

***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**

+W.P.Nos.11032, 11034 and 11037 of 2018

% 16-08-2018

W.P.No.11032 of 2018:

M/s. Trinity Infraventures Limited, formerly known as
M/s. Goldstone Exports Ltd, represented by its
Authorised Signator Mr. P.S. Parthasarathy
having its registered office At 83 and 84,
AC Sharma Complex, S.D. Road,
Secunderabad.

Vs.

The State of Telangana, represented by its
Principal Secretary, Department of Revenue,
Secretariat Buildings, Hyderabad, and 3 others

... Petitioner

... Respondents

W.P.No.11034 of 2018:

M/s. Trinity Infraventures Limited, formerly known as
M/s. Goldstone Exports Ltd, represented by its
Authorised Signator Mr. P.S. Parthasarathy
having its registered office At 83 and 84,
AC Sharma Complex, S.D. Road,
Secunderabad and another

Vs.

The State of Telangana, represented by its
Principal Secretary, Department of Revenue,
Secretariat Buildings, Hyderabad, and 4 others

... Petitioners

... Respondents

W.P.No.11037 of 2018:

M/s. Trinity Infraventures Limited, formerly known as
 M/s. Goldstone Exports Ltd, represented by its
 Authorised Signator Mr. P.S. Parthasarathy
 having its registered office At 83 and 84,
 AC Sharma Complex, S.D. Road,
 Secunderabad and another

... Petitioners

Vs.

The State of Telangana, represented by its
 Principal Secretary, Department of Revenue,
 Secretariat Buildings, Hyderabad, and 4 others

... Respondents

! Counsel for the Petitioners : Mr. R.N. Hemandranath Reddy

^ Counsel for Respondents : Mr. Sharath, Spl.G.P &
 Mr.C.B.Ram Mohan Reddy for
 Mr.V. Venkata Mayur

< Gist:

> Head Note:

> Cases referred:



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N. BALAYOGI

W.P.Nos.11032, 11034 and 11037 of 2018

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

Challenging three different orders passed by the Joint Collector on the same day allowing three different revision petitions filed under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, the companies in whose favour the Tahsildar directed the grant of patta (and which orders were reversed by the Joint Collector by the impugned orders), have come up with the above writ petitions.

2. Heard Mr. R.N. Hemandranath Reddy, learned counsel for the petitioners, the learned Special Government Pleader appearing on behalf of the learned Additional Advocate General for the State of Telangana and Mr. C.B. Ram Mohan Reddy, learned counsel appearing for unofficial respondents in all the writ petitions.

Tahsildar's order

3. By two independent proceedings dated 19-08-2011, the Tahsildar, Balanagar Mandal, Ranga Reddy District directed that the record of rights (i) in respect of lands in Survey No.57 to an extent of Ac.39.00 guntas in Hasmathpet village of Balanagar Mandal, be amended in favour of certain persons; and (ii) in respect of lands in Survey No.1 to an extent of Ac.74.08 guntas in the same village be amended in favour of certain other persons. The ultimate effect of

these two orders of the Tahsildar, Balanagar dated 19-08-2011 can be appreciated easily, if presented in a tabular column as follows:

S.No	Proc. No.	Date	Sy.No	Extent	Mutation ordered In favour of
1.	B/805/2011	19-08-2011	1	Ac.12.00	Mrs. Indrani Prasad
				Ac.10.00	Mr.S.Murali Krishna
				Ac.01.00	Dr. P.S. Prasad
				Ac.26.00	M/s. Cyrus Invest-ments Ltd.
				Ac.20.00	M/s. Goldstone Exports Ltd., (presently known as Trinity Infraventures Ltd)
				Ac.05.00	M/s. Goldstone Infratech. Ltd, (formerly known as Goldstone Engineering Ltd)
				Ac.74.00	
2.	B/807/2011	19-08-2011	57	Ac.10.20	Mr. L.P. Sashi Kumar
				Ac.01.20	Mr.R. Ramamurthy
				Ac.01.00	Dr. P.S. Prasad
				Ac.14.00	M/s. Cyrus Invest-ments Ltd.,
				Ac.20.00	M/s. Goldstone Exports Ltd, (presently known as Trinity Infraventures Ltd)
				Ac.39.00	

Revisions before the Joint Collector

3. Aggrieved by the aforesaid two orders of the Tahsildar effecting mutation in favour of those persons, three independent revisions came to be filed before the Joint Collector under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971. One revision was filed by (i) Hameedunnisa Begum challenging the order of the Tahsildar in respect of the land in Survey No.57. The other two revisions were filed by (i) Nawab Mohd. Moizuddin Khan relating to the land of an extent of Ac.9.30 guntas in

Sy.No.1 and (ii) Noushad Ali and Mansoor Sadruddin, in respect of the land of an extent of Ac.88.35 guntas in Survey No.1.

4. By separate orders dated 09-02-2018 containing identical reasons, the Joint Collector allowed all the three revision petitions and remanded the matter back to the Tahsildar for a *de nova* enquiry. Being aggrieved by these three orders of the Revisional Authority, the petitioners, who were the respondents before the Revisional Authority, have come up with the above writ petitions.

The claim of the writ petitioners and the basis of the claim

5. It is seen from the orders of the Tahsildar dated 19-08-2011 that the claim of the writ petitioners for a mutation of the revenue records in their favour in respect of the lands in Survey Nos.1 and 57, was based upon (i) a final decree purportedly passed by this Court in Application Nos.711 and 712 of 2009 in C.S.No.14 of 1958, respectively on 26-02-2010 and 31-03-2010 and (ii) the orders passed in Application No.86 of 2010 in C.S.No.14 of 1958 dated 10-06-2010 and Application No.86 of 2011 in C.S.No.14 of 1958 dated 04-02-2011, purportedly declaring the writ petitioners as absolute owners of these lands. The Tahsildar proceeded on the footing (i) that there was a final decree in favour of the writ petitioners in respect of these lands; (ii) that the attempts made by the State as well as the unofficial respondents in these writ petitions to challenge the final decree failed up to the Supreme Court and (iii) that therefore, the ownership of the writ petitioners to these lands is settled finally by the Civil Court.

6. In view of the basis on which the Tahsildar proceeded to pass an order dated 19-08-2011 in favour of the writ petitioners, it is necessary to find out whether (i) there was a final decree in favour of the writ petitioners and (ii) whether the final decree attained finality, having a binding effect upon the State as well as the unofficial respondents herein.

7. The suit in C.S.No.14 of 1958 has had a chequered history in this Court. The suit was originally instituted in the City Civil Court, Hyderabad, but it was withdrawn by this Court and transferred to itself probably under Clause 13 of the Letters Patent. There are innumerable applications still pending on the file of this Court in C.S.No.14 of 1958. In the past 60 years of its pendency in this Court, this litigation has created a history of sorts, mostly for bad reasons. It is stated by Mr.Sarath Kumar, learned Government Pleader that on the flipside, this litigation has taken a heavy toll on the reputation of a few on both sides. On the better side, the records in this litigation are worthy of preservation in the archives of a Law University and any student of law, who goes through this litigation, is sure to become a great expert in civil proceedings.

8. Since the entire claim of the writ petitioners is based upon a so-called final decree passed in their favour, it may be necessary to take a look at the said final decree. But before doing so, we must know (i) what were the properties listed in the schedule to the plaint in C.S.No.14 of 1958; (ii) how and what kind of a preliminary decree was passed and (iii) how and whether the lands in Survey Nos.1 and

57 were identified for allotment to the parties from whom the writ petitioners claim to have purchased these lands.

9. According to the writ petitioners, the suit in C.S.No.14 of 1958 was filed by one Mrs. Dildarunnisa Begum seeking partition of the matruka properties of one Mr. Kurshid Jahi Paiga. In the suit, the Jagir Administrator was arrayed as Defendant No.43 and the erstwhile composite State of Andhra Pradesh was shown as Defendant No.53. A preliminary decree was passed on 28-06-1963. Immediately thereafter several parties to the suit who styled themselves as owners of 80% of the shares in the suit properties, sold away their so-called "decretal rights" by way of registered sale deeds in the year 1964 and 1965 in favour of HEH Nizam and Nawab Khazim Nawab Jung, who were arrayed as defendants 156 and 157. According to the writ petitioners, the 156th defendant namely HEH Nizam sold his share in favour of a company by name M/s. Cyrus Investments Limited, under a registered sale deed dated 23-02-1967. As a consequence, M/s. Cyrus Investments Limited got impleaded as Defendant No.206 in the suit. After the said sale, the defendants 156 and 206 (namely the Nizam and Cyrus Investments) filed applications in Application Nos.64 and 65 of 1983, for deleting the names of the sharers, who sold away their shares and for substituting in their place, persons who bought the shares. It is claimed by the writ petitioners that these applications were allowed by this Court by an order dated 05-08-1983. This order was confirmed by the Division Bench in O.S.A.No.59 of 2006 by order

dated 10-10-2007. According to the petitioners, the persons arrayed as defendants 52 (Mohd. Ghouse Moinuddin Khan) and 58 (Hameedunisa Begum) had also sold their shares and hence, their names were removed from the array of the parties in C.S.No.14 of 1958. The 52nd defendant namely Mohd. Ghouse Moinuddin Khan is now no more and his son, who is the 4th respondent in W.P.No.11037 of 2018, filed an application in Application No.92 of 2005 to come on record as the legal heir of the deceased 52nd defendant. But according to the petitioners, the same was dismissed by a learned Judge of this Court by an order dated 31-07-2006 on the ground that his father, the 52nd defendant had already sold his share during his lifetime. The 4th respondent in W.P.No.11037 of 2018 (son of the 52nd defendant) filed an appeal in O.S.A.No.47 of 2006, but the same was dismissed by a Division Bench of this Court by an order dated 12-06-2007. The Special Leave Petitions filed by him in S.L.P.(Civil) Nos.19811 and 19812 of 2008 were also dismissed by the Supreme Court on 03-02-2015.

10. Similarly, Mrs. Hameedunnisa Begum, who is the 4th respondent in W.P.No.11032 of 2018 and who was shown as 58th defendant in C.S.No.14 of 1958, is also said to have sold her shares. It is further claimed by the writ petitioners that they entered into a compromise with the assignees/purchasers of the rights under the preliminary decree in respect of the land in Survey No.57.

11. Thereafter, the writ petitioners filed (i) Application No.711 of 2009 for a final decree in respect of the land in Survey No.1 and

(ii) Application No.712 of 2009 in respect of the land in Survey No.57, for recording a compromise and for passing a final decree in respect of these lands. According to the petitioners, a learned Judge of this Court allowed the final decree applications on 26-02-2010 recording the compromise and passing a final decree. It is the claim of the petitioners that the said order of the learned single Judge was confirmed on appeal and hence, the Court Receiver-cum-Commissioner handed over possession of the lands in Survey Nos.1 and 57 to the writ petitioners, as evidenced by a Panchanama.

12. According to the petitioners, it is on the basis of the compromise final decree passed in Application Nos.711 and 712 of 2009 and the handing over of possession by Receiver-cum-Commissioner that the writ petitioners made applications to the Tahsildar, Balanagar Mandal, for mutation. The Tahsildar conducted an enquiry as envisaged under the Record of Rights Act of 1971 and directed mutation to be effected by his orders dated 19-08-2011.

The claim of the contesting respondents

13. As against the orders of the Tahsildar dated 19-08-2011, the unofficial respondents filed revisions after a lapse of 4 years. As stated earlier, there were 3 revisions, whose details are as follows:

(i) In the revision filed by Nawab Mohd. Moizuddin Khan (4th respondent in W.P.No.11037 of 2018 and the son of the 52nd defendant in the suit) he claimed that his father was allotted land of an extent of Ac.9.30 guntas in Survey No.1; that the Court Receiver-cum-Commissioner applied for survey and demarcation after which

he was put in possession of Acs.3.37 guntas in Survey No.1 under Panchanama dated 02-03-2013; that when Cyrus Investments Ltd, started claiming ownership of the land of an extent of Ac.70.00 guntas in Survey No.1 on the basis of so-called final decree, he filed an appeal in O.S.A(SR)No.6415 of 2012 and that since the said appeal is pending and also since the Receiver-cum-Commissioner has handed over possession of the land measuring Ac.3.37 guntas, the mutation effected by the Tahsildar was not in order. He also claimed that he himself had filed an application for passing a final decree in respect of an additional extent of land in Survey No.1, measuring Ac.4.27 guntas and that since the same is also pending, the order of the Tahsildar was illegal.

(ii) Similarly, the 4th respondent in W.P.No.11032 of 2018 filed a revision, contending that she is in possession and enjoyment of the land measuring Ac.39.00 in Survey No.57 and that a Land Grabbing case filed against her by the Revenue Divisional Officer, Chevella in L.G.C.No. 104 of 1989 was allowed by the Land Grabbing Court, but the said order was stayed by this Court in W.P.No.4692 of 2007 by order dated 08-03-2007 and that she had also filed an Appeal in OSA (SR) No.1246 of 2013 questioning the final decree passed in favour of the writ petitioners and that since the same was pending, the Tahsildar was not right in directing mutation to be effected.

(iii) The respondents 4 and 5 in W.P.No.11034 of 2018 filed a revision contending that they purchased part of the land in Survey No.1 under a sale deed dated 08-02-2013 from the legal heir of a

person by name Ahmed Yar Jung, who was the 2nd defendant in C.S.No.14 of 1958; that the said 2nd defendant Ahmed Yar Jung was allotted the land purchased by them, as seen from the report of the receiver-cum-Commissioner in Application Nos.690 and 692 of 2005 and that even the Commissioner admitted before this Court that they are in possession and enjoyment of the said land. The respondents 4 and 5 in W.P.No.11034 of 2008 further contended in their revision that they had also filed a suit in O.S.No.167 of 2014 on the file of V Additional District Judge's Court, Ranga Reddy.

14. A careful look at the claims made by the writ petitioners and the rival claims made by the unofficial respondents in the revisions would show (i) that the petitioners claimed title to the lands in question by virtue of a compromise final decree allegedly passed in C.S.No.14 of 1958 and (ii) that the unofficial respondents opposed the claim on the ground that there was no such final decree and that their own applications for final decree are now pending. Therefore, it is clear that the resolution of this problem depends entirely upon the answer to the question whether there was a compromise final decree by which the petitioners have acquired title to the lands in question and whether such a decree had attained finality.

15. Adding another dimension to the already complex nature of the claims and rival claims, it was contended by the learned Government Pleader that the resolution of the problem on hand is not possible until all appeals and interlocutory applications now pending in C.S.No.14 of 1958 are taken up together and a careful

look, first at the preliminary decree and the schedule of properties to the plaint is made. According to the learned Government Pleader, there is no use in looking at the so called final decree relied upon by the writ petitioners, as the compromise on which it was brought about was fraudulent and in any case, there is yet to be a final decree. According to him, no one knows what were the properties included in the plaint schedule in the year 1955-56 when the suit was filed and as to how they correlate to the properties over which the writ petitioners are now staking a claim. Therefore, the learned Special Government Pleader requested that the appeals should be heard along with connected matters pending before this very same Bench in C.S.No.14 of 1958.

16. However, the aforesaid contention of the learned Special Government Pleader was resisted by the learned Counsel for the writ petitioners that in the cases on hand everything has attained finality and that therefore, these cases cannot be treated as forming part of the same batch now pending in C.S.No.14 of 1958.

17. Thus, the whole issue in these cases revolve around the finality to a final decree, but the very existence of the final decree is also in dispute. In any case, the respondents contend that the preliminary decree should first be looked into before deciding whether there was a final decree or not. But the parties to these cases have not produced copies of the plaint or the preliminary decree passed in C.S.No.14 of 1958.

18. However, this Bench has an advantage. Since all the miscellaneous petitions, writ petitions, writ appeals and appeals arising out of several orders passed in several interlocutory applications in C.S.No.14 of 1958 have now been posted before this Bench as Specially Ordered cases, in view of their long pendency, we have had the advantage of looking into the history of this litigation. We have seen the copy of the plaint in C.S.No.14 of 1958, the preliminary decree passed therein and the schedule of properties covered by the preliminary decree. It may be necessary for us to record what is reflected therein, so that the issues raised herein can be thrashed out easily.

Judgment in C.S.No.14 of 1958

19. The judgment in C.S.No.14 of 1958, contains the following facts and information:

- (i) O.S.No.41 of 1955-56 filed by Dildarunnisa Begum in the Court of the Additional Judge, City Civil Court, Hyderabad was withdrawn and taken on the file of this Court as C.S.No.14 of 1958. The suit was for partition of the Matruka properties left by Nawab Khurshid Jah, who died as far back as in the year 1320 H (i.e. July, 1902) leaving behind him surviving, his two sons (1) Nawab Imam Jung Khurshid-ul-Mulk, and (2) Nawab Zafar Jung Shamsul-ul-Mulk.
- (ii) While Nawab Imam Jung died in 1943, Nawab Zafar Jung died much earlier, in Zikad 1324 H. (January, 1907 A.D.).
- (iii) None of the said sons, in their own life times, brought any action for the division of the suit properties. Nor did their sons and

daughters within reasonable period after their death prefer their claims. That was because the orders and the Farmans of the Nizam issued from time to time imposed restrictions and eventually declared them as properties not liable to partition as Matraka.

(iv) But the heirs in the line of succession of the said Nawabs brought the aforesaid suit, as the said orders or Farmans which stood in their way, ceased to have their operation, on account of the abolition of Jagirs and Paighas.

(v) The Paigah, known as Khurshid Jahi Paigah, of which Nawab Khurshid Jah was the sole beneficiary, was but a separated part of a larger estate known as Paigah estate, the roots of which lay deep in the remote past. The brief history of Paigah with particular reference to its origin, development, disintegration into three Paighas, its nature at its inception, at the time when Khurshid Jah died and up to the date of the suit are of relevance.

(vi) Mohammed Abdul Kair Khan was the common ancestor of the families of the three Paighas who came to this place with the first Nizam Asaf Jah, who was then only a feudal Chief of the Moghuls. As soon as Asaf Jah saw that the Moghul empire was dwindling away, he at once proclaimed his independence and founded the kingdom of Hyderabad.

(vii) As written by Gribble in his "History of Deccan", Asaf Jah brought with him a number of followers, both Mohammadens and Hindus, who were attached to his person and fortunes. To the Mohammedan nobles, he granted Jagirs or estates on military

tenure and employed them as his generals. The Hindus were employed principally in the administrative work in the departments of revenue and finance. To them also he granted Jagirs as remuneration for their services and all these Jagirs whether granted for civil or military purposes came to be regarded as hereditary.

(viii) Distinguished among the Muslim followers was Mohammed Abdul Khair Khan, a member of a noted family which had settled for some generations in Oudh and afterwards in Agra. He had rendered meritorious services in battles and was the recipient of several favours and honours at the hands of the Nizam. He was eventually made a "Commander of 6000 horsemen", with the title of "Imam Jung". He died in 1751 A.D. His son, Abdul Fateh Khan, who followed in the foot steps of his father, soon rose to great prominence. His services also got rewarded and his estate swelled up by reason of fresh grants and sanads.

(ix) Eventually, in or about the year 1198 H. (1784 A.D.) the Jagirs roughly coinciding with what some time thereafter were called the Paigah Estates, were granted to him by Nizam Ali Khan under a perwana. On his death, a fresh grant of the same estate and of about the same area was made in 1205 H. to his son, Fakhruddin Khan, who was a minor then. This grant seems to have been made as Paigah grant. In fact, the term 'Paigah' as used in the Parwan, of 1198, and 1205 H. connotes an estate granted for maintenance of the army. Abdul Fateh Khan indeed expressly undertook to maintain a regular number of troops at a definite cost. In 1253 H. on the

application of Fakhruddin Khan, a regular sanad was granted. That sanad is the foundation of the title of the Paigah family. The nature of the grants evidenced by this sanad would show that these grants were burdened with obligations to maintain Paigah troops for the services of the Nizam.

(x) Fakhruddin Khan, however, died in 1863 A.D. He was succeeded by his eldest surviving son, Rafiuddin Khan, who was co-Regent of the Hyderabad State along with Sir Salar Jung during the minority of the late Nizam Mir Mahboob Ali Khan. On the death of Rafiuddin Khan, disputes arose about the family properties between Rashiduddin Khan, his brother, and Motashim-ud-doula and Bashirdu-Daula (Sir Asman Jah) the two sons of Sultanuddin Khan, another brother of Rafiuddin Khan. Before these quarrels were settled, Motashim-ud-Daula and Rashiduddin Khan died. Eventually in 1882 A.D., an award was made between Asman Jah on the one side and Rashibuddin Khan's two sons, Khurshid Jah and Vikar-ul-Umara on the other by Sir Salar Jung, as a result of which certain estates called Paigah Taluqas were awarded to Asman Jah. The remaining Paigah taluqs of the family were divided between Khurshid Jah and Vikar-ul-Umara as a result of the award of Mr. Ridsdale. There was a partial division of the family property in 1878 A.D. also. As a result of these arrangements, the original Paigah estate become divided into three separate estates known as the Asman Jahi Paigah, Khurshid Jahi Paigah and Vikar-ul-Umrahi Paigh.

(xi) Therefore, Asman Jah, Khurshid Jah and Vikar-ul-Umara remained in possession of their respective Paigahs until their deaths.

(xii) These Paigah grantees, were not absolute owners of the estates. In fact, the Jagirs in Hyderabad State were neither in the nature of Zamindaries of Madras State nor of Taluqaris of U.P. While proprietary rights vested in the Zamindars of Madras and Taluqdars of Qudh, the Jagirdars in Hyderabad were entitled only to the usufructs of revenue from the estate for life. The grant, in law, on the death of Jagirdar would revert to the Crown and would be made as a fresh grant to the new Jagirdar. The Paigah estates with which this case was concerned, was no exception to this. In fact, since they were burdened with the obligation to maintain Paigah troops, they were liable to be resumed by the Nizam if he so willed. The Nizam could as well commute the military burden into an equivalent money payment and require such payment on pain of resuming the Paigah Jagir. He was, at any time entitled to state that he does not require troops but require money in their stead.

(xii) Besides, the Paigah like Jagirs were inalienable and impartiable save with the consent of the Nizam. Therefore, the above mentioned partitions required the consent of the Nizam. In fact, several partitions which took place, obviously had the implied consent of the Nizam. On 10th Rajab 1337 H. (12-4-1919) the Nizam appears to have ordered that the Paigah Jagirs were not to be further divided.

(xiii) But the fact that the Paigah Jagirs as they stood at that time were not to be physically divided, did not prevent such members of

the family as are legally entitled thereto, from dividing the shares of the income of the Jagirs.

(xiv) A special feature of the Paigah, as also of Jagirs and Inams in Hyderabad State was that possession of the estate was given to a single person as the Paigah holder (in case of Paigahs) who, in addition to his own shares, was entitled in respect of the management, a specific share in the income of the estate; and this right was called Hage Inthezam or right of management. The junior members were entitled to their shares after deducting the Hage Intezam and other administrative expenses. There used to be others also known as Guzaryats.

(xv) The Paigah Estate included some Zat Jagirs as distinct from the Paigah taluks granted from time to time. They too were eventually merged in the paigah estates. The holder of the paigah was called Amir. Though the holder was the Amir, the heirs of the original grantees, as in any other jagirs, were entitled to their respective shares in the revenue, by inheritance, of course, after deducting the share of the Amir and also the administrative expenses. The Amir had a special share of his own to support his position as the head and manager of the paigah and its representative towards the Nizam and the public. This share was previously unascertained. That was the reason why until the death of Sir Khurshid jah and the other respective holders of the paigah, the Amirs were practically the only persons to be considered their respective paigah and could take for themselves what part of the income they thought fit.

(xvi) In order to remedy the injustice caused by such arbitrary and capricious way of appropriation of the income, several committees came up with proposals. Sir Brain Egerton's Committee proposed among other things that the Amir should be allowed to take $1\frac{1}{4}$ annas in the rupee of the gross income of the paigah. The Reilly Commission proposed that Amir should take a definite portion of the net, instead of the gross income of the paigah. In fact, in respect of jagirs there was also a Farman of 1340 H that the manager should be allowed 4 annas in the rupee of the net income.

(xvii) Sir Khurshid Jah died in Rabi-us-Sani, 1320 H (July, 1902) leaving behind him surviving, 2 sons, by name Imam Jung and Zafer Jung as his only recognised legitimate heirs. As already stated, any grant of jagir on the death of the grantee holder in theory would lapse to the Crown and would be made as a fresh grant to any of the heirs of the previous grantor. The Nizam had ample powers to resume the Jagirs or to appoint any person, be he the eldest son or not, as the Amir or make any other arrangements.

(xviii) On the death of Sir Khursid Jah, no Amir was appointed by the Nizam in relation to that Paigah until 1345 H (February, 1927) and no member of the family was put in complete charge of the paigah. Nawab Zafar Jung, under a Firman issued a few weeks after the death of Sir Khurshid Jah, was put in charge of the Khurshid Jahi Paigah as a mere supervisor and trustee to carry on the ordinary routine work and was directed to take the Nizam's orders in all

important matters and to account for the income and expenditure of the estate.

(xix) The administration of this paigah estate, as in the case of other paigahs in which similar arrangements were made, did not fare better and in fact all these estates ran into huge debts. A Controller General of Paigah Affairs called Sadr-UI-Moham of the paigahs was appointed by the Nizam to undertake complete control and management of the three paigahs under his orders. This step proved successful and the able and efficient management of the committee helped to build up appreciable reserves for each of the paigah estates after wiping out the huge debts.

(xx) It was then that Lutfuddaula was appointed Amir under the Farman dated 29th Rajjab, 1345 H (4-2-1927) A.D. During the interval, the matruka left by Khurshid Jah was not permitted to be divided, though claims were advanced by his two sons and by their children.

(xxi) In connection with the claims made by various heirs, the Nizam appointed as many as three Royal Commissioners: (1) The Egerton Committee (2) The Glancy Commission and (3) The Reilly Commission.

(xxii) After a consideration of these reports, a Farman was issued on 17th January, 1929 (5th Shahban 1347 H.) The Nizam stated therein that in regard to the Paigah, he held a three-fold capacity (i) as the Ruler of the State (ii) as the head of Sarf-i-khas and (iii) as the patron of the paigah family.

(xxiii) In para 2 of the General orders of the Farman, he directed that 'whatever property had hitherto been acquired or articles purchased or buildings constructed out of the income of the paigahs are not that of any individual, and it will not be liable to division like matruka property. In Order II the Nizam directed that one third of the gross income should be appropriated for the administrative charges of the Jagir, and the second third would constitute the Manager's share i.e. the Paigah Amir's share, and the remaining one third shall form the share of the other heirs, i.e., the share holders of the paigah.

(xxiv) In order III Para 9, he further directed that the precious stones jewellery and rare articles, which, in accordance with the principles laid down in para 2 of the Farman are the property of the Paigah from olden times, or have been purchased with money belonging to the paigahs will remain with the Paigah Amir in trust. Paigah Amir shall not have the right to sell, pledge, or give them to any person, but they can be lent for temporary use to members of the paigah family after obtaining the Nizam's sanction from time to time, provided the Amir holds himself responsible for their safety and careful use. In order III para 2, the Nizam directed that if there is any property left as intestate property of any paigah, the distribution thereof shall also be settled by the Committee appointed by the Firman.

(xxv) The Nizam stated in Or.III, para 2 that at the time of Sir Khurshid Jah's death, his two sons Imam jung and Zafer jung were his only heirs, who, if alive then, would have been entitled to one half

share each of third part of the gross income, and that since both are dead and the number of their survivors was large and regarding some of them (especially among Zafer Jung's heirs) there was difference of opinion as to the legality of certain marriages and the legitimacy of some children, a committee had to be appointed for the distribution of the third part of the gross income of the Khurshid Jahi paigah among the heirs of Khurshid Jah's two sons.

(xxvi) This committee was presided over by Nawab Mirza Yar Jung, the then Chief Justice of Hyderabad and it submitted its report on 17th January, 1929.

(xxvii) This Committee, known as the Paigah committee, gave a definite finding that Nawab Khurshid Jah left no property which was not acquired or purchased out of the paigah income within the meaning of para 2 of the preliminary portion of the Farman. Thus, what was left by Sir Khurshid Jah were (1) the properties or articles purchased or buildings constructed out of the income of the paigahs and (2) precious stones, jewellery and rare articles which, in accordance with the principles laid down in the Farman are the property of the Paigahs from olden times, or have been purchased with money belonging to the Paigahs which are held by the Paigah Amir in trust as heirlooms of the Paigah family. Distribution of these two cleanses of properties, including their accretions, could not be made, in view of the farman, amongst the heirs of Nawab Sir Khurshid Jah, as they were held indivisible, impartiable and

inalienable. The Amir Paigah was only a supervisor and trustee for these properties.

(xxviii) Twenty years after this report, the political atmosphere changed and the Jagirs and the paigahs were abolished by means of the Jagir Abolition Regulation (69 of 1388F) with effect from 15.8.1949. The Jagirs and the properties connected with the Jagirs were taken over by the Jagir Administrator and the Jagirdars were declared entitled only to the commutation amount. The other properties and estates unconnected with the Jagirs, however, were allowed to remain with the Jagirdars.

(xxix) It was in those circumstances, that Dildarunissa Begum, the plaintiff in C.S.No.14 of 1958 came up with the suit, claiming that the properties coming under the above mentioned categories were not Jagir or paigah properties but strictly matruka properties of late Nawab Khurshid Jah and that the order or Farman prohibiting its distribution has worked itself out on account of the abolition of the Jagirs.

(xxx) Originally, there were 43 defendants to the suit, among whom 42 defendants were the heirs of both Zafar Jung and Imam Jung. The defendant No.43 was the Jagir Administrator. This number swelled from time to time. At the close of the arguments in the suit, there were in all 119 defendants. Some came in even thereafter. Defendant No.38, who was in the line of Nawab Imam Jung, was transposed as plaintiff No.2. All the other claimants, who were on

record as defendants, were conveniently brought, by the learned Judge who dealt with the suit, under four categories.

(xxxi) The first category consisted of the alleged heirs of late Zafar Jung. They were defendants 1 to 35, 44 to 49, 51, 52, 56 to 62, 80 to 94, 98, 100 and 102 to 112. Defendant Nos.1, 8 and 15 died during the pendency of the suit. The legal representatives of defendant No.1 were brought on record as defendants 102 to 112, in addition to defendants 51 and 52 who were brought on record during the life time of their father as they had some property in their possession. Defendants 9 and 100 were the legal representatives of defendant No.8 and defendants 90 to 94 were the legal representatives of defendant No.15.

(xxxii) The second category of defendants was the alleged heirs of Imam Jung, and they were defendants 35 to 42, 50, 97, 99 and 113 to 118. Defendants 113 to 118 were the heirs and legal representatives of defendant No.36, who died during the pendency of the suit.

(xxxiii) The third category of defendants consisted of defendant No.43, the Jagir Administrator, defendant No.53 the State of A.P. and defendant No.55, the State of Mysore, who were brought on record as they were supposed to be in possession of some of the suit properties.

(xxxiv) The fourth category of defendants consisted of alienees, mostly *pendente lite*. They were defendants 54, 63 to 89, 95, 96, 101 and 119 to 127.

(xxxv) Defendants 1, 2, 5 to 18, 21 to 29, 33, 34, 36 to 43, 47, 49 to 55, 77, 78 and 95 to 97 filed their written statements. The others did not file any written statements. The defendants 3, 4, 19, 29 to 32 and 48 were set exparte.

The Preliminary decree in the suit:

20. A preliminary decree was passed in C.S.No.14 of 1958 on .28-06-1963, in favour of the plaintiffs vis-a-vis the defendants other than those who were parties to a compromise. It was on the following terms:

"1. That the properties

- (a) mentioned in plaint Schedule IV as also detailed in list "A" forming annexure to application No.37/59, excepting items 26, 29, 30, 34, 35 and 36 and houses bearing Municipal Nos.28 and 29 in item No.22 of the Schedule;*
- (b) Khurshid Bagh at Lallaguda;*
- (c) the oil paintings, chandeliers and furniture in Baradari (item No.1 in Schedule-IV) and Lingampalli garden (item No.27) referred to in the first part of Schedule IV-b, the number and value of which shall be determined in the final decree proceedings;*
- (d) the first arms and weapons and their sale proceeds, referred to in part-II of Schedule IV-b, the number and value of which shall be divided in the final decree proceedings as per the decision under issues 16 and 18;*
- (e) the articles in Part III, Sub-item-I of Schedule IV-b, as detailed in Ex.P-10 and P.12 taken over by the Jagir Administrator and deposited in the Bank;*
- (f) the gold coins referred to in sub-item-II of Schedule IV-b, which are taken under Ex.P.9 by the Jagir Administrator; and*

(g) the jewellery as contained in Ex.P.8 and inventory prepared by the receiver;

are properties coming from Khurshid Jah's time covered by para-2 of the Fiman Ex.P.30 dated 5th Shahban 1347 II, and Order 3 Clauses 9 of the same Firman and are liable to be partitioned among the surviving legal heirs of late Nawab Khurshid Jah.

2. that properties items 37 and 40 in Schedule-IV will also be available for partition only in case they happen to be released by the Government;

3. that plaintiff No.1 and defendants 1 (since dead) to 35, 44 to 49, 51, 52, 56 to 69, 90, 94, 98, 100 and 102 to 112 are the heirs through Zafar Jung in the line of succession of Khurshid Jah, and Plaintiff No.2 and defendants 36, 37, 39 to 42, 50, 97, 99 and 113 to 119 are the heirs through Imam Jung, in the line of succession of Khurshid Jah, as detailed in Annexure-II to the judgment;

4. that in the aforementioned properties detailed in Annexure-IV to the judgment, defendant No.1 being dead, his legal representatives 51, 52, and 102 to 112 are entitled to a 1/3rd share; and in the remaining 2/3rds to surviving legal heirs in the line of Imam Jung are entitled to one half and the surviving legal heirs in the line of Zafar Jung, excluding defendants 51, 52, 102 to 112, to the other behalf, and their individual shares are as detailed in Annexure-III to the judgment;

5. that Mr. P. Ram Shah, Advocate of this Court, is appointed Commissioner and he shall partition the same subject to the directions contained in this judgment and to such further directions as may be given from time to time by this Court;

6. that the Commissioner shall take accounts from the heirs of defendant No.1 and submit his report on the following matters:

(a) the income and savings from the suit property during the period defendant No.1 was in management as Amir

Thigah, from 1950 upto the date of his death, 26.11.1961, as per the decision on issue No.37;

- (b) the sale proceeds of items 51 to 53 of Schedule-IV realised by defendant No.1;*
- (c) the excess expenditure alleged to have been met by defendant No.1 to the extent of one lakh of rupees referred to in the judgment in connection with issue No.40;*
- (d) expenses incurred by defendant No.1 for effecting repairs, extensions and improvements in Bagh Lingampalli (item No.27) as per the decision on issue No.22;*

7.the commissioner while partitioning the property shall also taken into account the amounts due from defendants 9, 10,11, 14, 15, 16, 18, 19, 21, 22, 24, 25, 30, 31, 32, 40, 42, 48, 49, 62, and 93 as per Annexure-V, towards damages caused by them to the suit properties, in determining the extent of their share;

8. that defendants 86 to 88 being alienees in relation to shops bearing Municipal Nos.-III C-113 to 120 which is a portion of item No.45: house bearing municipal No.20-3-842, situate at Shah Gunj comprising 420 sq. yds., house bearing No.2-2-722 and tin shed bearing No.2-2-723 situate at Shibli Gunj (both known as Rath Khana) and Baggi Khana, bearing Municipal No.2-3-184 situate at Shibli Gunj, the equities of these alienees may be worked out so far as possible by setting apart the alienated properties to the share of the alienor, defendant No.10, if that can be done without injustice to the other sharers.

The remuneration of the Commissioner is tentatively fixed Rs.600/- per month.

The plaintiffs will be entitled to the costs out of the assets.

Court fee shall be collected as and when the properties are valued and partition is being effected.

So far as the parties to the compromise are concerned, a decree shall follow in terms of the compromise, excluding such terms as relate to appointment of and directions to Receiver and Commissioner and also of defendants 2 and 39, viz., item No.26 and house Nos.28 and 29 in item No.22 in Schedule-IV; and so far as item No.34 of Schedule-IV is concerned, that property as also the sale proceeds connected there to shall be available for partition amongst the parties to the compromise, only after a setting apart the due shares of defendants 2 to 4, 10, 47, 94 and 98 and as the heirs of Zafar Jung which work out at double the shares entered in Annexure-III.

While allotting the shares to the parties to the compromise, equities of alienees, defendants 119, 120 and 121 and also of defendant No.77 may be worked out as far as possible, by setting apart the alienated properties to the share of the respective alienors as directed in the judgment under issues 41 and 49.

The Commissioner appointed under para (5) of this order shall partition the property and carry out the terms of the compromise subject to the directions contained in the judgment and such other directions as may be given from time to time.

The expense incurred in the execution of commission shall be met out of the assets.”

The properties covered by the decree for partition

21. The properties covered by the preliminary decree were as follows:

ANNEXURE – IV

List of immovable properties which are held to be Matraka of late Khurshid Jah.

Sl.No	Item No. shown in plaint schedule	Description	Name of the place
1.	1	Kotika Bangla also called Baradari House No.III C-3-1060	Shah Gunj

2.	2	Isharat Mahal House II C-3-1	"
3.	3	Divan Khana House No.III C-3-1040	"
4.	4	Chota Mahal No.1 No. III-C-3-140	"
5.	5	Naya Mahal H.No.III C-3-1059/13	"
6.	6	Khana Bagh with buildings H.No.III C-3-139	"
7.	7	Deodi Imam Jung house Nos.C-3-1059 & 1060/6.	"
8.	8	Nawazish Mahal H.No.III C-3-123/5	"
9.	9	Khurshid Mahal house No.III C-3-123/1.	"
10.	10	Fared bagh with building portion House No.III C-3-123/3 and 123/4	"
11	11	Mubarak Mahal House No.III C-3-1059/12	"
12	12	Kotar Ka Makah, Military Guard quarters House No.III-C-3-121	"
13	13	Khas Mahal house No. III C-3-1059/3 IIIC-3-1059/4 IIIC-3-1059/6 IIIC-3-1059/7 IIIC-3-1059/9	"
14.	14	Katora Hauz III C-3-1040	"
15.	15	Bangal Nagpanchami II C-3-	"
16.	16	Mahal Sara III C-3-1059/2	"
17.	17	Chota Mahal (No.2) III C-3-1059/1	"
18.	18	Jilo Khana III C-3-1059/8	"
19.	19	Chapa Khana III C-3-1059/10	"
20.	20	Club Ka Makan III C-3-1059/11	"
21	21	Behind Isharath Mahal H.No.III C-3-1-	"
22	22	Deodi Beh Jung House No. C-3-27	"
23.	23	Deodi Ghodin Khan II C-3-23	"
24	24	Kutub Khan C-3-Nil	"
25.	25	Chinni Ki III C-3-1040/1 Nawab Mohd Dilwarunissa Khan d-18	"
26.	26	Lingampalli Garden, containing a large building a few small quarters, area 53 acres within the compound wall and 77 acres outside the wall S.No.200 vice Lingampalli Taluk Gharbi Hyderabad District within city Municipal limits A-9-1138	Mohalla Lingampalli on old road university Adikmet
27.	27	Waheed and Adda Maakai, two small plots out of Lingampalli Garden area outside the wall	Mohalla Chikkadpalli

		containing a small old building and huts rented out to rental area 2 ¼ acres S.No.200	
28.	31	Sanagar Garden building and garden with compound wall area 3 acres.	Vg. shahdnagar Tq. Sharki
29	32	-do- area 2 acres	"
30	33	Hussain Shalwali Garden building in ruins garden enclosed with compound wall, S.No.33 area of 8 acres	Vg. Hussain Shahwali Garbi
31	37	Hafizpet patta lands, compact area of 1210 acres	Hydernagar Garbi
32	38	Hydernagar patta lands compact area of 1210 acres	-do-
33.	39	Hafeezpet compact area of 2684 acres	Hafeezpet
34	40	Ghansimiangudda patta lands, compact area of 743 acres	Ghansimiangudda
35	41	Sho at 2 number, Bazar Shamsul Umar Municipal Nos.III-C-3-1031 to 1033, 1036 to 1038, 1047 to 1050	Mohalla Sullumra
36	42	Shown 6 numbers Umda Bazar III S.No.549 to 554	Mohalla Umda Bazar Near Bowli
37.	43	Sho 9 numbers Dood Bowli III C-2 to 8 1155 and 1156	Mohalla Dood Bowli
38.	44	Shops 32 numbers Bazar Shilbi Gunj, III C 125 to 137, 151 to 159, 146 and 147	Mohalla
39.	45	Shops 34 numbers Basar Khurshid Gunj C-3-89 to 120, 722 and 752	Mohalla
40	46	House I Number C-3-838	Shah Inayatgnj
41	47	III C-3-84	Khurshid Gunj
42	48	III C-3-841	"
43	49	III C-3-	Shah Inayatgunj
44	50	With a specious land	Lalaguda
45	51	Burhanpur lands S.No.333 102 acres (outside Hyderabad)	Umagiri Village, Burhanpur District, Madhya Pradesh
46	52	Poona Lands (Hyderabad State)	Opp. Boat Club in Poona.
47.	53	Khandala House (Outside Hyderabad State Bonbay)	Khandal Ghat, _____ State
		Plaint Schedule IV-a	
48.	1	Malkaram patta lands	Malkaram Tq. Shahbad.
49	2	Hasmatpet Patta lands	Hasmatpet Taluq Garbi

50.	3	Dilwarguda patta lands	Sultanpur tq. Kalbagur, District Medak
51	4	Sahebguda patta lands	VI. Sahebguda Tq. Ibrahimpatan
52.	5	Kaderbad patta lands	Kaderbad Tq. Ibrahimpatan.
53.	6	Gaddi Annaram (Malla Bundam)	Gaddi Annaram Tq. Sharqui.
54	7	Makta Mohd. Box Khan	
55	8	Lallaguda Patta lands	Lallaguda tq. Sharqui
56	9	Machawaram patta lands	Machawaram tq. Sharqi
57	10	Bagh Saheb Jan Garden enclosed with a compound wall	Phisalbanda, near Zafar Bagh Palace, Hyderabad.
58.	11	Gulbagh garden lands	Near old bridge with municipal Limits.
59.	12	Daricha Bohra open plot of land	Near Hussain alam
		Properties mentioned in list "A" in Appln.No.37/59 list "A" –A.	
60	1	Plot No.1 about 4272 sq. yds Boundaries North estate house occupied by Kulsum Bi tenant, S-1 and W-roads.	
61.	2	Plot No.2. 3206 Sq. yds Boundaries North house occupied by Zulfiqar Ali Khan S-Estate House and vacant land, E- Sajanlal's house W-land.	
62	3	Plot No.3.72 sq. yds boundaries. N-Vacant land of the estate S-road E-Sajanlal's house and : estate house.	
63.	4	Plot No.4. 250 sq. yds Boundaries N- Vacant land of the estate S-do E-road W-estate house occupied Zulfiqur Khan and W-road.	
64.	5	Plot No.5 578, Sq. yds Boundaries, N- Vacant land of the estate S-do E-road W-estate house occupied by Fakruddin Khan tenant.	

65	6	Plot No.61556 sq. yds Boundaries N-vacant land of the estate and house occupied by Fakruddin tenant S-do- occupied by Kulusum bi East-road and W-estate house occupied by Kulusum Bi Abdulli, tenant.	
66	7	Plot No.1522 sq. yds Boundaries N-road, S-tiled house of this estate E-cement road, W-road.	
67	8	Plot No.734 sq. yds boundaries N-tiled house of this estate S-Sajanlal's house E-cement road and house occupied by Zulfiquar Ali, tenant.	
		List A-2	
68.	32	Shop No.II C-184 named stables	Khurshid Gunj
69.	33	Shop No.III C-72 Named Ratkhana	"
70	34	Shop No.III C-73 named Adda Jhatka	"
71.	35	Shop No.III double storied house No.III C-752	"
		List A-3	
72.	1	Hq. Se III C-121	Shilbi Gunj Bazar
73.	2	Banoom III C-122	"
74.	3	Nawn maha III C-123/4	"
75	4	Roo III -C-150	"
76	27	Room No.III-C-149	Shibli Gunj Bazar
77	28	Room No.III.C-843	"
78	29	Room No.III.C-842	"
79.	32	Room No.III-C-199	"
80.	33	Fallen land about 4250 yds. Boundaries N-H1 house and road: Sawazish Nahal E-room of thl : estate, shops.	
81.	34	Fallen land, 400 sq. yds, boundaries: N-road, S-Khana Bagh, E-do, W-fallen land.	
82.	35	200 sq. yds. Boundaries, Estate's house named Kitchen, S-1, E-Kitchen's Gate, W-rooms of this etc.	
		List 'A' – 4	
83	3	Fallen room No.103	Shamsul Umra
84.	5	Bungalow No.2	"
85.	7	Muggi No.1041	"
86.	12	Bungalow No.1051	"
87.	13	Bungalow No.1051	"

88.	14	Bungalow No.1052	“”
89.	15	Vacant land Opp: Jib Khana, 150 sq. yds. Boundaries N-Mos. And road, S-Kishenlal's house, N-Cht. Road and W-Kishenlal's house.	
90	16	Katora House named Sadir Bibi in possession of Jagir Administrator.	
91.	17	Land of 3 fallen slops.	
92.	18	Fallen house with fallen land Lallaguda No.12/1-514, Khurshid Bag Allaguda.	

ANNEXURE – V

List of properties damaged and extent of damage caused by the respective parties.

Sl.No	Name of the defendant & his rank	Property damaged	Item No. in Sch.IV	Extent of damage caused Rs. Np.
1	2	3	4	5
1.	Dilavaruddin Khan (D-18)	House No.IIIC-3-838 in Shah Inayat Gunj	46	
2	_do_	-do- III C-3	49	4000-00
3	Jameelunnisa Begum (D-19)	Matbeka Makan	19	500-00
4	Najeebuddin Khan (D-15) & Jalaluddin Khan (D-93)	Chota Mahal.	4	4000-00
5.	-do-	Naya Mahal	5	
6	-do-	House of Sarur Nagar	31	
7	Bahdurunnisa Begum (D-32)	Isharat mahal	2	8000-00
8	Tahveruddin Khan (D-25)	Fareed Bagh	10	2500-00
9	Taheeruddin Khan (D-24) & Tahvaruddin Khan (D-25)	Mubarak Mahal	11	300-00
10.	Kabiruddin Khan (D-9) Shamsuddin Khan (D-10) Mahbubuddin Khan (D-11) & Kamalunnisa Begum (D-21)	Khas Mahal	13	10000-00
11	Shamsuddin	Nagpanchami	15	

	Khan (D-10)	Bunglow		
12	Shamsuddin Khan (D-10)	Katora House	14	6000-00
13	Raqueebuddin Khan (D-22)	Chota Mahal.2	17	3000-00
14	Rahimuddin Khan (D-16)	Khana Bagh	6	3000-00
15	Shamsuddin Khan (D-10) & Fazaluddin Khan (D-14)	Khursheed Mahal. (Passage)	9	6000-00
16	Mahmooda Bee (D-49)	Fareed Mahal in Shibli Gunj	44	Mortgaged the house
17	Fazalluddin Khan (D-14)	Kursheed Mahal	9	25000-00
18	Muneeruddin Khan (D-42)	Nawazish Mahal	8	300-00
19	Shafiuddin Khan (D-40)	Kotar ka Mahal or H. Qrs. House	12	15000-00
20	Mahbubunnisa Begum (D-48)	Mubarak mahal	11	200-00
21	Jahan Ara Begum (D-62)	Club Bungalow	20	6000-00
22	Jahan Ara Begum (D-62) Rabia Bgum (D-30) & Kudratunnisa Begum (D-31)	Julo Khana	18	
23	Jahan Ara Begum (D-62)	Waheed Bagh	28	--
24	Dilawaruddin Khan (D-18)	Tambolkhana (in the possession of Board)		500-00
25	Shamsuddin Khan (D-10)	Bawarchi Khana in Shibli Gunj	44	2000-00
26	-do-	Khursheed Bagh at Lalaguda	93 (in Annexure-IV)	30000-00
27	Kabiruddin Khan (D-9)	Naya Makan		15000-00

Alleged Final Decree

22. Now that we have seen the judgment, the preliminary decree and the list of suit properties, let us come to the final decree said to have been passed in the suit. As we have pointed out earlier, the claim of the petitioners is that a compromise final decree was

passed in Application Nos.711 and 712 of 2009 dated 26-02-2010.

Let us now see what it actually is.

23. In the decree engrossed on Non-Judicial stamp papers of the value of Rs.2,000/- in Application No.711 of 2009, it is stated that Application No.711 of 2009 is allowed and the compromise decree between the parties as per the Memorandum of Compromise dated 14-08-2009 is recorded and that a final decree is passed as per the Memorandum of Compromise. Similarly, in another final decree engrossed on Non Judicial stamp papers of value of Rs.2,000/-, it is indicated that Application No.712 of 2009 was allowed and the compromise decree between the parties as per the Memorandum of Compromise dated 14-08-2009 is passed.

24. But the Memorandum of Compromise in Application No.711 of 2009 was between three parties namely (i) Mrs. Indrani Prasad, S. Murali Krishna and Dr. P.S. Prasad as the first party; (ii) Cyrus Investments Limited, as the second party and (iii) Goldstone Exports and Goldstone Infratech. Ltd, as the third party.

25. Similarly, the Memorandum of Compromise filed in Application No.712 of 2009 was also between three sets of parties namely (i) L.P. Sashi Kumar, R. Ramamurthy and Dr. P.S. Prasad as the first party; (ii) Cyrus Investments Limited as the second party and (iii) Goldstone Exports Ltd., and Goldstone Infratech. Ltd., as the third party.

26. Curiously, the writ petitioners, who have filed the copies of the decree in Application Nos.711 and 712 of 2009, have not chosen

to file copies of their affidavits in support of these applications and the judgment rendered thereon. But fortunately the unofficial contesting respondents in W.P.No.11034 of 2018 have filed a copy of the judgment in Application No.711 of 2009. This judgment shows that Cyrus Investments Limited was the applicant in both these applications. They filed these applications purportedly under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 to record a compromise in terms of the Memorandum of Compromise dated 14-08-2009 and to pass a final decree to the extent indicated in the Memorandum of Compromise. In both the applications namely Application Nos.711 and 712 of 2009 filed by Cyrus Investments Limited, 7 parties were shown as compromising parties on the side of the respondents. They were (1) Indrani Prasad, (2) Murali Krishna, (3) Dr. P.S. Prasad, (4) Goldstone Exports Ltd, (5) Goldstone Infratech Private Limited, (6) M.A. Bhari, Receiver-cum-Commissioner and (7) Shyam Sundara Rao, Receiver-cum-Commissioner. The parties to the original suit in C.S.No.14 of 1958 including the State were all shown as respondents.

27. Actually the claim of Cyrus Investments Limited was that they purchased the share of HEH Nizam, who was the 156th defendant, who himself claimed to have purchased 80% of the shares from those entitled to a share in the suit schedule property as per the preliminary decree passed on 28-06-1963. In other words, all persons whose entitlement to certain undivided shares in the suit schedule properties were declared under the preliminary decree

dated 28-06-1963 are stated to have sold their undivided shares under the preliminary decree to HEH Nizam, the 156th defendant. He, in turn, is said to have sold his shares to Cyrus Investments Limited and the writ petitioners entered into a compromise with them.

28. At the outset we are unable to comprehend as to how the shares declared in favour of some parties under a preliminary decree for partition could have been first purchased by HEH Nizam, then sold to Cyrus Investments Limited and thereafter distributed among several persons pursuant to a compromise entered into with that person. ***Order XX Rule 18 of the Code of Civil Procedure, 1908, lays down a procedure to be adopted by a Court while passing a decree in a suit for partition. There are two sub rules to Rule 18 of Order XX. As per the first Rule, the Court passing a decree for partition may direct the partition or separation to be made by the Collector or any gazetted subordinate deputed by him, if the decree relates to an estate assessed to the payment of revenue to the Government.*** This shall be done, after first declaring the rights of several parties interested in the property. ***Under the second rule, the Court may, if it thinks that the partition and separation cannot be conveniently made without further enquiry, pass a preliminary decree declaring the rights of several parties and giving such further directions as may be required, if the decree relates to any other immovable property not covered by sub-rule (1).***

29. Obviously, the preliminary decree passed on 28-06-1963 in C.S.No.14 of 1958 did not belong to the category indicated in Order XX Rule 18 (1). It belonged to the category mentioned in Order XX Rule 18 (2).

30. As to what should be done in such cases, is provided in Order XXVI Rule 13 of the Code. ***Order 26 Rule 13 provides that where a preliminary decree for partition has been passed, in any case not covered by Section 54 {and Order XX Rule 18 (1)}, the court should issue commission to such a person as it thinks fit, to make the partition and separation according to the rights as declared in such a decree.*** The Commissioner so appointed should conduct an enquiry, divide the property into as many shares as may be and allot such shares to the parties, awarding wherever required and authorized, such sums to be paid for the purpose of equalizing the value of the shares, under Order XXVI Rule 14 (1). The Commissioner should then file a report into Court under sub-rule (2) of Rule 14 of Order XXVI. The Court may give an opportunity to the parties to file objections to the report and thereafter confirm, vary or set aside the recommendations made in the report of the Commissioner. After this is done by the Court, a decree should be passed by the Court under Order XXVI Rule 14 (3) of the Code.

31. Therefore, in cases of partition and separate possession not covered by Section 54 of the Code, a preliminary decree is first passed in terms of Order XX Rule 18 (2) of the Code, a

Commissioner is appointed in a subsequent proceeding under Order XXVI Rule 13 and on the basis of his report, a final decree is passed under Order XXVI Rule 14 (3) of the Code. Thereafter, the possession of such property, if it is an immovable property, is taken by executing such final decree in terms of Order XXI Rule 35 of the Code.

32. Therefore, ***the question of specific immovable properties or specifically identified portions of immovable properties getting allotted to any person merely holding a preliminary decree with respect to an undivided share does not arise. A preliminary decree in a suit for partition merely declares the shares that the parties are entitled to in any of the properties included in the plaint schedule and liable to partition. On the basis of a mere declaration of the rights that take place under the preliminary decree, the parties cannot trade in on specific items of properties or specific portions of suit schedule properties.*** Since there are three stages in a partition suit namely (i) passing of a preliminary decree in terms of Order XX Rule 18, (ii) appointment of a Commissioner and passing of a final decree in terms of Order XXVI Rule 14 (3) and (iii) taking possession in execution of such decree under Order XXI Rule 35, no party to a suit for partition, even by way of compromise, can acquire any title to any particular property or any particular portion of a property, by way of a compromise.

33. It is interesting to note that the Application Nos.711 and 712 of 2009 were not filed under Order XXVI Rule 14 (3), but were filed under Order XXIII Rule 3 of the Code. In a suit for partition and separate possession of immovable properties, a compromise decree can be passed under Order XXIII Rule 3 allotting specific properties to a few of them, only when the compromise is entered into between all the parties to the suit. If only a few parties to the suit are parties to the compromise, neither a preliminary decree in respect of all shares nor a final decree in respect of specific items can be passed on the basis of such a compromise. Assuming all the averments made by the writ petitioners to be true, it may lead at the most to the conclusion that they purchased only undivided shares from persons whose rights to such undivided shares were declared by the Court in the preliminary decree. In other words, no final decree allotting any specific property could have been passed on a compromise in a petition under Order XXIII Rule 3, when all persons, who may be affected thereby were not parties to the compromise. It is not open to a few parties to a suit for partition (even if they are in a majority) to compromise the matter between themselves and make self-allotment of the properties that they want to take away. Keeping this principle in mind, let us now see the judgment delivered in the Application Nos.711 and 712 of 2009.

34. Before we look into the judgment rendered in Application Nos.711 and 712 of 2009, we are obliged to record one more fact. The writ petitioners chose to file only the decrees in Application

Nos.711 and 712 of 2009. By design or by choice, they have not chosen to file the judgment in Application Nos.711 and 712 of 2009. Fortunately, respondents 4 and 5 in W.P.No.11034 of 2018 have filed the copy of the judgment.

35. A careful look at the judgment in Application No.711 of 2009 would show that the said application was opposed by a few parties. One of the objections was that the claim made in the memorandum of compromise as though M/s. Gold Stones Exports Private Limited got an assignment of the shares of someone, was false and that some of the parties had not even given consent. They also brought to the notice of the Court that a proper final decree application in Application No.116 of 2008 was still pending and that until the same is disposed of, Application Nos.711 and 712 of 2009 cannot be disposed of.

36. In his judgment dated 26.02.2010 passed in A.No.711 of 2009, the learned Judge extracted the rival contentions in paragraphs 1 to 5. Thereafter, the learned Judge recorded in paragraph-6 of his judgment, the submission made by the learned Senior Counsel appearing for Cyrus Investments Limited to the effect that though they prayed for a final decree, they were not pressing for the same at present. The relevant portion of paragraph-6 of the judgment dated 26.02.2010 in Application No.711 of 2009 reads as follows:

“The learned counsel Sri Vedula Venkata Ramana, appearing for the applicant in Application No.711 of 2009 contended that though the applicant prayed for assign of

final decree, it is not praying the said relief for the present. He further contended that, in view of the fact that some of the parties in the application entered into compromise, which is lawful, there is no impediment in recording the same in terms of the Memorandum of Compromise."

37. In paragraph-8 of his judgment dated 26.02.2010, the learned Judge recorded the following:

"It is not in dispute that Application No.116 of 2008 is pending before this Court for passing of Final Decree. At this stage, this Court is not determining the rights of any one of the parties, because the properties in dispute have to be divided by metes and bounds after considering the claims of the parties. The rights and interests of the parties in dispute have to be gone into at the time of passing of the Final Decree."

38. After recording that the rights and interests of the parties to the dispute have to be gone into only at the time of passing of the Final Decree, the learned Judge went on to consider a very short question as to whether there was any impediment for just recording the compromise entered into between some of the parties to the litigation. After referring to various provisions of the C.P.C., and the case law cited by the learned Senior Counsel appearing for the applicant in Application No.711 of 2009, the learned Judge came to the conclusion that there was no impediment just for recording a compromise without passing a final decree.

39. Even while concluding his judgment, the learned Judge reiterated that even the counsel for the applicant in Application No.711 of 2009 was not pressing for a final decree. The relevant portion of paragraph-16 of the judgment dated 26.02.2010 reads as follows:

“Further more, at this stage, this Court is not determining the rights of the parties who are claiming the property. In view of the fact that the learned counsel for the applicant is not pressing for passing of a final decree in this application, but is only seeking to record compromise, there is no impediment for recording of such compromise.”

40. Thus it is clear that no final decree was ever passed in Application Nos.711 and 712 of 2009 as prayed for by the writ petitioners or their predecessors in interest. But still they managed to get a final decree drafted by the Registry of this Court. In other words, what the learned counsel appearing for the applicant in Application No.711 of 2009 did not press for and what the learned Single Judge did not grant, was graciously granted by an official working in the Registry of the Court. The Registry may have to pin down the official responsible for this mischief.

41. When confronted with the judgment dated 26.02.2010 passed in Application No.711 of 2009, Mr. Hemendranath Reddy, learned counsel appearing for the writ petitioners, contended that it is not open to the respondents to contend that the decree is not in accordance with the judgment. According to the learned counsel, if there is a decree in favour of a party, he is entitled to enjoy the fruits of the decree and that if at all the respondents were aggrieved, they must have pointed out the mistake to the Registry or taken up the decree on appeal.

42. The above argument is a very clever argument, but it overlooks or tends to over simplify an important aspect. We are now dealing with a writ petition arising out of an order passed by the Joint

Collector, reversing the order of the Tahsildar effecting mutation in the revenue records. Fortunately for the writ petitioners and unfortunately for the respondents the revenue officials such as the Tahsildar and the Joint Collector cannot go into the question of executability of a decree passed by a civil Court of competent jurisdiction. Therefore, the writ petitioners are trying to take advantage of this position.

43. In cases of this nature, the question that the Court should address itself to, is, as to whether a decree on which reliance is placed before the revenue authorities, could have been executed in a civil court or not. Today, the petitioners are conveniently claiming to be in possession of the property. In case, they were not in possession, the writ petitioners would have been compelled to file an application under Order XXI Rule 35 for execution of the decree. At that time the cat would have been out of the bag. The Executing Court could not have enforced, what the writ petitioners now claim to be a final decree. The judgment dated 26.02.2010 in A.No.711 of 2009 is not a judgment finally allocating specific properties to specific parties to the final decree application.

44. More over, the decree that has been drafted in Application Nos.711 and 712 of 2009 is amenable to amendment by this Court even under Section 152 C.P.C. The argument advanced by Mr. Hemendranath Reddy that if the decree is not in tune with the judgment, the respondents ought to have taken steps, cannot be accepted for one more reason. The decree that the writ petitioners

are now relying upon, does not come under the category of “decree not in tune with the judgment”. It actually comes under the category of “decree that runs contrary to the judgment”. Therefore, the very foundation upon which the edifice of the writ petitioners is built, is slushy.

45. As rightly pointed out by the learned counsel appearing for the contesting respondents even the writ petitioners never imagined that they had walked away with a final decree after conceding before the learned Judge that they were not entitled to it. This is why the writ petitioners, their predecessors and the individuals representing the writ petitioners actually filed one more application in A.No.312 of 2010 seeking a final decree. This application was filed on 01.04.2010, after the disposal of Application Nos.711 and 712 of 2009 on 26.02.2010. Probably during this interregnum between 26.02.2010 (date of judgment in Application No.711 and 712 of 2009) and 01.04.2010 (date of filing of Application No.312 of 2010), the writ petitioners were not able to manage the drafting of the decree in a manner that they wanted. It is seen from the non-judicial stamp papers on which the so called final decree is engrossed, that the non-judicial stamp papers were purchased on 29.04.2010. This was after the filing of Application No.312 of 2010.

46. After very cleverly managing to get a final decree drafted, without actually there being a final decree, the petitioners reported to this Court that no further orders are necessary in Application No.312 of 2010. Accordingly, Application No.312 of 2010 was closed on

01.10.2010. The orders passed in Application No.312 of 2010, reads as follows:

“Sri N. M. Krishnaiah, learned counsel for the petitioners stated that no further orders are required in this Application in view of the orders passed in Application Nos.710/2009, 711/2009 and 712/2009.

In view of the said submission, the Application is closed. No costs.”

47. It may be interesting to note that the writ petitioners requested this Court to close Application No.312 of 2010 (For passing a final decree) on the ground that no further orders were necessary in view of the orders passed in Application Nos.711 and 712 of 2009. But the truth of the matter is that the writ petitioners did not have the necessity to get a final decree ordered by a learned Judge of this Court, as someone else was gracious enough to handover a final decree in Application Nos.711 and 712 of 2009 itself, contrary to the judgment rendered thereon.

48. In response to the conduct of the writ petitioners in filing Application No.312 of 2010 and later allowing the same to be closed, it was contended by Mr. Hemendranath Reddy, learned counsel for the writ petitioners that the said Application No.312 of 2010 praying for a final decree was filed by mistake and that when the mistake was realized, the application was allowed to be closed without any necessity for further orders. But this argument is nothing but an attempt to hide a huge pumpkin in a handful of grains. This can be seen from the chronology of events, as follows:

- i) Application Nos.711 and 712 of 2009 are disposed of on 26.02.2010, merely recording a compromise entered into between a few parties, but pointing out that no final decree is passed.
- ii) Therefore, the writ petitioners themselves filed an application for final decree in Application No.312 of 2010 on 01.04.2010.
- iii) But in the Registry, the writ petitioners got a final decree engrossed on non-judicial stamp papers dated 29.04.2010, thereby getting what they did not press for before the learned Judge and what the learned Judge did not grant them.
- iv) Thereafter, they reported to the Court that no further orders are necessary in the real final decree application view of the orders passed in Application Nos.711 and 712 of 2009.
- v) From the portions of the judgment dated 26.02.2010 passed in Application Nos.711 and 712 of 2009 it would be clear that further orders for passing a final decree were in fact necessary. This is what the writ petitioners conceded before the learned Judge on 26.02.2010. When that is so, it is perplexing to note how the petitioners reported on 01.10.2010 that no further orders are necessary in Application Nos.312 of 2010.

50. Therefore, in essence, it is clear –

- i) That in Application Nos.711 and 712 of 2009 no final decree could have been passed, as those applications contained a Memorandum of Compromise only between a few parties;
- ii) That when Application Nos.711 and 712 of 2009 came up for hearing, the writ petitioners reported that they did not press for a final decree, but prayed only for recording of the compromise, probably because they realised that the compromise was only between a few parties to the litigation;
- iii) That in view of the above admitted position, the petitioners themselves filed an application for final decree in Application No.312 of 2010 after orders were passed in Application nos.711 and 712 of 2009;
- iv) That the writ petitioners later allowed Application No.312 of 2010 to be closed on 01.10.2010 on the ground that no further orders were necessary.

51. Hence our answer to the first issue arising for consideration in these writ petitions is that there was in fact no final decree in favour of the writ petitioners, which was capable of being executed under any of the Rules of Order XXI. If that was so, the Tahsildar could not have acted upon such a document merely out of deference to the orders of Courts. Since Tahsildar mistook the document to be a final decree, the Joint Collector, as the Revisional Authority reversed the order of the Tahsildar. The only mistake

committed by the Joint Collector, if at all, was in remitting the matter back to the Tahsidar without nailing the claim of the petitioners in the coffin.

52. An argument was raised by Mr. Hemendranath Reddy, learned counsel for the writ petitioners that the State of A.P. as well as other individuals attempted to challenge the final decree and that those attempts failed. Therefore, he claimed that the final decree had attained finality and was not capable of being reopened.

53. It appears that as against the judgment dated 26.02.2010 passed in Application Nos.711 and 712 of 2009, the State of A.P. filed Intra Court Appeals in O.S.A.(SR).Nos.7870, 7871 and 7872 of 2011 with a delay of 620 days. The applications for condonation of delay in O.S.A.M.P.Nos.1201, 1202 and 1203 of 2012 were dismissed by a Division Bench of this Court by an order dated 30.04.2013.

54. But it does not mean that a final decree attained finality. What attained finality was only the judgment dated 26.02.2010 in Application Nos.711 and 712 of 2009. There was no final decree therein. Since the Division Bench refused to condone the delay in filing the appeals, there were virtually no appeals in the eye of law. The doctrine of merger would apply only where there was an appeal and the same was dismissed. When an application for condonation of delay is dismissed, the very right to file appeal is snatched away. Therefore, there was no opportunity to test the judgment and

possibly the decree. Hence, the argument that the final decree attained finality cannot be accepted.

55. Another interesting aspect of the matter is that in the proceedings in C.S.No.14 of 1958, an Advocate was appointed as Commissioner cum receiver who started allotting and distributing properties and also handing over possession, purportedly on the basis of several final decrees. We have heard of several preliminary decrees culminating in one final decree in a partition suit, but in C.S.No.14 of 1958 there was one preliminary decree, from out of which the parties started securing several final decrees in respect of non-existent properties as well as unidentified properties. We do not know how the Receiver cum Commissioner was entitled to assume the role of a benefactor. We have already summarised the gist of the judgment in support of the preliminary decree, the actual preliminary decree passed by the court and the schedule of properties to the plaint. We have not been able to find out, in the plaint schedule, with the best of our efforts, the properties in respect of which the writ petitioners are seeking mutation. The alleged purchase of 80% of the shares by H.E.H. Nizam and later by Cyrus Investments Ltd., appear to be of properties which cannot be identified with the suit schedule. In any case, the purchase of decretal rights may tantamount to champerty, especially in a suit for partition.

56. In paragraph-3 of the affidavit in support of the writ petition, the petitioners claim to have secured possession of the properties allotted to them, from the Receiver cum Commissioner

and on the basis of such possession, they applied to the Tahsildar for mutation. But the very same writ petitioners have questioned the letters of allotment issued by the very same Receiver cum Commissioner in favour of the unofficial respondents, on the ground that he had no authority. This is nothing but approbating and reprobating.

Impugned orders of the Joint- Collector

57. Having settled two fundamental issues that go to the root of the matter, let us now turn to the orders of the Joint Collector dated 09.02.2018 impugned in these writ petitions. In his orders dated 09.02.2018, the Joint Collector pointed out – (1) that there was actually no final decree, as seen from the judgment dated 26.02.2010; (2) that if there was a final decree, there was no necessity to file a fresh application for a final decree in Application No.312 of 2010; (3) that even if the final decree is presumed to have been passed, the recording authority is obliged to follow Rule 27 (4) with respect to stamp duty; and (5) that even the Receiver cum Commissioner issued a letter dated 28.10.2013, which would show that there was no final decree.

58. All the above findings of the Joint Collector, are perfectly in order. In fact, even before looking at the order of the Joint Collector dated 09.12.2018, we tested the very basis of the claim of the writ petitioners and we have found – (1) that there was no final decree; (2) that the properties are not traceable to the plaint schedule in the suit (3) that the petitioners were not entitled to have mutation in the

revenue records, unless and until a final decree in a manner known to law is passed in C.S.No.14 of 1958 and that too in respect of these properties. As we have pointed out in the first part of this order, the entire proceedings in C.S.No.14 of 1958 have created more questions than answers. The entire batch of Applications for final decrees, Original Side Appeals etc., are all clubbed together and posted before a Special Bench of this Court for hearing. Unless and until the confusion created by various conflicting orders, are cleared in the batch of applications and appeals arising out of C.S.No.14 of 1958, the writ petitioners are not entitled to have mutation effected in the revenue records.

59. Therefore, leaving it open to the writ petitioners to join the chorus in the applications and appeals forming part of a huge batch of cases in C.S.No.14 of 1958, for appropriate reliefs, the writ petitions are dismissed. We make it clear that even the Tahsildar cannot pass any order effecting mutation, until a final decree in accordance with law is passed. There shall be no order as to costs.

60. As a sequel, miscellaneous petitions pending in these writ petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

Date: 16-08-2018

Note: L.R. copy to be marked.

B.O./Ksn

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N. BALAYOGI



W.P.Nos.11032, 11034 and 11037 of 2018

16th August, 2018

Ksn