattadar passbook bearing No.307332 bearing Patta No.63 dated 24-12-1995 in favour of the plaintiff, to the extent of Ac.17.35 guntas;

that the defendants managed the Revenue Officers and secured mutation in the records; that the mutation was obtained behind the back of the plaintiff; that on 05-03-2007, the associates of the defendants tried to interfere with the possession of the plaintiff and that upon coming to know of the same that they were making illegal entries in the revenue records, the plaintiff was compelled to file the suit.

5. The defendants filed written statement contending *inter alia*, that the plaintiff was not the relative, descendent or legal heir or successor of the original pattadar Nawab Rais Yar Jung; that the plaintiff bribed the officials of the Revenue Department and got her name recorded in the revenue records without any enquiry; that the entries so gained in the revenue records surreptitiously, cannot confer valid title upon the plaintiff; that it was not open to the plaintiff to unilaterally decide how the alleged matruka estate of Nawab Rais Yar Jung could be partitioned and how she could be allotted a specific share; that even assuming without admitting that the plaintiff was the descendant of Nawab Rais Yar Jung, a suit for declaration of title is not maintainable, in as much as the only remedy available to the co-owner against another co-owner is to institute a suit for partition; that the defendants are the lawful owners and possessors of the suit schedule property, having inherited the same from their mother Smt. Yamuna Bai; that their mother Yamuna Bai purchased the suit schedule property from Nawab Mir Fazilath Hussain Khan, son of the original pattadar Nawab Rais Yar Jung, under a

registered sale deed dated 04-05-1970; that after the sale, the name of the defendants' mother was entered in the revenue records and after her demise, the names of the defendants were entered; that in order to find out the truth about the plaintiff's claim of being a descendant of Nawab Rais Yar Jung, the defendants had taken out an application under Order XI Rules 12 and 14 C.P.C., seeking discovery and inspection of certain documents; that in any case, since the defendants have purchased the suit schedule property from one of the sons of the original pattadar, the defendants have acquired joint possessory rights to the suit property in terms of Section 47 of the Transfer of Property Act, 1882; that the plaintiff had maliciously instituted the suit through her G.P.A holder and was actually a land grabber and that, therefore, the possession of the defendants should be protected by a decree of perpetual injunction.

6. In response to the counter claim made by the defendants, the plaintiff filed a rejoinder denying all the allegations and seeking dismissal of the counter claim.

7. On the basis of the above pleadings, the trial Court framed the following issues for consideration.

1. Whether the plaintiff is the daughter of late Smt. Shah Jaha Begum and Whether the late Shah Jaha Begum was the daughter of late Nawab Rais Yar Jang and sister of late Nawab Mir Fazilath Hussain Khan?
2. Whether the plaintiff is the absolute owner of the suit schedule property?
3. Whether the defendants are liable to deliver the vacant possession of the suit schedule property in favour of the plaintiffs?

4. Whether the plaintiff is entitled to make necessary corrections in the revenue records in respect of the suit schedule property?
5. Whether the defendants are entitled for perpetual injunction Restraining the plaintiff and her men from interfering with peaceful possession and enjoyment of the suit schedule property as prayed in the counter claim?
6. To what relief?

8. The G.P.A holder of the plaintiff was examined as PW.1 and the plaintiff herself was examined as PW.2. A total of 24 documents were filed on the side of the plaintiff. Exs.A.1 to A.4 were the certified copies of the Khasra Pahanis for years 1954-55, 1993-94, 1995-96 and 2006-2007 respectively. Ex.A.5 was the patta pass book dated 21-12-1995. Ex.A.6 was the genealogy tree. Exs.A.7 to A.11 were certified copies of Form-III of D.1 to D.5. Ex.A.12 was the General Power of Attorney. Ex.A.13 was the Valuation Report. Ex.A.14 was the Rough Sketch. Ex.A.15 was the B.1 register issued by the Mandal Revenue Officer. A copy of the order in I.A.No.1963 of 1993 in O.P.No.330 of 1968 was filed as Ex.A.16. The Urban Land Ceiling Proceedings were filed as Ex.A.17, the letters written by the plaintiff to the Tahsildar were marked as Exs.A.18 and A.19. A bunch of photographs were filed as Ex.A.20. E-Aadhaar letter in respect of the plaintiff was filed as Ex.A.21. The Death Certificates of the plaintiff's uncle and aunt were filed as Exs.A.22 and A.23. The notarized copy of the passport of the plaintiff was filed as Ex.A.24.

9. The 3rd defendant examined himself as DW.1. The defendants filed only one document, viz., certified copy of the sale deed dated 03-05-1970, executed by one of the four children of the

original owner, in favour of the mother of the defendants and 2 others.

10. After taking note of the pleadings and the evidence, the trial Court held on Issue No.1 that the plaintiff failed to establish her identity either as the grand-daughter of the original pattadar Nawab Rais Yar Jung or as the daughter of Shahjahan Begum, one of the daughters of Nawab Rais Yar Jung. Thereafter, the findings on Issue Nos.2 to 4 automatically followed the same route.

11. On Issue No.5, the trial Court held that since the plaintiff sought the relief of declaration and failed to establish the same, there was a presumption of interference by the plaintiff and that therefore, the defendants were entitled to a decree of perpetual injunction. Accordingly, the trial Court dismissed the suit and decreed the counter claim. Hence the present appeals.

12. Assailing the judgment and decree of the trial Court, it is contended by Mr. M.V.S. Suresh Kumar, learned senior counsel for the appellant that the trial Court miserably failed to consider Ex.A.16, which is an order passed by the Court of the Chief Judge, City Civil Court, Hyderabad in I.A.No.1963 of 1993 in O.P.No.330 of 1968, indicating the name of the plaintiff as one of the legal heirs of Shahjahan Begum; that the trial Court failed even to consider the proceedings of the competent authority under the Urban Land Ceiling Act, filed as Ex.A.17, wherein the identity of the plaintiff's mother Shahjahan Begum was established; that the trial Court did not even properly consider the entries made in the passport of the

plaintiff marked as Ex.A.24 to establish her identity; that the finding of the trial Court on Issue No.1 about the identity of the appellant/ plaintiff was completely perverse; that the revenue records filed by the plaintiff clearly established that the plaintiff was recognized as the owner of the property; that when the genealogy of the original pattadar Nawab Rais Yar Jung was not disputed, the defendants' mother could not have purchased the suit property from only one of the four children of the original pattadar; and that in one paragraph the trial Court granted a decree of permanent injunction in the counter claim filed by the defendants without any single scrap of paper to establish their possession or the interference by the plaintiff and that therefore, the entire judgment is contrary to law, weight of evidence and the probabilities of the case.

13. However, it is contended by Mr. Rakesh Sanghi, learned counsel appearing for the respondents/defendants that the suit itself was not maintainable, as the co-owners were not made parties and a decree for partition not sought; that Ex.A.16 cannot be relied upon as the plaintiff's husband acted as power agent of one of the parties before the Civil Court and he surreptitiously included the name of the plaintiff as one of the heirs of Shahjahan Begum; that in any case, Ex.A.16 is irrelevant in terms of Section 43 of the Indian Evidence Act, 1872; that the plaintiff ought to have produced at least the copy of the order passed in the petition for bringing on record the plaintiff as one of the legal heirs of Shahjahan Begum in O.P.No.330 of 1968; that the order recording the name of a person as a legal

representative in a proceeding, cannot operate as *res judicata* in subsequent proceedings where the identity is questioned and it is substantially in issue; that the passport filed by the plaintiff as Ex.A.24 was actually a fabricated document in as much as the photograph of the original person was removed and the photograph of the plaintiff was pasted therein; that when the very identity of the plaintiff was questioned, the plaintiff ought to have produced at least the voters list, educational records/certificates etc., as the question of identity was within the special knowledge of the plaintiff, which had to be established in terms of Section 106 of the Indian Evidence Act; that during the course of cross-examination, PWs.1 and 2 even pleaded ignorance of the names of the close relatives and failed to produce necessary certificates for proving the plaintiff's lineage; that a mere comparison of the revenue records filed as Exs.A.4, A.5 and A.15 would show that the name of the plaintiff was included surreptitiously without any enquiry preceding the same; that the law is well settled that revenue records do not create title in favour of a person; that the title pleaded by the defendants in paragraph-6 of the written statement was not specifically denied as required by Order VIII C.P.C.; that if the plaintiff had at least filed a suit for partition by impleading the co-owners, the defendants could have claimed equities and that in the above circumstances, the judgment and decree of the trial Court were liable to be upheld. The only mistake committed by the trial court, according to the learned counsel for the respondents, was its failure to award costs to the respondents.

14. We have carefully considered the rival contentions.

15. From the arguments advanced on both sides, the following points appear for determination in the above appeals,—

1. Whether the identity of the appellant/plaintiff as the daughter of Shahjahan Begum and as the grand-daughter of Nawab Rais Yar Jung stood established?
2. Whether failure of the appellant/plaintiff to implead the other heirs of Nawab Rais Yar Jung as parties to the suit and her failure to seek partition, was fatal?
3. Whether the plaintiff established her right to claim a declaration of title, recovery of possession and mutation in revenue records on the basis of the evidence on record?
4. Whether the Court below was right in granting a decree of permanent injunction in favour of the respondents/defendants, in the counter claim filed by them?

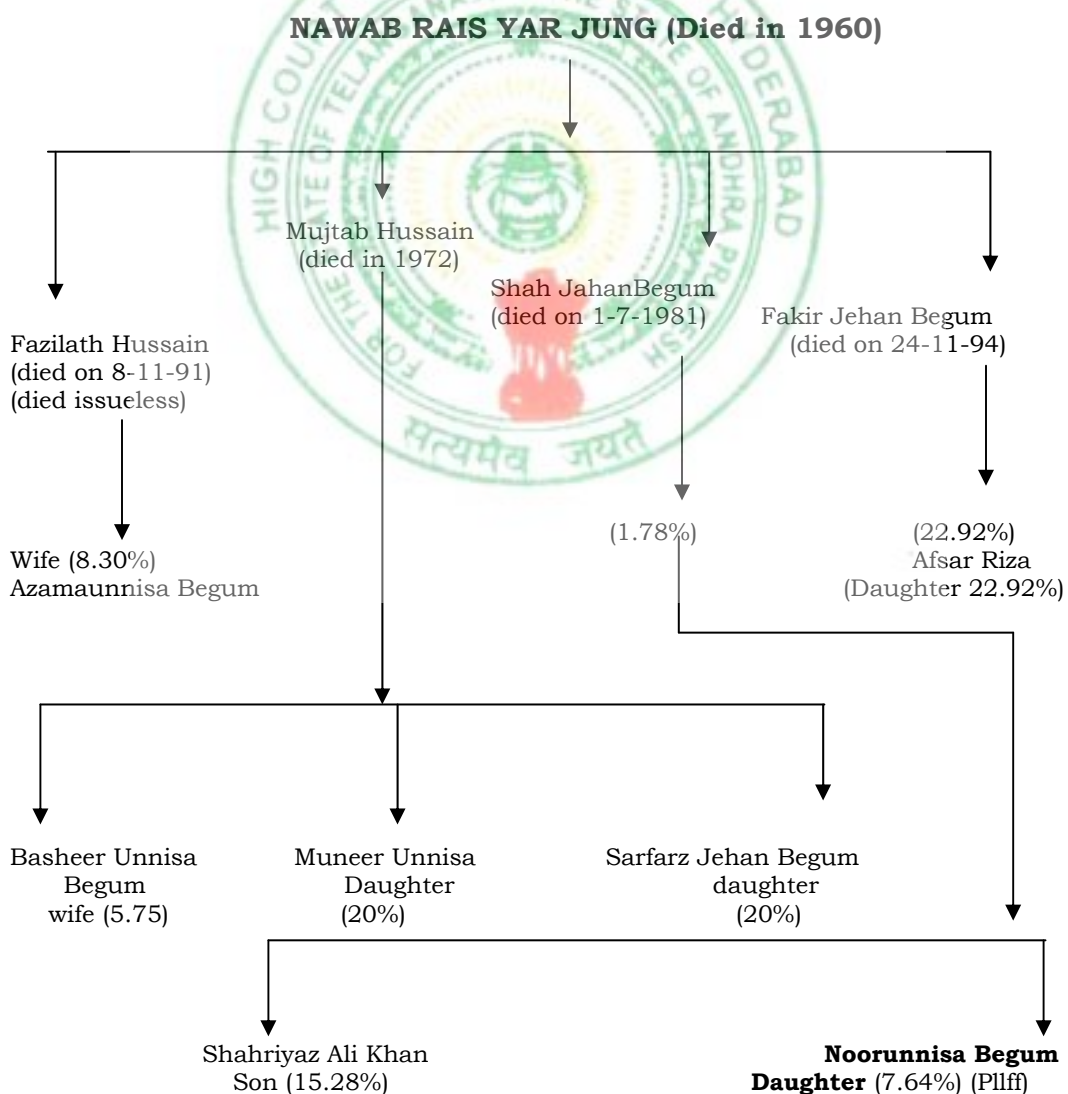
Point No.1:

16. The first point arising for determination in these appeals is as to whether the identity of the appellant/plaintiff as the daughter of Shah Jahan Begum and the grand daughter of Nawab Rais Yar Jung stood established.

17. The appellant/plaintiff filed the suit for a declaration of title and recovery of possession on the ground that a large extent of land, of which the suit schedule property was only a part, originally belonged to one Nawab Rais Yar Jung; that he had two sons and two daughters; that one of the daughters was by name Shah Jahan Begum; that Shah Jahan Begum died leaving behind a son by name

Shahryar Ali Khan and a daughter who was the plaintiff; that the plaintiff succeeded to 7.64% of the estate left behind by Nawab Rais Yar Jung as per the Muslim Shariat Law and that though the plaintiff's name was entered in the Revenue records, the defendants got their names substituted in the place of the plaintiff's name and hence upon coming to know of the same, she came up with the above suit.

18. In other words, the genealogy pleaded by the plaintiff in her plaint was as follows:



19. In the written statement filed by the defendants, they denied the lineage, relationship, legal heirship and succession of the

plaintiff to the original owner Nawab Rais Yar Jung. A careful look at the written statement would show that the defendants (i) did not claim that Nawab Rais Yar Jung did not have a daughter by name Shah Jahan Begum, (ii) did not claim that Shah Jahan Begum never had a daughter by name Noorunnisa Begum and (iii) did not even claim that the plaintiff was not the same Noorunnisa Begum as the daughter of Shah Jahan Begum.

20. The identity of a party to a suit can be challenged in two ways viz., (a) by contending that there was never such a person in existence or (b) that the person claiming to be so and so, was not the actual person but an impersonator.

21. If a party to a suit has chosen the first method indicated in the preceding paragraph to challenge the identity of the other party, he must positively plead that the ancestor, whose lineage is claimed, never had such a son or daughter or grand-child. As a corollary, he must plead who were the actual children of that ancestor.

22. If the defendants had chosen the second way of challenging the identity of the plaintiff, they must have stated that the plaintiff was not the same Noorunnisa Begum, who was the daughter of Shah Jahan Begum and the grand-daughter of Nawab Rais Yar Jung, but an impersonator.

23. Curiously, the defendants in this case did not specifically plead the category under which their challenge would fall. The respondents/defendants did not plead who were all the sons and daughters left behind by Nawab Rais Yar Jung and who were all the

children of those children. We would not, in the normal course, expect the defendants to know the details about the sons and daughters of Nawab Rais Yar Jung, but for the fact that the defendants themselves claim title to the suit schedule property, under a sale deed dated 03-05-1970 executed by one of the sons of Nawab Rais Yar Jung. In fact, Ex.B-1 dated 03-05-1970 under which the defendants claim title to the suit schedule property, was executed by (i) Nawab Mir Fazilath Hussain Khan and (ii) Mahesh Chand. The recitals contained in Ex.B-1 show that the first vendor Fazilath Hussain was none else than one of the sons of Nawab Rais Yar Jung. Interestingly, Ex.B-1 proceeds on the premise that Fazilath Hussain's father viz., Nawab Rais Yar Jung executed an agreement of sale in favour of one Kalva Mallappa and Kalva Bhadrappa on 14-12-1956 and that those 2 persons in turn assigned their rights under the agreement of sale, to the second named vendor Mahesh Chand on 22-06-1964 and that upon the request of the second vendor, the first vendor joined in the execution of the sale deed in favour of three persons. One of those three persons who purchased the property as such was Smt. Yamuna Bai, mother of the defendants herein. She was also the wife of vendor No.2.

24. Therefore, it is clear that the defendants were aware of Nawab Rais Yar Jung's ownership of the lands and also aware of the existence of at least one son by name Mir Fazilath Hussain. Therefore, if the defendants wanted to challenge the identity of the plaintiff on the ground of non-existence of a person by name

Noorunnisa Begum, in the family of Nawab Rais Yar Jung, the defendants, having purchased the land from one of the sons of Nawab Rais Yar Jung, should have provided the details of the sons and daughters of Nawab Rais Yar Jung. But the defendants did not do so. Therefore, it is clear that the defendants had not chosen the first method of challenging the identity of the plaintiff, by pleading that no child with the name of the plaintiff was ever born in the family of Nawab Rais Yar Jung.

25. At least the defendants could have adopted the second method of challenging the identity of the plaintiff by claiming that though there was a grand daughter by name Noorunnisa Begum, the plaintiff was not the same person. But the defendants did not even plead this.

26. In other words, the challenge to the identity of the plaintiff was neither on the ground that there was no such member in the lineage of Nawab Rais Yar Jung, nor on the ground that the plaintiff was impersonating as the real Noorunnisa Begum who was the grand-daughter of Nawab Rais Yar Jung. Therefore, it is clear that the challenge to the identity of the plaintiff was a wild goose chase made by the defendants.

27. We are conscious of the fact that in a suit of this nature, the burden is cast entirely upon the plaintiff to prove her claim not only about her status, but also to the property in question. Our analysis of the written statement in the preceding paragraphs was not with a view to shift the burden on the defendants. Our analysis of

the written statement in the preceding paragraphs was to understand what the plaintiff was required to prove and to what extent she had to go, to prove her identity. Questioning the identity of a plaintiff is like creating a cloud on the personality. The heaviness of the burden cast upon the plaintiff to clear the cloud, depends upon the density and thickness of the cloud. In this case, the challenge made by the defendants in their statement, to the identity of the plaintiff, without adopting any of the time tested methods, created only a cloud of very thin density and hence, we have to test whether the plaintiff produced as much of sunshine as to dispel the cloud of suspicion and established her identity. It is only for the purpose of finding out the heaviness of the burden cast upon the plaintiff that we ventured to analyze the written statement and the recitals contained in Ex.B-1.

28. Now let us come to the question whether the plaintiff discharged the burden of proving her identity, to the extent necessitated by the pleadings.

29. The plaintiff produced 3 documents viz., Exs.A-16, A-17 and A-24. Ex.A-16 is a certified copy of the order dated 18-08-1993 passed by the Chief Judge of the City Civil Court, Hyderabad, in I.A.No.1963 of 1993 in O.P.No.330 of 1998. This is an order directing payment out, of a part of the compensation awarded in land acquisition proceedings. This Ex.A-16 is not relied upon for the value of its contents, as much for the value of its cause title. In the cause

title found in Ex.A-16, the names of 10 persons are shown as petitioners/claimants. These names are as follows:

“Between:-

1. Mir Fazilat Hussain
2. Bilqis Jehan Begum (died)
3. Faker Jehan Begum (died) per LR Ptr.No.8
4. Shah Jehan Begum (died) per LR Ptrs. No.9 & 10
5. Basheerunnisa Begum
6. Munnerunnisa Begum
7. Sarfaraj Jehan Begum
8. Afsar Riza Quizilbash through GPA Shujaath Ali Khan
9. Syed Ali Sheriar
10. Noorunnisa Begum ... Petitioners/Claimants”

30. All the 10 names contained in the cause title found in Ex.A-16 tally with the genealogy tree which was also filed as Ex.A-6 and which we have extracted earlier. The person shown as the 1st petitioner in Ex.A-16 is Mir Fazilath Hussain, who was the son of Nawab Rais Yar Jung. In fact, his identity is not and cannot be disputed by the defendants, as they claim title only under him. The person named as the 2nd petitioner viz., Bilquis Jehan Begum was the mother of one son and two daughters of Nawab Rais Yar Jung, as seen from the second paragraph of the order in Ex.A-16. The person named as the 3rd petitioner viz., Fakhr Jehan Begum was one of the two daughters of Nawab Rais Yar Jung. The person named as the 4th petitioner Shah Jehan Begum was the other

daughter of Nawab Rais Yar Jung. The persons named as petitioners 5, 6 and 7 are the children of Mujtaba Hussain, who was the 2nd son of Nawab Rais Yar Jung. The person named as the 8th petitioner viz., Afsar Riza Quizilbash was the daughter of Faker Jehan Begum. The persons named as petitioners 9 and 10 were impleaded as legal heirs of the 4th petitioner Shah Jehan Begum.

31. The appellant herein/plaintiff was none other than the person named as 10th petitioner in Ex.A-16. She was impleaded, as seen from Ex.A-16, as one of the legal heirs of the 4th petitioner Shah Jehan Begum.

32. Ex.A-17 is an order passed by the Special Officer and Competent Authority (Urban Land Ceiling), under Section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976. This Ex.A-17 shows that Mr. Fazilath Hussain, Mrs. Faker Jehan Begum and Mrs. Shah Jehan Begum, who are respectively the son and two daughters of Nawab Rais Yar Jung filed separate statements in Form-I under Section 6 (1) of the Urban Land Ceiling Act, 1976. Since the other son of Nawab Rais Yar Jung, by name Mujtaba Hussain had died then, his wife Basheerunnisa Begum filed a separate statement in Form-I under Section 6 (1) of the Urban Land Ceiling Act.

33. Therefore, the fact (i) that Nawab Rais Yar Jung had two sons by name Fazilath Hussain and Mujtaba Hussain and two daughters by name Shah Jehan Begum and Faker Jehan Begum and (ii) that the appellant/plaintiff was the daughter of Shah Jehan Begum stood established by Exs.A-16 and A-17.

34. The appellant/plaintiff also filed the copy of the Passport as Ex.A-24. The second page of the Passport mentioned the name Shah Jahan Begum as the name of the mother of Noorunnisa Begum. The plaintiff also filed the E-Aadhaar Letter as Ex.A-21 to establish that she was the same person whose particulars are mentioned in Ex.A-24. Thus the entries in the Passport Ex.A-24 also stood corroborated by the E-Aadhaar Letter filed as Ex.A-21. We do not think that anything more could have been done or needed to be done by the plaintiff to establish her identity as the grand-daughter of Nawab Rais Yar Jung and the daughter of Shah Jehan Begum, especially when the challenge to her identity did not fall under any of the established methods of challenging the identity.

35. Drawing our attention to the admissions made by P.Ws.1 and 2 in the course of cross-examination, it was contended by Mr. Rakesh Sanghi, learned counsel for the respondents/defendants, that the plaintiff examined as P.W.2 and her power agent examined as P.W.1 did not even know the names of the close relatives and cousins and that despite the plaintiff claiming to be an educated lady, she could not even produce her School Certificates, Ration Card or Voter ID Card, despite being confronted in the cross-examination. Therefore, it is contended by him that the plaintiff failed to establish her identity despite being challenged.

36. We have carefully considered these submissions. At the outset, it should be pointed out that P.W.1 claimed to be an illiterate. He signed the pleadings as well as the Affidavit in lieu of chief-

examination only in Urdu. He was employed only as a driver. Therefore, much ado cannot be made about the statements made by him feigning ignorance of certain things.

37. But the plaintiff examined herself as P.W.2. It is only in the course of cross-examination of P.W.2 that a suggestion was made as though she impersonated the real Noorunnisa Begum. It was suggested in the cross-examination that the photograph in the Passport marked as Ex.A-24 was manipulated.

38. But Ex.A-24 was not the only document which contained the photograph of the plaintiff. The Pattadar Pass Book filed as Ex.A-5 and B.1 Register issued by Mandal Revenue Officer and marked as Ex.A-15 also contained the photograph of the plaintiff. These photographs were the same as that of the photograph contained in Ex.A-24 Passport. The photograph and particulars contained in Ex.A-24 Passport also tallied with the particulars contained in Ex.A-5 Pattadar Pass Book and Ex.A-15 B.1 Register. It is not the case of the respondents/defendants that these documents were also manipulated.

39. The learned counsel for the respondents sought to lay much emphasis on the admissions made by P.W.2 in the cross-examination that she did her graduation in a particular college, but that she could not get any record regarding her educational career that would disclose the names of her parents. We do not think that there was any necessity to multiply the documents since the plaintiff filed the passport, Urban Land Ceiling proceedings, Court

proceedings under the Land Acquisition Act, the patta pass book, B-1 register and E-adhaar letter. A person who is not satisfied with these statutory documents, will not be satisfied by school/college certificates.

40. The statement made by P.W.2 in the cross-examination to the effect that she did not file any documents with the Passport Office along with her application for proving her identity, cannot be relied upon as sacrosanct, since the Passport was obviously obtained in 1993 at Hyderabad (much before the litigation) and there is a presumption that statutory authorities followed the procedure before performing their statutory functions.

41. Interestingly, the respondents/defendants could not break P.W.2 in the cross-examination on the question of the number of children born to Nawab Rais Yar Jung and under whom the plaintiff claimed title. The challenge thrown to P.W.2 to bring her brother to the witness box or to summon the husband of one of the legal heirs who was in Pakistan, cannot take the defendants anywhere.

42. Unfortunately, the Trial Court rejected Ex.A-16 on the ground that the cause title found in Ex.A-16 did not show the relationship of the plaintiff with Shah Jehan Begum. This is completely perverse, since the name Shah Jehan Begum is mentioned as the 4th petitioner, as against whom it was written in the cause title “per LRs Petitioners 9 and 10”. The name of the plaintiff was shown as the 10th petitioner. But by a patent error, the Trial Court proceeded as though Ex.A-16 does not mention the

relationship between the plaintiff and Shah Jehan Begum. When someone is impleaded as the legal representative of a lady, it is not customary to show in the cause title, the mother's name. Every person would be described as the son of or the wife of someone.

43. Similarly, the Trial Court rejected Ex.A-17 on the ground that it mentioned the name of Shah Jehan Begum but not the name of the plaintiff. The purpose of marking Ex.A-17 was to show that Shah Jehan Begum was one of the children of Nawab Rais Yar Jung. The purpose of filing Ex.A-16 was to show that the plaintiff was the legal heir of Shah Jehan Begum. The Trial Court completely lost track of this thread connecting Exs.A-16 and A-17.

44. Interestingly, the Trial Court rejected Ex.A-24 on the ground that it does not mention the name of Nawab Rais Yar Jung as the father of Shah Jehan Begum. No Passport will mention the name of the maternal grand-father. The Trial Court went against the most fundamental principles.

45. The reliance placed by the appellant/plaintiff on Ex.A-16 (order in the land acquisition proceedings) was sought to be questioned by the learned counsel for the respondents/defendants on the ground that neither the order impleading the plaintiff as the legal representative was produced nor could the same be of any relevance in the light of Sections 40 and 43 of the Indian Evidence Act, 1872. It is also contended by the learned counsel for the respondents that the mere recording of the name of the plaintiff as one of the legal representatives in Ex.A-16 will not operate as *res*

judicata in a subsequent proceeding where the identity is challenged.

46. But we think that the above argument of the learned counsel for the respondents is completely misdirected. The plaintiff did not rely upon Ex.A-16 to contend that an enquiry into her identity cannot be made in these proceedings and that such an enquiry was already concluded in a previous proceeding. The appellant/plaintiff did not rely upon Ex.A-16 to thwart an enquiry into the question of her identity, on the basis of the principle of *res judicata*. Ex.A-16 was relied upon only for the purpose of showing that Shah Jehan Begum had a daughter by name Noorunnisa Begum and that the suit is not instituted either in the name of a non-existent person or by an impersonator. Therefore, the reliance placed in this regard, by the learned counsel for the respondents on the decision of the Full Bench of the Punjab and Haryana High Court in ***Mohinder Kaur v. Piara Singh***¹ is of no avail. There can be no dispute about the fact that a decision under Order XXII, Rule 5 CPC would not operate as *res judicata* in any subsequent proceedings, when the identity is questioned. Therefore, the reliance placed upon the decision of a learned single Judge of this Court in ***Vijayalakshmi Jayaram v. M.R. Parasuram***² and the decision of the Supreme Court in ***V. Rajeshwari v. T.C. Saravanabava***³, are also of no avail, as the appellant never pitched her claim on the basis of *res judicata*.

¹ AIR 1981 P&H 130

² AIR 1995 A.P. 351

³ (2004) 1 SCC 551

47. At the cost of repetition, it should be pointed out that the appellant/plaintiff filed Ex.A-16 to show that more than a decade before the present proceedings started, she was recognized by the other legal heirs of Nawab Rais Yar Jung as one of the legal heirs of the daughter Shah Jehan Begum. The respondents cannot create an imaginary argument around Ex.A-16 and attempt to deal with it.

48. The contention that the plaintiff ought to have produced the copy of the order passed in the interlocutory application, bringing her on record as the legal representative of Shah Jehan Begum in the proceedings in Ex.A-16, does not impress us. If the order bringing the plaintiff on record as the legal representative of Shah Jehan Begum in the proceedings in Ex.A-16, is of no avail according to the plaintiff, in view of the non-applicability of the principle of *res judicata*, no useful purpose would have been served by the plaintiff producing the same. Therefore, the contention that the plaintiff ought to have produced the said order under Order XXII, Rule 5, appears to have been raised only for the purpose of an objection.

49. The learned counsel for the respondents next contended that under Section 43 of the Indian Evidence Act, the orders of Courts other than those mentioned in Sections 40 to 42 are irrelevant, unless the existence of such an order is a fact in issue or is relevant under some other provisions of the Act. It is the contention of the learned counsel for the respondents that Ex.A-16 is

not an order that would fall under Section 40 and hence Ex.A-16 was irrelevant.

50. But the above contention is misconceived. It was never the contention of the plaintiff either before the Trial Court or before this Court that the order in Ex.A-16 was an order, which by law, prevented any Court from taking cognizance of a suit, so as to fall under Section 40. It was never the case of the plaintiff that Ex.A-16 fell under one of the categories of orders mentioned in Sections 40 to 42 of the Indian Evidence Act.

51. In fact, the arguments revolving around Section 43 of the Evidence Act and the principle of *res judicata* could have been raised by the respondents only if the plaintiff had done two things viz., (i) filing the copy of the order bringing her on record as the LR of her mother in the proceedings in Ex.A-16 and (ii) contending that the said order operated as *res judicata* and became binding on the Court in the present proceedings. The plaintiff did not do both. Therefore, the journey sought to be undertaken by the respondents to the principle of *res judicata* and to Sections 40 and 43 of the Evidence Act, is wholly unnecessary.

52. It is next contended by the learned counsel for the respondents that under Section 106 of the Indian Evidence Act, the burden of proving a fact specially within the knowledge of a person, is upon that person and that the failure of the plaintiff to produce her Educational Certificates, Ration Card, Voters' List was fatal. In this connection, the learned counsel for the respondents invited our

attention to the decision of the Privy Council in ***T.V. Murugesan Pillai v. M.D. Gnana Sambandha Pandara Sannadhi***⁴, where the Privy Council observed that a practice has grown up in India, of those in possession of important documents or information, lying by, trusting to the abstract doctrine of the onus of the proof and failing accordingly to furnish to the Courts the best material for its decision.

53. But we do not think that the production of educational certificates would have made the respondents admit the case of the plaintiff graciously. A Court record is produced in the form of Ex.A-16 and it is questioned by the respondents on the ground of *res judicata* and Section 43 of the Evidence Act. A proceeding under the Urban Land Ceiling Act is produced as Ex.A-17 and it is questioned by the respondents on the ground that it did not establish the umbilical cord between the plaintiff and her mother. The e-Aadhaar Letter is produced as Ex.A-21, the particulars contained wherein corroborate with the Passport filed as Ex.A-24. But it is questioned by the respondents on the ground that the photo in the Passport was manipulated. This is despite the fact that the photographs contained in two other documents viz., Exs.A-5 and A-15 match with the photograph found in the Passport Ex.A-24.

54. Therefore, we do not think that the respondents, who were not satisfied with documents containing photo identity, would have been satisfied with educational qualification certificates and other documents which did not contain photo identities. These objections

⁴ AIR 1917 Privy Council 6

appear to have been taken only in an attempt to divert the attention to the question of identity at the microscopic level, so that the real issue gets deflected.

55. As we have indicated above, the genealogy tree filed by the appellant/plaintiff filed as Ex.A-6 contains details of the members of the family that match with Exs.A-16 and A-17. Therefore, in the first step, the identity of Shah Jehan Begum as one of the four children of Nawab Rais Yar Jung stood established. Exs.A-16 and A-24 were sufficient to prove that the appellant/plaintiff was the daughter of Shah Jehan Begum. The photograph contained in Ex.A.24 matches with the photographs contained in Ex.A-5 Pattadar Pass Book and Ex.A-15, which is a B.1 Register. The particulars contained in Ex.A-24 Passport also match with the particulars contained in e-Aadhaar Letter filed as Ex.A-21. We do not think that anything more could have been done to satisfy the Court (if not the respondents) that the appellant/plaintiff was the daughter of Shah Jehan Begum and the grand-daughter of the original Pattadar Nawab Rais Yar Jung. Hence, the first point arising for consideration in the above appeals is answered in favour of the appellant.

Point No.2:

56. The second point arising for determination is whether the failure of the appellant-plaintiff to implead other heirs of Nawab Rais Yar Jung as parties to the suit and her failure to seek partition was fatal to her case.

57. The case of the respondents/defendants is that since the appellant-plaintiff is claiming a specific share in the properties left behind by her ancestor Nawab Rais Yar Jung, she should have impleaded her maternal uncles and maternal aunt or their children as parties to the suit and should have asked for a decree of partition. According to the respondents, the appellant-plaintiff was not entitled to claim a specific share by making a self-serving pleading as though she became entitled to the same. It is their contention that in as much as the defendants have purchased the properties from one of the sons of Nawab Rais Yar Jung, the defendants-respondents could have at least sought equities at the time of final decree, if the appellant-plaintiff had impleaded the other heirs of Nawab Rais Yar Jung and sought a partition.

58. But we do not think that the plaintiff could have impleaded the other legal heirs and sought a decree for partition, when her specific case was that each of the legal heirs had taken a particular share and that consequent thereto, mutation had also been effected. If we take a careful look at the plaint, it can be seen that the plaintiff pleaded the inheritance of specific shares by each one of the heirs. As per the plaint, the wife of one son by name Mir Fazialath Hussain became entitled to 8.31%, the wife of another son by name Mir Mujtaba Hussain became entitled to 5.75%, the two daughters of Mir Mujtaba Hussain became entitled to 20.05% each, the blood brother of the plaintiff by name Shahryar Ali Khan, son of Shahjahan Begum (one of the daughters of Nawab Rais Yar Jung) became entitled to

15.28% share and that Afsar Riza Qizilbash, the daughter of Fakhr Jahan Begum (one of the daughters of Nawab Rais Yar Jung) became entitled to 22.92% and that the plaintiff herself became entitled to 7.64% share. It is also the specific case of the appellant-plaintiff that the Mandal Revenue Officer, Vikarabad, issued a pattadar pass book bearing No.63 on 24-12-1995 marked as Ex.A.5, to the extent of the share of the plaintiff namely 7.64% in the estate of Nawab Rais Yar Jung.

59. In the light of the above pleadings, it was not possible for the appellant-plaintiff to implead the other legal heirs of Nawab Rais Yar Jung and seek a partition, when her share was already recognized and a pattadar pass book was issued and the other legal heirs never had any dispute with the appellant-plaintiff.

60. In fact, the respondents-defendants should be happy that the appellant-plaintiff did not implead the other heirs. If she had done that, the sleeping tiger would have been woken up to the disadvantage of the respondents.

61. As we have indicated elsewhere, the respondents-defendants filed only one document as exhibit on their side and that was Ex.B.1 sale deed dated 03-05-1970. Under the sale deed, the mother of the respondents/defendants and two other ladies had purchased the entire estate of Nawab Rais Yar Jung comprising of lands of an extent of 248 acres in Sivareddy pet village, Vikarabad Taluk. Interestingly, only one of the sons of Nawab Rais Yar Jung by name Fazilath Hussain joined in the execution of the sale deed

Ex.B.1. It is not even stated in Ex.B.1 that Fazilath Hussain was the only legal heir of Nawab Rais Yar Jung or that the entire property covered by Ex.B.1 was allotted to the share of Fazilath Hussain.

62. What is worse about Ex.B.1 is that the very devolution of title in the form of a series of transactions was doubtful. This can be seen from the recitals contained in Ex.B.1. As per the recitals contained in Ex.B.1 (1) Nawab Rais Yar Jung entered into an agreement of sale dated 14-12-1956 with two persons by name Kalva Mallappa and Kalva Bhadrappa and delivered possession of the land; (2) Nawab Rais Yar Jung died before the completion of the registration of the sale deed; (3) Kalva Mallappa and Kalva Bhadrappa in turn sold the lands to one Mahesh Chand and assigned their rights under the agreement of sale dated 14-12-1956 in favour of Mahesh Chand under a deed of assignment dated 22-06-1964; (4) Mahesh Chand requested Fazilath Hussain by a letter dated 15-07-1964 to register lands in favour of Mahesh Chand; (5) Mahesh Chand in the meantime executed an agreement of sale on 15-08-1964 in favour of three ladies by name Yamuna Bai, Jamuna Bai and Shanta Bai and (6) pursuant to the said agreement, Fazilath Hussain and Mahesh Chand jointly executed Ex.B.1 sale deed.

63. In the light of the very recitals contained in Ex.B.1 sale deed, the entire property of the extent of 248 acres purchased by the mother of the defendants and the other two ladies under Ex.B-1, would have been at great risk, if the appellant-plaintiff had

impleaded all other heirs and sought a partition. Therefore, the argument of the respondents that they could have claimed equities if a suit for partition had been filed, is only an argument raised for the purpose of the case. Today, what is at stake for the respondents-defendants is only the land of an extent of Ac.17.35 guntas out of the total extent of about 248 acres purchased by the defendants' predecessors under Ex.B.1. If the appellant/plaintiff had impleaded all legal heirs and sought partition, the other legal heirs who were not parties to Ex.B-1, would have sought their own shares, leaving nothing for the defendants. Therefore, it is nothing but an argument of convenience and hence we answer Point No.2 arising for determination against the respondents.

Point No.3:

64. The third point arising for determination is as to whether the appellant-plaintiff established her right to claim a declaration of title, recovery of possession and mutation in the revenue records on the basis of the evidence on record.

65. The case with which the appellant-plaintiff came to Court was (1) that the suit schedule property was part of a large estate owned by Nawab Rais Yar Jung; (2) that Nawab Rais Yar Jung had two sons and two daughters by name Mir Fazilath Hussain, Mir Mujtaba Hussain, Shahjahan Begum and Fakhr Jahan Begum; (3) that Mujtaba Hussain had two daughters by name Muneeruniisa Begum and Sarfaraz Jahan; (4) that Shahjahan Begum had a son by name Shahryar Ali Khan and a daughter, who was the plaintiff and

(5) that Fakhr Jahan Begum had one daughter by name Afsar Riza Qizibash; (6) that each one of them got a specific share in the estate of Nawab Rais Yar Jung as specifically pleaded in para-III.1 of the plaint; (7) that the plaintiff herself became entitled to 7.64% share in the estate of Nawab Rais Yar Jung; (8) that accordingly, the Mandal Revenue Officer, after enquiry, issued a pattadar pass book bearing Patta No.63, dated 24-12-1995 to the extent of the suit schedule property; and (9) that the plaintiff thus became the owner of the suit schedule property. Since the defendants also got a mutation effected, the plaintiff was constrained to file the suit praying for (1) declaration of title, (2) recovery of possession and (3) mutation in the revenue records.

66. Since the appellant-plaintiff came to Court with the above pleadings, she was required to prove each one of those averments by credible evidence. Now let us see whether the appellant-plaintiff established every one of the averments that we have extracted in general words in the preceding paragraphs.

67. The fact that the suit schedule lands were part of the estate of Nawab Rais Yar Jung was not required to be proved by the plaintiff, since the defendants themselves claimed title under Nawab Rais Yar Jung as seen from the recitals contained in Ex.B.1 sale deed. As a matter of fact, the plaintiff is claiming title only to an extent of Ac.17.35 guntas in S.Nos.60, 61, 62, 66, 71 and 72 in Sivareddipet village. Ex.B.1 filed by the respondents-defendants contains a recital that Nawab Rais Yar Jung was the owner of a

large estate comprising of land of an extent of about 248 acres in Sivareddipet village that included the lands in S.Nos.60, 61, 62, 66, 71 and 72. Therefore, the fact that the suit schedule properties originally belonged to Nawab Rais Yar Jung is an admitted fact. Once the ownership of the lands by a common ancestor is established, the other things should normally fall in line and we think they have actually fallen in line.

68. The fact that Nawab Rais Yar Jung had two sons and two daughters by name Mir Fazilath Hussan, Mir Mujtaba Hussain, Shahjahan Begum and Fakir Jahan Begum stood established by Ex.A.17, the proceedings of the Special Officer and Competent Authority, Urban Land Ceiling. Ex.A.17 is a final order passed under Section 8 (4) and a final statement issued under Section 9 of the Urban Land (Ceiling and Regulation) Act, 1976. This final order proceeded on the basis of the statements filed in Form-I under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, independently by Fazilath Hussain, Fakher Jahan Begum, Shah Jahan Begum and Basheerunnisa Begum, wife of Mujtaba Hussain. The fact that Fazilath Hussain was a son of Nawab Rais Yar Jung is also born out by Ex.B.1.

69. A genealogy tree containing the names of the children and grand children of Nawab Rais Yar Jung was marked as Ex.A.6. The particulars contained therein stood corroborated by Exs.A.16 and A.17. While Ex.A.17 established that Shahjahan Begum was one of

the two daughters of Nawab Rais Yar Jung, Ex.A.16 established that the plaintiff was the daughter of Shahjahan Begum.

70. It must be pointed out that the main focus of the challenge of the respondents/defendants was to the identity of the appellant-plaintiff as the daughter of Shahjahan Begum and the grand daughter of Nawab Rais Yar Jung. The fact that Shahjahan Begum was one of the four children of Nawab Rais Yar Jung stood established by Exs.A.16 and A.17. The fact that the appellant-plaintiff was the daughter of Shahjahan Begum stood established by Ex.A.16 and Ex.A.24. The particulars contained in Ex.A.24 such as the husband's name of the plaintiff and her residential address, all stood corroborated by Ex.A.21 e-Aadhaar letter. The physical identity of the plaintiff as Noorunnisa Begum stood established by the photographs contained in three documents namely Ex.A.5 Pattadar pass book, Ex.A.15 B-1 register, and Ex.A.24 Passport.

71. Once the plaintiff has established (1) that the suit properties were part of the estate of Nawab Rais Yar Jung; (2) that Nawab Rais Yar Jung had two sons and two daughters; (3) that the plaintiff was the daughter of one of those daughters by name Shahjahan Begum, it follows that she had become one of the heir apparent. The share that she is entitled to, in the estate of Nawab Rais Yar Jung, was calculated according to the Muslim Shariyat Law. There was no challenge by the respondents-defendants to the calculation of the percentage of share by the plaintiff. To be precise, the plaintiff claimed to have inherited 7.64% share in the estate of

Nawab Rais Yar Jung. The respondents-defendants claim to have purchased the entire estate of 248 acres. Out of this 248 acres, 7.64% works out to Ac.18.94 guntas. The appellant-plaintiff claimed only an extent of Ac.17.35 guntas.

72. Therefore, we are of the considered view that the appellant-plaintiff has established through credible and acceptable evidence that she had title to the suit schedule properties. Once a person is found to be entitled to a declaration of title, such a person would also normally be entitled to recovery of possession, unless a bar for such recovery on the ground of limitation or other technicalities is pleaded. No defence was set up by the respondents that the appellant-plaintiff was barred from seeking recovery of possession on account of any of the procedural technicalities. Therefore, the plaintiff was also entitled to recovery of possession.

73. Once it is found that the plaintiff is entitled to declaration of title and recovery of possession, she will be entitled as a corollary, even to have mutation effected in the revenue records, as her name was also entered in the revenue records as seen from Exs.A.5 and A.15.

74. In view of the above, Point No.3 arising for determination is also answered in favour of the appellant-plaintiff.

Point No.4:

75. Point No.4 arising for determination is as to whether the Court below was right in granting a decree of permanent injunction

in favour of the respondents-defendants, in the counter claim filed by them.

76. By virtue of rule contained in Order VIII Rule 6A of the Code of Civil Procedure, 1908, the counter claim in a suit shall have the same effect as a cross suit and the counter claim should be treated as a plaint. Therefore, it follows that the burden of proof is on the defendants to prove their counter claim.

77. The counter claim filed by the respondents-defendants was for a decree of permanent injunction, restraining the plaintiff from interfering with the possession and enjoyment of the properties by the defendants.

78. In fact, the appellant-plaintiff did not even raise a dispute about the defendants' possession of the property. This is why the plaintiff sought a decree for recovery of possession. In other words, the plaintiff sought to interfere with the possession of the defendants only through a decree of Court. But unfortunately, the very fact that they sought a decree for recovery of possession was treated by the trial Court as a reason good enough to decree the counter claim.

79. The entire counter claim of the respondents-defendants was dealt with by the trial Court in a single paragraph namely paragraph 17. If paragraph 17 of the judgment of the trial Court is extracted, that would be sufficient to decide whether the decree in the counter claim could be sustained or not. Therefore, paragraph 17 of the judgment of the trial Court is extracted as follows:

“17. Issue No.5: The contention of the defendants is that they are entitled for the relief of perpetual injunction against the plaintiff and her men from interfering in their peaceful possession and enjoyment of the suit schedule property. The plaintiff on the other hand denied that the defendants are entitled for such relief, vide issues Nos.1 to 4, this Court concluded that the plaintiff neither established her relationship with the original owner of the suit schedule property i.e. late Nawab Rais Yar Jung nor established her title, possession over the suit schedule properties and as such is not entitled for correction of the revenue records into her name. Since the plaintiff sought for the said relief without having established the said claim, the Court concludes that the same amounts interfering in the rights and possession of the defendants over the suit schedule property. Hence, concludes that the defendants are entitled for the relief of perpetual injunction towards their counter claim over the suit schedule property against the plaintiff.”

80. In fact, the trial Court has miserably failed to take note of the recitals contained in Ex.B.1, the sale deed, by virtue of which the defendants claimed title. It may be useful to extract the recitals contained in Ex.B.1 as follows:

“Whereas the late Nawab Rais Yar Jung Bahadur the father of Vendor No.1 herein agreed to sell lands admeasuring 248 acres situate in village Sivareddipet, Taluk Vikarabad, District, Hyderabad, in S.Nos.50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 70, 71, 72, 75, 76, 77, 78, 84, 85, 86, 87, 88, and 104 situate in village Sivareddipet, Taluk, Vikarabad, District Hyderabad to one late Kalva Mallappa, son of the late Kalva Chandrappa and Kalva Bhadrappa son of late Kalva Chandrappa, residing at Sivareddipet village, Taluk Vikarabad, District Hyderabad, for a sum of Rs.3,700/- (Rupees three thousand seven hundred only) as per an agreement of sale dated 14-12-1956 and delivered possession of the said lands to them.

AND WHEREAS the said Nawab Rais Yar Jung Bahadur died before the completion of the registration of the said lands.

AND WHEREAS the said Kalva Mallappa and Kalva Bhadrappa, the prior purchasers from the said late Nawab Rais Yar Jung Bahadur, the father of the vendor No.1 herein, have in turn sold away the said lands to Mr. Mahesh Chand, the vendor No.2 herein and have assigned all their rights under the said agreement of sale dated 14-12-1956 executed by the late Nawab Rais Yar Jung Bahadur in their favour, to the vendor No.2

herein and executed an agreement the deed of assignment dated 22-06-1964 in favour of vendor No.2 herein for a sum of Rs.12,000/- (Rupees twelve thousand only) and delivered the said original agreement dated 14-12-1956 and the possession of the said lands to the vendor No.2 herein and they acknowledged the receipt of the said sale amount of Rs.12,000/- (Rupees twelve thousand only) from vendor No.2 and WHEREAS the said Kalva Mallappa and Kalva Bhadrappa have also filed an affidavit dated 22-06-1964 affirming the said assignment of the said lands and their interest under the said agreement dated 14-12-1956 in favour of Vendor No.2 herein and requested the Vendor No.1 herein through their letter dated 15-07-1964 to register the said lands under the said agreement dated 14-12-1956 in favour of Vendor No.2 herein as they have no further interest whatsoever in the said lands.

AND WHEREAS the Vendor No.2 herein has executed an agreement dated 15-08-1964 in favour of the purchaser herein agreeing to sell the said lands in three shares as detailed in the schedule herein for an aggregate sum of Rs.12,500/- (Rupees twelve thousand five hundred only) and as such requested the Vendor No.1 herein to execute a sale deed in favour of the purchasers herein through his letter dated 15-08-1964 and in view of the above mentioned facts, the vendors are agreeable to execute the sale deed in favour of the purchasers.....”

81. The recitals extracted above go to show that on the basis of alleged agreement of sale executed on 14-10-1956 by Nawab Rais Yar Jung in favour of Kalva Mallappa and Kalva Bhadrappa, they sold the property to one Mahesh Chand (the father of the respondents herein), under a deed of assignment of rights dated 22-06-1964 and that on the basis of such assignment of rights, a sale deed was executed after 6 years namely on 03-05-1970 by (1) Fazilath Hussain, one of the sons of Nawab Rais Yar Jung and (2) Mahesh Chand, the father of the respondents-defendants. It is needless to point out that an agreement holder cannot convey any title. Kalva Mallappa and Kalva Bhadrappa even as per the recitals contained in Ex.B.1 were only the holders of an agreement of sale

dated 14-12-1956 from Nawab Rais Yar Jung. But these agreement holders are stated to have sold the lands to Mahesh Chand, not under a sale deed but under an agreement of assignment dated 22-06-1964. Nawab Rais Yar Jung was not a party to the agreement of assignment of rights in favour of Mahesh Chand. By the time Kalva Mallappa and Kalva Bhadrappa executed the agreement of assignment dated 22-06-1964, Nawab Rais Yar Jung had already died, opening the succession as per Muslim Law. But without demanding the legal heirs to honour the commitment made by Nawab Rais Yar Jung under the agreement of sale dated 15-12-1956, the agreement purchasers namely Kalva Mallappa and Kalva Bhadrappa created third party rights in favour of Mahesh Chand and Mahesh Chand, the father of the respondents, cleverly roped in, only one of the sons of Nawab Rais Yar Jung.

82. Without even looking at these inherent defects, the trial Court decreed the counter claim.

83. *De hors* the above, the moment we have found that the plaintiff is entitled to a decree for declaration and recovery of possession, the defendants will not be entitled to a decree of permanent injunction. A decree of recovery of possession in favour of the plaintiff cannot go hand in hand with a decree of permanent injunction in favour of the defendants. Therefore, the decree of permanent injunction granted in the counter claim filed by the defendants is liable to be reversed. Point No.4 is answered accordingly.

Conclusion:

84. In view of the foregoing, we are of the considered view that the appellant-plaintiff is entitled to a decree as prayed for and the counter claim of the respondents-defendants is liable to be dismissed. Hence, both the appeals are allowed, the judgment and decree of the Court below are set aside and the suit filed by the appellant-plaintiff is decreed as prayed for and the counter claim filed by the respondents-defendants is dismissed. The appellant-plaintiff will be entitled to costs throughout.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.



V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

Date: 27-06-2018

Js/Ak/Ksn

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N. BALAYOGI



A.S.Nos.149 and 239 of 2015

27th June, 2018

Ksn