
(2004) 04 AP CK 0017

In the Andhra Pradesh High Court

Case No : CCCA No's. 132 of 1979, 209 of 1981 and 54 of 1985

Chairman, A.P. State Electricity Board

APPELLANT

Vs

Mohd Noruddin Asrani (died) by LRs. and Others

RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : (2004) 4 ALD 413

Hon'ble Judges : Motilal B. Naik, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : C.R. Pratap Reddy and M. Vinobha Devi, SC in CCCA No. 132 of 1979, N. Subba Reddy, in CCCA No. 209 of 1981 and A.G. in CCCA No. 54 of 1985, for the Appellant; Advocate-General for Respondent No. 1 in CCCA No. 209 of 1981, G.V. Krishna Reddy, for Respondent Nos. 2 to 6, 8, 9, 12, 14, 16, 18 to 46 in CCCA No. 132 of 1979 and 54 of 1985, M. Vinobha Devi, SC for A.P. TRANSCO, in CCCA No. 209 of 1981 and B. Viswanatha Reddy, in CCCA No. 209 of 1981, for the Respondent

Judgement

Dalava Subrahmanyam, J.—The above three appeals are filed against the judgment and decree in OS No. 38 of 1969 on the file of I Additional Chief Judge, City Civil Court, Hyderabad, dated 30-12-1978 in partly decreeing the suit and declaring the title of the plaintiffs to the unreclaimed portion comprised in Survey No. 9/3 of Khairatabad Village and for recovery of possession of the said extent and dismissing rest of the reliefs claimed in the suit.

2. Aggrieved against the judgment and decree in OS No. 38 of 1969, the Chairman A.P. State Electricity Board, Hyderabad, who is the second defendant filed CCCA No. 132 of 1979, the plaintiffs filed CCCA No. 209 of 1981 and the State of Andhra Pradesh, who is the first defendant filed CCCA No. 54 of 1985. Since the subject-matter of the property in all the above three appeals are one and the same and all the above appeals are filed against the judgment and decree in OS No. 38 of 1969, the following common judgment is delivered in all these appeals.

3. The matrix of the case are as follows:

Mohammad Nooruddin Asrari and Ors., who are the plaintiffs filed the suit for declaration of their title and possession of the lands measuring 75 Acres and 8 guntas comprised in survey numbers 9/2 to 9/15 situated at Khairatabad together with mesne profits for three years preceding to the filing of the suit or in the alternative for a decree for Rs. 1,45,58,720/- towards the cost of the land with interest thereon at 6% per annum from the date of institution of the suit till the date of realization. The material averments contained in the plaint are as follows. For convenience sake the parties are described as plaintiffs and defendants. The Plaintiffs 1 to 4 are the sons, Plaintiffs 5 and 6 are the daughters and Plaintiff No. 7 is the widow of late Shah Mohammad Wajhuttah Hussaini Asrari, S/o late Mohammad Abdul Qader. The said Shah Mohammad Wajhullah Hussain Asrari died on 15-4-1952 leaving behind the plaintiffs as the legal representatives and the plaintiffs succeeded to the suit properties and other properties situated at Khairatabad Village. Late Naimatullah Shah was the ancestor i.e., "Jedda Aala" of the plaintiffs. Along with the plaint material documents were filed in support of their contentions and it was further contended that the original documents are with the Defendants 1 and 2. It was further contended that the Defendants 1 and 2 are in possession and occupation of 75 Acres and 8 guntas as described in plaint A schedule property and it was occupied by the then Electricity Department of erstwhile Hyderabad State from the possession of Shah Mohammad Wajhullah Hussaini with his implied permission and specific understanding that the Government would pay adequate compensation after succession proceedings by Atiyat Court. The land occupied by the Defendants 1 and 2 for power house, workshop, offices and other departmental works and buildings are in the capacity as licensees of the ancestors of the plaintiffs. Late Shah Mohammad Wajhullah Hussaini during his life time asserted his right, title and claim to the suit property and the Electricity Department of Defendants 1 and 2 admitted his title to the suit land and advised him to settle the matter with higher authorities. In spite of repeated correspondence, the compensation was not paid and due to changed circumstances the Defendants 1 and 2 committed breach. Hence, the plaintiffs are entitled to claim possession of the suit land from the Defendants 1 and 2. The then Honourable Minister for Public Work Department Sri Mehdi Nawaz Jung as an agent and head of the Defendants 1 and 2 conclusively accepted the title of late Shaw Mohammad Wajhullah Hussaini to the suit land on 9-4-1952. Meanwhile, Shah Mohammad Wajhullah Hussaini died on 15-4-1952 and later succession proceedings were taken up in Atiyat Court and the first plaintiff was declared as the Manager of the said "Maqta" and as such the plaintiffs became competent to asset their claim for compensation. All the Government Departments of Defendants 1 and 2 have admitted and accepted the right and title of the plaintiffs and their ancestors. An opinion was sought from the Advocate-General and subsequently the claim was denied, which necessitated the plaintiffs to file the suit for the reliefs prayed for. The Defendants 1 and 2 are

liable to remove the constructions from the suit land and bring the land to its original condition. Since the Defendants 1 and 2 played fraud on the plaintiffs by not paying compensation or delivering the suit land, no limitation operate against the plaintiffs in filing the suit against the Defendants 1 and 2. The Defendants 3 to 30 were subsequently impleaded subject to their title and right in the suit land. The defendants approached the revenue authorities for mutation of their names as shikmidars, but their claims were rejected and hence Defendants 3 to 30 are strangers and they have no right, title or interest in the suit properties. They did not file any revision or appeal against the others of Atiyath Court, which became final. Hence, the plaintiffs are entitled to the suit property absolutely through their ancestors of their late Shaw Mohammad Wajhullah Hussaini Asrari.

4. The Defendants 1 and 2 filed separate written statements denying all the averments contained in the plaint. They contended that the suit lands belong to the Government and the plaintiffs have no right, title or interest in the suit properly. The Electricity Department has been using the lands for the purpose of powerhouse, since a long time as the title and possession to the lands vested with the Government. The defendants denied the relationship of the plaintiff to late Mohammed Wajhullah Hussaini Asrari and his alleged right to the suit land. The alleged documents relied on by the plaintiffs are concocted and not binding on the defendants. At any point of time neither the Government nor any one accepted to pay compensation after the succession proceedings as the alleged Muntakhab is void and bad in law and cannot confer any right or title to the suit lands. The Electricity Department never admitted the right and title of the plaintiffs at any point of time much less the then Honourable Minister for Public Works. No survey was conducted to the knowledge of the Collector or any official. The claim of the plaintiffs is not based on any document and all the reliefs claimed are barred by limitation. The suit lands have been in continuous possession and enjoyment of the successive Governments including the Government of Andhra Pradesh. In any event, the defendants have acquired title to the suit property by adverse possession over several decades. The defendants have raised valuable structures on the lands and the plaintiffs and their predecessors having permitted these constructions to be made are precluded from seeking delivery of possession or declaration of title. The suit is not maintainable as there was no notice u/s 80 of Civil Procedure Code. There is no cause of action and hence the suit is liable to be dismissed.

5. The Defendants 3, 5 and 7 to 15 filed written statement contending that they are the successors of late Mohammad Wajhullah Hussaini and they are entitled to the extent of two Annas two and two third pies share in a rupee along with other shareholders. The other defendants also made similar contentions.

6. On the above said pleadings, the Trial Court framed and settled the following issues and additional issues :

Issues :

- (1) Whether late Shah Mohd. Wajhullah Hussaini Asrari had title to the suit land ?
- (2) Whether the plaintiffs are the legal representatives and heirs of late Shah Mohd. Wajhullah Hussaini Asrari ?
- (3) Whether this Court has jurisdiction to entertain the suit ?
- (4) Whether the suit is barred by limitation and the provisions of Order VII, Rule 6 CPC are complied with ?
- (5) Whether the Defendants 1 and 2 are the absolute owners and possessors of the suit land as alleged by the Defendants 1 and 2?
- (6) Whether the Defendants 3 to 30 have title to the suit property ?
- (7) To what relief are the plaintiffs entitled ?

Additional Issues :

- (1) What are the extents and boundaries of the suit land and where are they located ?
- (2) Did the Electricity Department occupied the suit land with the permission of Late Wajhullah Hussaini Asrari and are the Defendants 1 and 2 are licensees of the plaintiffs or their ancestors ?
- (3) Are the requirements of Section 80 CPC satisfied ?
- (4) Have not the Defendants 1 and 2 acquired title by adverse possession ?
- (5) Is the suit claim in admissible in view of the Article 299 of the Constitution of India ?

7. On behalf of the plaintiffs, the first plaintiff was examined as PW.1 and Exs.A1 to A44 were marked and on behalf of the defendants, DWs.1 and 2 were examined and Exs.B1 to B61 were marked. The learned First Additional Chief Judge after appreciating the entire evidence partly decreed the suit with regard to the extent of unreclaimed portion comprised in Survey No. 9/3 of Khairatabad Village declaring the plaintiffs right and title, and ordered recovery of possession and dismissed rest of the suit claim.

8. Aggrieved against the decree and judgment, the plaintiffs filed CCA No. 209/1981 contending that the Court below erred in coming to the conclusion that the Civil Court had no jurisdiction to try the suit with regard to inam lands. The lower Court failed to appreciate that the first defendant denied the title only in the year 1956 and the suit having been filed within 12 years the suit is maintainable and it is not barred by limitation. The lower Court failed to appreciate that under Article 65 of the Limitation Act, 1963, the onus is on the defendants to prove as to when their possession became adverse to the plaintiffs. The lower Court failed to appreciate that the possession of the Defendants 1 and 2 was permissive and there was no adverse possession at all and hence the suit is not barred by

limitation. The lower Court ought to have decreed the suit as prayed for and erred in dismissing the other claims.

9. Aggrieved against the judgment and decree in OS No. 38 of 1969, the Chairman A.P. State Electricity Board, Hyderabad filed CCCA No. 132 of 1979 contending that the Court below erred in declaring that the plaintiffs are entitled to the so called unreclaimed portion of Survey No. 9/3 without appreciating the facts of the case. The Court below failed to appreciate that the plaintiffs were never in possession of whole or any part of the suit lands at any point of time and that the defendants were in possession and enjoyment of the entire suit property by constructing buildings and thereby perfected their right by adverse possession. The Court below ought to have rejected Ex.A11 as not proved. The lower Court erred in relying the evidence of DW-2 and erroneously came to the conclusion that the Defendants 1 and 2 are in possession of a part of Survey No. 9/3 as "unreclaimed portion". The lower Court failed to appreciate that the plaintiffs never pleaded or proved that they were in possession of the so called unreclaimed portion of Survey No. 9/3 within 12 years prior to the suit. Hence, the decree and judgment of the lower Court may be set aside.

10. The State of Andhra Pradesh represented by the Chief Secretary filed CCCA No. 54 of 1985 against the decree and judgment in OS No. 38 of 1969 contending that the lower Court erred in partly decreeing the suit and declaring the right of the plaintiffs to the so-called unreclaimed portion of Survey No. 9/3. The lower Court failed to appreciate that the Defendants 1 and 2 are in possession of the suit lands from 1943 continuously and the plaintiffs failed to prove their right and title and erred in relying on Kasra pahani. The lower Court erred in observing that the Defendants 1 and 2 did not specifically plead adverse possession to the suit land. The Court below erred in partly decreeing the suit and the plaintiffs never pleaded or proved that they are in possession of unreclaimed portion in Survey No. 9/3.

11. Now the following points arise for consideration in these appeals.

(1) Whether the lower Court committed error in coming to the conclusion that the plaintiffs and their predecessors in title, late Mohammad Wajhullah Hussaini Asrari had no right and title to the entire suit properties and thereby not entitled for the relief of declaration and delivery of vacant possession of the entire suit properties with mesne profits and if so, whether CCCA No. 209 of 1981 is to be allowed?

(2) Whether the lower Court committed error in coming to the conclusion that the Electricity Department did not occupy the suit land with the permission of late Wajhullah Hussaini Asrari and the Defendants 1 and 2 are not licensees of the plaintiffs and their predecessors in title?

(3) Whether the Defendants 1 and 2 are the absolute owners and possessors of the suit lands as contended by them and if so whether the lower Court committed error in decreeing the suit partly?

(4) Whether the lower Court committed error in coming to the conclusion that the suit is not barred by limitation ?

(5) Whether the lower Court committed error in coming to the conclusion that the plaintiffs have established their right and title to the unreclaimed portion comprised in Survey No. 9/3 of Khairatabad village and thereby the plaintiffs are entitled for recovery of possession of the said land and if so, whether C.C.C.A. No. 132 of 1979 and C.C.C.A. No. 54 of 1985 are liable to be allowed ?

Point Nos. 1 to 5:

12. The plaintiffs filed the suit for declaration of title to the suit property and for recovery of possession with mesne profits or in the alternative they claimed the cost of the lands in a sum of Rs. 1,45,58,720/-with interest at 6% per annum from the date of suit till the date of realization with ancillary reliefs. The first plaintiff Mohd Nooruddin Asrari is examined as P.W-1 and through him Exs.A1 to A44 are marked to prove the suit claim. P.W-1 deposed with regard to the relationship of the plaintiffs with their ancestors Shah Mohammad Wajhullah Hussaini, who died on 15-4-1952. It is in the evidence of P.W-1 that the suit property was originally granted by H.E.H. the Nizam in the name of his ancestor, Naimuttah Shah and later it was confirmed in favour of his grand father Mohammad Abdul Khader and the lands are called maktha lands. The plaintiffs are relying on Ex.A1, which is the certified copy of Muntakhab. Ex.A1 was issued in pursuance of a firman issued by Nizam. The suit lands are maktha lands. Survey was conducted in 1340 fasli and Setwar was issued in 1350 fasli showing the Survey numbers and extents of the lands in question. In the Setwar mutation was done in favour of his father Wajhullah Hussaini Asrari@ Mohammad Kajimuddin. Patta was also granted in favour of his father. Ex.A3 is the certified copy of the Virasat order. Ex.A5 is the certified copy of faisal patti. On account of non-payment of land revenue, the maktha lands were taken possession by the Government in 1328 Fasli. In 1356 Fasli, the possession of the maktha lands were restored to his father. Certified copy of the order of the Collector is Ex.A7. Ex.A8 is the certified copy of the compliance report. Ex.A9 is the certified copy of the panchanama at the time of redelivery. Ex.A10 is the certified copy of the delivery receipt. Ex.A11 is the certified copy of khasra pahani for 1954-55. A part of the land was also acquired for railway siding and compensation was paid to his ancestor and C.C. of the letter is Ex.A.14. Ex.A18 is the Gazette notification. Ex.A19 and Ex.A20 are the letters from the Electricity Department. The Revenue Secretary opined that his father had title to the suit land. The Chief Electrical Engineer wrote a letter to his father asking him whether his father was agreeable to receive compensation at the rate of Rs. 1/- per square yard and other official correspondence were marked through P.W-1. P.W-1 further deposed that the suit lands are inam lands and he filed an application on 26-9-1975 for grant of occupancy rights in his name and the said application is still pending with the Special Tahasildar, Inams. P.W-1 admitted that some portions of the suit lands were occupied by the Department over number of years.

13. Syed Mohammad Ghouse, Special Deputy Tahasildar in the office of the Special Deputy Collector, Land Enquiries, Hyderabad was examined as D.W-1. He deposed that Khairatabad Village was formerly a part of Sarfekhas. The Sarfekhas was merged with Dewani in 1358 Fasli. On the merger of Sarfekhas in the Dewani, the record of the Sarfekhas was sent to respective Department of Dewani. The certified copies of faisal patti with regard to Makta Niyamathullah Shah were marked as Exs.B24 to B29. In Ex.B29 it was recorded by the Nizam Jamabandi that in respect of Survey numbers 9/2 to 9/15 earlier orders in faisal patti of 1355 Fasli to the effect that the patta for the lands covered under the said survey numbers were cancelled for the reasons recorded. Ex.B30 is the certified copy of the faisal patti for 1950. The father of the plaintiff preferred an appeal before the Additional Collector against the orders, of Nizam Jamabandi in Ex.B30 and Ex.B31 is the judgment dismissing the said appeal on 30-9-1950. Appeal filed before the Board of Revenue by the father of the first plaintiff was also dismissed and Ex.B32 is the copy of the judgment. The certified copy of the judgment passed by the Sarfekhas is Ex.B37. Ex.B38 is the certified copy of the judgment of Moziz committee. Printed copy of the Muntakhab is Ex.B40. Printed copy of the statement in respect of Makta Niyamathullah Shah is Ex.B41. The maktha lands in question were under the submergence of Hussainsagar and from 1909 onwards structures have been constructed in the disputed land by the Electricity Department. Setwar is a Survey Register. No notice was issued to the plaintiff before passing an order under Ex.B35. In Setwar disputed lands are mentioned as sarkari. The Electricity Department is in possession of the suit land from 1909.

14. Sri M. Nageswarao the then Superintendent of power house in mint compound is examined as D.W-2 and he deposed that he worked in Hussainsagar power house station in various capacities and promoted as Superintendent of power house. Through him, some official records were marked, who produced Exs.B42 to B47. It is in his evidence that the power house was constructed some time in 1909. As per the records power house was expanded stage by stage. It was in continuous occupation of the Electricity Department.

15. Heard the Counsel for the appellants and respondents. Perused the oral and documentary evidence on record.

16. The learned Senior Advocate Sri C.R. Pratap Reddy appearing for the appellants/plaintiffs contended that the lower Court has not appreciated the oral and documentary evidence of P.W-1. The documents filed by the plaintiffs are public and ancient documents, which would prove the right and title of the plaintiffs and their predecessors. The learned Senior Advocate further contended that the lower Court failed to rely on the entries in the khasra pahani showing the patta for all the lands in the names of the plaintiffs and failed to appreciate the entries in the Setwar which is a basic document showing the names of the pattadars and the patta holder, basing on which pahani patrikas will be prepared. Further, D.W-1 admitted that the entries in those public documents are true and

correct. The entries in Ex.A1 would prove the conversion of maktha lands into patta lands which would further corroborate the entries in the Setwar. Exs.B24 to B29 would prove that Naimuthullah Shah as the makthadar of the disputed lands. Exs.A9, A10 and A29 would prove delivery of possession and succession of the lands in question in favour of Shah Mohd. Wajhullah Hussain, The entries in Ex.A11 are not disputed and it is a record of right. The Senior Counsel further contended that though the arguments are advanced that the Defendants 1 and 2 perfected their right by adverse possession, the same was not pleaded or proved.

The learned Advocate relied on the following decisions:

(1) Seshamni and Another Vs. The Deputy Director of Consolidation, District Basti U.P. and Others, . Wherein it was held that:

"To base a claim on adverse possession, it is not enough to allege that one is in possession of the land concerned. The ingredients of adverse possession were missing as these were not alleged nor taken into consideration."

The same view was taken in the following decisions also.

(1) Balkrishan Vs. Satyaprakash and Others, .

(2) Indira Vs. Arumugam and Another, .

(3) Gaya Parshad Dikshit Vs. Dr. Nirmal Chander and Another, .

(4) Bhura Mogiya and Ors. v. Satish Pagariya and Ors. ..

(5) Bai Reva Vs. Bai Jadav, .

The learned Senior Advocate Sri Pratap Reddy, further contended that the suit for possession is not a bar and the suit is maintainable even after the enactment of A.P. (T.A) Abolition of Inams Act, 1955. The learned Advocate relied on a decision in B. Ramender Reddy and Ors. v. The District Collector, Hyderabad District and Ors. 1993 (2) An.WR 84, wherein it was held that notwithstanding the abolition of the Inams on 20-7-1955 and vesting the Inams in the State, the rights of the inamdar or tenant are not extinguished provided, they are in possession of the land on the relevant date viz. First July, 1960, on which date the rest of the provisions of the Act were brought into force. He also placed reliance on the decision in B. Naga Reddy and Ors. v. Mattam Parvathaiah (died) and Ors. 1996 (1) ALD 254, wherein it was held that:

"the relief of possession claimed by the plaintiffs in the suit could not be granted by the statutory authorities under the Tenancy Act or under the Abolition Act. Where the authorities have no jurisdiction to grant the relief claimed, there is no warrant for the presumption that the jurisdiction of the Civil Court is ousted."

The learned Advocate further contended that the plaintiffs are basing their claims on the entries in the khasra pahani, which is a record of right and entries would prove the right and title of the plaintiffs. The learned Advocate relied on a decision in Mylaram Lachaiah and Ors. v. Nafeezunnisa Begum and Anr. ILR 1972

AP 652, wherein it was held that the particulars contained in the khasra pahani give all the particulars stipulated in Section-4 of the Regulation and are in conformity with Sub-section (1) of Section-4. Hence, it can be held that Khasra pahani is a record of right notified under Section-4(2) of the Regulation and hence the suit may be decreed as prayed for by allowing CCCA No. 209 of 1981.

17. The learned Advocate-General Sri Anantha Babu appearing on behalf of the State and the appellant in CCCA No. 54 of 1985 contended that the plaintiff has not proved the documents of title and P.W-1 is not competent to speak about these documents since he is only a legal representative. Further, the authenticity of the said documents are questioned as they are spurious documents. In the absence of best evidence, the documents cannot be relied and no credence can be placed on these documents. The learned Advocate-General further contended that the lower Court erred in coming to the conclusion the suit is not barred by limitation. The suit having been filed in the year 1968, the provisions of the Limitation Act, 1963 would come into operation. The construction and occupation of the suit lands by the Electricity Department and the admissions made by P.W-1 would prove that the Electricity Department has been enjoying the property as absolute owner. The admissions made by P.W-1 would destroy the case of permissive possession. The plaintiffs own admission, own pleadings show that the defendants were in possession of the property utilizing it for their own purpose and constructing buildings thereon. The conduct of the defendants clearly established the requisite animus for holding the property as its own. It was open, peaceful and continuous. Nothing more is required to establish adverse possession. The alleged departmental communications would not amount to any admission of their title. Since the suit was filed more than 12 years later, the suit is barred by limitation. There is not a single document, which indicates acceptance of title or admission of title. It was further contended that all the ingredients of adverse possession were present in favour of the Defendants 1 and 2. Admittedly, the plaintiffs are not in possession since 1930 and unless permissive possession is proved, the title of the plaintiffs is lost. The Trial Court rightly held that there was no permissive possession and hence the plaintiffs lost their title and the suit is clearly barred by limitation. The documents relied on by the plaintiffs are not proved and they are spurious. The plaintiffs have not filed any document to prove their possession. Further the finding in the decision in Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, would operate as res judicata. In the said decision, the original grant itself was disbelieved. The plaintiffs have not produced any patta to any specific land. No revenue receipts are available and no documents are filed to show their possession. After the abolition of imams and enactment of A.P. (T.A) Abolition of Inams Act, 1955 the Civil Court has no jurisdiction in respect of the inam lands and hence the suit is not maintainable.

18. The learned Senior Advocate Sri N. Subba Reddy appearing for the second defendant and the appellant in CCCA No. 132 of 1979 contended that the disputed property has been in continuous possession of the Electricity

Department and at no point of time they recognized the plaintiffs or their predecessors in title as the owners of the disputed property and further the suit is barred by limitation. The learned Senior Advocate Sri Subba Reddy further contended that on the death of the inam holder, the property reverts back to Nizam and the Nizam has to regrant the same either to the heirs of maktha holder or to a stranger. Unless and until there is regrant after the death of the last male holder, the property reverts back to Nizam. In the instant case, Succession proceedings were pending for a long time and unfortunately by the time the Nizam took a decision, Hyderabad State merged with the Indian Union and the power of Nizam has come to an end and successive Governments have not regranted the same to the heirs of the last male member after the merger. The learned Advocate relied on a decision in Lokraj and Others Vs. Kishan Lal and Others, , wherein it was held that:

"Consequent to the abolition, the pre-existing right, title and interest of the inamdar or any person having occupation of the inam lands stood divested and vested in the State until regrant is made. The inamdar thereby lost the pre-existing right, title and interest in the land. The right to partition itself also has been lost by the statutory operation unless regrant is made, When regrant is made and in what capacity the regrant would be made is a matter to be considered and decided in terms of the regrant."

In the instant case, there is no evidence of regrant and hence the property reverted to the Nizam and no orders have been passed with regard to regrant by successive Governments. The Succession proceedings relied on by the plaintiffs cannot be recognized in the eye of law. The mere entries in khasra pahani will not confer any title on the plaintiffs. The entries in the Setwar and Khasra pahanies cannot be relied as they were not proved and further the entries were tampered and there are interpolations. The documents relied on by the plaintiffs were disbelieved by the Land Grabbing Court and they were held to be spurious and the order of the Land Grabbing Court was confirmed by the Supreme Court in the decision reported in Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, and hence the suit of the plaintiffs may be dismissed in toto by allowing CCCA No. 132 of 1979.

19. The plaintiffs filed the suit for declaration of their title and for recovery of possession and hence the burden of proof lies on the plaintiffs. The plaintiffs are mainly relying on the Muntakhab, which is a crucial document. The evidence of P.W-1 and the documents marked would disclose that the suit property consists of Inam land covered by inam maktha and the land assigned by Sarfekhas authorities. Under Ex.A1 there was a grant of 72 bigas of inam land. As seen from Ex.A1, no survey numbers or boundaries are mentioned in the said document. It was a personal grant to the grand father of first plaintiff. There is no documentary evidence that the original grantee enjoyed the suit properties. He died in the year 1918. It is also admitted by P.W-1 that no patta was granted in favour of the original grantee. Abdul Khader did not apply for issuance of a

patta in respect of the excess land. The extent of the excess land referred under Ex.A1 was not determined. The plaintiffs have not filed any document to prove that they applied for assignment and competent authority assigned the said lands. So far as maktha lands are concerned, there was no subsequent grant by Nizam and by the time the proceedings started, the property vested with the Government. Statement of maktha enquiry, which is in Urdu shows that the Maqta was granted by the Qutub Shahi Rulers which became Sarfekhas property (private property of the Nizam) subsequently. In the maqta enquiry, the Taluqdar (Sarfekhas) recommended that maqta be granted in favour of Md. Abdul Quadir and others, who were ancestors of the plaintiffs. The location of the Maqta, which is referred to as Maqta Niamatullah Shah was mentioned as adjacent to Hussainsagar. As seen from the letter of Administrative Committee of Sarfekhas (Mubark) HEH, the Nizam sanctioned confirmation of cash grants and the Maqta excluding the land covered by graveyard and the Kings bungalow. The original Muntakhab of Maqta Naimuthullah Shah had excluded the King's bungalow with the land and the graveyard while sanctioning confirmation of Maqta by H.E.H. the Nizam. A Palace was constructed during the life time of H.E.H. the Nizam, which was referred to as King's bungalow and later came to be known as the Secretariat. The land between the Secretariat and the Hussainsagar was part of the excluded land and was lying vacant. It was the land of the Sarfekhas. The plaintiffs and their predecessors in title are claiming their right. The certified copy of panchanama is filed to show that the land bearing Survey Numbers 9/2, 9/10, 9/12, 9/15, 9/16 to 9/20 were put in possession of the inamdar. The document in Urdu recites "Hence the Maqta may be restored in favour of Syed Shah Mohd. Wajhullah Hussain Asrari, Maqtedar of Maqta Naimatullah Shah and after release and handing over a detailed compliance report, should be sent along with the receipt." Such an important order directing delivery of possession of land bearing survey numbers noted above, which was excluded from regrant of Maqta under Muntakhab could not have been directed to be delivered without an order. No order was filed in support of the panchanama. For the above said reasons, the lower Court rightly disbelieved those documents.

20. The next aspect to be considered is when the original grantee failed to seek patta for the additional grant, whether his right extinguished and his legal heirs cannot claim any right and title. The only source of title for the inam land is under the original of Ex.A1 Muntakhab. The land remained as the Sarfekhas land and on merger of Sarfekhas in Divani on 5-2-1949, it became the Government land. On coming into force of the A.P. (T.A) Abolition of Inams Act, 1955, the lands vested with the Government. Neither the plaintiffs nor his predecessors in title obtained occupancy certificate in respect of the land in dispute under the Inams Abolition Act. In the absence of documentary evidence, we are of the opinion that Mohd. Nooruddin Asrari had no title to the suit land and consequently the plaintiffs cannot derive any right or title. On the death of inam holder, the property reverted to the Nizam and before the Nizam regranted, the property merged with the Government. The plaintiffs are relying on the entries in

khasra pahani. It is only a piece of evidence, but it cannot confer any right or title to the plaintiffs. The plaintiffs did not allege any regrant. It is also admitted that the inam land was taken over for non-payment of taxes and subsequently they were handed over. The original grant was in favour of seven individuals and the plaintiffs are not the sole legal representatives. It is admitted by P.W-1 that the plaintiffs applied for grant of patta, but there is no proof that such a petition was filed. No revenue receipts are produced for the enjoyment of the plaintiffs or their predecessors in title. In the absence of documentary evidence, we come to the conclusion that the lower Court has not erred in coming to the conclusion that the plaintiffs failed to prove their right to the suit property. The next document relied on by the plaintiffs is the Setwar. It is noticed that the entries in the said pahani is interpolated and therefore the genuineness of the entries are in question. The documents relied on by the plaintiffs are not the originals, but they are certified copies. Further, those documents are not proved by any independent evidence and hence in the absence of proof, we are unable to believe the documents to be true. For the above said reasons, the lower Court has not committed error in not relying on those documents.

21. The documentary evidence on record disclosed that the Electricity Department occupied the suit land for construction of powerhouse from the year 1909. The Electricity Department also constructed number of buildings in the suit lands to the knowledge of the plaintiffs and their predecessors in title. There is absolutely no document filed by the plaintiffs to prove that the defendants occupied the suit land with the permission of the plaintiffs or their predecessors. The admissions made by P.W-1 destroy the theory of permissive possession. There is no document to show that the department obtained permission from the predecessors in title of the plaintiffs. P.W-1 admitted that he was aware of the possession by Electricity Department from his 14th year. As per old Limitation Act under Article 144, provide the period of limitation of 12 years from the date when the possession became adverse. The father of P.W-1 died in the year 1952 and P.W-1 was aware of the possession by Electricity Department from 1930 onwards. There is no document to show that the department was occupying the suit land with permission or they have been paying any rent to the plaintiffs. As per Article 144 of the Limitation Act, 1908, the plaintiff had to file the suit within 12 years when possession became adverse. P.W-1 admitted that they were aware of the possession of the Electricity Department from 1930 onwards. In such circumstances, the suit is barred, by limitation. Though some correspondence were marked and some officials were entertaining the claims of the plaintiffs, no legal consequences will follow, since those persons were not competent to represent the Government. The Government never accepted their claims and there was animus on behalf of the Electricity Department to enjoy the property, as the property of the Government and therefore all the ingredients of adverse possession are satisfied and we are of the view that the lower Court rightly held that Defendants 1 and 2 enjoyed the suit property as the property of the Government and therefore they perfected their title by adverse possession.

The suit was filed in the year 1969 and by then the new Limitation Act, 1963 has come into force. Under the New Limitation Act, the burden is on the defendant to prove adverse possession for 12 years. In the facts and circumstances of the case, the defendants have been enjoying the suit property adversely for more than 12 years and therefore the suit is barred under Article 65 of the new Limitation Act, 1963, The Chief Engineer of the Electricity Department is not competent to represent the Government and therefore even if those letters are taken into consideration, it cannot be said that the Defendants 1 and 2 acknowledged or recognized the right of the plaintiffs or their predecessors in title. For the above said reasons, we hold that the lower Court has not erred in holding that the defendants 1 and 2 perfected their right by adverse possession and the suit is barred by limitation.

22. The learned Additional Chief Judge decreed the suit in part declaring the right and title to the suit property insofar as unreclaimed portion comprised in Survey No. 9/3 of Khairatabad village and to demarcate the said portion, an Advocate Commissioner has to be appointed. The lower Court rightly came to the conclusion that the plaintiffs failed to prove their right and title to the suit property by their documents of title. Having given such a finding, we are unable to accept as to how the lower Court declared the right of the plaintiffs to the unreclaimed portion of Survey No. 9/3 of the suit land. Further, the suit is barred by limitation and the plaintiffs are not entitled for any reliefs claimed in the suit. The Trial Court relying on Ex.A11 decreed the suit in part. The plaintiff failed to prove by any documentary evidence with regard to their assignment of the land or grant of patta to the suit land or their possession. As per Ex.A7, the alleged possession was disbelieved and hence the plaintiffs are not entitled to any reliefs claimed in the suit.

23. The learned Additional Chief Judge mainly relied on the recitals in Ex.A1 1 "which is the certified copy of the khasra pahani. The entries in khasra pahani cannot confer any right or title to the plaintiffs, but it is only a piece of evidence. We have already discussed earlier in para-19 with regard to the oral and documentary evidence adduced on behalf of the plaintiffs. P.W-1 alone was examined on behalf of the plaintiffs and he is not competent to speak about the documents, which are marked through him and most of them are not proved. We have already observed that the plaintiffs failed to prove their right and title to the suit property and the suit is barred by limitation. There was no regant by the Nizam and the property merged with the Government and no patta was granted in favour of the plaintiffs. Mere entries in the khasra pahani cannot confer any right to the plaintiffs. The Trial Court erred in observing that the plaintiffs got their right and title to the unreclaimed portion in Survey No. 9/3 relying on the entries in Ex.A11 and erred in observing that there is no evidence that the defendants acquired the property by adverse possession to the said portion. For the above said reasons, we hold that the Trial Court erred in partly decreeing the suit and to that extent the judgment and decree has to be set aside.

24. On reappraisal of both oral and documentary evidence adduced on behalf of the parties, we hold that the plaintiffs and their predecessors in title failed to prove their right and title to the entire suit property and the lower Court committed error in partly decreeing the suit so far as unreclaimed portion of Survey No. 9/3 is concerned and considering the evidence of P.W-1 and D.Ws.1 and 2 and the documents filed on both sides, we hold that the Electricity Department did not occupy the suit land with the permission of late Wajhullah Hussaini Asrari and the Defendants 1 and 2 are not licensees of the plaintiffs or their predecessors in title. There was no regrant by Nizam so far as suit properties are concerned and the properties merged with the Government and no patta was granted to the plaintiffs after coming into force of A.P. (T.A) Inams Abolition Act, 1955. In view of the fact that the defendants are in continuous possession and enjoyment of the suit properties, they perfected their right by adverse possession and the suit is barred by limitation. For the abovesaid reasons, we hold that the suit of the plaintiffs against the Defendants 1 and 2 has to be dismissed in toto by allowing CCCA No. 132 of 1979 and CCCA No. 54 of 1985. Consequently, CCCA No. 209 of 1981 is dismissed and we answer the points accordingly.

25. In result, in view of the findings given above, CCCA No. 132 of 1979 and CCCA No. 54 of 1985 are allowed with costs setting aside the decree and; judgment in OS No. 38 of 1969 on the file of the First Additional Chief Judge, City Civil Court, Hyderabad, dated 30-12-1979 holding that the plaintiffs are not entitled to any reliefs claimed in the suit. CCCA No. 209 of 1981 is dismissed without costs.