

IN THE HIGH COURT FOR THE STATE OF TELANGANA

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

I.A.No.1 of 2014 in OSA No.54 of 2004
I.A.No.2 of 2014 in OSA No.54 of 2004
I.A.No.2 of 2019 in OSA No.54 of 2004
I.A.No.3 of 2019 in OSA No.54 of 2004
I.A.No.1 of 2014 in OSA No.56 of 2004
I.A.No.2 of 2014 in OSA No.56 of 2004
I.A.No.2 of 2019 in OSA No.56 of 2004
I.A.No.3 of 2019 in OSA No.56 of 2004
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I.A.No.2 of 2019 in OSA No.58 of 2004
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I.A.No.3 of 2014 in OSA No.59 of 2004
I.A.No.4 of 2014 in OSA No.59 of 2004
I.A.No.1 of 2017 in OSA No.59 of 2004
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I.A.No.4 of 2019 in OSA No.59 of 2004

AND

O.S.A. No. 54, 56, 57, 58 and 59 of 2004

O.S.A.No.54 of 2004

Between:

M/s.Gold Stone Exports Pvt. Ltd.,
#9-1-83 and 84, A.C. Sharma Complex,
S.D. Road, Secunderabad,
Represented by its Director, and others

...Appellants / Respondents

and

Sri M.S. Murthy, S/o. M.G. Rao,
Aged about : 47 years, Plot Holder No.183,
H.No.256, H.M.T. Colony, Sathavahana Nagar,
Kukatpally, Ranga Reddy District and others

.... Respondents / Claim Petitioners

O.S.A.No.56 of 2004

Between:

M/s.Gold Stone Exports Pvt. Ltd.,
#9-1-83 and 84, A.C. Sharma Complex,
S.D. Road, Secunderabad,
Represented by its Director, and others

...Appellants / Respondents

and

Sri U. Anjaneyulu, W/o.Venkata Subba Rao,
Aged about : 41 years, R/o.305,
L.I.G., Bharathnagar Colony, Hyderabad and
others.

.... Respondents / Claim Petitioners

O.S.A.No.57 of 2004

Between:

M/s.Gold Stone Exports Pvt. Ltd.,
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S.D. Road, Secunderabad,
Represented by its Director, and others

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and

Md. Ehteshamuddin, S/o.Md. Ghouse,
Aged : 48 years, R/o. Plot No.60,
H.No.20-4-285/1, Kilwath,
Hyderabad and others

.... Respondents / Respondents

O.S.A.No.58 of 2004

Between:
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And

Smt. R. Hemalatha, W/o. Late Arjun Kumar,
Aged about : 42 years, Occ : Service,
R/o.2-4-528, Kachiguda, Kalaba Road,
Hyderabad and others.

.... Respondents / Respondents

O.S.A.No.59 of 2004

Between:
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and

Nawab Kazim Nawaz Jung,
S/o. Late Sajjad Yar Jung,
R/o. Osman Cottage, Purani haveli,
Rep. by his G.P.A., Sri Jitender Kumar,
S/o. Bansilal and another

.... Respondents / Respondents

Date of Judgment pronounced on : 20-12-2019

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

And

HONOURABLE SRI JUSTICE K.LAKSHMAN

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : **Yes**
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?



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%20-12-2018

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Rep. by his G.P.A., Sri Jitender Kumar,
S/o. Bansilal and another

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< **GIST:**

> **HEAD NOTE:**

!Counsel for the appellants : Sri Vedula Venkata Ramana, Senior Counsel

^Counsel for the implead petitioners / respondents : Sri B.Adinarayana Rao, Sri J.V.Suryanarayana, Sri Vikas Singh, Senior counsel, Sri Kakara Venkata Rao, Sri P.Sri Raghu Ram, Senior Counsel for Sri P.Sri Ram, Sri P.Dharmesh, Sri C.Damodar

Reddy, Sri G.Vidya Sagar, Senior Counsel,
Sri D.Srinivas, Sri K.S. Murthy and Sri C.B.
Ram Mohan Reddy, Senior Counsels for Sri
V.Venkata Mayur, Sri V.Ravi Chandran
and Sri J.Prabhakar.

? Cases referred

1. (1999) 1 SCC 76
2. (2002) 1 SCC 662
3. 2004 (5) ALD 632
4. 1998(3) SCC 723
5. 1998(4) SCC 543
6. (2019) SCC Online SC 938
7. 2000(10) SCC 592
8. 2001 AIHC 3500
9. 2002(3) Cal. H.C.N. 482
10. 2003(3) Cal. H.C.N. 28
11. (2004) 1 SCC 769
12. AIR 1968 SC 1165
13. (1974) 1 SCC 128
14. (2011) 12 S.C.C. 220
15. (2000) 8 SCC 395
16. (2001) 10 SCC 191
17. (2010) 9 SCC 437
18. (2011) 5 SCC 142 para 32 and 33
19. (1995) 3 SCC 413
20. (2007) 10 SCC 448
21. AIR 1963 SC 992
22. (2008) 5 SCC 84
23. (1994) 1 SCC 1
24. (2003) 8 SCC 319
25. (2003) 8 SCC 311
26. (1996) 5 SCC 550
27. AIR 1955 SC 352
28. AIR 1962 SC 996
29. AIR 1952 Hyderabad 163
30. CCCA No.84 of 1982 dt.16.08.1985 (DB)
31. AIR 1960 SC 862
32. ILR 1976 AP 1095
33. (2004) 1 SCC 287
34. AIR 2011 SC 514
35. (2007) 8 SCC 751
36. (2007) 4 SCC 221
37. AIR 1963 SC 1
38. 1987(4) SCC 611
39. 2009(4) SCC 625
40. 2013(10) SCC 136
41. 2011(10) SCC 543

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COMMON ORDER: (*Per* Sri Justice M.S.Ramachandra Rao)

Introduction:

All these Original Side Appeals (for short 'the OSAs') arise out of CS No.14 of 1958 on the file of this Court. There were several judgments /

orders passed by this Court and there have been 3 remand orders from the Supreme Court of India, the last one being on 5.3.2014.

Serious issues of *fraud* practised by appellants and their predecessors in interest on the Courts- both the District Court, Ranga Reddy and the High Court of A.P, and also *collusion* in disposal of various applications affecting third parties in possession /respondents in these OSAs are raised in these OSAs.

2. Justice L.Narasimha Reddy, a learned Single Judge of this Court had passed a common order dt.26.10.2004 in claim petitions/ Application No.585 of 2002, Application No.708 of 2002, Application No.s 294 of 2003, Application No.296 of 2003, Application No.1319 of 2003, Application No.s 1320 of 2003 filed by the respondents in the OSAs under **Or.XXI Rule 97-101 CPC** in E.P.3 of 1996 in C.S.No.14 of 1958 *allowing them*. He also passed order dismissing an Application No.994 of 1995 filed by the appellants in C.S.No.14 of 1958 on the file of this Court.

3. A Division Bench of this Court consisting of Justice B.Prakash Rao and Justice B.Seshasayana Reddy set aside the above order of the learned Single Judge on 23.6.2006 in OSA No.s 52-59 of 2004.

4. The Supreme Court of India, by orders passed on 5.3.2014, in CA.No.3327 of 2014, 3328 of 2014, CA.No.3329 of 2004, CA.No.3330 of 2004 and CA.No.3331 of 2004, set aside the common order dt.23.6.2006 passed by a Division Bench of this Court in OSA No.s 52-59 of 2004 and the OSA No.s 54, 56, 57 and 58 of 2004 were remitted back for fresh

consideration to this Court. *This is the third remand of the matter to this Court.*

5. Post-remand by the Supreme Court, the present common order is being passed in these OSAs.

6. **Henceforth, the respondents in the OSAs will be referred to as claim petitioners and the applications filed by them under Or.XXI Rule 97-101 CPC will be referred to as ‘claim petitions’.**

7. For better appreciation of the issues raised herein, the following index is given:

Part I:	Events prior to 1948 up to 29-3-1996, the date of alleged delivery of possession to appellants.	Para 17 pg.17 to para 77 pg.37
Part II:	Events between 29.3.1996 from filing of Applications in EP 3 of 1996 by 3 rd parties under Order 21 Rule 97, up to date of 1 st Remand order of Supreme Court dt.14-8-1997.	Para 78 pg.37 to para 89 pg.45
Part III	Events subsequent to 1 st Remand order of Supreme Court on 14-8-1997 up to 23-11-2001, 2 nd Remand order of Supreme Court.	Para 90 pg.45 to Para 99 pg.48
Part IV	Events from 23-11-2001 order of Supreme Court up to 5-3-2014 when Supreme Court passed the 3 rd Remand Order .	Para 100 pg.49 to para 136 pg.62
Part V	Events after 3 rd Remand order of Supreme Court dt. 5-3-2014 and Discussion of the points argued and findings thereon in the present OSAs.	Para 137 pg.62 To Para.235 pg.100
Part VI	Whether the claim petitioners / respondents in the O.S.A.s have established their right, title and interest in the properties claimed by them in the claim petitions.	Para 236 pg.100 to para 289 pg.117
Part VII	Contentions 1 to 15 raised in the written submissions of appellants, discussion and findings thereon.	Para 290 pg.117 to para 362 pg.135

Part VIII	Whether OSA.No.59 of 2004 also gets reopened consequent to the concession made by the appellants before the Supreme Court and whether the said OSA is also required to be decided afresh by this Court & Question whether judgment of High Court in OSA 59 of 2004 dt.23-6-2006 against which no SLP was filed, is also void on account of <i>coram non judice</i> and finding thereon.	Para 363 pg.135 to para 400 pg.145
Part IX	Whether the various applications for impleadment in the OSAs can be ordered	Para 401 pg.145 to Para 414 pg.148
Part X	The reliefs granted in the the OSAs	Para 414 pg.149-152

More details re: the OSAs 52,53,54,55,56,57,58 and 59 of 2004 against the order dt.26.10.2004 of learned single Judge:

8. (a) OSA.No.s 52, 53 and 55 of 2004 arise of the order dt.26.10.2004 in Application No.294 of 2003, Application No.296 of 2003 and Application No.1318 of 2013 respectively. *We are not concerned with these OSAs.*

(b) O.S.A.No.54 and 56 to 58 of 2004 arise out of common order dt.26.10.2004 in Application No.s 1320 of 2003, Application No.585 of 2002, Application No.1319 of 2003, Application No.708 of 2002 respectively filed under Or.XXI Rule 97-101 CPC in E.P.3 of 1996 in CS.NO.14 of 1958.

(c) O.S.A No.59 of 2004 arises out of the same common order dt.26.10.2004 in Application No. 994 of 1995.

(d) In O.S.A.No.54 and 56 to 59 of 2004, the property in dispute is land in Hydernagar village, Balanagar Mandal, Ranga Reddy District in the State of Telangana.

(e) A Division Bench of this Court on 23.6.2006 allowed OSA No.s 52-59 of 2004 and set aside the common order dt.26.10.2004 of the learned Single Judge in Application No.585 of 2002, Application No.708 of 2002, Application No.s 294 of 2003, Application No.296 of 2003, Application No.1319 of 2003, Application No.s 1320 of 2003 filed under Or.XXI Rule 97-101 CPC in E.P.3 of 1996, and also in Application No.994 of 1995 in C.S.No.14 of 1958.

(f) As regards OSAs.54, 57, 56 and 58 of 2004, these common orders dt.23.06.2006 were challenged in the Supreme Court of India in CA.No.3328 of 2014, CA.No.3329 of 2004, CA. No.3330 of 2004 and CA.No.3331 of 2004.

(g) There is a controversy as to whether OSA No.59 of 2004, which was also decided by the Division Bench in it's common order dt.23.6.2006 along with the other OSA No.s, can also be reconsidered by us, for fresh decision, which will be considered later in this judgment.

The parties in the OSAs

(i) M/s Goldstone Exports Pvt. Limited and 16 others are appellants in O.S.A.Nos.54, 56, 57 and 58 of 2004 and the respondents / claim petitioners are persons who had filed the said claim petitions Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003

and Application No.s 1320 of 2003 under Or.XXI Rule 97-101 CPC in E.P.3 of 1996.

(j) In OSA No.59 of 2004, M/s Goldstone Exports Pvt. Limited and 15 others are appellants and the respondents are Khasim Nawaz Jung and M/s.Cyrus Investments Pvt. Limited who were defendant Nos.157 and 206 in C.S No.14/1958.

The relief prayed in the claim petitions by the respondent third parties in possession in the Applications under Or.XXI Rule 97-101 CPC

Application No.1320 of 2003

9. OSA No.54 of 2004 arises out of claim petition/ Application No.1320 of 2003 where 14 claim petitioners/respondents in the OSA claimed in all 14 plots of land admeasuring 3567 sq.yds of land in Sy.No.172/11, 172/13 and 172/14 of Hydernagar village purchased under regd. sale deeds dt.30.7.1991, 3.6.1991, 6.1.1996, 17.10.1995, 3.8.1991,3.8.1991,3.8.1991, 11.1.1993, 25.5.1992, 8.5.1984 and 7.6.1984.

10. They are claiming that pattas were issued to Ruquia Begum, Waris Ali and Ghani Sharif before 1948 by the Revenue Secretariat of HEH the Nizam of Hyderabad in respect of land in Sy.Nos.172/11, 172/13 and 172/14 of Hydernagar village; that these pattedars through their G.P.A. entered into an agreement with Setwin Employees Housing Cooperative Society to sell their lands either to the Society or to its members; and the claim petitioners, who were members of the said Society, purchased various extents measuring between 100 to 300 sq. yds. in Sy.Nos.172/11, 172/13 and 172/14. In their claim petition they seek recall of the warrant dt.29.3.1996 in EP.No.3 of

1996 issued for delivery of possession of these properties in Sy.No.172 to the appellants by the District Court, Ranga Reddy District.

Application No.1318 of 2003

11. OSA No.55 of 2004 arises out of Application No.1318 of 2003 filed by N.S.S. Narayana Sharma and 33 others, but this claim petition is stated to have been withdrawn after a settlement with the appellants, in the Supreme Court by withdrawing SLP No.15890 of 2006 filed by them on 16.5.2008. It is not therefore subject matter of this batch or in this judgment.

Application No.585 of 2002

12. OSA No.56 of 2004 arises out of Application No.585 of 2002, a claim petition filed by 34 persons, who sought a prayer for adjudication of their claim, to allow it, and to also declare that Ac.5.28 gts in Sy.No.172/10 belongs to them. They are claiming through one Boddu Veeraswamy, who according to them, is a pattedar of the land in Sy.No.172/10 of Hydernagar village and to whom patta was allegedly granted before 1948 by the Revenue Secretariat of HEH the Nizam of Hyderabad.

Application No.1319/2003

13. OSA. No.57 of 2004 arises out of Application No.1319/2003 and the claimants in the said application are one Ehteshamuddin and 104 others in respect of 25,132 sq.yds in Sy.No.172/11, 172/13 and 172/14 of Hydernagar Village and they prayed for a direction of symbolic redelivery of possession to them of the said land. They also claim through Ruquia Begum, Waris Ali and Ghani Sharif, who according to them were issued pattas.

Application No.708 of 2002

14. OSA No.58 of 2004 arises out of Application No.708 of 2002 and is filed by 2 individuals to adjudicate their claim and allow it in regard to 722 sq.yds forming part of Ac.5.28 gts in Sy.No.172/10 and to declare that the same belongs to them absolutely. They are claiming through Boddu Veeraswamy, said to be a pattedar of the said extent of land in Sy.No.172/10 of Hydernagar village.

Application No.994 of 1995

15. OSA No.59 of 2004 arises out of Application No.994 of 1995 filed by M/s Goldstone Exports and others (appellants) to modify the order dt.20-01-1984 passed by the AP High Court in Application No.266/1983 in C.S.No.14 of 1958 by substituting the names of the appellants and to direct delivery of possession to them to an extent of half share out of Ac.196.20 gts in Sy.No.172 of Hydernagar village by issue of warrant of possession executable by the Court of the District Judge, Ranga Reddy District. There are only two respondents in this appeal i.e., Khasim Nawaz Jung (defendant no.157) and M/s Cyrus Investments Pvt Ltd.(defendant no.206).

16. In order to appreciate the controversies in these O.S.As., it is necessary to take note of some of the events which transpired during the course of this suit, which had been filed in 1955, more than 60 years back. They are set out below:

PART-I:

Events prior to 1948 upto 29-3-1996, the date of alleged delivery of possession to appellants

Period prior to 1948 to 1950

17. HEH the Nizam of Hyderabad was the Ruler of the Princely State of Hyderabad which came to be annexed to the Union of India through Police action on 18-09-1948. During his rule, for the purpose of supplying men for his armed forces prior to 1929, he gave certain lands to Khursheed Jah, a nobleman, who was also given the title Paigah.

18. Khursheed Jah died in 1929.

1951-1960

OS No.41 of 1955 before the City Civil Court, Hyderabad was transferred to the High Court of Hyderabad and numbered as CS.NO.14 of 1958

19. Khursheed Jah's daughter Dildarunnissa Begum filed O.S.No.41 of 1955 in the City Civil Court, Hyderabad which was transferred to the High Court of Hyderabad and was renumbered as C.S.No.14 of 1958.

20. There were 88 defendants initially in the said suit. The Jagir Administrator, Government of Hyderabad was arrayed as defendant No.43 and the State of Andhra Pradesh was impleaded as defendant No.53. Later several people were impleaded as defendants.

21. An extent of Acs.1210.00 gts in a compact block in the village of Hydernagar is item No.38 of schedule-IV of the plaint schedule in CS No.14/1958. No Survey Numbers or boundaries were given for the said item. It was stated that survey numbers were not available.

22. There were also several other moveable and immoveable properties mentioned in the schedules to the plaint, with which we are not concerned in this litigation.

23. The plaintiff contended that all the plaint schedule properties were “Matruka” properties of late Khursheed Jah Paigah and she and other sharers/defendants were entitled to the same.

24. One of the prayers in the suit was for a preliminary decree to be passed (a) directing the properties detailed in schedule-IV and IV-A which are in the possession of the parties detailed in para-12 (defendant No.43) *and all other properties whatsoever may be found to belong to the Matruka of late Nawab Khursheed Jah be divided by metes and bounds and the plaintiff be given her 29/2944th share therein.*

25. Thus, it is clear that even the plaintiff was not aware of specific particulars such as boundaries and survey numbers of the properties said to be Matruka property.

1961-1970

Compromise preliminary decree dt.28.6.1963 in favor of predecesors of appellants

26. A preliminary decree, which was partly based on compromise and partly on contest, came to be passed in C.S.14 of 1958 on 28-06-1963.

27. Clause (2) of the Memorandum of Compromise filed under Order XXIII Rule 3 C.P.C. stated “*that the parties to this compromise admit that the suit properties are the properties of Estate Khursheed Jah Paigah.....*”.

28. Hydernagar village falls in the *compromise* decree portion of the preliminary decree, and it is clear that there was no *adjudication* that it is a *Matruka property of Khursheed Jah Paigah*.

29. In the preliminary decree, an Advocate Commissioner-cum-Receiver was appointed by the A.P. High Court, the successor of the Hyderabad High Court, to partition the suit schedule properties in the preliminary decree and carry out the terms of compromise subject to the direction contained in the judgment and *such other directions as may be given from time to time*.

Assignment by preliminary decree holders to defendants 156 and 157

30. The decree-holders/sharers (plaintiff and the defendants), who were entitled to 80% share in the suit schedule properties sold in 1964-67 their decretal rights to HEH the Nizam (defendant Nos.156) and to one Nawab Khasim Nawaz Jung (defendant No.157) in C.S.No.14 of 1958.

Application No.268/1966

31. The Receiver-cum-Commissioner filed Application No.268/1966 to take over possession of the lands including the lands in Sy.No.172 of Hydernagar village.

32. On 24-03-1967, the High Court of Andhra Pradesh, in Application No.268/1966, stated that no counter was filed by the respondents; in view of the fact that the State Government was a party and the property in question was *declared* to be Matruka property, it directed the State Government to deliver the possession of the property to the Receiver. As the District

Collector, Hyderabad was in possession of the properties allegedly on behalf of the Government, directions were issued to him to do so.

The Receiver arbitrarily and illegally identified several Survey No.s as part of the Hydernagar village

33. Though the plaint schedule did not mention any Survey Numbers in Hydernagar village, the Advocate Receiver-cum-Commissioner *unilaterally* filed a report in this Court that lands in Sy.NO.s 145, 163 and 172 of Hydernagar village are the Matraka properties of Khursheed Jah Paigah in the following manner.

34. He collected details of lands for the villages of Hafeezpet and Hydernagar (item No.38 of schedule-IV) as mentioned in the decree claiming that they belonged to Khursheed Jah Paigah allegedly on the basis of Revenue records such as pahani patriks and Khasra Pahanis. According to him, Sy.No.145 of Hydernagar was of extent Ac.220.10 gts, Sy.No.163 of Hydernagar was of extent Ac.175.06 gts and Sy.No.172 of Hydernagar was of extent Ac.196.20 gts, in all Ac.591.31 gts.

Further assignment by defendant no.156 in favor of defendant no.206

35. Subsequently, HEH the Nizam of Hyderabad sold under a regd.sale deed dt.23.2.1967 (marked as Annexure 3 in all the claim applications by the appellants) his undivided half share to M/s.Dinshaw Co., which was subsequently renamed as M/s.Cyrus Investments Pvt. Limited and the said Company was impleaded as defendant No.206 in the suit. Thus, Khasim Nawaz Jung (defendant Nos.157) and M/s Cyrus Investments Pvt. Ltd

(defendant no.206) became entitled allegedly to 80% of the suit schedule properties.

1971-1980

Application No.73/1970

36. By order dt.29-01-1971, in Application No.73/1970 in C.S.No.14 of 1958, the High Court accepted a scheme of partition submitted by the Commissioner-cum-Receiver in regard to the suit schedule movable and *urban* immovable properties and directed the Receiver to submit a scheme for partition in regard to the suit schedule *agricultural* lands.

Application No.139 of 1971

The Receiver was authorized by the Court only to partition the claims and not the property

37. On 01-11-1971, the Receiver-cum-Commissioner filed application No.139/1971 seeking orders from the High Court as to whether he should proceed with the preparation of scheme of partition by distributing only the **claims** (but not the physical land) stating that *third parties are in actual and apparently long possession of the suit schedule agricultural lands* and they would have to be treated as protected tenants under Section 34, 37 and 37-A of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. He stated that *those lands were not available for distribution*, and only the **claims** in respect of those lands will have to be allotted to the shareholders according to their respective shares in terms of the value of the land after making proper valuation of the lands.

38. An Explanatory Note was enclosed by the Receiver-cum-Commissioner to the Application No.139/1971 stating that that the

Collector, Hyderabad District, who was ordered to handover possession of the lands of Hydernagar to the Receiver, was raising objections with regard to the title in respect of lands therein claiming that they are Government lands, notwithstanding the fact that the preliminary decree was passed against the Government also which was defendant No.53.

39. He categorically admitted that *“none of the lands are in possession of the Receiver-cum-Commissioner or in the possession of any of the admitted shareholders and so only **claims** of the shareholders in the lands proposed to be allotted to them have therefore been partitioned, as either the Government or third parties as Protected Tenants or otherwise **are actually in possession of them.***

40. On 16-09-1972, the High Court, in Application No.139 of 1971, granted permission to the Receiver-cum-Commissioner to prepare the scheme of partition as proposed by him by partitioning only **the claims in terms of value of the lands**, as the lands were not in possession of the shareholders.

41. On 03-12-1972, the Receiver submitted the scheme of partition distributing **only the claims** in respect of various survey numbers including Sy.Nos.145, 163 and 172 of Hydernagar by ‘unilaterally’ selecting and ‘assuming’ Sy.No.145, 163 and 172 to be item No.38 of the suit schedule-IV though the said survey numbers were not mentioned in the suit schedule-IV or in the preliminary decree schedule-IV properties. In the Note appended to the said report containing the scheme of partition, he specifically stated that *none of the alleged suit lands are in the possession of the Receiver or any*

sharer and they are in the possession of the Government or third parties as Protected Tenants.

Application No.19/1973

42. In 1973, the Receiver-cum-Commissioner filed Application No.19/1973 in C.S.No.14 of 1958 impleading *only the State of Andhra Pradesh as a party* and praying the High Court to issue directions to the Collector, Hyderabad District *to handover possession* of the lands in Sy.Nos.145, 163 and 172 of Hydernagar stating that in spite of direction dt.24-03-1967 in Application No.268/1966, the Collector, Hyderabad, who is in possession of the said lands did not handover possession of those lands to the Receiver for the purpose of affecting partition. *None of the persons who would be dispossessed by him, were made parties to this application.*

Other False statements made by the Receiver-cum-Comissioner

The Receiver –cum-Commissioner falsely alleged that in the preliminary decree there was an *adjudication* that item No.38 of the plaint schedule-IV is land belonging to the Estate of Khursheed Jah Paigah. (There was infact no adjudication in the preliminary decree of the said aspect.)

He also stated that the Government Pleader had given an opinion that *there were no patta lands belonging to the Paigah in the said village i.e. Hydernagar, that the pattas in that village were only in the name of the ryots and that as the ryots were not parties to the suit, they were not bound by the decree in this suit.* (This is also false as number of pattas were given prior to 1948 in favor of Ruquia Begum, Waris Ali, Ghani Sharif and Boddu Veeraswamy and others as will be shown below).

The Receiver- cum-Commissioner stated that the Government as defendant No.53 had not denied at any stage the claim of the plaintiffs in the suit that the estate had patta lands in Hydernagar; and *even if some land in the said village was granted on patta to other ryots*, the said fact will not deprive the shareholders of the estate from getting their rightful shares.

He suppressed about the order dt.16-9-1972 passed in Application No.139/1971 referred to above, wherein the Court had permitted him to only divide the 'claims' and the lands.

43. In that application, a counter-affidavit was filed by the Dy. Collector that except lands in Sy.No.145 and 163 of Hydernagar, other lands (including Sy.No.172) were in possession of ryots or were communal lands; that Government was prepared to give only symbolic delivery of lands in Sy.No.145 and 163 but *in regard to other lands (including Sy.No.172), the State Government was not in possession and would not be able to give even symbolic possession.*

Order of the High Court dt.5.7.1974 directing Receiver only to take steps to recover land in Sy.No.172 of Hydernagar in accordance with law

44. On 05-07-1974, High Court passed orders in Application No.19/1973 directing the Government to give symbolic delivery of possession of Sy.Nos.145 and 163 of Hydernagar to the Receiver-cum-Commissioner *and in respect of other lands (including land in Sy.No.172 of Hydernagar), the Receiver should take steps which are available to him in law to take possession from actual occupants of those lands.* This order is marked as Annexure 14 by the appellants in all the claim petitions.

Order dt.31-01-1976 in Application No.139/1971 referring the matter to the District Collector, Hyderabad under Sec.54 CPC

45. The earlier Application No.139/1971 was taken up by this Court on 31-01-1976 and this Court noted that *parties have not been able to agree upon the allotment of the extents of land to the share of each one of them in accordance with the decree of this Court. Nor have they been able to suggest the name of a Surveyor who is willing to take up the work and parcel out the lands in accordance with the scheme accepted under the decree;* and so in Application No.139/1971 orders were passed by the High Court referring the matter to the District Collector, Hyderabad *under Section 54 C.P.C. for division* and allotment of suit schedule agriculture lands to the sharers; and all the parties including the Receiver-cum-Commissioner, were directed to appear before the District Collector. This order was marked as Annexure 15 by the appellants in all the claim applications.

46. This order was never questioned by any party to the suit and had attained finality.

47. The District Collector, Hyderabad appears to have entrusted the partition work of the suit schedule agriculture lands in C.S.No.14 of 1958 to the Revenue Divisional Officer, Chevella, who divided and allotted land in Sy.No.163 and 145 of Hydernagar village to the concerned sharers in different extents, but *no such exercise was undertaken by him in respect of land in Sy.No.172.*

The Faisal Patti for 1978-79 issued by the Revenue Officials for the land in Sy.No.172 of Hydernagar village showing possesin of the occupants/predecessors of present claim petitioners.

48. A Faisal Patti for 1978-79 (marked as Ex.A4 in Application No.1319/2003 and as Ex.A14 in Application No.1318 of 2003) was issued by the Mandal Revenue Officer, Balangar Mandal, Ranga Reddy District mentioning about 25 subdivisions of Sy.No.172 of Hydernagar village made during the tenure of the Paigah and mentioning the names of 24 persons including Boddu Veeraswamy, Ruquia Begum, Waris Ali and Ghani Shareef, who were given pattas prior to 1948 by the Revenue Secretariat of HEH The Nizam, through whom some of the respondents/claim petitioners in the applications under Order XXI Rule 97 C.P.C. claim, showing that they are in occupation of Ac.5.10 gts, Ac.9.37 gts, Ac.9.39 gts and Ac.9.31 gts respectively. The translated version of statement in the Faisal Patti as under:

*“In Survey No.172 the extent of land (196-20) belongs to Government land. **There as per the orders of the Paigah vide File No.172/1 to 172/25 divided the same Survey Number and allotted to the occupiers/pattedars.** During Jamabandi of 1977-78 the Survey No.172/12 was entered into Sethwar records, vide Hyderabad District File No.F3/21079/74 & B1/7110/78 orders were issued by the Collector, Ranga Reddy District, in letter No.B1/22021/78 dated 19-5-79, the bandobust was effected and implemented as per file No.B1/6015/76 orders issued thereby to them for implementation.*

Rs.187.20 Bandobast 25%

Rs.187.20 may be sanctioned as Bandobast izafa.

Sd/xxx

*Mandal Revenue Officer, Balanagar Nagar Mandal,
Ranga Reddy District, A.P.”*

49. It appears that there was a proposal before the Revenue authorities for implementation of a Sethwar issued by the Paigah authorities before 1948, which was obtained from the Director of State Archives in respect of

Sy.No.172 of Hydernagar village at the instance of one Yusuf Ali Khan whose name was mentioned at Sl.No.12 of the Sethwar. In regard to the same, it is recorded in the Faisal Patti in the form of a 'Note' of the then Revenue Divisional Officer, Ranga Reddy District as under:

“.. the pertinent question here in the case is one has to see whether sethwar issued is a genuine one and whether the present cultivators are in possession over the land. For the first point, I do not see any reason to doubt about the sethwar issued by the then Paiga authorities as the same was obtained from the State Archives Dept. by the Collector. Secondly, it is clear from the report of the Tahsildar to the Collectorate which is available in the same file, that the present occupants in whose favour sethwar was issued are in possession of the lands and also cultivating the same. Since a part of the sethwar was already implemented as per the instructions of the Collectorate in the year 1977-78 (1387 Fasli), there is no point not to implement the sethwar in respect of others. Therefore I order for implementation of the sethwar of 1357 Fasli issued by the Paiga Authorities in respect of other persons in the revenue records based on the part implementation of the sethwar in the year 1357 Fasli in the revenue records.”
(emphasis supplied)

50. From the above, it is clear that even during the rule of the Nizam, pattas were granted to ryots in the land in Sy.No.172 of Hydernagar village and a Sethwar was also issued in 1357 Fasli (1947) for recognizing the pattas granted to the ryots. The Faisal Patti was issued in 1978-79 reiterating these facts and accepting that ryots were cultivating the land and also accepting that the Sethwar as genuine. This establishes that Ruquia Begum, Waris Ali, Ghani Sharif, Boddu Veeraswamy and others were in possession of the lands in Sy.No.172 of Hydernagar village and that *none of the parties to the suit or the State Government or the Receiver-cum-Commissioner had possession of the said lands.*

1981-1990

Report of the Receiver dt.12.6.1981 admitting that District Collector had given pattas to various persons much earlier

51. The Receiver-cum-Commissioner later filed a report on 12-06-1981 in Application No.139/1971 before this Court stating that *in Sy.No.172 of Hydernagar, the Collector, Ranga Reddy District has given pattas to several persons much earlier and as soon as the Receiver-cum-Commissioner came to know of it, he wrote a letter No.Rcc-89/80 dt.09-04-1980 to which no reply was received.* He alleged that even after 5 years of time, the Collector or the RDO have not completed the survey work in Sy.No.172 of Hydernagar village and it smacks of motives of the Collector and the Revenue Divisional Officer. This is marked as Annexure-21 on behalf of the appellants in the claim applications.

The State of A.P (defendant no.53)'s attempt to challenge the Preliminary decree failed between 1982-2001

52. The State of Andhra Pradesh filed Application No.44/1982 seeking amendment of the preliminary decree dt.28.6.1963 by deleting item Nos.35 to 38 and 40 of schedule-IV of the preliminary decree (including Hydernagar village) contending that the said decree was not in consonance with the judgment and the said properties were not divisible and they belonged to it.

53. On 18-12-1982, Application No.44/1982 was dismissed by this Court holding that the decree was in consonance with the judgment.

54. O.S.A.No.1 of 1985 was filed by the State Government against the order dt.18-12-1982 in Application No.44/1982.

55. On 24-12-1999, O.S.A.No.1 of 1985 filed by the State Government was dismissed by this Court.

56. The State challenged the order in O.S.A.No.1985 before the Supreme Court in S.L.P. (C) No.7052 of 2000, but it was withdrawn on 05-05-2000 by informing the Supreme Court that the State would file a regular appeal against the preliminary decree dt.28-06-1963 in C.S.No.14 of 1958 along with application for condonation of delay.

57. O.S.A. (SR) No.3526 of 2000 was filed by the State against the preliminary decree dt.28-06-1963 along with application for condonation of delay of more than 38 years. The said O.S.A.(SR) was dismissed on 07-02-2001 by a Division Bench of this Court.

58. S.L.P. © Nos.10622-10623 of 2001 was filed against the order dt.07-02-2001 in O.S.A. (SR) No.3526 of 2000. They were dismissed on 16-07-2001.

Application No.266/1983 dy defendants no.157 and 206 suppressing previous orders recognising possession of third parties

59. *Suppressing the fact* that land in Sy.No.172 was in possession of ryots/pattedars and the reports submitted by the Receiver-cum-Commissioner to that effect (including his pleading in Application No.139/1971 and his report referred to above) *and* the order dt.05-07-1974 in Application No.19/1973 passed by this Court (refusing to direct the State Government to handover possession of Sy.No.172), defendant Nos.157 (Nawab Khasim Nawaz Jung) and defendant No.206 (M/s.Cyrus Investments Pvt. Limited) filed Application No.266/1983 before the High Court seeking direction to handover possession of land admeasuring Ac.196.50 gts in Sy.No.172 of Hydernagar to them and to

direct the Receiver *to put the said defendants in possession of the said land* through warrant of Court.

60. Only the Receiver-cum-Commissioner Sri Anantarao Deshmukh was made the sole respondent in the said Application and the Receiver also suppressed the order dt.05-07-1974 in Application No.19/1973 and reported “No Objection” to allowing of the said Application.

61. *None of the persons in possession of lands in Sy.No.172 of Hydernagar village, through pattas, which was admittedly the case, were impleaded as parties to Application No.266/1983.*

On 20-1-1984 High Court grants permission only to the Receiver to take possession and there is no order for delivery of possession in favor of defendants 157 and 206

62. On 20-01-1984, Application No.266/1983 filed by defendants no.157 and 206 was allowed to a limited extent granting a direction *only* in favor of Sri Anantarao Deshmukh, the Receiver-cum-Commissioner, to handover possession of land in Sy.No.172 of Hydernagar of extent Ac.196.50 gts to defendant Nos.157 and 206. He was directed to execute warrant of possession through *City Civil Court while putting defendant Nos.157 and 206 in possession of Sy.No.172 of Hydernagar village.* No permission was granted to defendants 157 and 206 to seek possession of the land in Sy.No.172.

63. Thus *only Sri Anantarao Deshmukh, the Receiver-cum-Commissioner can execute the above order and none else, that too in the City Civil Court, Hyderabad and not in the District Court, Ranga Reddy District.*

64. Warrant of possession was also given by this Court to Sri Anantarao Deshmukh, Receiver-cum-Commissioner, but the same was not executed probably since the lands were in possession of third parties.

Application No.276/1984

The discharge by this Court on 27.10.1984 of the Receiver-cum-Commissioner

65. On 16-11-1984, in Application No.276/1984, the High Court discharged the Receiver-cum-Commissioner observing that *he had not submitted scheme for distribution* in spite of a specific earlier order dt.27.10.1984 and directed him to handover the records to the Dy.Registrar of the High Court on or before 01-12-1984. This is marked as Annexure 29 by the appellants in the claim applications.

66. The Receiver-cum-Commissioner, on 01-12-1984, handed over charge of the office of the Receiver-cum-Commissioner to the Dy.Registrar of the High Court and the order dt.20-01-1984 in Application No.266/1983, and thereafter the warrant bearing the same date dt.20-1-1984 issued in Appln.No.266 of 1983, were not implemented/executed.

67. Thus the role of the Receiver-cum-Commissioner ended in C.S.No.14 of 1958 as regards lands in Sy.No.172 of Hydernagar village and the warrant in his favor was never executed by him.

1990-2000

The deed of assignment executed on 29-11-1995 by defendant No.206 in favour of M/s.Gold Stone Exports and others

68. On 29-11-1995, defendant No.206 executed deed of assignment in so far as it relates to extent of Ac.98.10 gts for the lands in Sy.No.172 of

Hydernagar village in favour of M/s.Goldstone Exports Private Limited and 15 others/appellants .

3 applns 992,993 and 994 of 1995 filed by M/s.Goldstone Exports Private Limited and 15 others/appellants

69. Application No.992/1995 was filed for recognition of the said assignment, Application No.993/1995 was filed for impleadment in Application No.266/1983 and **Application No.994/1995** was filed *to modify the order passed in Application No.266/1983 dt.20-01-1984 (which order was only in favor of Receiver) by substituting the names of the petitioners in this application in the place of the assignors and to direct delivery of possession to them of an extent of half share out of Ac.196.20 gts in Sy.No.172 of Hydernagar village by issue of warrant of possession executable by the Court of the District Judge, Ranga Reddy District.*

The third parties in possession as per the Faisal patti of 1978-179 were deliberately not impleaded as respondents.

70. In the said Application, the applicants impleaded only M/s Cyrus investments Pvt. Ltd. (defendant No.206) and Khasim Nawaz Jung (defendant No.157) as respondents, who were their assignors and not the third parties who were in possession as per the Faisal Patti of 1978-79.

Order dt.28.12.1995 allowing Appln.No.s 992,993 and 994 of 1995 as they were not opposed by the assignors who alone were respondents

71. On 28-12-1995, Application Nos.992, 993 and 994 of 1995 were allowed *unopposed*.

72. Persons in possession of land in Sy.No.172 of Hydernagar village and who were sought to be dispossessed by the applicants in Application No.994 of 1995 were necessary parties to this Application as their possession would be jeopardized, if these applications were to be allowed in their absence.

It is contended before us by the claim petitioners that this Court should have insisted for the impleadment of the persons in possession and that this order is unsupportable. **(This order dt.28.12.1995 in Appln.No.994 of 1995 was expressly set aside by the Supreme Court in the Second remand order dt.23.11.2001.)**

E.P.No.3 of 1996 filed in District Court, Ranga Reddy District by assignees only against assignors without impleading persons in possession as per Faisal patti of 1978-79

73. E.P.Nos.3 and 4 of 1996 were filed by M/s.Goldstone Exports Private Limited and 15 others under Order XXI Rule 35 C.P.C. before the District Judge, Ranga Reddy District seeking execution of the *preliminary decree dt.26-08-1963* in C.S.No.14 of 1958 arraying *only* defendant Nos.206 and 157, *their assignors, as judgment-debtors* and praying that the said Court should direct its Bailiff to deliver possession of Ac.98.10 gts. forming part and parcel of Sy.No.172 of Hydernagar village, Balanagar Mandal, Ranga Reddy District *pursuant to* order dt.28-12-1995 in Application No.994/1995. We are not concerned with E.P.No.4 of 1996.

74. *The third parties in possession were not impleaded.*

75. On 29-03-1996, the said E.P.No.3 of 1996 was entertained and orders were passed by the District Judge, Ranga Reddy District directing the Bailiff

of that Court to deliver Acs.98.10 gts of land in Sy.No.172 of Hydernagar village to the petitioners in E.P.No.3 of 1996.

76. As stated above in the said Execution Petition, none of the persons who were sought to be dispossessed from the land admeasuring Acs.98.10 gts in Sy.No.172 of Hydernagar village were impleaded.

We have already pointed out

- (i) that the said lands were not in possession of any of the shareholders in the suit C.S.No.14 of 1958,
- (ii) that the State Government had stated that it had no possession of the land in Sy.No.172,
- (iii) that the Faisal Patti 1978-79, report dt.03-12-1972 of the Receiver-cum-Advocate Commissioner in Application No.139/1971, and order dt.05-07-1974 in Application No.114/1973 in C.S.No.14 of 1958 showed possession of pattedars/ryots on the basis of assignments made by the Paigah authorities *before 1948* and
- (iv) that in the order dt.05-07-1974 in Application No.114/1973, there was a specific direction *only* to the Receiver-cum-Commissioner to take steps as per law to take possession of the land from the 'actual occupants'.

Therefore the E.P. could not have been ordered without the presence of necessary parties i.e. the occupants in the lands in Sy.No.172 before this Court. If they are not impleaded, there cannot be any execution by their

dispossession from the lands in their occupation in Sy.No.172, unless the persons in actual possession were heard by the Court.

Evidence of collusion:

77. Also, the respondents in the E.P. No.3 of 1996 were shown to be only Khasim Nawaz Jung (defendant No.157) and M/s.Cyrus Investments Private Limited (defendant No.206). They were described as '*judgment-debtors*'.

Indeed they were only the assignors of the applicants in Application No.994/1995 under the assignment deed dt.29-11-1995. Naturally, they would have no conflict of interest with the applicants and would not oppose the E.P.

Also M/s.Cyrus Investments Private Limited was represented by Dr.P.S. Prasad, s/o. late P.S. Rao of Secunderabad. Mrs.Indrani Prasad, the wife of Dr. P.S. Prasad is the second applicant in Application No.994/1995 and also the second applicant in E.P.No.3 of 1996. Naturally, M/s.Cyrus Investments Private Limited represented by Dr. P.S.Prasad would not oppose the E.P. filed by his wife Mrs.Indrani Prasad and others.

The question is whether such an order can be said to be have been obtained collusively by the applicants in Application No.994/1995 and their assignors, and whether it can be allowed to be executed at all to the detriment of the persons in actual possession of the land in Sy.No.172, who were not before the Executing Court?

(i) The effect of the order dt.28-12-1995 in Application No.994/1995 in C.S.No.14 of 1958 would only be to modify the order dt.20-01-1984 in Application No.266/1983 by substituting the names of the applicants in Application No.994/1995 in the place of the applicants in Application

No.266/1983 i.e. to substitute the names of M/s.Goldstone Exports Private Limited and 15 others in the place of Kazim Nawaz Jung (defendant No.157) and M/s.Cyrus Investments Private Limited (defendant No.206).

(ii) There was no order in favor of defendants 157 and 206, the applicants in the EP.No.3 of 1996 to take delivery of possession.

As pointed out earlier, the order dt.20-01-1984 in Application No.266/1983 directed *only* Mr.Anantaroo Deshmukh, the Receiver-cum-Commissioner to handover possession of land in Sy.No.172 to defendant Nos.157 and 206.

(iii) It is therefore clear that the order of substitution and impleadment in Appln. No.994/1995 dt.28.12.1995 did not touch the portion of the order dt.20-01-1984 in Application No.266/1983 directing '*Mr.Anantaroo Deshmukh, Receiver-cum-Commissioner to handover possession*', and he had to deliver possession. There was no order in favor of defendants Nos.157 and 206 (the assignors) to take possession and hence the assignees, M/s.Goldstone Exports Private Limited and 15 others (the applicants in Application No.994/1995), could not have sought possession at all by filing E.P.No.3 of 1996.

(iv) Any execution petition could only have been filed Mr.Anantaroo Deshmukh by obtaining a warrant of possession from the District Court, Ranga Reddy District and none else. So the very execution petition E.P.No.3 of 1996 by M/s.Goldstone Exports Private Limited and 15 others is not maintainable.

(v) As we have stated earlier, the High Court on 16-11-1984 in Application No.276/1984 discharged the Receiver by directing him to handover records to the Registrar of this Court. So, even Mr. Anantarao Deshmukh stands disabled from filing an E.P.

(vi) Admittedly, on 31-01-1976, this Court had passed orders in Application No.139/1971 forwarding the issue of division of properties to the District Collector under Section 54 C.P.C. for the purpose of separation and allotment of share to each of the parties. This order had not been challenged by anybody. If the District Collector, Hyderabad did not take action pursuant to the direction contained in the order dt.31-01-1976 in Application No.139/1971, the only course open to the Executing Court is to direct the District Collector, Hyderabad to implement the High Court order, but it cannot bypass the District Collector, without the High Court order being recalled and modified, and act as an Executing Court and execute the decree itself by asking its Bailiff to execute it (See **Chintaman Vs. Shankar**¹).

Part-II:

**Events from 29.3.1996 till the 1st remand by the Supreme Court
on 14.8.1997**

How could the Bailiff in his Report dt.19-04-1996 state that the assignors (defendants 157 and 206) were in possession?

78. On 29-03-1996, warrant of delivery of possession was issued to the Bailiff of the District Court, Ranga Reddy District stating that the extent of Ac.98.10 gts. in Sy.No.172 of Hydernagar village is *in the occupancy of the judgment-debtors* who are mentioned as Khasim Nawaz Jung (defendant

¹ (1999) 1 SCC 76

No.157) and M/s.Cyrus Investments Private Limited (defendant No.206).

This recital is a false recital as they had no possession at any point of time and though they had obtained order dt.20-01-1984 in Application No.266/1983 in C.S.No.14 of 1958 that Sri Anantarao Deshmukh, Receiver-cum-Commissioner only could take steps to take possession of the said land to them, admittedly this never happened as the Receiver was discharged and physical possession continued to be with third parties, who were claiming through the persons show in Faisal Patti of 1978-79.

On 19-04-1996, the Bailiff of the Ranga Reddy District Court executed the warrant and filed his report stating that *there is no resistance from any of the judgment-debtors at the spot and that he delivered possession of Ac.98.10gts in Sy.No.172 of Hydernagar village to the decree-holders.*

Therefore the report of the Bailiff runs contrary to the facts on record and cannot be accepted.

Thus all these events and circumstances show that by playing fraud on the Court and also persons in occupation of lands in Sy.No.172 of Hydernagar village, and by way of collusion among the parties to Application No.994 of 1995 and E.P.No.3 of 1996, orders were obtained by the appellants and their predecessors in title, in as much as (a) the application was falsely made for possession of the land rather than for assignment of the shares in the property, (b) there was no order in favor of appellants for recovery of possession, (c) there was no final decree passed in the case so as to enable an application for delivery of property and

(d) Dr.P.S.Prasad was representing the assignors Cyrus Investments Pvt.Ltd, while his wife Mrs.Indrani Prasad was one of the applicants in the E.P.

The claim petitions by third parties/respondents in the OSAs and contentions therein

79. Several claim petitions were filed in **1996** including Application No.s 585, 708 of 2002 and Applications 1318-1320 of 2003 in E.P.No.3 of 1996 invoking Order XXI Rule 97-101 C.P.C. resisting delivery of possession to M/s.Goldstone Exports and others/appellants in the OSAs by setting up independent right, title and possession over the E.P. schedule property.

Contentions of the claim petitioners

80. It is their contention in the claim petitions (which were numbered later as Application No.585 of 2002 and 708 of 2002) that an extent of Acs.5.28 gts. in Survey No.172 of Hydernagar Village was in possession and occupation of one Boddu Veeraswamy; recognizing his long-standing possession, a patta was granted to him by the Revenue Secretariat of H.E.H. The Nizam of Hyderabad in 1357 fasli (**1947**) and communicated by the Management Committee of the Khursheed Jah paigah. In view of the same, Khursheed Jah or his legal heirs or the Government had no right in the said land and it was not available for partition to the legal heirs of Khursheed Jah. Boddu Veeraswamy and other like pattedars approached the Government for mutation in Revenue Records and for issuance of a revised Supplementary Sethwar; the Government after obtaining legal opinion from the Advocate-General agreed and recognized the possession of the pattedars and recommended for issuance of a revised Supplementary Sethwar mentioning

about the absolute ownership of the pattedars / vendors of the claim petitioners; and this was evidenced by issuance of a Memo No.D1/11924/90 dt.13.10.1992 issued by the Collector of Ranga Reddy District. They contended that 3rd party claim petitioners had purchased house plots as delineated by the said Boddu Veeraswamy by paying valuable consideration and constructed residential houses which were assessed as such by various statutory authorities like Municipal Corporation of Hyderabad, A.P. State Electricity Board and Hyderabad Metro Water Works and Sewerage Board.

81. It is the contention of claim petitioners in another claim petition (later numbered as Application No.1318 of 2003) that they are members of M/s. Sri Satya Sai Co-operative Housing Society Ltd., Sanjeev Reddy Nagar, Hyderabad who had purchased plots through the Society under registered Sale Deeds. According to them, the Society purchased Acs.54.30 gts. in certain sub-divisions of Survey No.172 of Hydernagar Village from the pattedars under registered sale deeds, then it prepared a lay-out, sub-divided the land into plots to various members including the claim petitioners and then registered the plots during 1981-84. They contended that they are in possession and enjoyment of the lands purchased by them.

They contended that the Paigah authorities granted patta of the land to 24 persons by sub-dividing the land in Survey No.172 to Survey No.172/1 to 172/25; Survey No.172/1 was 'Gairan' and land in Survey Nos.172/2 to 172/25 was allotted to various individuals who were also granted pattas prior to 1947; that pursuant to the said grant in 1357 Fasli (1947) a Tonch Map of Survey No.172 showing sub-divisions of the said Survey number into Survey No.172/1 to 172/25 was issued by the Revenue authorities.

They also contended that a Supplementary Sethwar was also issued much earlier to coming into force of the A.P. (T.A.) Abolition of Jagir Regulation of 1358 Fasli which came into force on 15th Meher 1358 Fasli (1948).

They contended that they were in possession as Pattedars of their respective plots prior to 1947, that in 1974 the Government recognized their rights as occupants and granted patta in 1977 by mutating their names in the Revenue Records.

They also contended that at the request of the Society, the Inspector of Land Records inspected the land on 16.08.1986 and recorded panchanama of sub-divisions and demarcated with reference to their boundaries.

They also claimed that in 1982 some of the pattedars obtained 'No Objection Certificate' from the Competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 for sale of their property and then sold to the Society.

According to them, on the mid-night of 16.04.1996 some unsocial elements dismantled existing structures with bulldozers, brought the Court Bailiff on 17.04.1996 and took possession of the property saying it is vacant land.

They contended that the preliminary decree is a *collusive decree* for partition obtained by the parties in C.S.No.14 of 1958 among themselves without impleading the occupants and pattedars of the land in Survey Nos.172/2 to 172/25 as parties, and the said persons have no right to obtain possession, that they have no executable decree in their favour for

possession as no final decree was passed which was engrossed on stamp paper by then.

They also contended that the execution petition filed in 1996 by the appellants was not maintainable to execute the collusive decree passed on 28.06.1963.

They also contended that the various pattedars of land in Survey No.172 (Survey No.172/2 – Abdul Hai, Survey No.172/3 – Alimuddin, survey No.172/4 – Hasmutunnisa Begum, Survey No.172/5 – Mohd. Waziruddin, Survey No.172/6 – Lokabhi Raminaidu, Survey No.172/7 – Sulochanamma, Survey No.172/8 – Akram Ali, Survey No.172/9 – Bande Ali, Survey No.172/18 – T. Bhadraiah, Survey No.172/19 – Pushpavati) who had sold the land to the Society are not judgment-debtors, and they and the claim petitioners are not bound by the decree in C.S.No.14 of 1958.

82. Some other claim petitioners in claim petitions (later numbered as Application No.1319 of 2003) contended that Paigah authorities of the Khursheed Jah Paigah granted patta for land in Survey No.172/11 to Ruquia Begum, for land in Survey No.172/13 to Waris Ali and for land in Survey No.172/14 to Ghani Shariff; that though Supplementary Sethwar was issued reflecting their possession, it was not implemented for sometime; and Government by letter dt.15.07.1982 declared that the pattedars became owners of the land.

They contended that the pattedars through their G.P.A. entered into an agreement with M/s Set-win Employees Housing Cooperative Society to sell their lands either to the Society or to its members; and the petitioners,

who were members of the Society purchased various extents admeasuring 100 to 300 Sq.yds. in Survey No.172/11, 172/13, and 172/14.

According to them, there was a full-fledged colony which came up in these survey numbers by name Setwinabad Colony.

According to them, there was a dacoit in the house of one of the petitioners in the said colony and an F.I.R. was also issued.

They contended that though there were in possession of the lands purchased by them, *reports were engineered* to show as if possession was delivered and on 28.07.1996, there was an attempt to dispossess the petitioners and other petitioners. According to them, the report dt.17.04.1996 of the Bailiff purporting to deliver possession is not correct and is only a *make-believe* document. According to them, a proceedings in the E.P. are null and void and of no legal effect.

83. Other claim petitioners in their claim petition (later numbered as Application No.1320 of 2003) raised pleas identical to the above claim petitions (Application No.1319 of 2003).

The initial orders of the District Court, Ranga Reddy dt.13.9.1996 rejecting the claim petitions as not maintainable

84. Initially, the District Court, Ranga Reddy District rejected on 13-09-1996 the said claim petitions without even numbering them on the ground that they were not maintainable in that Court.

85. One of the claim petitioners by name M/s. Sri Satya Sai Co-operative Housing Society Ltd filed C.R.P.No.4921 of 1996 before the High Court

challenging the order dt.13-09-1996 passed by the District Court, Ranga Reddy rejecting the claim petitions.

86. Some members of M/s Set-win Employees Housing Cooperative Society and 33 members of M/s. Sri Satya Sai Co-operative Housing Society Ltd i.e., **N.S.S. Narayana Sharma** and 32 others filed O.S.A.Nos.10, 11 and 20 of 1996 questioning the orders dt.28-12-1995 of Single Judge in Application No.994 of 1995 in C.S.No.14 of 1958 directing delivery of possession of Ac.196.20 gts in Sy.No.172 of Hyderangar village to appellants and O.S.A.No.19 of 1996 against orders in another Application No.963 of 1995 in C.S.NO.14 of 1958 pertaining to another E.P. No.4 of 1996.

87. On 06-11-1996, a Division Bench of this Court allowed the O.S.As. by treating the same as appeals against the order of the District Court, Ranga Reddy by which the District Judge had rejected the claim petitions as not maintainable, and held that they were maintainable and directed the District Court to entertain and dispose of the claim petitions on merits and also directed restoration of possession of the land to the claim petitioners and hear their objections before passing any orders in the E.Ps.

88. Similar order was passed in C.R.P.No.4921 of 1996 allowing the said C.R.P. filed by M/s. Sri Satya Sai Co-operative Housing Society Ltd. and its members and a direction was given to the District Court, Ranga Reddy to register and dispose of the claim petitions filed by them on merits.

The First round to the Supreme Court leading to the First order of remand dt.14.8.1997

89. M/s.Goldstone Exports and others/appellants in the OSAs filed S.L.P.No.8787-8789 of 1997 in the Supreme Court challenging the order dt.06-11-1996 in O.S.A.Nos.11 and 20 of 1996 and S.L.P.No.23706 of 1996 against the orders in O.S.A.No.10 of 1996 (pertaining to Application No.994/1995 and E.P.No.3 of 1996).

Part-III :

Events from the First remand of the Supreme Court on 14.8.1997 upto the Second remand order dt.23.11.2001 of the Supreme Court

First order of Remand by the Supreme Court dt.14.8.1997

Order dt.14.08.1997 of the Supreme Court in SLP.Nos.8787 -8789 of 1997, SLP.No.23706 of 1996 and batch (the *first remand* by the Supreme Court of the Appeals) filed against the orders of the High Court holding that the claim petitions were maintainable)

90. By order dt.14-08-1997, the Supreme Court allowed all the S.L.Ps. and remanded O.S.A.Nos.10, 11 and 20 of 1996 to the High Court. *This is the first remand of the appeals arising out of the claim petitions filed by respondents in O.S.A.No.54, 56, 57 and 58 of 2004.*

91. On Remand, a Division Bench of this Court again dismissed O.S.A.Nos.10, 11 and 20 of 1996 on 10-11-1998 holding that the claim petitions were not maintainable and that the claimants therein were claiming rights through the parties to the decree in C.S.No.14 of 1958.

FINAL DECREE (Application No.517 of 1998 in C.S.No.14 of 1958)

92. Application No.517 of 1998 was filed in C.S.No.14 of 1958 to pass final decree by M/s.Goldstone Exports Pvt. Ltd., and 15 others/appellants in

the OSAs impleading the legal representatives of Khasim Nawaz Jung in respect of Ac.98.10 gts in Sy.No.172 of Hydernagar Village, Balanagar Mandal, Ranga Reddy District on the ground that they have been delivered possession of the property by the District Judge, Ranga Reddy District on 17-04-1996 pursuant to the direction of this Court dt.28-12-1995 in Application No.994 of 1995.

93. On 27-04-1998, this Court passed a **final decree** in Application No.517 of 1998 in C.S.No.14 of 1958 recording that the property of extent Ac.98.10 gts in Sy.No.172 of Hydernagar village, Balanagar Mandal, Ranga Reddy District (item No.38 of schedule-IV) was delivered possession to the applicants by Bailiff of the Court of the District Judge, Ranga Reddy District on 17-04-1996 in E.P.No.3 of 1996.

Order dt.8.6.1998 of Justice B.Seshsayana Reddy in a claim petition when he was District Judge, Ranga Reddy

94. There is one other important event to be noted here.

95. An E.P.No.4 of 1996 in C.S.No.14 of 1958 had been filed in the District Court, Ranga Reddy. Appellants herein who were petitioners in E.P.No.4 of 1996 filed E.A.No.3 of 1998 and batch praying the District Court, Ranga Reddy to decide the preliminary issue whether E.A.No.10 of 1997 and batch (claim petitions) filed by third parties/claimants in that E.P. under Order XXI Rule 97 to 99 of Civil Procedure Code, 1908 were maintainable in that Court.

96. On 08.06.1998, Sri B. Seshasayana Reddy (as he then was), the District Judge in the Ranga Reddy District Court dismissed E.A.s No.3 of

1998 and batch holding that E.A.No.10 of 1997 and batch are maintainable in that court. *This order is the cause of the third remand from the Supreme Court as will be explained below.*

2000-2010

Second Round to the Supreme Court, now by the claim petitioners

97. The claim petitioners challenged the order dt.10.11.1998 of the Division Bench of this Court (after First remand) dismissing O.S.A.s 10, 11, 19, 20 of 1996 wherein the Division Bench had held that the claim petitions were not maintainable by filing Civil Appeal Nos.7983 of 2001 with Nos.7984-85 & 7986-88 of 2001.

The Second order of remand by the Supreme court on 23.11.2001

98. The Supreme Court in **N.S.S. Narayana Sarma and others**² (2 supra), on 23.11.2001, after considering the scope of Order XXI Rule 97 to 101 of C.P.C. (which will be adverted to later) held that the claim petitioners before the executing court / respondents in these OSAs *are claiming independent right to the property from which they are sought to be evicted in execution of the decree; it is their case that the right in the property had vested in them much prior to the filing of the present suit, the decree of which is under execution; that the suit as initially filed was a suit for partition simpliciter; in such a suit, the High Court, in the course of execution proceeding ordered delivery of possession and whether such a direction given in the suit is valid or not is a separate matter.*

It observed that on 10.11.1998 the Division Bench dismissed the petitions filed by the claim petitioners as not maintainable *without entering*

² (2002) 1 SCC 662

into the merits of the case; and the view of the Division Bench that the claim petitioners are claiming the property through the Paigah Committee or the State Government, who are parties in the suit and the decree binds them, is unsustainable and does not stand the scrutiny of law.

It held that the claim petitioners are claiming independent title to the property as the transferees from the pattedars whose lands did not vest in the State Government under the provisions of the A.P. (Telangana Area) Abolition of Jagirs Regulation, 1958; that the single Judge as well as the Division Bench completely misread the case of the claim petitioners and had a misconception of the legal position relevant to the matter; and therefore, the matter should be remitted to the High Court for fresh consideration of the claim petitions filed by the appellants before the Supreme Court by a single Judge of the High Court.

It accordingly allowed Civil Appeals Nos.7983 of 2001 with Nos.7984-85 & 7986-88 of 2001 on 23.11.2001 and remanded the matter for the Second time.

99. Crucially, the Supreme Court in the above order dt.23.11.2011 also set aside order dt.28.12.1995 of the learned single Judge in C.S.No.14 of 1958 (order in application No.994 / 1995) and the matter was remitted back to the High Court for fresh consideration. (That application No.994 of 1995 was for modification of the order dt.20.1.1984 in Appn.No.266 of 1983 and for delivery of possession) (see para 69 above)

This has great significance and will be adverted to later.

Part-IV

Events from Second remand of Supreme Court on 23.11.2001 upto the Third remand order of the Supreme Court on 5.3.2014

High Court on 18.2.2003 transfers all Execution Proceedings to itself from the District Court, Ranga Reddy District

100. In the meantime, on 18.2.2003, this Court called for the entire record relating to the claim petitions in E.P.No.3 of 1996 as N.S.S. Narayana Sarma and others filed applications 605, 606 and 607 of 2002 seeking transfer of their claim petitions E.A.Nos.5 of 1997, 9 of 1997 and 37 of 1996 in E.P.No.3 of 1996 from the District Court, Ranga Reddy to this Court to dispose of the same as per the order of the Supreme Court in **N.S.S. Narayana Sarma and others** (2 supra).

101. On 18.02.2003, this Court transferred the said E.As filed in the District Court, Ranga Reddy in E.P.No.3 of 1996 to itself for trial and disposal as per the directions of the Supreme Court. The claim petitions were then re-numbered as Application Nos.1318, 1319 and 1320 of 2003 in E.P.No.3 of 1996 in C.S.No.14 of 1958. They were taken up along with other claim petitions/ Application Nos.585 and 708 of 2002.

102. Evidence adduced by the parties was recorded by the learned single Judge, Justice L. Narasimha Reddy (as he then was), in these claim petitions and other claim petitions also and a common order was passed on 26.10.2004 allowing application Nos.1318, 1319, 1320 of 2003 and also Application Nos.585 and 708 of 2002 and dismissing Application No.994 of 1995.

Order dt.26.10.2004 of the learned single Judge Justice L.Narasimha Reddy in Application Nos.1318, 1319, 1320 of 2003, Application Nos.585 and 708 of 2002 and in Application No.994 of 1995 in favor of third party claim petitioners (the order impugned in these OSAs)

103. The learned Single Judge framed 11 issues and 2 additional issues.

104. He referred to the Order dt.30.01.1976 in Application No.139 of 1971 in C.S.No.14 of 1958 wherein this Court had directed that the District Collector under Section 54 CPC to take steps for separation and allotment of shares to each of the parties and concluded that in the light of the said order, this Court, which passed the preliminary decree, was not supposed to take any steps in relation to partition and there was no provision in CPC which enables the Court to deal with a decree, once it is referred to the District Collector under Section 54. He took note of the fact that this order dt.30.01.1976 in Application No.139 of 1976 was never set aside and Order 26 Rule 13 CPC thus disables the Receiver-cum-Commissioner to undertake any exercise, if the matter is covered by Section 54 CPC.

105. The learned Single Judge then took note of the fact that in Application No.994 of 1995 filed by the appellants for recognition of the assignment, impleading them as parties in C.S.No.14 of 1958 and for delivery of possession of the property of Ac.98.10 guntas in Survey No.172 of Hydernagar Village, even the defendants in the suit were not made parties and only the Receiver-cum-Commissioner or the assignors/defendants 157 and 206 were made parties.

106. The learned Single Judge further held that in Application No.266 of 1983 filed by defendants 157 and 206, only the Receiver-cum-Commissioner was added as the sole respondent; the preliminary decree did not identify the

extent of lands and did not allot item 38 of Schedule IV consisting of the land in Survey No.172 of Hydernagar Village to any party or parties; and there is no order passed by the High Court dividing the properties by metes and bounds and allotting the divided items to the respective parties; and there was no final decree passed, Application No.266 of 1983 could not have been filed seeking delivery of possession of the land in item 38 of Schedule IV.

107. According to him, Application No.266 of 1983 was ordered because the Receiver had no objection, but admittedly the Receiver-cum-Commissioner was not in possession of the lands in Survey No.172 of Hydernagar Village and therefore, the said order was not implemented from 20.01.1984 and 11 years thereafter, Application No.994 of 1995 was filed.

108. He also observed that the appellants in O.S.As. who filed Application No.994 of 1995, maintained strategic silence as to who was in possession of the land covered by Application No.266 of 1983 and why the order dt.20.01.1984 in Application No.266 of 1983 needs modification and which portion of the half area of Survey No.172 is required to be delivered to them.

109. The learned Single Judge then referred to A.P. (Telangana Area) Jagirs Abolition Regulation, 1358 Fasli and A.P. (Telangana Area) Jagirs (Commutation) Regulation, 1359 Fasli and the fact that several items in Schedule IV and all items in Schedule IV-A of the decree were Jagirs and covered by these Regulations and in the suit, C.S.No.14 of 1958, the plaintiff and the contesting defendant had also stated it. He observed that Khursheed

Jah Paigah was specifically included in the Schedule to the said Regulations containing the list of Jamiat Jagirs at Serial No.2 and that these Regulations were also included in Schedule IX to the Constitution of India.

110. The learned Single Judge therefore concluded that the properties of this nature could not have been subject matter of a suit for partition or a decree passed mainly on compromise, where there was no controversy as to the applicability of the said Regulations over the lands in question.

111. The learned Single Judge then referred to the description of the properties in the Schedule in C.S.No.14 of 1958 and observed that (i) neither survey numbers nor boundaries were mentioned, (ii) the extent indicated was only approximate which included private and public properties, (iii) there were also references to entire villages, and so it was impossible to undertake any adjudication or to grant any relief on the basis of such incomplete, vague and imperfect description of the properties.

112. He held that the lands in Schedule IV are part of an estate assessed to revenue and therefore the procedure prescribed under Rule 18(1) of Order 22 and Section 54 CPC has to be followed and there was a direction on 30.01.1976 in Application No.139 of 1971 to do so and any other steps were impermissible in law.

113. He then went on to note that delivery of possession of the properties in the suit for partition is not part of the function of a Receiver-cum-Commissioner and there were certain observations made in Application No.1116 of 2003 in C.S.No.7 of 1958 that even if the lands in question are not part of an estate, the power of the Advocate Commissioner did not

extend to such an extent as to identify the properties, divide them into parts and deliver possession of the same to the respective parties. He observed that the role of an Advocate Commissioner in a suit for partition is limited to equitably divide the properties which are already identified into shares taking into account the views of the parties under Rule 13 of Order 26 CPC.

114. The learned Single Judge observed that the assignment itself, *before* passing of a final decree, can only be in relation to undivided share and not otherwise and it was not permissible for anyone to claim rights vis-à-vis a definite extent of property in the absence of allotment by the Court through a final decree.

115. *He noted that the appellants sought delivery of about Ac.98.10 gts of land in Survey No.172, but the said survey number was not mentioned in Schedule IV of C.S.No.14 of 1958 and there was no final decree allotting this extent to the appellants or their assignors.*

116. He held that in a suit for partition, all parties stand on the same footing in the matter of giving effect to either the preliminary decree or final decree and at every stage including when delivery of possession of any item of the property is sought, all the parties are required to be impleaded so that they can put forward their own point of view. The learned Single Judge held that an application, be it one as a step towards a final decree or an E.P. for implementation of the final decree, without impleading all parties to the suit, cannot be maintained. *He noted that there are 800 defendants in the suit and in Application No.994 of 1995, only the assignors of the appellants were*

made parties and it was these assignors who had filed Application No.266 of 1983.

117. The learned Single Judge then referred to the decision of this Court in **I.D.P.L. Employees' Co-operative House Building Society Ltd., Hyderabad Vs. B.Ramadevi³**, wherein this Court had held that disputes in relation to partitioned properties in a partition suit as against third parties have to be worked out separately by the joint owners collectively or the respective sharers individually and if such a task is undertaken by a Court in a suit for partition, it would convert the character of a suit into a suit for recovery of possession or administration.

118. The learned Single Judge observed that the contention of the claim petitioners that the suit was filed mainly with a view to circumvent the proceedings under or the operation of Jagir Regulations in relation to thousands of acres of urban and urbanizable lands cannot be brushed aside as totally irrelevant and vast extents of land were taken possession of or retained in violation of the A.P.(Telangana Area) Abolition of Jagirs Regulation, A.P. Agricultural Lands (Ceiling on Agricultural Holdings) Act, 1973 or Urban Land (Ceiling and Regulation) Act, 1976 apart from the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 under consent orders obtained from this Court. *He observed that there was evidence of misuse of the process of this Court and fraud was played and consequently, he rejected Application No.994 of 1995.*

³ 2004 (5) ALD 632

119. Coming to Application Nos.585, 708 of 2002 and 1318 to 1320 of 2003, the learned Single Judge held that as per Article 128 of the Limitation Act, 1963, the limitation for filing a claim petition by a person who was dispossessed of immovable property and who is disputing the right of the decree holder or purchaser at a sale in execution of the decree is 30 days from the date of the dispossession; that this provision and Order 21 Rule 99 CPC contemplated dispossession in question to take place only pursuant to the decree for possession of immovable property or where the property is sold during the course of execution; such decrees are provided under Rule 9 of Order 20 CPC but the instant suit being one for partition, the decree which is to be passed therein is governed by Order 20 Rule 18 CPC. He also noted that possession was delivered to the appellants in O.S.As. pursuant to an order passed by the Court on an application filed under Section 151 CPC in Application No.994 of 1995, and it does not fit into Order 21 Rule 9 CPC for which Article 128 of the Limitation Act would apply.

120. He held that the claim petitioners moved the applications without any delay and they had been faced with a peculiar situation in filing their applications since delivery of possession was directed by the High Court, while the warrant of delivery of possession was issued by the District Court, Ranga Reddy District, and it was difficult for the claim petitioners to ascertain as to which Court was the executing Court for filing these applications and so they cannot be said to have been barred by limitation.

121. The learned Single Judge held that items of Schedule IV and Schedule IV-A contain thousands of acres of land in various revenue villages which are part of the city of Hyderabad or surrounding it and these lands formed

part of Paigah property. He noted that even according to the plaintiff in C.S.No.14 of 1958, H.E.H. the Nizam prohibited partition or alienation of these lands and the prohibition imposed in the Farmans issued by the Nizam for partition or alienation ceased to be operative only with the abolition of Jagirs through the Jagir Abolition Regulations w.e.f. 15.08.1949 and that the cause of action arose in that context.

122. The learned Single Judge then held that the appellants did not disclose that the land in Survey No.172 of Hydernagar Village was recognized as Matraka property of Kursheed Paigah and even assuming that this land did not vest in Government on abolition of Jagirs, it needs to be seen as to whether there were any Farmans prohibiting alienation of such land and the point of time up to which they operated.

123. The learned Single Judge then referred to Exs.A1, A3 and A55 pattas issued to one *Lokabhiram Naidu, Puspaula Sulochanamma and Boddu Veeera Swamy* respectively in 1947. He then noticed the fact that the Prime Minister in Council of the erstwhile Government of Hyderabad issued rules known as “Rules regarding grant of pattedari rights in non khalsa villages, 1356 Fasli” under the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli, and that under Rule 2 thereof stated that persons who hold Jagir land and pay revenue direct to the Jagirdars shall, from the date of coming into force of the Rules in all Jagirs, whether settled or unsettled, be deemed to be pattadars of the lands held by them for all purposes. He then held that the pattas Exs.A1, A3 and A55 themselves disclosed that they were granted by the Revenue Secretariat as per Circular No.11 dated 12th Thir 1356 Fasli and it is a Circular issued by H.E.H. the Nizam according special permission for

grant of pattas in respect of Paigah property. He therefore held that the land covered in Survey No.172 of Hydernagar Village was not Matruka of Kursheed Jah Paigah and the land in question did not vest in the Government after abolition of Jagirs.

124. The learned Single Judge rejected the plea of the appellants that Exs.A1, A3 and A55 were not proved by examining the persons in whose favour they were granted on the ground that the presumption under Section 90 of the Evidence Act would get attracted as they were pattas of the year 1947 and more than 30 years have elapsed.

125. He then referred to the sale deeds filed by the claim petitioners through which lands were purchased by Sri Satya Sai Co-operative Housing Society and individual members and also the Setwar, Faisal Patti, Jamabandi and tax receipts and proceedings before various authorities and concluded that these documents established the title and possession of the persons in whose favour the proceedings or documents came to be issued. He held that possession of the land covered by such documents in favour of the persons mentioned therein was not challenged and the claim petitioners were able to place a chain of events without any break from the time of grant of pattas till the date of dispossession or threat to their possession. He observed that possession of the claim petitioners or the societies deserves to be tacked in the context of adverse possession and the possession of the claim petitioners had become adverse to the parties in C.C.No.14 of 1958 through whom the appellants are claiming right in the said property.

126. *He also concluded that the judgment and decree in C.S.No.14 of 1958 is not binding on the claim petitioners as they were not claiming through the Government or Jagir Administrator who were parties to the suit.*

127. The learned Single Judge also held that *the alleged delivery of possession on 14.07.1996 was not valid, legal and having any legal effect.* He held that under Section 38 CPC, a decree may be executed by the Court which passed it and if the decree is required to be executed by a different Court, it has to be transferred to such Court under Section 39 CPC and in the instant case, this Court which passed the preliminary decree had directed the District Court at Ranga Reddy District in Application No.994 of 1995 to grant possession of Ac.98.10 guntas in Survey No.172 of Hydernagar Village to the applicants and this is alien to CPC. The learned Single Judge therefore concluded that *the issuance of delivery warrant in E.P.No.3 of 1996 or the steps taken for delivery of possession on 14.07.1996 at the instance of the appellants are outside the scope of the procedure prescribed under the CPC and they are contrary to law.*

128. The learned Single Judge *dismissed* Application No.994 of 1995 and allowed Application Nos.585 and 708 of 2002 and 1318 to 1320 of 2003. He held that the alleged delivery of possession in favour of the appellants was only symbolic and the claim petitioners have title and possession of the lands covered by the respective sale deeds in their favour. He held that it is open to the claim petitioners to remain in possession of the said lands and the appellants did not have any right, title or interest in respect of the land which is the subject matter of E.P.No.3 of 1996. In case, there is any resistance from the appellants to the right of the claim petitioners to remain in

possession of the land, the learned Single Judge directed the District Court, Ranga Reddy District to redeliver possession of the property to the claim petitioners if an application is filed for that purpose. He also gave liberty to the claim petitioners to take steps open to them in law in relation to assignment of rights in their favour.

129. *Thus the findings of the learned Single Judge were all in favor of the 3rd parties/claim petitioners and against the appellants.*

Order dt.23.06.2006 of the Division Bench in OSA Nos.52 to 59 of 2004

130. The appellants filed the OSAs.52 to 59 of 2004 against the common order dt.26.10.2004 of the learned single Judge in Application Nos.1318, 1319, 1320 of 2003 and also Application Nos.585 and 708 of 2002 and dismissing Application No.994 of 1995.

131. These OSAs were heard by a Division Bench consisting of Justice B. Prakash Rao and Justice B. Seshasayana Reddy. The latter had, while working as the Principal District Judge at Ranga Reddy Court, passed an order on 08.06.1998 dismissing E.A.Nos.3 of 1998 and batch filed by the appellants to reject E.A.No.10 of 1997 and batch (claim petitions) in E.P.No.4 of 1996 (vide paras 95-97 above), in favor of the third party claim petitioners and against the appellants.

Thus the order passed by the Division bench on 23.6.2006 ran directly contrary to the earlier order passed by Justice B.Seshasayana Reddy, as the District Judge, Ranga Reddy on 8.6.1998 holding the claim petitions as maintainable.

132. The said Division Bench passed a common order on 23.06.2006 allowing all the OSAs.52 to 59 of 2004. The Division Bench held that there was no final decree passed with regard to the property in Survey No.172 of Hydernagar Village, that there was a delivery of possession of the land in Sy.No.172 of Hydernagar Village in E.P.No.3 of 1996 to the appellants, and therefore, the claim petitions cannot be entertained. It also held that the claim petitioners failed to establish their independent right, title and interest much less possession of whatsoever nature.

The 3rd round to the Supreme Court by the claim petitioners

133. Challenging the order dt.23.06.2006 in OSAs.52 to 59 of 2004, the claim petitioners filed Civil Appeal No.3327 to 3331 of 2014 in the Supreme Court in respect of OSAs 57 of 2004, 54 of 2004, 57 of 2004, 56 of 2004 and 58 of 2004 respectively.

SLP.15890 of 2006 was also filed by N.S.S. Narayana Sarma and 33 others against the order in OSA.No.55 of 2004, but the same was dismissed as withdrawn on 16.05.2008.

However, against the order in OSA No.55 of 2004, another party M/s. Sri Satya Sai Co-operative Housing Society Ltd. Society filed SLP(C).No.21308 of 2008 directly in the Supreme Court. It was not a party to any of the OSAs 52 to 59 of 2004 and leave was sought by them to challenge the order in OSA 55 of 2004.

134. There was no Special Leave Petition / appeal to the Supreme Court by any party to the order dt.26.10.2004 in OSA.No.59 of 2004 of the learned single Judge, Justice L. Narasimha Reddy.

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The 3rd order of remand dt.05.03.2014 in C.A.Nos.3327 to 3331 of 2014 and in SLP(C).No.21308 of 2008 (the *third remand* order from the Supreme Court of the OSAs filed against the orders in the claim petitions and Application No.994 of 1995 of the learned single Judge

135. When the case came up for hearing before the Supreme Court, it was noticed by the Supreme Court that one of the Judges of the Division Bench (Justice B.Seshasayana Reddy) which passed the order in the OSAs on 23.6.2006, had earlier passed an order, while he was a District Judge, Ranga Reddy in favor of the claim petitioners (Paras 95 to 97 above). Therefore all counsel including the counsel for the appellants herein conceded before the Supreme Court that the common judgment of the Division bench dt.23.6.2006 in the OSAs be set aside as it was not proper for the said Judge to have taken part in the decision of the Division Bench.

136. By order dt.05.03.2014, the Supreme Court set aside the order dt.23.06.2006 of the Division Bench of Justice Prakash Rao and Justice Seshasayana Reddy. It observed as under :

“... .. Leave granted.

After we have heard the matters for a pretty long time, it emerged that one of the Hon'ble Judges who had passed the impugned order dealt with the subject matter in issue as Principal District Judge, Ranga Reddy District, while disposing of an application under Order 21 Rule 97 and Rule 99 read with Section 151 of the Code of Civil Procedure and had passed the order on 08.06.1998, whereupon learned counsel for the parties suggest that the impugned order be set aside and the matters be remitted back to the Division Bench of the High Court for fresh consideration of the matters in accordance with law.

We order accordingly.

It is made clear that we have not expressed any opinion in regard to the merit of the cases of the parties.

As the matters are pending since long, we deem it expedient that the High Court decides the cases expeditiously, preferably within a period of six months from the date the parties appear before it in the cases.

Further, we direct the parties to appear before the Andhra Pradesh High Court on 24.03.2014 and no notice is necessary to be issued by the High Court in this regard.

The Order of status quo granted by this Court shall remain operative till the decision by the High Court.

With the aforesaid observations and directions, these appeals stand allowed, impugned order(s) is set aside and the matters are remitted back to the Division Bench of the High Court for fresh consideration in accordance with law.

S.L.P.(C).No.21308 of 2008 :

Application for deletion of the respondents is allowed. No orders on the application for impleadment.

In view of the Order passed in S.L.P.(C).No.11101 of 2006 and analogous cases, this special leave petition is also disposed of with liberty to the parties to take recourse to such other remedy as is available to them in law.

It is made clear that we have not expressed any opinion to the maintainability of the application for revocation of permission granted to the petitioner.

This special leave petition is disposed of with the aforesaid liberty.”

Part V:

Events after the 3rd remand order dt.5.3.2014 , discussion and findings on all points raised before us in the present OSAs before us now

137. By virtue of this order of the Supreme Court, OSAs.54, 56, 57, 58 and 59 of 2004 were listed before this Bench for hearing.

138. Heard Sri Vedula Venkata Ramana, Senior Counsel for M/s Bharadwaj Associates, Sri Vikas Singh, Senior Counsel for V.Ravichandran, Counsel for M/s Cyrus Investments Pvt. Ltd. Sri J.V.Suryanarayana, and Sri Partahsarathy, Senior Counsel for Sri P.Dharmesh, Counsel for respondent nos.6, 9 to 11, 13 to 18, 21 and 26 in O.S.A.No.56 of 2004 and also for respondent nos.1 and 2 in O.S.A.No.58 of 2004; Sri B.Adinarayana Rao, Senior Counsel appearing for Sri Kakara Venkat Rao, Counsel for respondent no.10 in O.S.A.No.54 of 2004 and respondent no.102 in O.S.A.No.57 of 2004 on 23.10.2019, 29.10.2019, 30.10.2019, 31.10.2019, 05.11.2019, 11.11.2019, 12.11.2019 and 13.11.2019, and orders were reserved on 13.11.2019.

Discussion :

The scope of the enquiry under Or.XXI Rule 97-101 CPC

139. We shall first consider the scope of an enquiry under Order XXI Rules 97 to 101 CPC.

140. Order XXI Rule 97 of CPC deals with the remedy to be availed of by a decree holder having a decree for possession of immovable property or a purchaser of any such property sold in execution of a decree, when he is obstructed or resisted by any person in obtaining possession of the property. The said provision enables him to make an application under sub-Rule (1) thereof to the Court complaining of such resistance or obstruction. Sub-Rule(2) of the said provision directs the Court to adjudicate upon the said application in accordance with the provisions contained in the CPC.

141. Sub-Rule (1) of Order XXI Rule 98 of CPC states that upon determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-Rule (2) –

- “a) *make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or*
- b) *pass such other orders as, in the circumstances of the case, it may deem fit.”*

Sub-Rule (2) states that whereupon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

142. Order XXI Rule 99 of CPC deals with the remedy to be availed of by a person *other than the judgment debtor* who is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of the decree, by the purchaser thereof. Sub-Rule (1) thereof enables him to make an application to the Court complaining of such dispossession. Sub-Rule (2) thereof directs the Court to adjudicate upon the application.

143. Order XXI Rule 100 of CPC deals with the order to be passed by the Court upon an application complaining of dispossession made under Rule 99 of Order XXI CPC. It states:

“Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination:-

- i. make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application: or*
- ii. pass such other order as, in the circumstances of the case, it may deem fit.*

144. Order XXI Rule 101 of CPC states:

“All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.” (emphasis supplied)

145. The word ‘any person’ appearing in Order XXI Rule 97 CPC has been interpreted in **Silverline Forum Pvt. Ltd. v. Rajiv Trust**⁴ to cover every sort of resistance or obstruction offered by any person to the execution of the decree by the decree holder or purchaser of property sold in execution of a decree. The Court held that though Rule 99 of Order XXI is not available to any person *until* he is dispossessed of immovable property by the decree holder, Rule 101 stipulates that all questions ‘*arising between the parties to a proceeding on an application under Rule 97 or Rule 99*’ shall be determined by the Executing Court, if such questions are ‘*relevant to the adjudication of the application*’. It held that *a third party to the decree who*

⁴ 1998(3) SCC 723

offers resistance would thus fall with the ambit of Rule 101 if any adjudication is warranted as a consequence of the resistance or obstruction by him to the execution of the decree. It explained that the words '*all questions arising between the parties to a proceeding on an application under Rule 97*' would envelop *only such questions as would legally arise for determination between those parties and that the Court is not obliged to determine a question merely because a resistor raised it*. It held that the questions which the Executing Court is obliged to determine under Rule 101, must possess two adjuncts – (i) that such questions should have legally arisen between the parties, and (ii) such questions must be relevant for consideration and determination between the parties. By way of illustration it explained that if the obstructer admits that he is a transferee *pendent lite* it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property *and* a third party, who questions the validity of a transfer made by the decree holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings.

The Supreme Court emphasized that it is necessary that the questions raised by the resistor or the obstructer must legally arise between him and the decree holder. Referring to Order XXI Rule 35(1) CPC it held that the Executing Court can decide *whether the resistor or obstructer is a person bound by the decree*. According to the Supreme Court, the adjudication mentioned in Order XXI Rule 97(2) CPC need not necessarily involve a detailed enquiry or collection of evidence and the Court can make the

adjudication on admitted facts or even on the averments made by the resistor.

It was also held that it is open to the Court to direct the parties to adduce evidence for such determination if the Court deems it necessary. It explained that the Court can also enquire into whether the obstruction by that person in obtaining possession of immovable property was legal or not. It declared that the words ‘any person’ as contemplated by Order XXI Rule 97 CPC are comprehensive enough to cover *persons claiming independently and who would therefore be total strangers to the decree.*

146. These principles were reiterated in **Shreenath v. Rajesh**⁵ by stating that the word ‘any person’ in Order XXI Rule 97 CPC is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant/stranger. It also reiterated that *a person holding possession of a immovable property in his own right can object in execution proceeding under Order XXI Rule 97 CPC and he need not wait for his dispossession to enable him to participate in the execution proceedings.* It explained Order XXI Rule 101 CPC to mean that ‘all disputes’ between the decree holder and any such person are to be adjudicated by the Executing Court instead of by the long drawn out arduous procedure of a fresh suit.

147. In fact, in **N.S.Narayana Sarma and Others** (2 supra) (the second remand order of the Supreme Court) which arises out of these very claim petitions in CS.No.14 of 1958, the decisions of the Supreme Court in

⁵ 1998(4) SCC 543

Silverline Forum(P) Ltd. (4 supra) and **Shreenath** (5 supra) were followed and the Court declared that the legislature has enacted Order XXI Rules 97 to 101 CPC with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of immovable property under execution and has vested the power in the Executing Court to deal with all questions arising in the matter *irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature*; that this is a clear statutory mandate and should not be lost sight of by the Courts seized of any execution proceeding.

Under Or.XXI Rule 101 it is required that “all questions of right , title and interest” of both parties have to considered

148. Recently, in **Shamsher Singh vs. Nahar Singh**⁶ followed the decisions in **Silverline Forum Pvt. Ltd.** (4 supra), and once again reiterated that under Rule 101 of Order XXI, all issues relating to right, title or interest in the property can be determined. It held that a person seeking restoration of possession on the ground that he had acquired title by adverse possession must establish his right, title or interest under Order XXI Rules 99 to 101 CPC and the High Court erred in holding that issue of adverse possession need not be considered in the appeal before it.

Issue of fraud on Court can be taken up in a claim petition filed under Order XXI Rule 97 -101 CPC by the Court

149. The next question which arises is, whether an issue of fraud, if raised in a claim petition filed under Order XXI Rule 97 CPC can be gone into by the Executing Court in such application.

⁶ (2019) SCC Online SC 938

150. The Supreme Court had an occasion to consider this issue in **National Textile Corporation (Maharashtra South) Ltd. v. Standard Chartered Bank and another**⁷. In that case the respondent No.1 was a landlord of the suit premises and respondent No.2 was the tenant of respondent No.1 in respect of the suit office premises, while the petitioner was the sole tenant in respect of part of the suit office premises. During the pendency of the suit, respondents No.2 and 1 entered into a compromise under which respondent No.2 agreed to handover to respondent No.1, 7,800 sq.ft. area of the suit office premises. The said compromise stated that the area in occupation of the petitioner is only 3,617 sq.ft. out of total area of 11,417 sq.ft. A writ petition was filed by the petitioner before the Mumbai High Court contending that fraud was committed as against the petitioner by both respondents No.1 and 2 by including the area in possession of the petitioner without bringing the petitioner as a party to the compromise. The Bombay High Court dismissed the Writ Petition. Petitioner then approached the Supreme Court and contended that the compromise terms are not binding on it and fraud was committed against it by both the respondents by including the area in possession of the petitioner without bringing the petitioner as a party to the compromise. The Supreme Court held that questions of *fraud* and to what extent the area covered by the compromise includes the area in possession of the petitioner cannot be gone into in writ proceedings as they are questions of fact and that *the proper course open to the petitioner was to have moved under Order XXI Rule 97 of CPC*. On the facts of that case the Court permitted him to file a fresh suit since there was a dispute, whether the petitioner was dispossessed or not from the subject premises.

⁷ 2000(10) SCC 592

151. Justice A.M. Khanwilkar of the Bombay High Court (as he then was) in **Ahmed Abdul Aziz Bengali v. Mohammed Hanif M.Mullaa and others**⁸ considered this issue and held that on a plain reading of Order XXI Rules 97 to 101 CPC *it is not open to contend that the question relating to a decree obtained by fraud cannot be gone into by the Executing Court at the instance of a third party, who is neither a judgment debtor nor claiming through the judgment debtor.* He held that Rule 101 bars a separate suit and instead requires all questions arising between the parties shall be determined by the Court dealing with the application filed under Rule 97 or Rule 99 and *the issue regarding the decree having been obtained by fraud can surely be adjudicated by the Executing Court at the instance of a stranger to the decree.* On the facts of the said case, the Court held that the petitioner therein had abused the process of the Court by filing a false suit against a fictitious person, that the petitioner had engaged in sharp practice and made calculated moves with ulterior design so as to evict the respondent No.2, who was in possession of the suit premises, by instituting a false suit against respondent No.3 on the premise that he was his tenant in respect of the suit premises, though he was aware at the time of the institution of the suit that it was the respondent No.2 who was in physical possession and occupation of the suit premises.

152. Similar view was also expressed by the Division Bench of Calcutta High Court in **Sri Bibhusti Bhusan Dutta v. Dr.Samarendra Nath Misra**⁹.

The Calcutta High Court held:

⁸ 2001 AIHC 3500

⁹ 2002(3) Cal. H.C.N. 482

“19. The question pertaining to the validity of the ex parte decree and its binding effect between the parties the suit cannot be gone into within the scope of Rule 99 Civil Procedure Code. True it is, but where such decree is obtained by practicing fraud upon Court, when such question has been brought before the Court, the question comes within the exception of the principle that the Executing Court cannot go behind the decree, when a third party claims that the decree is not binding upon him in certain circumstances. When fraud is alleged, the Executing Court can examine the same even if it amounts to going behind the decree. Inasmuch as fraud unravels everything. One cannot be permitted to reap the benefit of a fraudulently obtained decree even on a sound principle of law that the Executing Court cannot go behind the decree, in a case where it is claimed that the decree is not binding upon the person dispossessed in view of Rule 101 Order 21 Civil Procedure Code. Inasmuch as, in that event, the Court would be an idle onlooker to the abuse of its jurisdiction. Unscrupulous people would then take advantage of the judicial system. Judicial process cannot be utilized to aid fraudulent activities of a litigant. In such a case, the Court has to rise to the occasion and protect and preserve its purity. The purity of justice cannot be permitted to be soiled or polluted. It is the self-preservation of the justice delivery system. Unless it is preserved, people will loose faith in the judiciary and unscrupulous people will take advantage of their fraudulent activities, making a mockery of the judicial system. These are cases where the Court has to activate itself to find out whether its process has been abused and advantage of any fraudulent activity is obtained by any party by acting fraud upon court.”(emphasis supplied)

153. This was reiterated by another Division Bench of the Calcutta High Court in **Sova Rani Chandra v. Gur Charan Kaur**¹⁰.

Summary of principles applicable to applications under Or.XXI Rule 97-101 CPC

154. In our opinion, the following principles emerge from the above decisions:

- (i) *The expression ‘any person’ occurring in Order XXI Rule 97 CPC would cover every sort of resistance or obstruction offered by any person to the execution of the decree by the decree holder or purchaser of property sold in execution of a decree;*

¹⁰ 2003(3) Cal. H.C.N. 28

(ii) *The words ‘any person’ in Order XXI Rule 97 CPC are comprehensive enough to cover persons claiming independently and who would therefore be total strangers to the decree; and a person holding possession of a immovable property in his own right can object in execution proceeding under Order XXI Rule 97 CPC and he need not wait for his dispossession to enable him to participate in the execution proceedings.*

(iii) *The expression ‘all questions’ which was followed by the expression ‘including the question relating to right, title or interest in the property’ makes the same inclusive and not exhaustive. ‘All disputes’ between the decree holder and any such person is to be adjudicated by the Executing Court instead of by a long drawn out arduous procedure of a fresh suit.*

(iv) *Questions to be determined by the Executing Court under Rule 101 of Order XXI must possess two adjuncts – a) that such questions should have legally arisen between the parties, and b) such questions must be relevant for consideration and determination between the parties; and that the Court is not obliged to determine a question merely because a resistor raised it;*

(v) *The Executing Court can decide whether the resistor or obstructer is a person bound by the decree; and whether the obstruction by that person in obtaining possession of immovable property was legal or not;*

(vi) *The legislature has enacted Order XXI Rules 97 to 101 CPC with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of immovable property under execution and has vested the power in the Executing Court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature;*

Fraud:

(vii) *An issue of **fraud**, if raised in a claim petition filed under Order XXI Rule 97 CPC can be gone into by the Executing Court in such application but it must have legally arisen between the parties, and it must be relevant for consideration and determination between the parties; the issue regarding the decree having been obtained by fraud can be adjudicated by the Executing Court at the instance of a stranger to the decree;*

(viii) *The adjudication mentioned in Order XXI Rule 97(2) CPC need not necessarily involve a detailed enquiry or collection of evidence and the Court can make the adjudication on admitted facts or even on the averments made by the resistor. It is open to the Court to direct the parties to adduce evidence for such determination if the Court deems it necessary;*

(ix) *Thus, this includes the question of fraud within the scope and ambit of such proceeding. Even if it is contended that the fraud is independent and that the person sought to be affected is not bound by the decree or that the decree has been obtained fraudulently without making him a party, are also the questions, which can be gone into within the scope and ambit of Rule 101.*

(x) *In exercise of the power of the Court under Order XXI Rule 97 to 101 of C.P.C., the Court has the power and the jurisdiction not merely to allow application under Order XXI Rule 97 and 99 C.P.C. and direct the applicant to be put into possession of the property or to dismiss the application, but it can also pass such other order as, in the circumstances of the case, it may deem fit, in view of Clause (b) of sub-Section (1) of Order XXI Rule 98 and Clause (b) of Order XXI Rule 100 of C.P.C..*

155. In view of the above settled legal position, in proceedings under Order XXI Rule 97 to 101 CPC, we hold that the Executing Court can also consider the question *whether the said decree is binding on the objector/claim petitioner* as well as the question *whether the said decree was obtained by playing fraud on the Court or a party* and its jurisdiction is not confined to merely allowing or dismissing the claim petition but also extends to passing other orders, which it feels are warranted by the circumstances.

156. In the instant cases, the provisions of Order XXI Rules 97 and 99 CPC were invoked by the claim petitioners. Therefore, the above parameters have to be kept in mind while deciding these appeals.

Another reason why appellants should prove their title:

157. It is based upon the principle that a dispossessor must prove that he has better title than the person in possession, whether the dispossessor is a plaintiff /applicant or a defendant/respondent.

158. These principles were laid down in **Rame Gowda v. M. Varadappa Naidu**¹¹, following the decision in **Nair Service Society Ltd. v. K.C. Alexander**¹². It was held therein that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted.

159. Since the appellants sought to evict the claim petitioners by filing the E.P.No.3 of 1996, they must show a better title than the claim petitioners to succeed. Otherwise on the basis of their prior possession, the claim of the claim petitioners would have to be upheld.

160. On the question of title, learned Counsel for the appellants Sri Vedula Venkata Ramana, Senior Counsel appearing for M/s. Bharadwaj Associates in these OSAs and Sri Vikas Singh, Senior Counsel appearing for Sri V. Ravichandran, Counsel for M/s. Cyrus Investments Pvt. Ltd. raised a contention that in these appeals, this Court should limit itself only to consideration of the claim of the claim petitioners and virtually accept the preliminary decree dt.28.06.1963 in C.S.No.14 of 1958 as evidence of the

¹¹ (2004) 1 SCC 769

¹² AIR 1968 SC 1165

title of the appellants / predecessors, i.e., Khursheed Jah Paigah, Dildarunnisa Begum, Kazim Nawaz Jung and H.E.H. The Nizam.

The contention is that the Court has to proceed on the basis that the land in Survey No.172 of Hydernagar Village is Matruka property of Khursheed Jah Paigah and concentrate only on the question whether the claim petitioners have established, their right, title or interest to the lands claimed by them in the claim petitions.

161. In our opinion, this submission cannot be accepted. Undoubtedly, the right, title or interest in the property is required to be determined in the execution proceedings. In this context, the words '*all questions*' occurring in Or.XXI Rule 101 CPC indicate that by using the word '*including*' that 'what follows those words are merely illustrative and not exhaustive'.

The Court is therefore not confined only to the question of right, title or interest in the property of the claim petitioners but of all the parties including the title of the persons who want to dispossess those in possession. More so, because a separate civil suit is barred by Order XXI Rule 101 C.P.C.

162. If the above contention of the Counsel for appellants were to be accepted, it would render the words '*all questions including*' in Order XXI Rule 101 *otiose* by confining enquiry only into the question relating to the right, title or interest in the property of the obstructionist/claim petitioner.

163. It is settled law that a construction of a statute which renders any part of a statute to be otiose must be rejected. (**Krishan Gopal v Prakashchandra**¹³)

164. Therefore, we hold that the enquiry under Order XXI Rule 97 to 101 C.P.C. cannot be confined only to the claim of the obstructionist / claim petitioner / respondents in the OSAs 54, 56, 57 and 58 of 2004. This Court would be entitled to even go into the entitlement of the appellants to file E.P.No.3 of 1996 to execute the preliminary decree dt.28.06.1963 as well as order dt.28.12.1995 in Application No.994 of 1995 and consider all relevant matters including whether the preliminary decree dt.28.06.1963 and order dt.28.12.1995 in Application No.994 of 1995, is obtained by playing fraud on court as well as claim petitioners.

165. Secondly, as pointed out above, the initial burden to prove title is on the dispossessor and he has to prove a better title than the persons in occupation, whether he is a plaintiff (applicant) or a defendant (respondent).

Thirdly, the appellants were obliged to prove title in the light of the decision of the Supreme Court in **Rangammal v.Kuppuswami**¹⁴, explained below.

The application by this Court of the above principles to the facts of the OSAs.54, 55 to 58 of 2004

(a) **Whether the appellants have discharged the initial burden of proof as to title to land in Hydernagar Village, i.e whether the property is the Matruka property of Khurshhed Jah Paigah?**

166. We have already noticed that Hydernagar Village is the subject matter of the compromise decree portion of the preliminary decree dt.28.06.1963

¹³ (1974) 1 SCC 128

¹⁴ (2011) 12 S.C.C. 220

and not the contested portion of the said decree. There was never any adjudication by this Court of the issue whether land in Sy.No.172 of Hydernagar Village or for that matter any land in Hydernagar Village was the Matruka property of Khursheed Jah Paigah.

The present third party claimants were not parties to the said compromise preliminary decree dt.28.6.1963 in CS 14 of 1958 and the same was passed behind their back.

167. It is not open to the appellants in the OSAs as well as M/s. Cyrus Investments Pvt. Ltd. to therefore contend that the question whether the land in Survey No.172 of Hydernagar Village is Matruka property or not, cannot be adjudicated as between them and third parties by this Court in these OSAs, and that the said issue had already been 'adjudged' in the judgment of the High Court dt.28.6.1963 while passing the preliminary decree. As stated earlier, at the stage of preliminary decree, there was no adjudication and the decree was passed by way of compromise between both sides.

168. The claim petitioners / respondents may have to prove (only after and if the appellants had made out a better title because the initial burden is on the persons who want to dispossess those in possession), their right, title or interest in the EP schedule property, in case the appellants in the OSAs 54, 56 to 58 of 2004 have initially succeeded in proving that the property was the Matruka property of Khursheed Jah Paigah.

Direct authority of the Supreme Court on this point

169. Dealing with a partition suit of a Hindu Joint Family where a third party claimed that his property, which is not the property of the plaintiff's

Hindu Joint Family, was included to his prejudice, the Supreme Court observed the following in **Rangammal (14 Supra) :**

“45. It hardly needs to be highlighted that in a suit for partition, it is expected of the plaintiff to include only those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned and if someone else’s property, meaning thereby disputed property is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial court, obviously it is the plaintiff who will have to first of all discharge the burden of proof for establishing that the disputed property belongs to the joint family which should be partitioned excluding someone who claims that some portion of the joint family property did not belong to the plaintiff’s joint family in regard to which decree for partition is sought.”(emphasis supplied)

170. There is also no reason why this logic cannot apply to suits for partition of alleged Matraka property of Muslims.

Therefore it is clear that the initial burden is on the appellants to prove that they derive title from Khursheed Jah who had Matraka property including the present property.

171. If a third party can get impleaded in a suit and compel the plaintiff to initially establish that the disputed family belongs to the joint family, *afortiori*, there is all the more reason to compel the plaintiff or persons claiming through the plaintiff in a partition suit to initially establish in a claim petition under Order XXI Rule 97-101 C.P.C., that the property is indeed the property of the family of the plaintiff and not the property of the third party.

(a) Whether the appellants discharged the burden of proving that land in Sy.No.172 of Hydernagar Village is the Matraka property of Khursheed Jah Paigah?

172. In the claim petitions filed by the third parties no oral evidence was adduced by the appellants and they merely marked some documents. Not a

single document or other evidence has been filed by the appellants to prove that the land in Sy.No.172 of Hydernagar Village is Matruka property of Khursheed Jah Paigah.

173. Herein below, while discussing the point whether the claim petitioners have established their right, title and interest in the extents claimed by them in the claim petitions, we have dealt elaborately with the legal regime prevalent prior to 1948, before annexation of the Hyderabad State and also dealt incidentally why the property cannot be said to be Matruka property of Khursheed Jah Paigah, available for partition. To avoid repetition, we have not dealt with this aspect more in detail here.

174. In our opinion, the burden of proof on the part of the appellants that the property is Matruka property, not having been discharged, the burden will not shift to the claim petitioners to establish their rival claim to the extents of land in Sy.No.172 of Hydernagar village covered by the claim petitions at all.

175. So the contention of the appellants in OSAs 54, 55 to 58 of 2004 that they are entitled to claim the said property **as Matruka property**, cannot be accepted.

(b) The effect of the decision of the Supreme Court in it's second Remand order dt.23.11.2001 in N.S.S. Narayan Sarma and others (2 supra) setting aside the order dt.of the High Court dt.28.12.1995 in Appln.No.994 of 1995

176. Admittedly, E.P.No.3 of 1996 is filed by the appellants in OSAs.54, 56 to 58 of 2004 for a direction to the bailiff of the District Court, Ranga Reddy District pursuant to the direction given by this Court on 28.12.1995 in Application No.994 / 1995 in C.S.No.14 of 1958 to deliver possession of

land admeasuring Acs.98.10 gts. forming part and parcel of Sy.No.172 of Hydernagar village, Balanagar Mandal, Ranga Reddy District.

177. It is not in dispute that the order dt.28.12.1995 in Application No.994 of 1995 was set aside by the Supreme Court in para no.20 of its order dt.23.11.2001 in Civil Appeal Nos.7983 of 2001 with Nos.7984 – 85 and 7986 – 88 of 2001 reported in **N.S.S. Narayana Sarma and others** (2 supra).

178. Once the said order dt.28.12.1995 in Application No.994 / 1995 in C.S.No.14 of 1958 was set aside by the Supreme Court on 23.11.2001, the very foundation of E.P.3 of 1996 to execute the direction contained in the said application No.994 of 1995, is knocked out and the E.P.is not maintainable.

(c) All consequential orders dependent upon the order dt.28.12.1995 automatically are rendered void

179. As a direct consequence of the order in **N.S.S. Narayan Sarma and others** (2 supra), the order of the District Judge, Ranga Reddy dt.29.03.1996 in E.P.No.3 of 1996 in C.S.No.14 of 1958 as well as the bailiff report dt.19.04.1996 executing the warrant dt.29.03.1996 would also fall to the ground.

180. This is because once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order is applicable to all judicial, quasi-judicial and also administrative orders as held in **Badrinath vs.**

Government of T.N.¹⁵, State of Kerala vs. Puthenkavu NSS Karayogam¹⁶, Kalabharati Advertising vs. Hemant Vimalnath Narichania¹⁷ and Chairman – cum – Managing Director, Coal India Ltd. and others vs. Ananta Saha and others¹⁸. They are dependent orders. In this situation, the legal maxim *sublato fundamento cadit opus* is applicable which means ‘*once the foundation is removed, the super structure falls*’.

181. As a consequence, the order of the District Judge, Ranga Reddy dt.29.03.1996 in E.P.No.3 of 1996 in C.S.No.14 of 1958 as well as the bailiff report dt.19.04.1996 executing the warrant dt.29.03.1996 would cease to exist and no reliance can be placed on the same by the appellants. For all intents and purposes they are null and void and deemed to be non-existent.

182. If the appellants in OSAs.54 and 56 to 58 could not have filed EP.No.3 of 1996 at all, they could not have allegedly evicted the claim petitioners.

Finding:

183. For all the above reasons, it is declared that the consequential orders of the District Judge, Ranga Reddy dt.29.03.1996 in E.P.No.3 of 1996 in C.S.No.14 of 1958 as well as the bailiff report dt.19.04.1996 executing the warrant dt.29.03.1996 are to be treated as *non est* and they are null and void, because they were passed on the basis of the decision of the High Court dt.28.12.1995 in Appl.994 of 1995 (which was set aside by the Supreme

¹⁵ (2000) 8 SCC 395

¹⁶ (2001) 10 SCC 191

¹⁷ (2010) 9 SCC 437

¹⁸ (2011) 5 SCC 142 para 32 and 33

Court in the second remand order dt.23.11.2001), and the appellants cannot place any reliance on them.

(d) What happens to the Final decree dt.24.4.1998 in Application No.517 of 1998 in CS No.14 of 1958?

184. Normally execution by a Court follows passing of final decree in a partition suit. In **Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande**¹⁹, the Supreme Court had held:

“8. It has been seen that after passing of preliminary decree for partition, the decree cannot be made effective without a final decree. The final decree made in favour of the first respondent is only partial to the extent of his 1/6th right without any demarcation or division of the properties. Until the rights in the final decree proceedings are worked out qua all and till a final decree in that behalf is made, there is no formal expression of the adjudication conclusively determining the rights of the parties with regard to the properties for partition in terms of the declaration of 1/6th and 5/6th shares of the first respondent and the appellants so as to entitle the party to make an application for execution of the final decree.”

185. But in the instant case execution somehow happened before passing of final decree.

It is strange that possession was ordered to be delivered in the E.P. on the basis of a preliminary decree, and a final decree was passed later on the ground that possession was already delivered !

186. The final decree dt.24.4.1998 was passed in favor of the appellants in Application No.517 of 1998 in CS No.14 of 1958 in respect of Sy.No.172 of Hydernagar village.

¹⁹ (1995) 3 SCC 413

187. The said order reads:

“ that the property of extent Ac.98-10 gts in Sy.No.172 of Hydernagar village, Ranga Reddy District of Item 38 of Schedule IV have been delivered possession to the Defendants No.318 to 333 by the District Court, Ranga Reddy District on 17.4.1996 in E.P.3 of 1996. Hence this Final decree is passed in respect of the property shown in the schedule which is part of Item 38 of Schedule IV of CS No.14 of 1958.”

188. Thus the sole reason for passing Final decree in Application No.517 of 1998 in CS No.14 of 1958 in respect of land of Ac.98-10 gts in Sy.No.172 of Hydernagar Village is that there was delivery of possession to the appellants by the Bailiff on 17.4.1996 pursuant to the order dt.29.3.1996 in EP No.3 of 1996. This is quite the reverse and only after passing of a final decree could possession have been delivered.

Similar issue in another matter decided by this Court to which these very appellants were parties

189. A Division Bench of this Court considered similar issue in its order dt.15-02-2005 in O.S.A.No.44 of 2004 arising out of Application No.541 of 2002 in C.S.No.14 of 1958. In Application No.541 of 2002 also, like in the Application No.266 of 1983, a prayer for delivery of possession of lands in item Nos.1 to 7 in Schedule-IV A was sought on the ground that after the preliminary decree was passed on 28-06-1963, Advocate-Receivers had identified most of the lands of the Khursheed Jah Paigah with the help of the Deputy Director of Survey, Settlement and Land Records.

In that case, a learned Single Judge, on 18-08-2004, dismissed it stating that most of the lands were not in the possession of the parties to the suit and it is not the duty of the Court either to identify or recover possession of the lands from third parties and the prayer in the Application No.541/2002

travels beyond the scope of the decree that can be passed in any suit for partition.

The Division Bench upheld the same and held that after a preliminary decree is passed, final decree is to be passed by partitioning the property by metes and bounds; the prayer for recovery of possession and delivery of property cannot be granted till final decree is passed; and *even at the stage of passing of final decree, delivery of possession of the property can only be given provided the same is with either of the parties to the suit.* The Bench held that in case third parties are in possession, only symbolic delivery of possession can be handed over and that too *after passing of final decree* at the stage of execution after decree is drawn on appropriate stamp paper.

190. The applicant in Application No.541/2002 is M/s.Goldstone Exports Pvt. Limited (the 1st appellant in all the O.S.As. which are now being decided by us) and the respondent is M/s.Cyrus Investments Limited (its assignor) which was the applicant in Application No.266/1983. It is also an appellant No.17 in O.S.A.Nos.54 of 2004 to 58 of 2004 and respondent No.12 in Application No.994/1995.

191. This order dt.15-02-2005 in O.S.A.No.44 of 2004 and the principle laid down therein binds both of them and they are not entitled to canvass, in these O.S.As., to the contra.

The said decision of this Court is therefore directly in point.

192. The logical consequence of declaring that the order dt.29.3.1996 in E.P. No.3 of 1996 and the consequent Bailiff report dt.19.4.1996 (in which persons in possession were not impleaded) recording delivery of Ac.98-10

gts in Sy.No.172 of Hydernagar village, Ranga Reddy District of Item 38 of Schedule IV are null and void and non-existent, is that the order dt.24.4.1998 passing Final decree in Appln. No.517 of 1998 in CS No.14 of 1958, also falls to the ground on the principle *sublato fundamento cadit opus* discussed above which means '*once the foundation is removed, the super structure falls*'.

Finding:

193. Thus it is declared that the order dt.24.4.1998 passing Final decree in Appln. No.517 of 1998 in CS No.14 of 1958 is null and void and there is no Final decree with regard to the Ac.98-10 gts in Sy.No.172 of Hydernagar village, Ranga Reddy District of Item 38 of Schedule IV.

194. This Court is entitled to hold as above in exercise of power conferred on this Court under Clause (b) of sub-Section (1) of Rule 98 of Order XXI C.P.C. and also Clause (b) of Rule 100 of Order XXI C.P.C. which confer power on this Court to pass *such other order as, in the circumstances of the case, it may deem fit.*

(e) Other reasons why the Bailiff report dt. 19.4.1996 is to be rejected

195. It is important to note that the order dt.05-07-1974 in Application No.19/1973 in C.S.No.14 of 1958 itself records the contention of the State Government that except the lands in Sy.No.145 and 163 of Hydernagar village, the other lands in the said village *were in possession of the ryots or were communal lands and that the Government has no effective possession of those lands; and that in respect of these lands, the Government was not in a position even to give symbolic delivery of possession to the Receiver.*

196. Sy.No.172 of Hydernagar village falls in the category of lands which was in the possession of ryots and that was why in that application this Court passed the order directing the *Receiver-cum-Commissioner to take steps available at law to take possession of the lands from the actual occupants.*

197. The possession of third parties of lands in Sy.No.172 is also clear from Ex.A-4/ A- 12 Faisal Patti issued by the Revenue Department in 1978-79 recording the possession of several persons including Ruquia Begum, Waris Ali, Ghani Sharef, Boddu Veeraswamy and others.

198. Thus, it is indeed unbelievable that the Bailiff of the Court could not find any third party in possession of the lands in Sy.No.172 covered by his warrant, though a large number of third parties were shown in possession as per the Faisal patti of 1978-79 as mentioned earlier. He was either blind to the reality or must have drafted the report without going anywhere near the property fraudulently.

Finding:

199. We hold that the Bailiff report is not based upon the available record namely the Faisal patti of 1978-1979 and it does not reflect the true facts and cannot be accepted as evidence of delivery of possession of Ac.98.10 gts in Sy.No.172 of Hydernagar village to M/s.Goldstone Exports Private Limited and 15 others who filed Application No.994/1995 and E.P.No.3 of 1996 or as regards lack of resistance to the alleged delivery of possession said to have been made by him to the applicants in E.P.No.3 of 1996. It deserves to be discarded as a worthless piece of evidence.

200. In any event, even the Bailiff report had only recorded that there was no resistance from the *judgment debtors* i.e., Khasim Nawaz Jung (defendant No.157) and M/s Cyrus Investments (defendant no.206), the ‘assignors’ of the appellants.

201. The claim petitioners were not the *judgment debtors* in the E.P.3/1996. So any statement made by the Bailiff about lack of resistance cannot be said to apply to the claim petitioners at all.

202. Only those who were not interested in resisting delivery of possession i.e the assignors were alone made parties in E.P.3 of 1996 and an order was obtained behind the back of persons in possession.

Finding:

203. Since the Bailiff report is fraudulent, any recording therein about taking of possession of the land in Sy.No.172 of Hydernagar Village is to be ignored.

(f) Re: the plea of collusion and fraud on court

204. The Senior Counsel for the claim petitioners vehemently contended that (i) the parties to the C.S.No.14 of 1958 had obtained the preliminary decree dt.28.6.1963 in CS.No.14/1958, and (ii) defendant nos.157 and 206, the predecessors of the appellants had obtained the Order dt.20.1.1984 in Application No.266 of 1983 and the Order dt.28.12.1995 in Application No.994 of 1995 from the A.P High court by playing fraud on the Court and on the claim petitioners by way of collusion to defeat the rights of third parties/pattedars/ claim petitioners in possession of the land in Sy.No.172

and so such orders cannot be permitted to be executed and ought to be declared as null and void.

205. We are inclined to consider the said plea since, if proved, it would be a strong defense against the executability of the preliminary decree dt.28.6.1963 in C.S.NO.14/1958 itself as well as the order dt.28.12.1995 in Application No.994/995 in E.P.3 of 1996 in view of the decisions of the Supreme Court in **National Textile Corporation (Maharashtra South) Ltd.** (7 Supra), of the Bombay High Court in **Ahmed Abdul Aziz Bengali** (8 Supra) and the Calcutta High Court in **Sri Bibhusti Bhusan Dutta** (9 Supra).

Fraud on the Court can be found by the Court by examining the record of the case before the Court

206. The counsel for the claim petitioners contended that where allegation of fraud on the Court or on parties is raised (in relation to obtaining of preliminary decree dt.28.6.1963 in C.S.NO.14/1958 as well as the order dt.28.12.1995 in Application No.994/995), *on basis of the record of the Court itself*, there is no necessity of a separate and specific pleading.

207. This above principle was laid down in **Lachhman Dass v. Jagat Ram**²⁰. In that case, the Supreme Court declared:

“17. The manner in which the purported consent decree was entered into by and between Defendant 9 on the one hand and Defendants 1 and 2 is telltale. Defendants 1 and 2 having transferred their right and interest, could not have conveyed any right in the property of Defendant 9. No such right existed in them.

18. In the consent decree no finding was arrived at as to on what basis the right of defendant-Respondent 9 was considered to be a superior right of

²⁰ (2007) 10 SCC 448

pre-emption. Defendant 9 out of the total consideration amount of Rs 30,000, deposited only 1/5th thereof i.e. Rs 6000 in the court. Respondents 1 and 2 neither said to have claimed the said amount nor the rest of the amount of Rs 24,000 could have been paid in their favour by Defendant 9.

19. If Defendants 1 and 2 only could not have accepted the said amount as a valid consideration of passing of a decree of pre-emption in favour of Respondent 9; the purported consent decree, in our opinion, was void ab initio. Moreover, in the aforementioned facts and circumstances of this case, the appellant was a necessary party therein. No decree, therefore, could have been passed in his absence. The parties to the said suit and, in particular, defendant-Respondents 1 and 2, therefore, by suppression of material facts committed a fraud on the court in obtaining the said decree. It may be true that collusion between Respondent 9 and Defendants 1 and 2 was required to be specifically pleaded, but in this case collusion between them is apparent on the face of the record. The circumstances obtaining in the case lead to only one conclusion that the parties were in collusion with each other for the purpose of obtaining the said decree.”(emphasis supplied)

208. So if the fraud and collusion is apparent from the record of the suit CS No.14/1958, there is no necessity of any specific pleading and Order VI Rule 4 C.P.C., would not apply in such a situation.

The preliminary decree dt.28.6.1963 in C.S.NO.14/1958 in so far as lands in Hydernagar village was procured by playing fraud on the Court

209. As held in **Venkat Reddy vs. Pethi Reddy**²¹, no doubt a preliminary decree is regarded as embodying the final decision of the Court passing that decree insofar as matters dealt with by it.

210. But, this is not to say that if it is vitiated by fraud or collusion, in a proceeding under Order XXI Rule 97 to 101 CPC, the Civil Court cannot hold it to have been procured by playing fraud on the Court or obtained by collusion and therefore incapable of being implemented / executed.

²¹ AIR 1963 SC 992

211. As regards the preliminary decree dt.28.6.1963 in CS.No.14/1958, it is contended by the claim petitioners:

(i) that an extent of Ac.1210.00 gts in a compact block in the village of Hydernagar is No.38 of schedule-IV of the plaint schedule in CS No.14/1958. No Survey Numbers or boundaries were given for the said item; it was stated in the plaint that survey numbers were not available; as per Order VII Rule 3 C.P.C., where the subject matter of a suit is immovable property, the plaint should contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint should also specify such boundaries or numbers; normally this would be noticed by the Court dealing with the suit involving immovable property, pointed out by it to the plaintiff, and the plaintiff would take steps to amend the plaint schedule by mentioning the boundaries and survey numbers of the land mentioned in the plaint schedule, but strangely this never happened; the plaintiff contended that all the plaint schedule properties were Matruka properties of late Khursheed Jah Paigah and she and other sharers/defendants were entitled to the same; one of the prayers in the suit was for a preliminary decree to be passed directing the properties detailed in schedule-IV and IV-A which are in the possession of the parties detailed in para-12 (defendant No.43) *and all other properties whatsoever may be found to belong to the Matruka of late Nawab Khursheed Jah be divided by metes and bounds and the plaintiff be given her 29/2944th share therein; and thus, it is clear that even the plaintiff was not aware of specific particulars such as boundaries and survey numbers of the properties said to be Matruka property.*

(ii) It was baldly stated in the plaint at para12 that properties in Schedules IV and IV (a) were left in the custody of the Government treasury during the days of Police action and subsequently they passed into the custody of the Jagir Administrator (Defendant No.43).

No evidence was adduced by the plaintiff in the suit in regard to possession of lands in Hydernagar Village and a consent preliminary decree was passed affecting third parties who would be affected by the execution of the said decree.

(iii) The Receiver had illegally identified several Survey No.s in Hydernagar village including Sy.NO.172 as forming part of the plaint schedule.

According to the claim petitioners, this establishes the fraud played on the Court by the predecessors of the appellants in the O.S.As./parties to C.S.No.14/1958 to obtain the preliminary decree suppressing relevant facts and renders the preliminary decree itself unenforceable.

212. We agree with these contentions of the claim petitioners.

213. Further we also noticed that:

(a) The Receiver-cum-Commissioner unilaterally made the court to believe that Sy.No.172 of Hydernagar Village was Matraka property of Khursheed Jah Paigah, though the Survey Number was not mentioned in the plaint schedule by the plaintiff in C.S.No.14 of 1958.

- (b) On 01-11-1971, the Receiver-cum-Commissioner filed application No.139/1971 seeking orders from the High Court as to whether he should proceed with the preparation of scheme of partition by distributing only the **claims** (but not the physical land) stating that *third parties are in actual and apparently long possession of the suit schedule agricultural lands* and they would have to be treated as protected tenants under Section 34, 37 and 37-A of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. He stated that those lands were not available for distribution and only the claims in respect of those lands will have to be allotted to the shareholders according to their respective shares in terms of the value of the land after making proper valuation of the lands.

An explanatory note was enclosed by the Receiver-cum-Commissioner to the Application No.139/1971 stating that that the Collector, Hyderabad District, who was ordered to handover possession of the lands of Hydernagar to the Receiver was raising objections with regard to the title in respect of lands therein claiming that they are Government lands, notwithstanding the fact that the preliminary decree was passed against the Government also which was defendant No.53. He categorically admitted that “*none of the lands are in possession of the Receiver-cum-Commissioner or in the possession of any of the admitted shareholders and so only **claims** of the shareholders in the lands proposed to be allotted to them have therefore been partitioned, as either the Government or third parties as Protected Tenants or otherwise **are actually in possession of them.***”

(c) In 1973, the Receiver-cum-Commissioner filed Application No.19/1973 in C.S.No.14 of 1958 impleading only the State of Andhra Pradesh as a party and praying the High Court to issue directions to the Collector, Hyderabad District *to handover possession* of the lands in Sy.Nos.145, 163 and 172 of Hydernagar stating that in spite of direction dt.24-03-1967 in Application No.268/1966, the Collector, Hyderabad, who is in possession of the said lands did not handover possession of those lands to the Receiver for the purpose of affecting partition. He stated that the Government Pleader had given an opinion that *there were no patta lands belonging to the Paigah in the said village i.e. Hydernagar, that the pattas in that village were only in the name of the ryots and that as the ryots were not parties to the suit, they were not bound by the decree in this suit.* The Receiver cum-Commissioner stated that the Government as defendant No.53 had not denied at any stage the claim of the plaintiffs in the suit that the estate had patta lands in Hydernagar; and *even if some land in the said village was granted on patta to other ryots*, the said fact will not deprive the shareholders of the estate from getting their rightful shares.

In that application, a counter-affidavit was filed by the Dy.Collector that except lands in Sy.No.145 and 163 of Hydernagar, *other lands (including Sy.No.172) were in possession of ryots or were communal lands;* that Government was prepared to give only symbolic delivery of lands in Sy.No.145 and 163 but *in regard to other lands (including Sy.No.172), the State Government was not in possession and would not be able to give even symbolic possession.*

(d) On 05-07-1974, High Court passed orders in Application No.19/1973 directing the Government to give symbolic delivery of possession of Sy.Nos.145 and 163 of Hydernagar to the Receiver-cum-Commissioner *and in respect of other lands (including land in Sy.No.172 of Hydernagar), the Receiver should take steps which are available to him in law to take possession from actual occupants of those lands.*

(e) In the common counter affidavit filed in Application No.585 of 2002 it is admitted that a Sethwar was issued in favour of pattedars in Survey No.172 of Hydernagar Village, who were predecessors-in-interest of the claim petitioner and was implemented in 1978 [para 66(IV) at page 26 and para 69 at page 27]; and

(f) In counter affidavit filed in Application No.708 of 2002 at para 25 at page 11, it is admitted that the Advocate Commissioner-Receiver appointed in C.S.No.14 of 1958 noticed mutations being made and pattas being granted in Survey No.172 of Hydernagar Village and had addressed a letter RCC No.89/80 to the Collector, Ranga Reddy District.

214. From the above material, it is clear that third parties/pattedars were in *long possession* of land in Survey No.172 of Hydernagar Village. According to the claim petitioners, such possession was from *prior to 1948* itself.

215. Evidence in this regard adduced in the claim petitions will be discussed while dealing with the issue whether the claim petitioners have established their right, title or interest in the properties claimed by them in the claim petitions. To avoid repetition, it is not dealt with here.

216. Therefore, the plaintiff in the plaint ought to have disclosed the possession of third parties in the lands in Survey No.172 of Hydernagar Village and impleaded them as parties in the suit.

217. But by not only not disclosing the possession of third parties in the lands in Survey No.172 but also by not impleading them, she gave a false impression to this Court that possession of the land was with the Jagir Administrator/Government, and a consent preliminary decree was obtained on 28.06.1963 in C.S.No.14 of 1958. This is nothing but playing fraud on the Court and also on the persons in possession.

218. It is settled law that a decree which has been obtained by suppression of facts or collusively will not be executable against those who were not parties to the suit. (**V.J.Thomas Vs. Pathrose Abraham and others**²²).

219. In **S.P. Chengalvaraya Naidu Vs. Jagannath**²³ the Supreme Court held that non disclosure of all necessary facts tantamount to playing fraud on the Courts.

220. In **Ram Chandra Singh v. Savitri Devi**²⁴, it was held that if an application is filed by a third party challenging the preliminary decree in a partition suit on the ground that such decree was obtained by practicing fraud, such application is maintainable and the Court, in exercise of its inherent power, can grant relief. The Supreme Court held that commission of fraud on Court is to be viewed seriously and a collusion or conspiracy with a view to deprive the rights of others in relation to a property would

²² (2008) 5 SCC 84

²³ (1994) 1 SCC 1

²⁴ (2003) 8 SCC 319

render the transaction void *ab initio*. It quoted its earlier decisions in **Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education**²⁵ and in **S.P. Chengalvaraya Naidu** (23 supra) to hold that no Court can allow a person to keep an advantage he has obtained by fraud and fraud unravels everything. It reiterated that the principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine a fraud in the hands of dishonest litigants and that one who comes to Court, must come with clean hands. It also stated that a person, whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. Referring to the decision in **Indian Bank Vs. Satyam Fibers (India) P Ltd.**²⁶ the Court went on to hold that the Judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by playing fraud on the Court.

Finding:

221. Therefore, such a preliminary decree dt.28.6.1963 in CS No.14/1958 secured by playing fraud on the Court cannot be allowed to be executed in E.P.No.3 of 1996 to enable persons like the appellants, who are claiming through the parties in C.S.No.14 of 1958, to keep an advantage obtained by fraud. There is collusion among the parties to the C.S.No.14 of 1958 and also between the predecessors of the appellants *and* the appellants to deprive the rights of third parties such as the pattedars and persons (like the claim petitioners) claiming through them in relation to the land in Survey No.172 of Hydernagar Village.

²⁵ (2003) 8 SCC 311

²⁶ (1996) 5 SCC 550

222. So we hold that the very preliminary decree dt.28.6.1963 passed in CS No.14 of 1958 as regards the lands in Hydernagar village was obtained by practicing fraud on the Court as well as the claim petitioners and other occupants of lands in the said village and is void *ab initio*.

223. This Court is entitled to hold as above in exercise of power conferred on this Court under Clause (b) of sub-Section (1) of Rule 98 of Order XXI C.P.C. and also Clause (b) of Rule 100 of Order XXI C.P.C. which confer power on this Court to pass *such other order as, in the circumstances of the case, it may deem fit*.

Other Orders dt.20.1.1984 in Application No.266/1983 and Order dt. 28.12.1995 in Application no.994/1995 were also procured by playing fraud on the Court and are also collusive in nature

224. The prayer in EP No.3 of 1996 by the appellants is to direct the Bailiff of the District Court, Ranga Reddy District to deliver possession of land of Ac.98.10 gts in Sy.No.172 of Hydernagar village pursuant to order dt.28.12.1995 in Application No.994 of 1995 in C.S.NO.14 of 1958.

225. The prayer in Application No.994 of 1995 was to modify the order passed in Application No.266/1983 dt.20-01-1984 by substituting the names of the petitioners in this application and to direct delivery of possession to them of an extent of half share out of Ac.196.20 gts in Sy.No.172 of Hydernagar village by issue of warrant of possession executable by the Court of the **District Judge, Ranga Reddy District**.

226. Defendant Nos.157 (Nawab Khasim Nawaz Jung) and defendant No.206 (M/s.Cyrus Investments Pvt. Limited) had filed Application No.266/1983 before the High Court seeking direction to handover

possession of land admeasuring Ac.196.50 gts in Sy.No.172 of Hydernagar to them and to direct the Receiver *to put the said defendants in possession of the said land* through warrant of Court. It was allowed on 20.1.1984 and a direction was given to Sri Anantarao Deshmukh, the Receiver-cum-Commissioner, to handover possession of land in Sy.No.172 of Hydernagar of extent Ac.196.50 gts to defendant Nos.157 and 206.

227. Coming to order dt.20.1.1984 in Application No.266/1983 and order dt.28.12.1995 in Application no.994/1995 passed by this Court, it is contended by counsel for the claim petitioners that there was suppression by the applicants therein of:

- (i) the order dt. 5-7-1974 in Application No.19/1973 in CS.NO.14 of 1958 *directing the Receiver to take steps which are available to him in law to take possession from actual occupants of those lands.;*
- (ii) the order dt.31-1-1976 in Application No.139/1971 on 31-1-1976 in CS.NO.14 of 1958 *referring the matter to the District Collector, Hyderabad under Section 54 C.P.C. for division and allotment of suit schedule agriculture lands to the sharers and all the parties including the Receiver-cum-Commissioner were directed to appear before the District Collector;*
- (iii) *about possession of third parties/ryots revealed in (a) Application No.139/1971 by the then Receiver-cum- Advocate Commissioner, (b) Counter affidavit filed By the State government in Application No.19/1973, (c) Faisal Patti for 1978-79 was issued by the Mandal Revenue Officer, Balangar Mandal, Ranga Reddy District with regard to Sy.No.172 of Hydernagar village mentioning the names of 20 persons including Boddu Veeraswamy, through whom some of the respondents/claim petitioners.*

228. These are matters of record and there is no dispute about their suppression in Application No.266/1983 and in Application no.994/1995 by the applicants therein.

229. In claim petition Application No.1319 of 2003, in para 9 the claim petitioners/obstructionists contended that though they are in absolute possession and enjoyment of the lands, the reports (Bailiff's report) *have been engineered* to show *as if* possession was delivered. In para 11, it is asserted that the so called report dt.17.4.1996 of the Bailiff of the Ranga Reddy District Court purporting to deliver possession is not correct and it is only a *make believe document*.

230. In claim petition Application No.1320 of 2003 also it is contended in para 11 that it is asserted that the so called report dt.17.4.1996 of the Bailiff of the Ranga Reddy District Court purporting to deliver possession is not correct and it is only a *make believe document*.

231. These pleadings satisfy the plea of fraud played on the Court by the appellants in the OSAs and their predecessors.

232. It is also a matter of record that predecessors of the appellants Kazim Nawaz Jung (Defendant No.157) and M/s Cyrus Investments Pvt. Ltd. (Defendant No.206) had impleaded only the Receiver-cum-Commissioner Anantrao Deshmukh in Application No.266/1983; and M/s Cyrus Investments Pvt. Ltd. (Defendant No.206) and Kazim Nawaz Jung (Defendant no.157) in Application No.994 /1995 were alone impleaded as parties by the appellants; persons in possession of land in Sy.No.172 of Hydernagar village and who were sought to be dispossessed in E.P.No.3/1996 were necessary parties to both Application No.266/1983 and Application No.994/1995 as their possession would be jeopardized, if the applications were to be allowed in their absence. They were deliberately not

impleaded as parties in Application No.266/1983 and Application No.994/1995.

233. Further in Application No.994/1995, the 1st respondent is M/s Cyrus Investments Pvt. Ltd. rep. by it's GPA by Dr.P.S.Prasad and the 2nd applicant is Mrs. Indrani Prasad, the wife of Dr.P.S.Prasad. The 1st respondent therefore would not oppose the plea of the applicant therein. This indicates collusion as well.

Finding:

234. In the light of the above discussion and the decisions referred to above regarding effect of fraud on Court played by parties, the order dt.20.1.1984 in Application No.266/1983 and order dt.28.12.1995 in Application no.994/1995 passed by this Court are declared to be orders obtained by the applicants therein by playing fraud on the Court and on the claim petitioners as well as being collusive in nature. Consequently they are declared to be *non-est* and void and they cannot be allowed to be executed.

235. This Court is entitled to hold as above in exercise of power conferred on this Court under Clause (b) of sub-Section (1) of Rule 98 of Order XXI C.P.C. and also Clause (b) of Rule 100 of Order XXI C.P.C. which confer power on this Court to pass *such other order as, in the circumstances of the case, it may deem fit.*

Part VI.

Whether the claim petitioners / respondents in the O.S.A.s have established their right, title and interest in the properties claimed by them in the claim petitions :

236. Admittedly, the contention of the plaintiff in C.S.No.14 of 1958 is that the properties shown in the schedule to the suit is the *Matruka* property of Khursheed Jah Paigah. This is disputed by the claim petitioners.

237. We have already held that the initial burden to prove title was on the appellants and that they have not discharged the burden to prove that the property was the Matruka property of their predecessors in interest.

238. The next question is *whether it is jagir land and whether the family members of Khursheed Jah Paigah can claim it, after his death, in this suit?*

239. Before we deal with this point, it is necessary to briefly note the nature of the Jagir tenures in the erstwhile State of Hyderabad ruled by HEH, the Nizam of Hyderabad.

240. Prior to the integration of the Hyderabad State with Indian Union on 19th September 1948, the Nizam of Hyderabad enjoyed uncontrolled sovereign power and he was the Supreme Legislature, Supreme Judiciary and the Supreme Head of the Executive and there were no constitutional limitations upon his authority to act in any one of these capacities. (See **Ameerunissa Begum Vs. Mahboob Begum and others**²⁷).

241. On the death of a Jagirdar, the Estate devolved upon the State and though it was usually regranted to the person who was found to be the successor of the Jagirdar on enquiry, in theory, Jagirs were resumed on the death of the holder of the Jagir and their heirs did not automatically succeed to them. In their life time, the Jagirdars were not permitted to alienate the property and no suit relating to Jagir could be instituted in the Civil Court without the prior permission of the Nizam. (See **Sikander Jehan Begum and another Vs. Andhra Pradesh State Government and others**²⁸). Thus, Jagir tenures consisted of usufructory rights in lands which were terminable

²⁷ AIR 1955 SC 352

²⁸ AIR 1962 SC 996

on the death of each grantee, were inalienable during his life, and heirs of the deceased holder got the Estate as fresh grantees. The Jagirdars had however, during their lives, valuable rights of managing their Estates, enjoying the usufructs and other important privileges, which conferred considerable monetary benefits on them. (**Ahmad Unnissa Begum Vs. State**²⁹ and **State of A.P. Vs. Mahamed Hasan Khan**³⁰).

242. A Firman was issued by the Nizam on 19.09.1948 vesting in the Military Governor Major General Choudary the authority to administer the State. On 10.08.1949, the Military Governor promulgated the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli and under Section 5 thereof from a date to be notified for the transfer of the administration of Jagirs in the State to the Government, the Jagirdars shall make over the management of the Jagirs to the Jagir Administrator; and by Section 6 it was provided that the Jagirs shall be included in the 'Diwani' and shall be administered by the Jagir Administrator, and the powers, rights and liabilities in relation to such Jagirs shall cease to be exercisable by the Jagirdars and shall be exercisable by the Jagir Administrators. Under Section 14, it was declared that the Jagirdars were to receive certain interim maintenance allowances until such time as the terms of the commutation of the Jagirs were determined. Pursuant to the authority reserved by Section 6 of the Abolition Regulation, possession of the Jagirs was taken over in September, 1949, by the Jagir Administrator acting on behalf of the State of Hyderabad. Parliament, by Constitution (1st Amendment) Act included the Hyderabad Jagir Abolition Regulation, 1358 Fasli as well as the Hyderabad Jagirs (Commutation)

²⁹ AIR 1952 Hyderabad 163

³⁰ CCCA No.84 of 1982 dt.16.08.1985 (DB)

Regulation, 1359 Fasli in Schedule IX to the Constitution of India. The challenge to these Regulations was rejected by the Supreme Court in **Sarwarlal Vs. State of Hyderabad**³¹.

243. The Jagir of Khurshhed Jah Paigah was included in the schedule to the Hyderabad Jagir Abolition Regulation, 1358 Fasli.

Finding:

244. In our view, as is explained below, the land in Hydernagar village was Jagir land, but prior to 1948, pattas were granted to cultivating ryots under the Khursheed Jah Paigah like Ruquia Begum, Waris Ali, Ghani Shareef , Boddu Veeraswamy and others by the Revenue Secretariat of HEH the Nizam in 1947. So title to this land passed on to the said cultivating ryots prior to 1948 itself and they validly conveyed title to the claim petitioners. This land therefore did not vest in the State Government after the Hyderabad Jagir Abolition Regulation, 1358 Fasli came into operation. The Revenue department of the later State Government accepted these pattas as genuine and implemented a Sethwar issued in 1947 and also issued the Faisal patti of 1978-79.

245. The Jagirdars used to give on lease the lands granted to them by the Nizam and used to collect rents. The cultivators of such lands were put to hardship because no patta rights were being given to them by the Jagirdars. It was not possible to find out which were the lands exclusively belonging to the Jagirdars and which were the lands being cultivated by the ryots. The Jagirdar could claim to be the pattedar of the entire land in the Jagir village.

³¹ AIR 1960 SC 862

This difficulty of the ryots cultivating lands in Jagir villages was noticed by HEH the Nizam of Hyderabad.

246. So in 1946, HEH the Nizam, amended the definition of the term ‘*pattadar*’ in Section 2(11) of the Hyderabad Land Revenue Act, 1317 Fasli by Act No.III of 1355 Fasli to the effect that ‘*pattadar*’ means :

“the person who is directly responsible to the Government for payment of land revenue and whose name has been entered as such in the Government records, whether he be personally or through his shikmidar, holding the land. In the case of non-Khalsa land, pattadar means the person who is directly responsible to the Jagirdar for payment of land revenue, whether his name has or has not been entered as such in the jagir records, and it also includes a person who was directly responsible to the jagirdar for payment of land revenue but was evicted by the jagirdar on or after 1st Azur 1348 Fasli.” (emphasis supplied)

247. Section 86 of the Act was also amended by the Nizam by Act III of 1355 Fasli (1946) and sub-Section (2) was added to it which stated :

“Section 86 (2) :

In non-Khalsa areas, the name of the jagirdar shall not be shown as pattadar against any land which is not cultivated by him personally.”

248. Sub-Section (3) of Section 86 states :

“Section 86(3) : For determining pattadari rights in non-khalsa villages, the orders made by a Jagirdar or officer of a Jagir so authorized by the Government by a notification in the Jarida, and in other cases the orders made by a Taluqdar shall be final, provided they have been made under the rules made under this Act.” (emphasis supplied)

249. Section 172 of the Act dealt with the rule-making power of the Government and Clause (m) of sub-Section (2) of Section 172 empowered the Government, by Notification published in the Jarida, rules *prescribing*

the manner in which pattadar's rights shall be determined in non-Khalsa areas under Section 86.

250. The Prime Minister in Council of H.E.H. The Nizam framed '*Rules regarding Grant of Pattadari Rights in Non-Khalsa Villages*' and published the same in Gazette No.32 dated Third 1356 Fasli.

251. Rule 2 of the said Rules states :

"2. From the date of the coming into force of these rules persons who hold jagir land and pay revenue direct to the Jagirdars shall, in all Jagirs, whether settled or unsettled for all purposes be deemed to be pattadars of the land held by them notwithstanding any oral or written agreement between the jagirdar and such persons or any entry in the concerned village records to the contrary, and their rights and liabilities shall be the same as those of the Pattadars of Khalsa lands." (emphasis supplied)

252. Rule 3 states :

"3. The authority mentioned in Rule 10 shall be responsible for recording the names of the holders of land mentioned in Rule 2 as pattadars in the concerned village records and give written intimation thereof to such persons within 3 months from the date of the coming into force of these rules."

253. Thus, it contemplates recording of the names of the holders of the land mentioned in Rule (2) as pattadars in the concerned village records and a written intimation thereof to the cultivator. If such entries are made in the village records of the names of the cultivators of the land of the Jagirdar / Paigah by the authority mentioned in Rule 10, that is enough.

254. Rule 4 states:

" The name of the Jagirdar or his hissadar or relation shall not be recorded in the concerned village records as pattadar of any jagir land except land

personally cultivated by him. Any pattas existing in the concerned village records in contravention of these rules shall be cancelled and recorded in the name of the person who has actually held the land”(emphasis supplied)

255. Rule 10 referred to in Rule 3 empowered the Taluqdar-i-Jagir to decide all questions of patta rights and an appeal was also provided from his decision to the jagirdar, provided he is competent to exercise powers of revenue recovery under the Jagirs Revenue Recovery Regulation of 1355 Fasli and his decision and that of the Taluqdar-i-Jagir was declared to be final.

256. Thus the Nizam amended Section 86 of the Hyderabad Land Revenue Act, 1317 Fasli (1907) declaring that *a Jagirdar is not entitled to patta rights in respect of lands which he was not personally cultivating*. He also framed Rules called ‘Rules regarding Grant of Pattadari Rights in Non-Khalsa Villages’ declaring that from Fasli 1356 (1946) onwards *the persons who were cultivating the lands as tenants or otherwise, except the lands personally cultivated by the Jagirdars, were deemed to be the pattadars for the said lands*. A Circular No.2 dt.18.10.1949 was issued by the Government to the Civil Administrators of all Districts under the Government of Hyderabad for implementation of the Rules regarding the Grant of Pattadari Rights in Jagir areas. These facts are clear from the Division Bench Judgment of this High Court in **Hussain Vs. Waheed**³² in the following terms:

“In Hyderabad, there were several Jagirs. The lands were given on lease and the rents were collected by the Jagirdars. But actually no patta rights were being given to them. This was causing great hardship to the cultivators and it was not possible to find out which were the lands exclusively

³² ILR 1976 AP 1095

belonging to the Jagirdars and which were the lands being cultivated by the ryots. The jagirdar could claim to the pattadar of the entire land in the Jagir village. Therefore an amendment was brought about in Sec.86 of the Land revenue Act,1317 Fasli (1907) whereby it was held that the Jagirdar is not entitled to patta rights in respect of the lands which he was not personally cultivating...

Subsection (1) of Section 86 is for lands in general (Khalsa) and not meant for non-khalsa (Jagir) areas. The Land Revenue Act was enacted in 1317 fasli; later amendment was brought in by adding sub-sections (2) and 13) in 1355 fasli. This amendment was brought in specifically to confer patta rights on persons in jagirs cultivating the lands on lease etc., Normally in jagirs only rents were being collected and not land revenue from the cultivators. As the Government wanted to bring some changes or reform pertaining to the lands situated in jagir villages, they also amended the definition of 'pattadar' under the Land Revenue Act,1317.

...

The Government in Sec.172 of the Hyderabad land revenue Act framed rules which are called Rules regarding Grant of Pattadari Rights in Non-Khalsa Villages."

The court then referred to Rule 2 and 4 of the said rules and declared:

"Thus under the said rules, it is evident that from Fasli 1356 (1946) onwards the persons who were cultivating the lands as tenants or otherwise, except the lands personally cultivated by the Jagirdars, were deemed to be pattadars for the said lands. There is no dispute in this case that the lands were taken on lease by Mohd.Marooof Ali and his two brothers and they were jointly cultivating the land even before the abolition of Jagirs by the Hyderabad (Abolition of jagirs) regulation,1358 fasli. Under Sec.6 of the Hyderabad (Abolition of jagirs) regulation, the jagirs were included in the Diwani and thus the jagirs stood abolished and the jagirdars could not exercise any powers thereafter in respect of their jairi lands. It is plain that when these lands were taken by all the three brothers on lease from the jagirdar prior to the abolition of jagirs, the patta rights have accrued to all the brothers. Therefore the question of granting patta by the jagirdar could not arise at all, but by virtue of operation of the law, they were deemed to be the pattadars of the land.

7. Even though the Rules were published in 1946, the same were not implemented and pattas were not granted to the persons holding the lands in the jagirs. Therefore the Government issued Circular No.2 dt. 18th October 1949 (18th Azur 1359 Falsi) to the Civil Administrators of all Districts under the Government of Hyderabad for implementation of the rules regarding the grant of pattadari rights in jagiri areas.” (emphasis supplied)

257. The above background has to be kept in mind while considering the claims of the claim petitioners.

258. Now we shall refer to evidence relating to proof of title as produced by the claim petitioners.

259. It is the contention of the claim petitioners that in respect of the extent of Acs.196.20 gts. in Survey No.192 of Hydernagar Village, pattas were granted by the Revenue Secretariat of HEH the Nizam to 24 persons by subdividing the said land into Survey nos.172/1 to 172/25 prior to 1948, and the Office of the Management Committee of the Paigah communicated these to some of the pattedars under Ex.A1, A3 and A55 and that the claim petitioners are claiming right, title and interest in the lands covered by the claim petitions from the said pattedars.

260. In Application No.s 585 of 2002 and Application no.708/2002, the claim petitioners are contending that their predecessor is Boddu Veeraswamy, one such cultivator, to whom Ac.5.28 gts in Sy.No.172/10 of Hydernagar village was granted patta and he is their predecessor in title. Ex.A.55, patta granted to Boddu Veeraswamy for Ac.8 acres was marked in Application No.585 of 2002 on behalf of the claim petitioners.

261. In Application No.1318 of 2003, the claim petitioners claim through M/S Satya Sai Co-operative Housing Society, which according to them

purchased Ac.54.30 gts in Sy.No.s 172/2, 172/3, 172/4, 172/5, 172/6, 172/7 and 172/18 and 172/19 from other cultivators as under:

- (a) Survey No.172/2 – Abdul Hai,
- (b) Survey No.172/3 – Alimuddin,
- (c) Survey No.172/4 – Hasmutunnisa Begum,
- (d) Survey No.172/5 – Mohd. Waziruddin,
- (e) Survey No.172/6 – Lokabhi Rami Naidu,
- (f) Survey No.172/7 – Sulochanamma,
- (g) Survey No.172/8 – Akram Ali,
- (h) Survey No.172/9 – Bande Ali,
- (i) Survey No.172/18 – T. Bhadraiah; and
- (j) Survey No.172/19 – Pushpavati.

262. In Application No.1318 of 2003, it was asserted by PW.1 that in 1357 Fasli, after pattas were issued to 24 individuals, Survey No.172 was subdivided into survey nos.172/1 to survey no.172/25 retaining Survey No.172/1 as Gairan and allotting Survey Nos.172/2 to 25 to the persons who were granted pattas prior to 1947; and that pursuant to the said grant in 1357 Fasli, Jamabandi Sethwar Patrika dated 4th Aban, 1357 Fasli was issued prior to the coming into force on 15th Meher, 1358 Fasli of A.P. (T.A.) Abolition of Jagir Regulation of 1358 Fasli.

263. P.W.1 in Application No.1318/2003, marked Exs.A.1 patta issued on 2nd Ardibehisht 1357 Fasli to one Lokabhi Ram Naidu for Ac.10 of land in Survey No.172/6, Ex.A.3, patta issued on 29th Farwardi 1357 Fasli to one Ms. Pushpala Solochanamma for Ac.10 of land in Survey No.172/7, Ex.A2 and A4 - certified copies of Revenue Map for the said land issued by the Secretary of the Board of Revenue, and Ex.A-12 certified copy of the Jamima Sethwar of 1357 Fasli relating to Sy.No.172 the issued by the Collectorate, Ranga Reddy District. He also marked Ex.A-13 Tonch Plan

Map enclosed to Ex.A-12 and stated that in 1978-79 mutation was granted and entries in pahanis were recorded for Sy.No.172/1 to 172/25. According to him, in Ex.A-14, Faisal Patti, issued after the mutation proceedings of 1978-79, the names of the 24 pattedars including P.Sulochanamma, Lokabhbiram Naidu were incorporated along with respective sub-division numbers. He filed *Ex.A-15 pahani of 1995-96 showing the possession of Satya Sai Cooperative Housing Society Limited and contended that in Ex.A-16, pahanis for 1993, 1994 and 1995, in pattadar pass books, names of original 24 pattedars were mentioned.* In the possession column, it is mentioned as houses. He was recalled on 25-08-2004 and further examined in chief and he marked the following documents:

- | | |
|---------|---|
| Ex.A-78 | is Doc.No.3250/1982 dt.1-5-1982 executed by Smt.Sulochana in favour of Sri Satya Sai Co.op.Housing Society Ltd. |
| Ex.A-79 | is Doc.No.7545/1982 executed by Hashmaulnisa Begum in favour of Sri Satya Sai Co.Op.Housing Society Ltd. |
| Ex.A-80 | is Doc.No.7479/1982 executed by Hashmaulnisa Begum in favour of Sri Satya Sai Co.Op.Housing Society Ltd. |
| Ex.A-81 | is Doc.No.6893/1982 executed by Sri Ajaayraju Naidu in favour of Sri Satya Sai Co.Op.Housing Society Ltd. |
| Ex.A-82 | is Doc.No.2265/1982 executed by Sri Abdul Hai in favour of Sri Satya Sai Co.Op.Housing Society Ltd. |
| Ex.A-83 | is Doc.No.6153/1984 executed by Smt.Pushpavathi Devi in favour of Sri Satya Sai Co.Op.Housing Society Ltd. |
| Ex.A-84 | is Doc.No.213/1985 executed by Smt.Pushpavathi Devi in favour of Sri Satya Sai Co.Op.Housing Society Ltd. |

264. These are the documents under which the land in Sy.Nos.172/2 to 172/9 and 172/18 & 19 were conveyed to Sri Satya Sai Cooperative Housing

Society Limited by the pattedars Smt.Sulochanamma, Hashmaulnisa Begum, Ajayraju Naidu, Abdul Hai and Pushpavathi Devi.

265. In Application no.1319 and 1320 of 2003, the claim petitioners claim through pattedars Ruquia Begum, Waris Ali and Ghani Sharif, in respect of of Sy.No.s 172/11,172/13 and 172/14 of Hydernagar village.

266. In Application No.1319 of 2003, the Jamaima Sethwar issued in 1357 Fasli incorporating the names of pattadars Ruquia Begum, Waris Ali, and Ghani Sharif for Acs.9.27 gts. in Survey No.172/11, 9.27 gts. in Survey No.172/13 and 9.31 gts. in Survey No.172/14 is filed as Ex.A.1, with English translation Ex.A.2 through the evidence of PW.1 therein.

267. PW.1, in Application No.1319 of 2003, also stated that the pattadars applied for implementation of sethwar issued and consequently to issue a supplementary sethwar; pursuant to the orders passed by the then Collector and in respect of an application of a pattadar at serial no.12 of the Sethwar by name Yousuf Ali Khan, the sethwar was implemented in 1978-79; this document implementing the supplementary sethwar was marked as Ex.A.3; and it shows that in File No.B1/6015/76 the then Tahsildar proposed to implement the sethwar issued by the Paigah authorities which was not implemented ; and observed that the records of the Director, State Archives were relied upon while implementing sethwar in favour of 24 pattadars and issued Supplementary Sethwar cum Faisal patti in 1978 which was marked as Ex.A.4.

268. Ex.A.3 records that the sethwar which was obtained from the Director of State Archives in respect of Survey no.172 was accepted as a genuine one

by the Revenue Department and the possession of the pattadars was also accepted and it was held that they were cultivating the lands allotted to them.

269. Ex.A.4 shows the total number of pattadars including all the pattadars from whom the claim petitioners were claiming, the total extent of land and the extent of land of each pattadar and the amount of land revenue collected from each pattadar and the proceedings thereon.

270. Thus from the date of grant of pattas prior to 1948 till 1978-79 when Ex.A3 and A4 were issued, there was admittedly no mutation of the names of the pattadars *though the Revenue department of the State accepted their possession and enjoyment of various portions of land in Sy.No.172 of Hydernagar village from prior to 1948.*

271. The learned Single Judge in his common order dt.26.10.2004 in application Nos.994/1995, 585 and 708 of 2002, 1318 to 1320 of 2003 in C.S.No.14 of 1958 (in para 58 of the impugned order) extracted the contents of the Ex.A1 patta (A3 and A55 had identical content, though the extent in A55 is mentioned as Ac.8.00) :

“With reference to the subject cited above, it is to state that as per your application dated 11th Farwardi, 1357 F., the patta of the land measuring (10) acres as per the Circular No.11 dated 12th Thir, 1356 Fasli, out of the land in Survey No.(172) totally admeasuring 196 acres and 20 guntas situated at Makhta Hydernagar is hereby granted in your name by the Revenue Secretariat with the land assessment of Re.1/- per acre, as the Gairan of this Makhta is more than the table. Thus, remit the assessment amount each year in the office of the Tahsil and obtain the receipt as per rules.

Second copy of this letter is forwarded to Tahsildar Saheb, Taluka Narsapur for favour of information and compliance.”

272. Ex.A1, A3 and A55, being 30 year old documents, the learned single Judge Justice L.Narasimha Reddy, as he then was, in his order dt.26.10.2004 while allowing the claim petitions, was right in presuming their genuineness under Sec.90 of the Evidence Act, 1872. He rightly rejected the objections of the appellants that the documents did not emanate from proper custody by holding that when transactions occur transferring rights in the property covered by documents, the documents would have been passed on to the transferees, and merely because they are not parties to the said documents, it cannot be said that their custody of the documents is improper. We agree with the learned Judge that Exs.A-1, A-3 and A-55 require no further proof and that the subsequent events such as implementation of Supplementary Sethwar and Faisal Patti corroborate the same.

273. In our view, having regard to the above legal position, Ex.A1, A3 and A55 are to be construed as communications of grant of pattadar status by the Revenue Secretariat of the Government to the individuals mentioned therein by the Office of the Management Committee of the Paigah.

274. It is obvious that even in regard to other cultivators like Ruquia Begum, Ghani Shareef, and Waris Ali , whose pattas were not filed, they were governed by Sec86 of the Hyderabad land revenue Act, 1317 fasli and the Rules framed thereunder referred to above, and they also became pattedars.

Finding:

275. Thus, we hold that Hydernagar Village, was Jagir property, but ceased to be property of Khursheed Jah Paigah, prior to 1948 itself on account of actions of the Revenue Secretariat of the Government of HEH The Nizam.

276. Also, in view of amendment to Sec. 86 of the Hyderabad Land revenue Act, 1317 Fasli and Rules 2-4 of the Rules regarding Grant of Pattadari Rights in Non-Khalsa Villages discussed above, the contention of the counsel for appellants that there is no evidence filed by the claim petitioners about the possession of the pattadars from whom they are claiming *during the regime of the jagirdar* or the Nizam, cannot be countenanced because, even if there is no entry of his (cultivator/ryot) name in the Jagir records, he would still be the pattadar if he was cultivating the lands of the Jagirdar prior to 1948 as per **Hussain** (32 Supra).

277. As per the above Rules, a Jagirdar is required to personally cultivate the lands granted to him by the Nizam, and otherwise, his name will not be recorded in the register to be prepared under sub-Section (1) of Section 86 for each village showing the area and the assessment of each number together with the name of the pattadar, at each settlement.

278. The appellants did not file any evidence to show that Khursheed Jah was personally cultivating the land in Hydernagar village and so he was recorded as it's pattadar by the Revenue department of the Nizam.

279. Thus, persons who were holding jagir land as *cultivators/ryots* under the jagirdars and paying revenue to them, are *deemed to be pattadars of the*

land, notwithstanding any entry in the concerned village records to the contrary. This legal position has been clearly explained by the Division Bench in **Hussain** (32 supra).

280. Therefore, even if the village records did not mention the name of the persons cultivating the land of the Jagirdars, if they were cultivating the same and paying land revenue to the jagirdar, they have to be *deemed* to be pattadars. There is no necessity of any patta to be issued to the cultivator at all as is made clear by Rule 3 extracted above.

281. As per the law laid down in **Hussain** (32 supra), and the above evidence, which is irrefutable, the extinguishment of title of the legal heirs of Khushid Jah paigah occurred prior to 1948 itself by operation of law, and in our opinion establishes the title of the ryots/ pattadars to the land as also their possession from prior to 1948 till the issuance of Ex.A.3 (in Application No.1319 of 2003) in 1978 – 79 in view of the opinion of the Revenue officials recorded therein and Ex.A4 Faisal patti.

282. In contrast, the parties in the suit /predecessors of the appellants never had possession of the land in Survey no.172 of Hydernagar at the time of filing of the suit or thereafter and the Receiver-cum-Commissioner also had no possession of the said land till his discharge on 16.11.1984 in Application No.276 / 1984, by an order passed by this Court. This state of affairs is presumed to continue till E.P.No.3 of 1996 was allowed on 29.03.1996 under sec.114 (d) of the Evidence Act, 1872.

283. PW1 in Application No.585 of 2002 stated that she purchased plot of 300 sq.yds from Boddu Veeraswamy under Ex.A1 dt.28.4.1989. PW2 in

Application No.585/2002 stated that Ex.A7 sale deed was executed on 28.4.1989 by GPA holder of Boddu Veerswamy, in favor of the 10th claimant therein, who is his brother in law.

284. PW1 in Application No.1318 of 2002 stated that applicants therein bought plots from Satya Sai Co-operative Housing Society and marked several sale deeds (Exs.A20 to A52). PW2 in Application No.1318 of 2003 stated that he bought from Satya Sai Co-operative Housing Society a plot in the name of his wife under regd. Sale deed Doc No.2194/1984 (Ex.A.44).

285. PW1 in Application No.1319 of 2003 stated that GPA holders of Ruquia Begum, Waris Ali etc., sold to members of Set-win Employees Housing Cooperative Society Ac.28 in Sy.No.172 and marked Ex.A68-271 sale deeds.

286. In applications No.s 708/2002 and 1320 of 2003 also some of the sale deeds were marked.

Finding:

287. We accept the evidence adduced by the claim petitioners about grant of pattadari rights to cultivating ryots i.e Ruquia Begum, Waris Ali, and Ghani Sharif, Boddu Veeraswamy and others of the Jagirdar's land in Hyderanagar village and we see no reason why their claim for title to the lands claimed by them in the claim petitions through such cultivating ryots, be disbelieved.

288. Though all the claim petitioners did not file their sale deeds and only some of them did, in view of the extinguishment of title of legal heirs of

Khushid Jah prior to 1948 itself, and the establishment of title and possession of the deemed pattadars as mentioned in **Hussain** (32 Supra) through whom the claim petitioners claim, the claim petitions are liable to be allowed.

289. We accordingly hold that the claim petitioners have established their title to the land in Sy.No.172 of Hydernagar village asserted by them in the claim petitions.

Part VII:

OTHER CONTENTIONS 1 to 15 RAISED IN THE WRITTEN SUBMISSIONS FILED BY THE COUNSEL FOR APPELLANTS AND M/S.CYRUS INVESTMENTS PRIVATE LTD.

Contention No.1

290. In the written submissions of the appellants, it is contended that the Jagirs were abolished by the Hyderabad Jagir Abolition Regulation, 1349 Fasli w.e.f. 1949 and in terms of the Regulation, the Jagirs stood abolished and vested with the Jagir Administrator for the purpose of management and ultimately vested in the State. It is contended that after the coming into operation of Jagir Abolition Regulation, the successors of Jagirdars or assignees of Jagirdar (or his Committee) does not arise. It is thus contended that by implication, the claim petitioners are claiming through the Jagir Administrator or the State Government and so their claim petitions are without any merit.

291. This contention cannot be accepted because the Supreme Court in **N.S.S.Narayana Sarma and others** (2 supra) held that the claim petitioners are not claiming property in Sy.No.172 of Hydernagar village through the Paigah Committee or the State Government, who are parties to the suit, that

they are not bound by the preliminary decree dt.28.6.1963, and that the decision of the Division Bench dt.10-11-1988 in O.S.No.20 of 1996 and batch to the contra, is wrong. We discussed at length what happened before the abolition of Jagirs by the Jagir Abolition Regulation, 1349 Fasli while dealing with the claims of the claim petitioners. We don't need to reiterate the same again. Therefore we reject this plea.

Contention No.2

292. It is next contended that Matruka property is the private property and not Jagir property and that the latter are incapable of being partitioned since they are personal grants to be enjoyed by the Jagirdar alone.

293. But as we have pointed out, no evidence has been adduced *before* passing of the preliminary decree on 28-06-1963 in C.S.No.14 of 1958 that land in Hydernagar village is Matruka property. We have also pointed out that even in the claim petitions, no evidence has been adduced on this point by the appellants and our attention has not been drawn to any document certifying that this land is Matruka property of Khursheed Jah Paigah.

294. Merely because the Nizam's Rule ended in 1949 and the Firman of 1929 prohibiting the Paigahs from alienating or partitioning their property lost effect, it does not follow that the appellants are entitled to partition of the land in Hydernagar village without proving that it is Matruka property in the first place.

295. This is because it does not follow that if the said land is not Jagir land, it has to be Matruka property because there is admittedly a possibility of land being patta land of third parties like the predecessors of the claim

petitioners. Therefore, the appellants cannot avoid establishing that the land in Hydernagar village is Matruka property and urge this Court to presume it to be so, without any basis.

Contention No.3

296. The further plea of the appellants is that because the Jagir Administrator was impleaded as defendant No.43 and the State of Andhra Pradesh was added as defendant No.53, it has to be inferred that the necessary parties, who could have contested the suit were on record.

297. We emphatically reject this contention and hold that if there were third parties who had been granted pattas prior to 1948 by the competent authority, such persons must be impleaded and if they are not impleaded, it would be a case of fraud being played on the said pattadars and alienees from them like the claim petitioners as well as on the Court, to secure the preliminary decree.

Contention No.4

298. It is next contended that the Advocate-Receiver identified the properties of the Khursheed Jah Paigah, that he submitted reports to the Court and that Sy.No.172 of Hydernagar village was allotted to the sold sharers from whom defendant No.157 and defendant No.206 had purchased it. It is also stated that the Advocate-Receiver had given a scheme of partition and that this is the foundational record that Sy.No.172 of Hydernagar village was part of Matruka of Khursheed Jah Paigah.

299. As rightly held by the learned single Judge, even if the lands in question are not part of an estate, the power of the Advocate Commissioner

did not extend to such an extent as to identify the properties, divide them into parts and deliver possession of the same to the respective parties. The role of an Advocate Commissioner in a suit for partition is limited to equitably divide the properties which are already identified into shares taking into account the views of the parties under Rule 13 of Order 26 CPC.

300. In any event, we are unable to understand how the Advocate-Receiver came to the conclusion that land in Hydernagar village is Matraka property because no such evidence is there on record or was pointed out to us.

301. We had earlier referred to application No.139/1971 filed by the Advocate-Commissioner seeking orders from this Court as to whether he should proceed with the preparation of scheme of partition by distributing only the **claims** (but not the physical land) stating that third parties are in actual and apparently long possession of the suit schedule agricultural lands, that they would have to be treated as protected tenants under Section 34, 37 and 37-A of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, that *those lands were not available for distribution* and only the **claims** in respect of those lands will have to be allotted to the shareholders according to their respective shares in terms of the value of the land after making proper valuation of the lands. So what the Advocate-Receiver actually proposed was only allotment of **claims** and not allotment of physical land to the parties and on 16-09-1972, this Court permitted the Receiver-cum-Commissioner to prepare scheme of partition as proposed by him by partitioning only **the claims** in terms of value of the lands.

302. So we hold that there is no basis for the appellants to contend that the Advocate-cum-Receiver's reports are the foundational record to show that Hydernagar village was part of the Matruka of Khursheed Jah Paigah.

Contention No.5

303. It is next contended that Application No.266/1983 was ordered on 20-01-1984 and possession was directed to be given by this Court to defendant Nos.157 and 206 by way of execution through Civil Court. According to the appellants, this order attained finality because it was not challenged by Jagir Administrator (defendant No.43) and State of Andhra Pradesh (defendant No.53) or by the sharers in the preliminary decree. Reliance is placed on the decision of the Supreme Court in **Rafique Bibi (dead) by L.Rs. Vs. Sayed Waliuddin (dead) by LRs. And others**³³ wherein the Supreme Court had held that a Court will invalidate an order only if the right remedy is sought by the right person in the right proceeding and circumstances; an order may be nullity and void but these terms have a meaning which is relative, depending upon the Court's willingness to grant relief in any particular situation. The Supreme Court also observed that order of a superior Court such as the High Court, must always be obeyed no matter what laws it may be thought to contain.

304. It is also contended that the claim petitioners have no *locus standi* to contend that the decree in the suit is obtained by resorting to fraud.

³³ (2004) 1 SCC 287

305. In our opinion, the said decision would not apply firstly where fraud was played on the Court and also on persons in occupation of the land in Sy.No.172 of Hydernagar village as we have held earlier.

306. We had also held that in claim petitions filed under Order XXI Rule 97 to 101 C.P.C., the plea of fraud in obtaining the preliminary decree as well as consequential orders, can certainly be urged.

307. In **Sarup Singh and another Vs. Union of India and another**³⁴, the Supreme Court has held that the execution Court can decline execution of even the decree of a superior Court, if it is one without jurisdiction and is null and void. More so, if it is a product of fraud.

308. In **T. Vijendradas v. M. Subramanian**³⁵, the Supreme Court held that once it is held that by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity, it would be wholly inequitable to confer a benefit on a party who is a beneficiary thereunder. It quoted its earlier decision in **A.V.**

Papayya Sastry v. Govt. of A.P³⁶ wherein it had held:

“21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

‘Fraud avoids all judicial acts, ecclesiastical or temporal.’

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any

³⁴ AIR 2011 SC 514

³⁵ (2007) 8 SCC 751

³⁶ (2007) 4 SCC 221

court, at any time, in appeal, revision, writ or even in collateral proceedings.” (emphasis supplied)

309. Therefore there is no question of conferring any benefit on the appellants who claim through such order dt.20-01-1984 in Application No.266/1983 obtained by playing fraud or permitting them to execute it.

310. The principle of “finality of litigation” cannot be pressed, as held in **S.P.Chengalvaraya Naidu** (23 supra), to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. No Court can allow a person to keep an advantage he has obtained by fraud and fraud unravels everything.

311. We hold that the claim petitioners have *locus standi* to raise the plea of fraud and we reject the contention of the appellants that they have no *locus standi* to take such a plea.

Contention No.6

312. The next plea of the appellants is that going into question of title of the appellants or their predecessors who are defendant No.157 and defendant No.206 or going into errors relating to adjudication of the suit in C.S.No.14 of 1958 is not permissible since the remand order of the Supreme Court in **N.S.S.Narayana Sarma** (2 supra) has confined the remand only to the claim petitions.

313. While dealing with the scope of Order XXI Rule 97 to 101 C.P.C., we have pointed out that the specific language of Order XXI Rule 98(1)(b) C.P.C. as well as Order XXI Rule 100(b) C.P.C. r/w Order XXI Rule 101 C.P.C. permit this Court not merely to allow or dismiss an application under

Order XXI Rule 97 and 99 C.P.C., *but also to pass such other order as, in the circumstances of the case, it may deem fit, provided it is relevant to the adjudication of the said Applications.*

314. Therefore we reject the contention of the appellants that this Court cannot go beyond what is pleaded in the claim petition.

Contention No.7

315. It is next contended by the appellants that the Paigah Committee did not have authority to give away the pattas to the pattedars in view of the Firman issued in 1929 by the Nizam.

316. We have elaborately discussed this aspect by dealing with the amendments made to the Hyderabad Land Revenue Act, 1317 Fasli in 1946 to Section 2(11) and Section 86 by Act III of 1355 Fasli, the '*Rules regarding grant of pattadari rights in non-khalsa villages*' framed under the said Act and published by the Prime Minister in Council of H.E.H. the Nizam as well as the decision in **Hussain** (32 supra).

317. Exs.A1, A3 and A55 are communications issued by Paigah Committee informing that the Revenue Secretariat of the Government granted land on patta to the ryots cultivating lands in the Paigah.

318. When the Revenue Secretariat of the then Government of the Nizam in 1947 gave these pattas, it cannot be said that they were given by the Paigah Committee or that they could not have been given at all in view of the Firman issued in 1929 by the Nizam.

Contention No.8

319. Counsel for appellants contended that who is the Jagirdar against whom the legal fiction is to apply, is not pleaded by the claim petitioners and the scope and ambit of Rule 2 of the Rules regarding 'Grant of Pattadari rights in non-Khalsa villages', 1356 Fasli framed under Section 172 of the Hyderabad Land Revenue Act, 1317 Fasli is nebulous. It is also contended that a Jagir tenure itself is a life time grant and when the Jagirdar himself cannot retain the benefit after his death, persons who have cultivated under the Jagirdar cannot obtain perpetual pattadari rights over the land. It is also contended that the land is not a cultivable land and there is no evidence of payment of revenue by the pattadars. Reference is also made to Rule 14 of the above Rules and it is contended that in case of Jagirs Umara-i-Paigah, Government has to submit the case to the Nizam with its recommendations.

320. In our opinion, Khursheed Jah is the Jagirdar. The grant was by the Revenue Secretariat of the Nizam Government in 1946 to the cultivators such as Boddu Veeraswamy and others. There was a Sethwar issued in 1357 Fasli which was obtained from the State Archives by the District Collector, Hyderabad on the basis of which Ex.A4/A12 Faisal Patti was issued in 1978-79 by the Mandal Revenue Officer, after satisfying that it is a genuine one. It is absurd to contend that there was no cultivation.

321. The above Rules permitted issuance of grants by the Revenue Department to cultivators of the lands of the Jagirdars. Though the Jagirdar had no right to alienate the Jagir land because of the Firman issued by the Nizam, the Revenue Secretariat of the Nizam had no such restriction in view of the above Rules.

322. We are also of the view that Rule 14 is being quoted out of context by the appellants and without understanding its scope. The said Rule states:

“Rule 14: If any of the provisions of these rules are not complied within any Jagir, the Government in the Revenue Department may, subject to the exception mentioned in this rule, withdraw the powers exercisable under these rules and in the case of such withdrawal the Diwani Taluqdar in whose jurisdiction the Jagir exists shall exercise such powers subject to such instruction as may be given to him by the Government from time to time. If the conditions in a Jagir so require, the Government may take the Jagir in its Supervision.

Exception: In the case of Jagirs Umara-i-Paigah and Umara-i-Uzzam, (Umara means the jagirdhars who have been duly declared or recognized as per the Jagirs Revenue Recovery Regulation, 1355 F) Government shall submit the case to His Exalted Highness with its recommendation.)”

323. Rule 14 deals with a situation where the said Rules are not complied with in any Jagir and it empowers the Government, subject to the exception, to withdraw the powers in the Rules from the Competent Authority and vest the powers in the Diwani Taluqdar or the Government. The exception which deals with Jagirs Umara-i-Paigah and Umara-i-Uzzam enables the Government to obtain recommendation from HEH the Nizam, if the Rules are not complied with in the said Jagirs.

324. The appellants are twisting the interpretation of the Rule 14 out of context to imply that in respect of Jagirs Umara-i-Paigah, like the Jagir of Khursheed Jah Paigah, there was no power vested in the Revenue Secretariat of HEH the Nizam to grant pattas and that only HEH the Nizam could do so. We reject this interpretation. According to us, only in the event of a failure by the Competent Authority to comply with the Rules in a particular Jagir,

his powers can be withdrawn and the exception in Rule 14 will come into operation.

325. It is not the appellants' case that in 1946, there was such a situation in Khursheed Jah Paigah properties and the powers of the Competent Authority were withdrawn. Therefore this plea of the appellants is rejected.

Contention No.9

326. It is next contended that adjudication of the claim petition is equivalent to adjudication of a suit and that in the suit for title, plaintiff has to prove his case even if the defendant did not lead evidence or the evidence of the defendant is weak.

327. While there is no dispute with this principle, the instant suit is not one of title, but is a suit for partition where property in Sy.No.172 of Hydernagar village was alleged to be Matruka property by the plaintiff and by the appellants, who claim through the plaintiff.

328. In **Rangammal** (14 supra), the Supreme Court held that if a third party disputes that the suit schedule property is the property of the joint family and gets impleaded, the plaintiff must prove first that the disputed property belongs to the joint family.

329. Therefore not only the claim petitioners, but the appellants also must prove their case and the principle of 'weakness of the case' of the appellants, cannot be invoked here.

330. This is important also because at the stage of preliminary decree, there was no 'adjudication' that the land in Hydernagar village was Matruka

property by this Court and this item is part of the consent decree in the preliminary decree and not the contested decree part therein.

331. The question whether the property is Matruka property arises between the parties to the claim petition, it is relevant for consideration and determination between the parties and the Court is obliged to decide it as well under Order XXI Rule 97 to 101 C.P.C.

332. Therefore this contention is rejected.

Contention No.10

333. It is contended that in some claim petitions, there is also a plea of adverse possession and that the claim petitioners cannot at the same time plead title or acquisition of title by adverse possession.

334. No doubt this is true, but in spite of such plea of adverse possession being raised in some of the claim petitions, during submissions, counsel for the claim petitioners did not base the claim of the claim petitioners on adverse possession at all. Therefore, it is unnecessary to take note of this plea, when this Court is satisfied about the title set up by the claim petitioners.

Contention No.11

335. It is contended that even if the order dt.28-12-1995 in Application No.266/1983 is presumed to be non-existent, the *mother* order dt.20-01-1984 in Application No.266/1983 directing delivery of possession to defendants No.157 and 206 would continue to stand and without demolishing the said order, the claim petitioners cannot succeed at all.

336. We have earlier held that the preliminary decree dt.28-06-1963 in C.S.No.14 of 1958 is itself secured by playing fraud on the Court in regard to land in Hydernagar Village and that even the orders dt.20-01-1984 in Application No.266/1983 and order dt.28-12-1995 in Application No.994/1995 are obtained by fraud.

337. Therefore this contention has no merit and is rejected.

Contention No.12

338. It is contended that the pattas of Waris Ali, Ghani Shareef and Ruquia Begum are not filed at all by the claim petitioners in Application Nos.1313, 1320 of 2003 and Application Nos.585 and 708 of 2002, and that they have filed only the patta Ex.A-55 of Boddu Veeraswamy; and the sale deeds executed by Boddu Veeraswamy in favour of M/s.Satya Sai Co.op House Building Society and M/s.Set-win Employees Housing Co-operative Society were not filed.

339. As we have explained above, Exs.A-1, A-3 and A-55 though referred to as pattas by the claim petitioners, as per Rule 2 of the Rules regarding '*Grant of Pattadari rights in non-Khalsa villages*', 1356 Fasli framed under Section 172 of the Hyderabad Land Revenue Act, 1317 Fasli by the Nizam, persons holding Jagir land as cultivators under the Jagirdars and paying revenue to them are *deemed to be pattadars of the land*, notwithstanding any entry in the concerned village records to the contrary. Under Rule 3, the competent authority had to record the names of the holders of the land mentioned in Rule 2 as pattadars in the concerned village records and give written intimation thereof to such persons. Exs.A-1, A-3 to A-55 are such

communications by the Office of the Managing Committee of the Paigah to the pattadars named therein of grant of patta by the Revenue Secretariat of the Nizam.

340. There is no dispute that the names of the above three individuals i.e. Waris Ali, Ghani Shareef and Ruquia Begum were mentioned in the Sethwar issued in 1357 Fasli by the then Paigah authorities which was obtained from the State Archives Department by the District Collector, Hyderabad and which were later incorporated in Ex.A-4/A-12 Faisal Patti for 1978-79 issued by the Mandal Revenue Officer, Bala Nagar Mandal, Ranga Reddy District along with name of Boddu Veeraswamy.

341. In Ex.A-1 Jamaima Sethwar issued in 1357 Fasli marked in Application No.1319/2003, it is shown that Ruquia Begum, Waris Ali and Ghani Shareef had Ac.9.27 gts in Sy.No.172/11, Ac.9.27 gts in Sy.No.172/13 and Ac.9.31 gts in Sy.No.172/14. Its translation is marked as Ex.A-2 by P.W.1 therein.

342. These three persons had sold plots to members of Set-win Employees Housing Cooperative Society through a G.P.A. and Exs.A-68 to A-271 registered sale deeds were marked by P.W.1 in Application No.1319/2003.

343. In Application No.1318/2003, P.W.1 marked Ex.A-78 sale deed dt.01-05-1982 executed by Smt.Sulochanamma in favour of Sri Satya Sai Coop Housing Society Ltd. and also Ex.A-79 to A-84 sale deeds executed by other pattadars in favour of the said Society.

344. Thus we hold that there was no necessity for claim petitioners to file pattas of Waris Ali, Ghani Shareef and Ruquia Begum and they are entitled to grant of relief in the claim petitions, and the sale deeds A68-271 in Application No.1319/2003 and A79-84 in Application No.1318/2003 referred to above show that there was transfer of title to members of Setwin Employees Housing Cooperative Society and to the M/s.Satya Sai Coop. Housing Society Limited.

Contention No.13

345. Appellants contend that the claim petitioners did not adduce evidence that the pattadars had been cultivating lands under the Jagirdars and that they were paying revenue direct to the Jagirdars.

346. The Note attached to the Faisal Patti 1978-79 (Ex.A-4/A-12), after referring to District Collector obtaining the Sethwar of 1357 Fasli from the State Archives Department records a finding by the Revenue Divisional Officer that *he did not see any reason to doubt its genuineness and that the occupants in whose favour the Sethwar was issued are in possession of the land in Sy.No.172 and are cultivating the same.* He therefore directed the implementation of the Sethwar of 1357 Fasli in 1978-79. When the Revenue authorities accepted the possession and cultivation by the pattedars, and the appellants or their predecessors including the legal heirs of Khursheed Jah Paigah have not provided any evidence of their possession, they cannot doubt the cultivation by the pattedars. We reject this plea of the appellants also.

Contention No.14

347. Appellants contended that they had filed a Memo *vide* USR No.44451 of 2019 to the effect that the claim petitions may be allowed to the limited extent of the available claim petitioners and their extents of land, since the litigation is of very long duration, and it would further protract even after the judgment in the present appeals. Reliance is placed on Order XII Rule 6 and Order XXIII Rule 3 CPC.

348. In the said Memo at the end, the following is the plea of the appellants:

“Hence for the extent of land, the present concession is recorded and such of the claim petitioners may be declared as lawful owners and possessors of the said extent of land (as described by them in the claim petitions) and the balance extent of land may be declared as the exclusive entitlement (both ownership and possession) of the appellants/decreed holders and the appeals may be disposed of accordingly without any further adjudication.”

349. Thus the appellants wish to get a declaration of their title to the land in Sy.No.172 of Hydernagar village excluding the land claimed by the claim petitioners, without establishing the same by evidence. This cannot be permitted.

350. Order XII deals with ‘Admissions’.

351. It deals with admissions by a party to a suit of:

- (a) truth of the whole or any part of the *case* of any other party (Rule 1 of Order XII); and
- (b) of *documents* filed by the other party. (Rule 2 of Order XII).

352. Under Order XII Rule 5, a notice to admit facts shall be in Form No.10 in Appendix C and admissions of facts shall be in Form No.11 in Appendix C, with such variations as circumstances may require. A notice to admit documents is to be in Form No.9 in Appendix C, with such variations as circumstances may require.

353. Order XII Rule 6 deals with ‘admissions of fact’ and permits the Court at any stage of the suit, either on the application of the party or on its own motion and without waiting for determination of any other question between the parties, to make such order or give such judgment as it may think fit, having regard to such admissions.

354. In our opinion, there are no admissions of fact by the appellants i.e. the basis of the claim of the claim petitioners in respect of the lands claimed by them, has not been admitted by the appellants in the Memo filed by them. There is no admission of facts in Form No.11 in Appendix C required by Rule 5 of Order XII.

355. Also Order XII Rule 6 uses the words ‘the Court *may*’. Therefore, it is not mandatory and the appellants cannot insist that in view of the Memo filed by them, this Court is bound to pass an order under Order XII Rule 6 as is sought by the appellants.

356. Coming to Order XXIII Rule 3, there has to be a lawful agreement or compromise in writing signed by *both* parties.

357. The claim petitioners have not signed the Memo filed by the appellants and they have not agreed for the relief claimed in the said Memo

by the appellants and specifically requested the Court to ignore the Memo and decide these OSAs on merits.

358. In our opinion, this Memo is nothing but a desperate attempt by the appellants to prevent this Court from going into the issue of their predecessor's title *and* also the fraud and collusion in these OSAs, and to salvage, what little they could, if the decision in these OSAs were to go against them.

359. We therefore reject the plea of the appellants on the basis of the said Memo.

Contention No.15

360. Lastly, a plea is raised relying on Order VII Rule 7 CPC and it is stated that Court cannot grant a relief to a plaintiff on a case for which there was no foundation in the pleadings.

361. In our opinion, the *non obstante* clause in Order XXI Rule 101 CPC would override Order VII Rule 7 CPC and permit this Court to take note of the fraud played on this Court at every stage by the plaintiff, defendant No.157, defendant No.206 and the appellants on the basis of the record of this Court, and entitle this Court to adjudicate the OSAs by not merely allowing or dismissing the claim petitions, but also to pass such other order as, in the circumstances of the case, it may deem fit [Order XXI Rule 98 (1)(b) and Order XXI Rule 100 (b)], particularly when fresh suit is barred and this Court is deemed to have jurisdiction to decide such questions irrespective of what Order VII Rule 7 says.

362. Therefore, this plea is also rejected.

Part VIII.

Whether OSA.No.59 of 2004 also gets reopened consequent to the concession made by the appellants before the Supreme Court and whether the said OSA is also required to be decided afresh by this Court

363. Next we shall consider, whether OSA.No.59 of 2004 also gets reopened consequent to the concession made by the appellants in the Supreme Court and whether the said OSA is also required to be decided afresh by this Court.

364. The reason for this plea of the appellants is to contend that the order in OSA No.59 of 2004 is final and Application No.994 of 1995 has to be treated as having been allowed, and they can sustain the EP on it's basis.

365. It is the contention of the appellants that there has been no remand of OSA.No.59 of 2004 passed on 23.06.2006 by the Division Bench and no SLP was preferred by any party against the order in the said OSA; therefore, the order of the Division Bench in the said OSA setting aside the order dt.26.10.2004 in Application No.994 of 1995 in CS.No.14 of 1958 implies that Application No.994 of 1995 was allowed by the Division Bench; that no interference can be made by this Court while deciding the other OSAs.No.54, 56 to 58 of 2004 with the order of the Division Bench allowing Application No.994 of 1995.

366. Reliance is placed on an order dt.16.11.2018 passed by the Supreme Court in Spl. Leave Petition (Civil) Diary Nos.40990 of 2018. The said Special Leave Petition was filed against final judgment and order

dt.14.03.2018 in OSA.No.59 of 2004 passed by this Court. The said order of this Court on 14.03.2018 states as under:

“All the writ petitions falling under Category-XIII and XIV will be taken up for hearing from 10th April, 2018 on a day-to-day basis on a specific understanding that the learned Government Pleader will get ready to argue the writ petitions from 10th April, 2018 onwards. For the purpose of convenience, the cause list will be printed as such without any modification, since the learned counsel appearing on all sides today have had the benefit of the memo filed by the Receivers-cum-Commissioners and it is up to them to come prepared with respect to the cases that fall under these categories.”

367. The Supreme Court on 16.11.2018 while disposing of the above Special Leave Petition, quoted the above order of this Court and observed:

“Delay condoned.

Mr.Gopal Shankarnarayan, learned counsel, submits that the High Court is likely to reopen even those second appeals, which had already been disposed of.....It is made clear that the execution will pertain only to those writ petitions, which have otherwise survive on account of the remand.

In view of the above, the Special Leave Petition is disposed of.”

368. Subsequently, the operative portion of the above order was modified on 28.11.2018 as under:

“It is made clear that the adjudication will pertain only to those writ petitions and appeals(OSAs) which have otherwise survive on account of the remand. Rest of the order shall remain as it is.”

369. To this SLP Nawab Kazim Nawaz Jung (dead) through legal heir and another, and M/s.Trinity Infra Ventures Ltd. and Others only are parties.

370. *None of the claim petitioners, who were parties to Civil Appeals No.3327 to 3331 of 2014 are parties.*

Finding:

371. We are of the opinion that there was no remand by the Supreme Court of the OSA No.59 of 2004 to this Court in its order dt.5.3.2014 in Civil Appeals No.3327 to 3331 of 2014 because there was no SLP preferred against it by any party. We therefore hold accordingly.

372. In our view infact no remand was necessary in view of the concession made by the appellants before the Supreme Court on 5.3.2014 that common judgment of the Division Bench in the OSAs is vitiated as one of the Judges passed an order in favor of the third parties/claim petitioners when he was a District Judge, Ranga Reddy. (see paras 95-97 above)

Can the appellants rely on the order dt.23.6.2006 in OSA No.59 of 2004 in the instant OSAs 54,56-58 of 2004 ?

373. We are of the opinion that the appellants cannot rely on the order dt.23.6.2006 in OSA No.59 of 2004 in these OSAs for the following reasons:-

374. It is not in dispute that the learned Single Judge had passed a common order on 26.08.2004 in Application No.s 294 of 2003, 296 of 2003, 1320 of 2003, 1318 of 2003, 1319 of 2003, 585 of 2002, 708 of 2002 and **994 of 1995 in favor of the third parties in possession.** Against this common order, OSAs.No.52 to 59 of 2004 were filed by the appellants, which were allowed by the Division Bench on 23.06.2006 by another common order.

375. Even though, there was no Special Leave Petition filed by any party against the order of the Division Bench in OSA.No.59 of 2004, in the SLPs filed against the common order dt.23.06.2006 of the Division Bench in

OSAs.No.54, 56, 57 and 58 of 2004, leave was granted by the Supreme Court and those SLPs were numbered as Civil Appeal No.s 3327-3331 of 2014 and then a common order was passed by the Supreme Court on 05.03.2014.

376. We have already extracted the said common order earlier in para 137.

377. As can be seen from it, all the parties in the Civil Appeals, including the appellants such as Goldstone Exports Pvt. Ltd. and M/s.Cyrus Investments Pvt. Ltd. had informed the Supreme Court that the *impugned order be set aside and the matters be remitted back to the Division Bench of the High Court for fresh consideration of the matters in accordance with law.*

378. The basis of the said request was that Justice B.Seshasayana Reddy, one of the members of the Division Bench, which passed the common order on 23.06.2006 in OSA.No.s 52 to 59 of 2004, had admittedly dealt with the subject matter in issue when he was Principal District Judge, Ranga Reddy District, while disposing of an application under Order XXI Rule 97 and 99 of CPC and had passed an order on 08.06.1998 holding that the claim petition was maintainable in regard to land in Hydernagar village only. But as a member of a Division Bench which decided the OSAs on 23.6.2006, his Lordship had taken a contrary view.

379. In our considered opinion, when all the parties in CAs.No.3327 to 3331 of 2014 unanimously told the Supreme Court that the impugned common order dt.23.6.2006 in OSAs 52-58 of 2004 was bad, the same reason equally applies to the order in OSA. No.59 of 2004 also which was

part of the common order of the Division Bench dt.23.6.2006. In our opinion, the order of the Division Bench dt.23.6.2006 in OSA 59 of 2004, is also vitiated for the same reason for which the rest of the orders was vitiated.

380. We may reiterate that the order was vitiated on account of the same Judge participating in the batch of the OSAs after having passed a contrary order while he was a District Judge. That being the basis, irrespective of whether the Supreme Court had set aside the order in OSA 59 of 2004 or not, we are entitled to hold that the order in OSA 59 of 2004 was clearly vitiated and void and there was no requirement of a formal order setting it aside.

381. In this context, we may state that such cases **where the same Judge passes an order in the lower court and also passes a contrary order while sitting in the High Court in the same case** are also part of the general principle '*coram non judice*' (Judge not qualified) for the situation mentioned above, namely where a Judge in the appellate Court passes an order contrary to the order which he had passed as District Judge. It is in that sense that we propose to use the word '*coram non judice*' being a short description of the situation to say that the Judge (B. Seshasayana Reddy) "*was disqualified*".

382. So the appellants cannot contend that the said admission about the Bench deciding the OSAs is *coram non-judice* does not apply to OSA 59 of 2004.

383. The concept of *coram non judice*, is discussed in **R.Viswanathan and Others v. Abdul Wajid**³⁷. It was held in the said decision that where bias or prejudice vitiates an order of a Court or a Tribunal, the Supreme Court held that the decision may be declared as *coram non judice*.

384. In **Ranjit Thakur v. Union of India**³⁸, the Supreme Court held:

“16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial “coram non-judice”.

385. This principle has been reiterated in several decisions of the Supreme Court such as **Jagadguru Annadanishwara Maha Swamiji v. V.C.Allipur and Another**³⁹ and **Jagmittar Sain Bhagat and Others v. Director, Health Services, Haryana and Others**⁴⁰.

386. In a situation where a party challenged a common order of a Tribunal on the ground that it was *coram non judice*, the Supreme Court had held that *if the said common order is passed without jurisdiction, it would be a nullity and even in cases where the party does not file an appeal against some of the cases in which such common order is passed, the said order will not bind the party.* This is the view taken in **Union of India and another v. Association of Unified Telecom Service Providers of India and Others**⁴¹.

387. In the case of **Association of Unified Telecom Service Providers of India** (41 supra) against a common judgment and order dt.30.08.2007 of the

³⁷ AIR 1963 SC 1

³⁸ 1987(4) SCC 611

³⁹ 2009(4) SCC 625

⁴⁰ 2013(10) SCC 136

⁴¹ 2011(10) SCC 543

Telecom Disputes Settlement and Appellate Tribunal, New Delhi, appeals were filed before the Supreme Court under Section 18 of the Telecom Regulatory Authority of India Act, 1997. This order was based on a prior order dt.07.07.2006 of the said Tribunal, wherein it had decided on the validity of the definition of Adjusted Gross Revenue in the License Agreement between the Union of India and licensees. The Supreme Court was of the view that the Tribunal had no jurisdiction to decide on the validity of the terms and conditions of the license including the definition of Adjusted Gross Revenue incorporated in the License Agreement. It concluded that the order dt.07.07.2006 of the Tribunal insofar as it decides that revenue realized by the licensee from activities beyond the license will be excluded from Adjusted Gross Revenue *de hors* the definition of Adjusted Gross Revenue in the License Agreement is without jurisdiction and is a nullity and the principal of *resjudicata* will not apply. It held that the said order would be a *coram non judice* and *non est* in the eye of law. It further held that the said order is not binding on the Union of India *even in those cases in which the Union of India did not file any appeal against the said order to the Supreme Court.*

388. In our view, the above decision squarely applies on all fours, to the instant case ; and even though there was no Special Leave Petition filed by any party against the order dt.23.06.2006 in OSA.No.59 of 2004 of the Division Bench, since the said appeal was decided along with OSA.No.s 52 to 58 of 2004 by a common order, and since the said common order was accepted by all parties to be *coram non judice* and was set aside by the Supreme Court in its order dt.05.03.2014 in Civil Appeals No.3327-3331 of

2014 after granting Special Leave, even the order in OSA.No.59 of 2004 was hit by the principle of *coram non judice* and would be a nullity. Consequently, it is incapable of execution by the appellants in any forum.

Another alternative reason as to why the order dt.23.3.2006 of the Division bench in OSA 59 of 2004 even if not appealed against, does not help the appellants

389. There is a sharp distinction between (a) an order of an appellate court, here the Division Bench, which merely sets aside an order of a Single Judge, but does not finally dispose of the Application No.994 of 1995 on merits by allowing it *and* (b) an order which not only sets aside the order of the learned Single Judge in the Appln.994 of 1995, but also allows it on merits.

390. Therefore, we would like to point out that in his Common Order dt.26.10.2004 in Application No.s 994 of 1995, 585 and 708 of 2002, 1318 to 1320 of 2003 in CS.No.14 of 1958, the learned Single Judge had dismissed Application No.994 of 1995. From paragraphs 30 to 46 in his order, he gave reasons on merits why Application No.994 of 1995 filed by the present appellants should be dismissed.

391. In the present case, OSA No.59 of 2004 arose out of order of the Single Judge in Appln.No.994 of 1995 seeking modification of an earlier order and delivery of possession. As stated above, that application was heard and dismissed by the learned Single Judge on merits.

392. But in the OSA 59 of 2004, the Division Bench, *merely set aside* the order of the single Judge in Appln.No.994 of 1995 and did not go into merits nor did the bench pass an order for modification or for delivery of possession as claimed by the appellants in the said application No. 994 of 1995, in more detail, herein below.

393. Consequently the factual position is that while the application which was dismissed by the learned single judge stood restored, there was no order in Appln.No.994 of 1995 directing modification or for delivery of possession. So the appellants cannot rely on the order of the Division Bench dt.23.3.2006 in OSA 59 of 2004 to contend that the question of right to possession of the appellants, was already decided, and cannot be reopened.

Further reason why the order of the Division bench in OSA 59 of 2004 is not binding

394. The Division Bench, principally relied upon the circumstance of the State Government's claim being rejected as a ground to allow the OSAs.

395. In **N.S.S.Narayana Sarma and Others** (2 supra) the Supreme Court had itself held that the claim petitioners are setting up independent right and that they are not claiming through the State Government and so they were not bound by any orders passed against the State Government. Without any proper discussion of the legal position, the Division Bench even held that the pattas produced by the claim petitioners are not genuine and that no evidence was produced in support thereof. The Division Bench went on to say why the claim petitions were not maintainable in the following words:

“However, in the absence of a final decree, the same could not have been given affect to nor the claim petitioners also could have filed any applications by way of objections in regard to any of the property. Therefore, they could not have been possibly entertained in the absence of a final decree as such. Even otherwise, a final decree is required to be engrafted on a proper stamp and requirements.”

396. Having said as above as to the maintainability of the claim petitions , the Division Bench did not go into the question as to why the appellants/ applicants in Appln.994 of 1995 were entitled to have possession, because in

the absence of a final decree, it could not have directed delivery of possession to the appellants.

397. Consequently there was no adjudication in favor of the appellants by the Division Bench and what remained was that the OSA 59 of 2004 was allowed and the application 994 of 1995 was simply restored, but there was no adjudication in favor of the appellants in it.

398. That is why, even though there was no SLP against the order in OSA 59 of 2004, there is no *res judicata* on the question of entitlement of appellants to possession of the subject land even though, there is no appeal against the order of the Division Bench in OSA 59 of 2004 to the Supreme Court.

399. Thus we have given *three reasons* as to why, the fact that there was no appeal to the Supreme Court from the judgment of the Division bench in OSA 59 of 2004 arising out of Appln.No.994 of 1995, cannot come in the way of this Court from dealing with the question of the right of the appellants to get delivery of possession:

- (i) The order of the Division Bench in OSA 59 of 2004 is *coram non judice* in the sense mentioned by us, namely that one of the Judges had passed an order in the same CS 14/1958 contrary to the order of the Division bench while he was a District Judge, Ranga Reddy; therefore all findings of the Division Bench including the finding that claim petitioners did not prove their title, are vitiated and are null and void;

- (ii) The Division Bench allowed the OSAs on the ground that the State Government's claim was rejected which does not come in the way of this Court examining the title of the appellants and their right to obtain possession;
- (iii) The Division Bench clearly held that there was no final decree and the third parties/claimants could not file any claim applications.; for the same reason that there was no final decree, the appellants could not seek possession as well; and therefore, the Division Bench was constrained not to pass any order allowing Appln.994 of 1995 for delivery of possession in favor of the appellants.

Finding:

400. For the above 3 reasons given by us, the argument of the learned Senior Counsel for the appellants that the order of the Division bench in OSA 59 of 2004 was not appealed against and that this Court cannot go into the question of the title and right of the appellants to recover possession and that the order operates as *res judicata* is totally misconceived and contrary to the legal position applicable as stated above.

Part IX.

Whether the several implead applications filed in the OSAs are to be allowed or rejected.

401. The following are the implead applications filed by various parties to get impleaded in these OSAs:

1. I.A.No.1 of 2014 in OSA No.54 of 2004
2. I.A.No.2 of 2014 in OSA No.54 of 2004

3. I.A.No.2 of 2019 in OSA No.54 of 2004
4. I.A.No.3 of 2019 in OSA No.54 of 2004
5. I.A.No.1 of 2014 in OSA No.56 of 2004
6. I.A.No.2 of 2014 in OSA No.56 of 2004
7. I.A.No.2 of 2019 in OSA No.56 of 2004
8. I.A.No.3 of 2019 in OSA No.56 of 2004
9. I.A.No.2 of 2014 in OSA No.57 of 2004
10. I.A.No.3 of 2019 in OSA No.57 of 2004
11. I.A.No.5 of 2019 in OSA No.57 of 2004
12. I.A.No.2 of 2014 in OSA No.58 of 2004
13. I.A.No.2 of 2019 in OSA No.58 of 2004
14. I.A.No.2 of 2014 in OSA No.59 of 2004
15. I.A.No.3 of 2014 in OSA No.59 of 2004
16. I.A.No.4 of 2014 in OSA No.59 of 2004
17. I.A.No.1 of 2017 in OSA No.59 of 2004
18. I.A.No.2 of 2017 in OSA No.59 of 2004
19. I.A.No.1 of 2018 in OSA No.59 of 2004
20. I.A.No.2 of 2018 in OSA No.59 of 2004
21. I.A.No.2 of 2019 in OSA No.59 of 2004
22. I.A.No.3 of 2019 in OSA No.59 of 2004
23. I.A.No.5 of 2019 in OSA No.59 of 2004
24. I.A.No.4 of 2019 in OSA No.59 of 2004

402. Sri G. Vidyasagar and Sri P.Sri Raghuram, Senior Counsel and Sri Kakara Venkata Rao, Sri K.S.Murthy and Sri C.B.Ramamohan Reddy and Sri V.Venkata Mayur, Sri J. Prabhakar, Sri P. Dharmesh and Sri D. Srinivas, Sri Ambadipudi Satyanarayana, Sri C.Damodar Reddy, Advocates made submissions in these applications seeking impleadment in the OSA Nos.54 to 59 of 2004.

403. Sri K.S. Murthy, learned counsel for Sri Venkata Mayur in I.A.No.2 of 2019 in OSA No.59 of 2019 contended that his client is claiming through defendant No.52 in CS No.14 of 1958 by name Ghouse Mohiuddin Khan (defendant No.52); that defendant No.52 had got 2/5th share; that he gifted his share to Mahboob Beg; after preliminary decree, in the final report of the Commissioner-cum-Receiver, defendant no.52 got Ac.60.20 gts. as per orders of this Court in Application No.185 of 1973; that mutation was done

in 2012 after survey and demarcation by the Assistant Director, Survey Settlement and Land Records and possession was delivered through panchanama by the Court Commissioner in 2013. He therefore contended that his clients also have to be impleaded in the OSA No.59 of 2014.

404. Sri P. Sri Raghuram, Senior Counsel contends that his client in I.A.No.5 of 2019 in OSA No.57 of 2004 is claiming through one Ehteshamuddin, one of the applicants in Application No.1319 of 2008.

405. Sri G. Vidyasagar, Senior Counsel contends that his clients who are parties in I.A.No.5 of 2019 in OSA No.59 of 2004 and I.A.No.1 of 2018 in OSA No.59 of 2004 purchased plots from M/s Satya Sai Cooperative Housing Society.

406. Sri J. Prabhakar, counsel contends that his clients are parties in I.A.No.2 of 2014 filed in OSAs 54, 56 to 59 of 2004 and they are purchasers from the appellants and their representatives.

407. Sri Ambadipudi Satyanarayana, counsel contends that Punjab National Bank, Andhra Bank and Indian Overseas Bank are his clients, that they lent loans to MBS Jewellers Pvt Ltd on security of documents deposited relating to land in SyNo.172 of Hyderanagar , that the debt was assigned to his client M/s Rare Asset Reconstruction Ltd and they had filed implead petitions IA.No.s 4/2019 in OSA 59/2004, IA 3/2019 in OSA 56 of 2004, IA 3 of 2019 in OSA 54 of 2004 and IA No.1 of 2019 in OSA 55 of 2004 and so they ought to be impleaded as parties in the said OSAs.

408. Sri P. Dharmesh, counsel for the parties in I.A.No.4 of 2014 and I.A.No.3 of 2019 in O.S.No.59 of 2004 contends that his clients are claiming through Ehteshamuddin.

409. Sri C.Damodar Reddy, counsel for the parties in I.A.Nos.1 of 2014 filed in all OSAs claims to be representing the legal heirs of Mohd. Ghousuddin Khan.

410. Sri D. Srinivas, counsel for the parties in I.A.No.2 of 2018 in OSA No.59 of 2004 contends that his client has purchased the property from Satya Sai Cooperative Housing Society.

411. In respect of the various implead applications filed in OSA Nos.54, 56 to 58 of 2004 mentioned above, which arise out of decision of the learned Single Judge in claim petitions, we are of the opinion that there cannot be any impleadment of any party in a claim petition filed by somebody else and the only remedy of such party is to file a separate claim petition, if so advised. This is because each of them would also need to support their pleas by placing evidence before this Court, which cannot be done at the appellate stage.

412. As regards the implead applications filed in OSA No.59 of 2004 is concerned, we are of the opinion that since there was no remand of the said OSA by the Supreme Court to this Court in its order dt.05.03.2014 in Civil Appeal Nos.3327 – 3331 of 2014, it cannot be said to be pending and therefore, these implead applications are not maintainable.

413. Accordingly, all the implead applications in all the OSAs are rejected.

Part X.

The relief to be granted in these appeals:

414. In the result:

- (a) OSA NO.s 54, 56, 57, 58 of 2004 are dismissed and the common order of the learned single Judge dt.26.10.2004 in claim petitions Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application No.s 1320 of 2003 filed under Or.21 Rule 97-101 CPC in E.P.3 of 1996, is affirmed;
- (b) It is declared that the claim petitioners / respondents in the O.S.A.s have established their right, title and interest in the properties claimed by them in the claim petitions/ Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application No.s 1320 of 2003.
- (c) We declare that appellants have failed to establish that the land in Hydernagar village (including Sy.No.172 therein) is Matruka property of Khursheed Jah Paigah, from whom they were claiming under the preliminary decree;
- (d) We declare that the land in Hydernagar village was Jagir land, but prior to 1948, pattas were granted to cultivating ryots under the Khursheed Jah Paigah like Ruquia Begum, Waris Ali, Ghani Shareef, Boddu Veeraswamy and other deemed pattedars by the Revenue Secretariat of HEH the Nizam in 1947. So title to this land passed on to the said cultivating ryots prior to 1948 itself and they validly conveyed title to the claim petitioners. This land therefore did not

vest in the State Government after the Hyderabad Jagir Abolition Regulation, 1358 Fasli came into operation.

- (e) Though there is no remand of OSA No.59 of 2004 by the Supreme Court to this Court, the order dt.23.6.2006 in the said OSA is declared to be passed by a *coram non judice* and to be a nullity and consequently we hold that it is not binding on any body including the claim petitioners in Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application No.s 1320 of 2003; we also hold that the entire order is void including all findings/observations made in it including the finding that claim petitioners did not prove their title to lands in their occupation;
- (f) We declare that the preliminary decree dt.28.6.1963 in CS No.14 of 1958 as regards the lands in Hydernagar village is obtained by practicing fraud both on the Court as well as on the claim petitioners and other occupants of lands in the said village and is declared void *ab initio*.
- (g) We declare that the order dt.20.1.1984 in Application No.266/1983 and order dt.28.12.1995 in Application no.994/1995 passed by this Court are orders obtained by the applicants therein by playing fraud both on the Court and on the claim petitioners and also to be collusive in nature. Consequently they cannot be allowed to be executed against the claim petitioners and third parties.
- (h) We declare that the order dt.24.4.1998 passing Final decree in Appln. No.517 of 1998 in CS No.14 of 1958 is null and void and it is

further declared that there is no Final decree with regard to the Ac.98-10 gts in Sy.No.172 of Hydernagar village, Ranga Reddy District of Item 38 of Schedule IV.

- (i) We declare that the order of the District Judge, Ranga Reddy dt.29.03.1996 in E.P.No.3 of 1996 in C.S.No.14 of 1958 as well as the bailiff report dt.19.04.1996 executing the warrant dt.29.03.1996 are non-existent and to be null and void, and the appellants are precluded from placing any reliance on them in any proceeding against the claim petitioners or against any third party.
- (j) We direct the appellants to forthwith restore to the claim petitioners in Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application No.s 1320 of 2003 lands claimed by the claim petitioners in Sy.No.172 of Hydernagar village (which were taken from them pursuant to the Bailiff report dt.19.4.1996 in E.P.No.3 of 1996) and the appellants are further enjoined from interfering with their possession and enjoyment of the said land.
- (k) The following implead applications are dismissed.
1. I.A.No.1 of 2014 in OSA No.54 of 2004
 2. I.A.No.2 of 2014 in OSA No.54 of 2004
 3. I.A.No.2 of 2019 in OSA No.54 of 2004
 4. I.A.No.3 of 2019 in OSA No.54 of 2004
 5. I.A.No.1 of 2014 in OSA No.56 of 2004
 6. I.A.No.2 of 2014 in OSA No.56 of 2004
 7. I.A.No.2 of 2019 in OSA No.56 of 2004
 8. I.A.No.3 of 2019 in OSA No.56 of 2004
 9. I.A.No.2 of 2014 in OSA No.57 of 2004
 10. I.A.No.3 of 2019 in OSA No.57 of 2004
 11. I.A.No.5 of 2019 in OSA No.57 of 2004
 12. I.A.No.2 of 2014 in OSA No.58 of 2004

13. I.A.No.2 of 2019 in OSA No.58 of 2004
14. I.A.No.2 of 2014 in OSA No.59 of 2004
15. I.A.No.3 of 2014 in OSA No.59 of 2004
16. I.A.No.4 of 2014 in OSA No.59 of 2004
17. I.A.No.1 of 2017 in OSA No.59 of 2004
18. I.A.No.2 of 2017 in OSA No.59 of 2004
19. I.A.No.1 of 2018 in OSA No.59 of 2004
20. I.A.No.2 of 2018 in OSA No.59 of 2004
21. I.A.No.2 of 2019 in OSA No.59 of 2004
22. I.A.No.3 of 2019 in OSA No.59 of 2004
23. I.A.No.5 of 2019 in OSA No.59 of 2004
24. I.A.No.4 of 2019 in OSA No.59 of 2004

(k) The appellants shall pay costs of Rs.10,000/- to each of the respondents in the OSAs 54, 56-58 of 2004 /claim petitioners/applicants in Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application No.s 1320 of 2003.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 20-12-2019

**Note : L.R. copy to be marked : YES
B/o.**

Svv/Vsv/Ndr/Gra/*