

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

S.A.M.P. No.2243 OF 2017

IN/AND

SECOND APPEAL No.1024 OF 1998

COMMON JUDGMENT:

1. The Appellants 1 and 2, who filed this Second Appeal, according to them, involving substantial questions of law, against the respondent-plaintiff, they being the defendants of the suit in O.S. No.202 of 1990, impugning the reversal judgment of the first appellate Court setting-aside the trial Court's decree and judgment in O.S. No.202 of 1990, dated 30.08.1994. Said reversal judgment in A.S. No.21 of 1994, dated 23.09.1998, involving the suit reliefs of declaration of title for the site covered by plaint A and B schedules in the claim as part of the property out of Ac.1.14 cents of Survey No.262/3 of Nagulagunta, Hamlet of Srikalahasti revenue village, with the claim that the entire Srikalahasti village is the estate of the deity-Srikalahasteeswara Swamy, and while the Government taken the estate under the Estates Abolition Act, 1948 (for short, 'the Act of 1948'), issued patta contemplated by Sections 11 to 14 of the Act of 1948, as the case may be, for the property in question, and like other persons the defendants 1 and 2 also occupied and, though other persons were paying the ground rents, the defendants despite demands failed to pay, from which the plaintiff constrained to issue Ex.A-3 notice dated 04.06.1984 preceded by oral demands that was acknowledged by the 1st defendant under Ex.A-4 with no reply (Leave about the case of the defendants of notice earlier issued by Executive Officer under Ex.B-32, dated 02.09.1979, and Ex.B-33, dated 25.01.1980, and Exs.B-34 to 36, reply, another notice and reply respectively of the year 1980 were issued claiming title over the property).

2. From the claim of the plaintiff *supra*, the claim of the defendants, in their pleadings and evidence before the trial Court were that this is not the property of the deity and the so called granting of patta under the Act of 1948, is not correct, and it is the private property of one Patnam Munaswamy and said Munaswamy executed under Ex.B-1 registered sale deed, dated 02.07.1962, in favour of one Amina Bee and the said Amina Bee under Ex.B-2, dated 21.01.1975, sold in favour of one Audilakshmamma, the vendor to the 1st defendant, and from the said Audilakshmamma under Ex.B-3, dated 07.06.1978, the 1st defendant purchased and in 1979 applied for municipal plan to the Srikalahasti Municipality under Ex.B-4 and the said Amina Bee who sold to the plaintiff's vendor under Ex.B-2 for not delivered part of the property covered by Ex.B-3, the 1st defendant herein as a plaintiff constrained to file suit in O.S. No.171 of 1979 covered by decree and judgment under Exs.B-6 and B-7 that was allowed and confirmed in Appeal in A.S. No.216 of 1985 under Exs.B-8 and B-9 and later even applied for the municipal plan that was granted under Exs.B-10 to B-12 respectively, and paid the possession tax receipts to the Municipality and pursuant to the said decree in O.S. No.171 of 1979, the Court Amin, from said Amina Bee, delivered part of the property covered by certified copy of Amin's report and possession receipt under Exs.B-13 and B-14 and another person wanted to claim a right of passage over part of the property maintained I.A. No.983 of 1980 in O.S. No.381 of 1989 under Ex.B-27 that was on contest injunction vacated and suit ultimately not prosecuted by said plaintiff against the 1st defendant herein thereby ended in dismissal under Ex.B-28, dismissal judgment dated 04.02.1994, and one of the employees by name Kannabhiraman also deposed in O.S. No.171 of 1979 to speak the possession of D-1 as plaintiff therein and thereby it is the property of the defendants and not that of the plaintiff-deity.

3. Pursuant to the above pleadings marked and evidence by its employee PW.1–C.Ankaiah and one neighbour PW.2-P.Seethapathi with reference to Exs.A-1 to A-9 was that pursuant to the patta granted under the Act of 1948 in favour of the deity for the property of Ac.1.14 cents *supra*, deity was in possession and enjoyment and allowed some occupants to pay ground rents for their continuation and permissive possession but for not chosen to pay by the 1st defendant after afflux of time resulting in exchange of notices and the evidence of PW.2 is also that he is one of the occupants of the deity land and 1st defendant is neighbour to it and this property belongs to the deity and he is paying to the deity ground rents covered by Exs.A-5 and A-6 and is paying for his house in the temple property house taxes covered by Exs.A-7 to A-9.

4. However, from the said evidence, with reference to the pleadings of the rival claim of title setup by plaintiff *vis-à-vis* the defendants over the plaint A and B schedule extents, the trial Court held that but for Ex.A-1 pattedar passbook issued under the Record of Rights Act, 1971 (for short, 'the Act of 1971'), the original patta said to have been granted in favour of the deity under the Act of 1948 not filed and defendants could show the title since predecessor's time under Ex.B-1 of 1962, thereby plaintiff is not entitled to the reliefs.

5. The plaintiff-deity when maintained the first Appeal *supra*, 1st appellate Court reversed the said trial Court's judgment and, in passing the reversal judgment and decree, formulated the point for determination contemplated by Order XLI Rule 31 of C.P.C., as whether there is any ground to allow the Appeal, and observed consequently while discussing in the re-appreciation of the evidence referring to the documentary and oral evidence *supra* that though since 1979 the defendants are in possession and enjoyment of the schedule property referring to Ex.B-3,

registered sale deed of 1978, from perusal of the documents relied on by both sides, the appellate Court came to the conclusion of the appellant-deity is the lawful owner because Ex.A-1 is the ryotwari pattedar passbook issued, which clearly shows the survey number and extent of the suit property in 262/3 of a total extent of Ac.1.14 cents of Nagulagunta and except the documents though plaintiff not filed any other documents, as per Ex.A-1, once the property belongs to the plaintiff-appellant as lawful owner to say got title for Ex.B-1 document of Munaswamy executed to Amina Bee in the year 1962 nowhere disclose how he got the property as to source of title of said vendor but for stated sold the property to Amina Bee, even later Amina Bee in turn sold to Audilakshamma under Ex.B-2 of 1975; Audilakshamma in turn sold to 1st defendant under Ex.B-3 of 1978 for showing any possession and enjoyment pursuant to the documents from 1962 to 1978 and later on though the temple slept over without diligence to recover possession from the defendants', once it is the property of the deity, the truthful owner, and pursuant to the documents for vendor no title, not the property of defendants, the plaintiff's suit is to be decreed and the trial Court's dismissal judgment is liable to be set-aside for true owner is Srikalahasteeswara Swamy Devasthanam under Ex.A-1 and not defendants or their predecessors in title under Exs.B-1 to B-3, and for all the reasons so came to the conclusion, allowed the Appeal in part without costs, directing the appellant-plaintiff to take steps as per above directions from the pucca constructions made by the defendants.

6. The grounds urged in the Second Appeal, involved substantial questions of law at Para No.16, which are extracted hereunder:

“1) Whether the approach of the Lower Appellate Court is vitiated by non-framing of each issue or point for determination and recording specific findings?

- 2) Whether the approach of the Lower Appellate Court is vitiated in view of a bald point for determination by the 1st appellate Court? Whether there is any ground to allow this Appeal without framing relevant points for determination to address itself to the real issue in controversy?
- 3) Whether the judgment is contrary to Order 41 Rule 31 of C.P.C.?
- 4) Whether the suit is barred by limitation? And
- 5) In the absence of Patta under the provisions of E.A. Act, for the land in S.No.262/3, whether the Lower Appellate Court is justified in partly allowing the Appeal?"

7. And this court, on 22.01.1999, admitted the Second Appeal by formulating the said grounds (a) to (e) of Para 16 as substantial questions of law and, by further hearing, this Court, on 19.06.2015, formulated the additional substantial question of law, which reads as follows:

"Whether exhibit A1-ryotwari patta pass book said to have been issued by the revenue authorities confirming title on the plaintiff is not a document of title and does not confer title? And, if so, whether the Court below erred in declaring the title of the plaintiff solely on the basis of exhibit A1?"

8. From the substantial questions of law involved, heard both sides in the Second Appeal. The respondent-plaintiff-deity in the Second Appeal filed Application in S.A.M.P. No.2243 of 2017 under Order XLI, Rule 27 R/w. Section 151 of C.P.C. to receive as additional evidence, which is the property register under Section 43 of the A.P.C. & H.R.I. and Endowments Act 30 of 1987 (Section 38 of the old Act) showing, among the other properties, the property covered by S.No.262/3 of Nagulagunta of Ac.1.14 cents is part of the property of the deity. No doubt, had it been filed earlier

before the trial Court or the 1st appellate Court, as the case may be, for no ground for non filing earlier, there could be a presumption under Section 46(3) of the Endowments Act 30 of 1987 that unless contrary is proved, the entry made in the register is genuine and got the sanctity of certificate issued thereunder under Section 76 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'). No doubt, irrespective of the party earlier filed or not, and entitled or not, under Order XLI Rule 27 of C.P.C., the Court got power from the very wording of Order XLI Rule 27(1)(b) of C.P.C. to receive any additional evidence on it's own without even any application as per the very wording within it's inherent power, at best, to read with Section 165 of the Act of 1872, that if the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. The scope of law is well laid down by the Apex Court in **K.R.Mohan Reddy Vs. M/s.Network Inc**¹.

9. Here, for effective delivery of the judgment covering the *lis*, the Court got the inherent power to receive additional evidence, at any time, even by appellate Court for that matter even in the Second Appeal is the said proposition. However, the issue is, is there any such necessity. In fact, a perusal of the document proposed to be adduced as additional evidence to receive, which is a document under the Endowments Act 17 of 1966, the property register, under Section 38 for which there is a presumption of entries are genuine *i.e.*, nothing but what is already contained in the pattedar passbook already issued in favour of the temple long ago covered by Ex.A-1, thereby non receiving of the said document nowhere improves the case much less of any such necessity of effective delivery of the judgment which is required to exercise the *suo motu* power

¹ 2008 (1) ALT (SC) 10 = 2007 (8) SCJ 233

and otherwise to receive there are no reasons assigned by the plaintiff, thereby the additional evidence Petition is dismissed.

10. Now, from this, coming to the Second Appeal grounds referred *supra*, so far as the grounds 1 to 3 formulated are concerned, those are in relation to the non formulation of the specific points for consideration by the lower appellate Court under Order XLI Rule 31 of C.P.C. For more clarity, it is necessary to reproduce the wording of Order XLI Rule 31 of C.P.C., which reads as follows:

“31. Contents, date and signature of judgment – The judgment of the Appellate Court shall be in writing and shall state –

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

11. From this, what it speaks is, the appellate Court’s judgment shall be in writing and state points for determination, decision thereon, and reasons for the decision, and whether the decree appealed from is reversed or varied and the relief to which the appellant is entitled, and with time, date and signature of the Judge or the Judges concurring therein, as the case may be; it speaks about the points for determination, decision thereon with reasons.

12. Learned counsel for the appellants-defendants, in this regard, placed reliance upon the judgments of this Court in ***Iruvanti Gopinatha Rao and others Vs. Vadlapudi Narayana and others***², ***Viyyapu Danayya Vs. Peethala Appa Rao and others***³, ***Thummala Kanakamma***

² 1997 (2) ALT 785

³ 1997 (3) ALT 266

and another Vs. Vottikala Venkataswamy and another⁴, and in an unreported judgment of this Court in **Kankanambedu Mallikeswara Chetty Vs. Angadi Venkatakrishnaiah⁵**.

13. In these judgments, what is observed is that from the use of the word 'shall' in Order XLI Rule 31 of C.P.C., it is the bounden duty of the first appellate Court, being a final fact finding Court, to formulate the points for determination and answer the points formulated for determination by giving reasons for it; otherwise, any even formulation of points is an empty formality, leave about the *omnibus* formulation of point as to trial Court's judgment is correct or not is depreciable. In fact, in these judgments several judgments of the Apex Court also referred and, in particular, in **Thummala Kanakamma** *supra* and it is observed that in several expressions referred that it was not observed in any of the decisions even remotely that first appellate Court Judge need not at all consider any of the relevant grounds raised in the Memorandum of Appeal or at the time of hearing the Appeal and in a confirming judgment, a one line judgment that first appellate Court Judge agrees with the findings of trial Court would serve the purpose of Order XLI Rule 31 of C.P.C. What all stated in the above judgments is that elaborate reference to the evidence on record and lot of discussion on facts of evidence are not necessary, for confirming a judgment. The procedure laid down in Order XLI Rule 31 of C.P.C. in substance complied or not is to be considered for same is not an empty formality. Once the trial Court in it's judgment stated categorically of defendants in fact encroached land of plaintiff and did not grant the decree in favour of the plaintiff on the sole ground of plaintiff failed to establish the extent of encroachment, and to localise the area of encroachment, lower appellate Court stated that it was contended by plaintiff before it that

⁴ 2003 (4) ALT 158

⁵ S.A. No.438/1999, Dt.13.09.2010

Commissioner's Report and personal inspection supports the case of the plaintiff, which is an important contention once raised, lower Appellate Court when did not focus it's attention though it is the duty to consider said appellate Court's judgment failed in it's duty contemplated by Order XLI Rule 31 of C.P.C., in substance, in setting-aside the same. Thus, the sum and substance of the expression is, once the first appellate Court sits in appeal against the trial Court's judgment, pursuant to the provision, considered the controversy and answered the same with its own reasons either to confirm or to reverse though not by undertaking reproduction or elaborate re-discussion of facts, in the course of duty of re-appreciation of facts, such a finding of the appellate Court is sustainable even no mere point for consideration formulated. Thus, the provision to be considered is in substance and not technically, for procedural law is handmaid from which any injustice done to the party or not to consider in each case on facts. Thereby, non mere formulation of points for determination not fatal, once the controversy is dealt with, with its own reasons by the lower appellate Court. That is the conclusion, though not in so many terms, by another single Judge of this Court in ***Eruvuru Ramachandra Reddy @ Chandraiah and others Vs. Koppala Bhushanam***⁶.

14. Here, as referred *supra*, the lower appellate Court's perusal of the judgment clearly shows, it considered the entire evidence on record and came to the conclusion in passing the reversal judgment of what among the Exs.B-1 to B-39 of the defendants placed reliance, all depending upon Exs.B-1 to B-3 and among Exs.B-1 to B-3 what it shows from defendants and predecessors in possession is from 1962 and to convey the title by the vendor under Ex.B-1, once his source of title not mentioned and once the patteddar passbook under Ex.B-1 in favour of the temple was duly

⁶ 2008 (2) ALT 36

issued by the Revenue Authorities under the Act of 1971, that *prima-facie* shows plaintiff is the true and lawful owner from correctness of the entries therein, even the settlement patta not filed by the temple against that evidence showing the correctness of the entries, there is no better evidence by the defendants, defendants cannot claim title over the property and the dismissal judgment of the trial Court is unsustainable, as plaintiff could *prima-facie* show the title. Once such is the case, the controversy raised in the grounds of the first Appeal practically with this undertaken discussion with reference to oral and documentary evidence in substance once met though not undertaken the elaborate discussion when the gist covered in substance, there is nothing to say that non formulation of a point for consideration is fatal to the facts of the case to set-aside the lower appellate Court's judgment or to remand back the matter on that ground; thereby, the three substantial questions of law regarding compliance or non-compliance of Order XLI Rule 31 C.P.C. are answered against the appellants.

15. Coming to the 4th substantial question of law, on the limitation aspect, Section 93 of the Andhra Pradesh Endowments Act 17 of 1966 says, in so many terms, that any resistance or prevention for taking possession, claiming of deriving title or otherwise entitled to be in possession. Section 143 of the Act 30 of 1987, which is the Act brought into existence by repealing of the old Act 17 of 1966, which is a repeal so far as the Andhra area concerned of the earlier Act 19 of 1951 which is a repeal so far as Andhra area concerned of the earlier Act 2 of 1927 amended by Act 11 of 1934, as held by a Division Bench of this Court in ***Tutta Chinnayya and others Vs. Executive Officer, Sri Varaha Lakshmi Narasimha Vari Devasthanam, Simhachalam,***

Visakhapatnam⁷, there is no question of adverse possession in the case of inam lands unless 60 years prior to the Act 11 of 1934 came into force, title over the property by adverse possession is perfected and in other cases even for any land belongs to a charitable or religious endowment prior to the 1951 Act 19 of 1951, title over the property by adverse possession is perfected by extinguishing the title of the institution, as the case may be. There is no evidence, undisputedly, from the defendants side before the trial Court of any possession prior to 1962 but for relying upon Ex.B-1 sale deed of the vendor of the sale deed possession by then in delivering of possession, leave about the no source of title mentioned, as rightly pointed by the first appellate Court, that was missed by the trial Court. Once such is the case, there is no question of adverse possession for inam or estate land, as the case may be, or even other land of the Devasthanam in question to claim any right by adverse possession by the defendants. Thereby, the point for 4th substantial question of law for consideration is also answered against the appellants.

16. Now, coming to the 5th substantial question of law and the additional substantial question of law, *supra*, the 5th substantial question of law is, in the absence of patta under the provisions of the Act of 1948 for the land of 262/3, whether the lower appellate Court is justified in allowing the Appeal and whether Ex.A-1 ryotwari patta passbook said to have been issued by the Revenue Authorities confirming title of plaintiff is not a document of title and does not confirm title and, if so, whether Court below erred in declaring the title of the plaintiff solely on the basis of Ex.A-1. In this regard, the facts nowhere require repetition. Ex.A-1 is the ryotwari passbook under the A.P. Rights in Land and Pattedar Passbooks Act, 1971 issued by the then Tahsildar, in the capacity of Deputy Tahsildar of

⁷ 2016 (6) ALD 63 (DB)

recording authority of record of rights, Srikalahasti with counter signatures of the Village Karnam, Revenue Inspector, Srikalahasti, to say it was issued long prior to the village karnam system was abolished in 1983-84. In this, several items of properties belong to the deity referred and among the 20th relevant column of page No.1 as to ownership rights, this is a item 3 of survey No.262/3 of Ac.1.14 cents and there is a mention about the said extent is under encroachments and temple is the owner and pattedar of the property as per the relevant columns 5 and 6, and for all the properties it is also mentioned as temple in possession while saying for this property mostly under encroachment and it is a dry land in the classification as per revenue records.

17. Section 6 of the Act of 1971, *supra*, reads that every entry in record of rights shall be presumed to be true until the contrary or until it is otherwise amended, in accordance with the provisions of this Act. Any mortgage or charge created earlier to mortgage or charge created in favour of a credit agency shall lose its priority, if it is not entered in the pattedar passbook; so far as that mortgage clause is concerned amended by ordinance 9 of 1994, dated 31.10.1993. As on the date of issue of the passbook, from the wording of Section 6 of this Act, it shows the temple is the title holder and owner and it is under encroachment, the entry shall be presumed to be true is the mandate of the statute. Section 4 of the Act of 1872 speaks on '*may presume*', '*shall presume*' and '*conclusive proof*'. So far as the '*shall presume*' is concerned, it is clear from the very wording that unless contrary is proved by the person who disputes the entry, the Court shall presume for taking as proved by preponderance of probability from the filing of the document and marking of the said entry, which is a public document with sanctity including under Section 114 of the Act of 1872, to draw the presumption for all public documents under Sections 74

to 77 of this Act. The document is not raised objection while marking regarding any proof, relevancy or admissibility. So far as admissibility and relevancy, no objection left open and regarding proof from the above nothing even left open to raise but for to consider said presumption could be rebutted by any of the oral and documentary evidence adduced by the defendants to impugn the lower appellate Court's reversal judgment of the trial Court's dismissal judgment and decree, as the case may be. The law is very clear by the expressions of this Court in saying it is the duty of the Court from the entry in the Record of Rights Act to presume to be true until contrary is proved by the person who disputes it and, in the absence of contrary evidence, the entry would prevail and though the record of rights is not a document of title, Court is perfectly entitled to take into consideration the entry in the Record of Rights Act regarding ownership for coming to the conclusion of certain person recorded as owner is the owner of the land in question. These are the expressions of this Court in ***Chanumolu Nirmala and others Vs. C.Indira Devi⁸, Secretary to Government of India, Ministry of Defence, New Delhi and another Vs. Indira Devi and another⁹*** and ***Pogiri Jagannadha Rao Vs. Venkatinaidu and others¹⁰***. Thus, in view of the settled law, laid down by another single Judge of this Court in ***Yeluri Vijayabharathi Vs. Yeluri Manikyamma and others¹¹***, the presumption is a rebuttable one, though not in dispute, what is laid down without referring to Section 6 of the Act of 1971 and the earlier expressions *supra* but merely referring to the Privy Council expression and Apex Court's expression in ***Nagar Palika Zind Vs. Jagat Singh¹²*** that entries in revenue records are for fiscal purpose are not documents of title and no presumption as to documents of title can

⁸ 1994 (1) APLJ 394

⁹ 1998 (5) ALD 387

¹⁰ 1999 (6) ALD 778

¹¹ 1998 (2) ALT 623

¹² AIR 1995 SC 1377

be drawn, is not laying down the correct proposition as in **Nagar Palika Zind** *supra* it is clearly laid down that the entries serve as corroborative evidence and further it is hit by the principle of *sub-silentio*, as held by another a Division Bench of this Court in **Gadda Balaiah and others Vs. The Joint Collector, Ranga Reddy**¹³, that is reiterated by this Court in **G.Narayana Reddy Vs. P.Narayana Reddy**¹⁴ for presumption of genuineness of entries showing as pattedar and owner is the temple that shall be drawn under Section 6 of the Act 1971 *supra* is ignored. Thus, even what are the expressions of the Apex Court in **Nagar Palika Zind** *supra*, **H.Lakshmaiah Reddy and others Vs. L.Venkata Reddy**¹⁵ referring to **Nagar Palika Zind** *supra* and **Sawarni Vs. Inder Kaur**¹⁶ of mutation of a property in the revenue records does not create or extinguish title nor has it any presumptive value of title; though not in dispute, that proposition is not axiomatic so far as Section 6 presumption once applies concerned under the Act of 1971.

18. Thus, those expressions laying down general law not referring to the truth of the entries as to the ownership and title to be presumed by the Court, is covered by Section 6 of the Act of 1971 not specifically referred therein, nor there is any such available presumption under any other law that was discussed and heard of despite it no presumption can be drawn.

19. Coming to the other expression, **State of Himachal Pradesh Vs. Keshav Ram**¹⁷, in Para 4, it was observed by the Apex Court that contra to the original settlement record, there is a correction made pursuant to the so called order of the Assistant Settlement Officer and such order of the Assistant Settlement Officer when not produced, for the correction to

¹³ 2005 (6) ALD 417

¹⁴ 2016 (3) ALT 12

¹⁵ 2015 (LS) SC 364

¹⁶ 1996 (6) SCC 223

¹⁷ AIR (1997) SC 2181

the original entry, no presumption of genuineness of the revenue record can be drawn. For such entry cannot be a basis for declaration of title is the finding of the Apex Court.

20. No doubt, it is only for the corrected entry, the Apex Court held presumption cannot be drawn and this expression is not an authority to say from the revenue records, showing ownership, no presumption can be drawn for the correctness of the entries. That too when Section 6 of the Act of 1971 speaks about the ownership and title over the property, with reference to the pattedar passbook making entries in relation thereto and showing the temple is the owner and title holder and the burden is therefrom lies on the defendants in not only disputing the plaintiff's title but also in setting up independent title over the property by the defendants from the very written statement and the contest with regard to the evidence before the trial Court by placing reliance mainly on Exs.B-1 to B-3, as held by the Apex Court in ***R.V.E. Venkatachala Gounder Vs. Arulmigu Visveswaraswami & V.P. Temple***¹⁸.

21. Even in a suit based on declaration of title, though plaintiff cannot rely on weakness of the defence is the basic principle, plaintiff need not prove the case beyond reasonable doubt for the reason in all civil cases proof including in a suit for declaration of title by preponderance of probability and that principle cannot be relied on weakness of defence is not a principle to read as static of burden of proof always on plaintiff for the reason the onus shifts where plaintiff is able to establish his entitlement to the property by preponderance of probability to rebut the presumption or the burden on the defendants lies. Once such is the principle to be taken into consideration, so far as the facts of the case concerned, from Ex.A-1 Record of Rights Act, pattedar passbook with

¹⁸ 2003 (8) SCC 752

presumption of genuineness of the entries, the Court has to draw as discussed *supra* but the burden on the defendants to rebut. Leave about Exs.B-4 to B-39 or the subsequent documents to Exs.B-1 to B-3, and Exs.B-2 and B-3 are depending upon Ex.B-1 for the claim of title by defendants through their predecessors. So far as Ex.B-1 is concerned, as rightly pointed out by the first appellate Court, the source of title of the vendor under Ex.B-1 not mentioned nor any scrap of permanent revenue record filed, in the name of the vendor of the defendants under Ex.B-1, if at all to show, there is nothing to say therefrom of defendants could discharge the onus shifted on them from the proof of the right and title of the plaintiff by drawing the presumption of correctness of the Ex.A-1 entries in the permanent revenue record and that are reproduced in the pattedar passbook with title, and once the defendants could not discharge their burden, the lower appellate Court is right in its conclusion in saying plaintiff is rightful owner by virtue of Ex.A-1 that could not be rebutted by any of the oral and documentary evidence of the defendants. Further Section 82 of the Endowments Act 30 of 1987 provides for cancellation of all existing leases and resumption of possession is upheld by the Apex Court in ***State of A.P. Vs. N. Rami Reddi***¹⁹ and even patta granted to temple (referred in the revenue record *supra*) is final and conclusive as held in ***Vatticherukuru Village Panchayat Vs. N.V.R. Deekshithulu***²⁰ which also speaks entries in enam fair register or survey and settlement record as pattedar is of great evidentiary value. Furthermore the Apex Court in ***Chittoor Chegaiah Vs. Pedda Jeeyengar Mutt***²¹ held that even a permanent lessee liable for eviction for relationship of landlord and tenant no way ceases to invoke process of law to evict person in that capacity. Apart from all these, even coming to case on hand, besides the

¹⁹ AIR (2001) SC 3616

²⁰ 1991 (Supp) 1 (SCC) 228

²¹ 2010 (3) SCC 776

temple is shown as owner and pattedar in the permanent revenue record gives presumption and that ownership is not shown extinguished for the land (temple inam or otherwise) and nothing shown any private person was granted any patta either under the Estates Abolition Act, 1948 or Inams Abolition Act, 1956, much less by so called predecessor to defendants, the lower appellate Court's judgment is supported by just conclusion and valid and no way requires to set-aside

22. However, from the urge by the learned counsel for the appellants-defendants in the course of hearing the Second Appeal, drawing attention to Section 51 of the Transfer of Property Act, 1882 (for short, 'the Act of 1882') the above conclusions are not the end all; in this regard, leave about facts no where require repetition so also the oral and documentary evidence; it is necessary to reproduce Section 51 of the Act of 1882, which reads as follows:

“51. Improvement made by bona fide holders under defective titles:- When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the market value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under circumstances aforesaid, the transferee has planted or sown on the property crops which are growing, when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.”

23. So far as the claim of *bona fides* by the defendants is concerned, with reference to this provision, Exs.B-1 to B-39 produced among which the 1st defendant's title is under Ex.B-3 of 1978 traced from Ex.B-2 of 1975, traced back from Ex.B-1 of 1962; at least therefrom, the vendor of the plaintiff and his predecessor under the guise of title from 1962 in continuous possession and once claimed *bona fide* believed the title and purchased this property and obtained the municipal plan more than once and constructed the building so far as that *bona fide* improvement is concerned, for the improvement, defendants are entitled to be compensated; otherwise, if at all, the deity wants to alienate the property to the defendants by private negotiation taking consideration of the facts which no doubt mandates *void* unless there is permission of the Commissioner of Endowments contemplated by Section 80 of the Act from the combined reading of Sections 80 to 82 of the Act 30 of 1987, they can consider. Subject to said compliance, any such application filed by the defendants within one (1) month from this date to decide on own merits for market value of the land, if at all chooses; otherwise, the defendants are entitled to the improvements for the constructions to the structural value only.

24. Accordingly, with these observations, instead of dismissal, the Second Appeal is disposed of. No order as to costs.

25. As a sequel, the miscellaneous petitions, if any pending, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date: 21-03-2018.
Dsh

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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