

(1956) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Second Appeals No's. 306 and 308 of 1952-53

Chanam Reddy

APPELLANT

Vs

Narayan Reddy

RESPONDENT

Date of Decision : 21-09-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7
Hyderabad Civil Procedure Code, 1323 — Section 68
Limitation Act, 1963 — Article 100, 106, 120

Citation : (1956) 09 AP CK 0004

Hon'ble Judges : Qamar Hasan, J; Manohar Pershad, J

Bench : Division Bench

Advocate : Khaja Abdul Mukhtadar, for the Appellant; L. Lakshmi Narsiah, for the Respondent

Judgement

Qamar Hasan, J.—Chinnam Reddy & Aga Reddy the Plaintiffs & the Defendant Narayan Reddy feel aggrieved by the judgment & decree dated 29-3-1952 of the District Judge, Madak, who in the exercise of his appellate jurisdiction affirmed the order of dismissal of the suit in so far as the declaration of title to kotwali patel's watan of KodpalU was concerned but decreed it for a quarter share in the pat-warigiri of Yelmakanna. Consequently there are two appeals numbering 306 and 308 of 1952-53 before us which will be governed by this judgment.

2. Undisputedly a moiety of the watan of patwarigiri of Yelmakana was purchased by Manik Reddy, the father of the Defendant in 1318-F., and the transfer was sectioned by the then holder of the paigah.

3. One Chinnam Reddy, the uncontroversial ancestor of the parties was the sole incumbent of the Mali and Kotwali watans of Kodpaill. On his death he was survived by his sons Baga Reddy and Manik Reddy and a grandson Durga Reddy by a predeceased son of Ranga Reddy, Proceedings for the succession to the watans started before the Jagir Officers and finally the Mir Mujlis of the Paigah by his order of 19th Meher 1313F., sanctioned the patta of both the watans in the

name of Baga Reddy and appointed. Dinga Reddy and Manik Reddy to discharge the duties of Kotwali and Mali Patel respectively.

In the month of Khurdad 1321F, Manik Reddy and Baga Reddy died one after Anr. in a short span of time, which resulted in fresh succession proceedings. The Plaintiffs through the guardianship of their mother Lingamma made representation that the patta of the Mali Patel's watan may exclusively be mutated in the name of the first Plaintiff Chinnam Reddy; and the Defendant, who was the son of Manik Reddy similarly be recorded as the Pattadar of the kotwali patel's watan.

Narayan Reddy expressed assent to the proposal made by Ligamma and on the recommendation of the Jagir's Tahsildar, the Taluqdar by his order of 23rd Khurdad 13235., gave effect to the wishes of the parties and accordingly mutated the patta of the Mali Patel's watan in the name of the first Plaintiff with the shikmi of the second Plaintiff, ordered the Defendant at the same time to be recorded as the exclusive pat-tadar of the Kotwali patel's watan.

4. This state of affairs continued for nearly 19 years. In 1342F., there was a partition of the family property between the Plaintiffs and the Defendant. It is admitted that the said watans were allowed to retain their status quo. In 1351-F., the Plaintiffs directed a two pronged attack against the Defendant. In the first place they moved the Taluqdar of the Paigah to re-open the succession proceeding in relation to the Kodpalli watans on the allegation of fraud and malpractices and in the second place they sought to have themselves recorded as proportionate sharers in the Yelmakanna patwarigiri along with the Defendant on the plea that it was purchased with the joint family funds.

The Taluqdar by his separate orders of 29th Islander 1352F., and 20th Aban 1352F., disallowed both the applications neatening the plea of fraud and of the purchase of half the share of the patwarigiri of Yelmakanna with the aid of joint family funds. The matter was taken in appeal and the Sadrul Maham Paigah dismissed the appeal and refused to review the appellate order. Against the background of these events the Plaintiffs brought the suit, out of which these appeals arise, on 12th Aban 1354F.

The whole case as put forward by the Plaintiffs rested upon the plea that at the time when succession opened on the death of Baga Reddy, they were exclusively entitled to the watan of the kotwali patel as well since the Defendant's father had already gone out of the family by reason of his being adopted by one Papamma who owned a share in the Mali Patel's watan at Rayala Mudug. The Defendant could not therefore claim any interest in Kodpalli watans as he was no longer a member of the family to which the watans actually belonged.

This important fact, according to the Plaintiffs, ought to have been brought to the notice of the Jagir authorities when they were dealing with the question of succession but they being minors and their mother being under duress no steps were taken to disclose the true state of affairs; on the other hand, the mother

was made to express her willingness on behalf of the plain-tiffs to the kotwali watan being mutated solely in the name of the Defendant.

In these circumstances, they alleged, they were not bound by the concession made by their mother and they were entitled to a declaration that the Defendant's name was liable to be removed from the takhta-e-wirasat and their name substituted as the exclusive owners of the disputed watan. The Plaintiffs made the same prayers for the same reason in respect of the purchased share in the patwarigiri of Yelmakanna.

5. The Defendant traversed all the material adverse allegations on the part of the Plaintiffs. He denied that his father had ever been adopted by Papamma and that he never put the mother of the Plaintiffs under duress to extract a statement to his advantage. The Mali pateli watan was, according to the Defendant, mutated in the name of the Plaintiffs because they were members of the senior branch of the family.

With respect to the Yelmakanna watan his defence was that it was an out & out self-acquisition of the Defendant's father & that fact according to him was borne out by non-intervention of the Plaintiffs' father in the succession proceeding, which started on the death of the Defendant's father to have himself mutated as pattadar on the plea of the watan being the asset of the coparcenaries and he being the senior member of the family.

His continuous silence over the exclusive sanction accorded to the Defendant till the moment of his death was a sure indication to the contrary to what the Plaintiffs alleged. He also raised the plea of limitation. He asserted that the impugned mutations were a fait accompli in 1322F., and 1323F., and the present suit filed in 1354F., could not for any reason be said to be within limitation. On these pleadings the following issues were struck:

1. Whether the Plaintiff has a right to sue,
2. Is the suit within limitation period,
3. Whether half of patwarigiri of village

Yelmakanna is the self-acquired property of the Defendant's father.

4. Whether the Defendant got the watan off police pateli by succession without any right at a time when the Plaintiffs were minors.

5. Whether the Defendant's father was adopted in Anr. family and so, he and the Defendant lost their rights in the parental family; what is its effect on the present suit,

6. Whether according to the facts of the plaint the partition between the parties took place in (13) 49F.,

7. In case the above issues are proved, are the Plaintiffs entitled to declaration of right to police pateli of Kodpalli and to half the patwarigiri of Yelmakanna?

Apart from documentary evidence, seven witnesses were led on behalf of the Plaintiffs including the Plaintiffs and the Defendant examined five witnesses of whom the Defendant was the fourth witness. The learned Munsiff after a review of the whole evidence held the suit beyond time and found all issues except 1 and 3 against the Plaintiffs and dismissed the suit. Issue No. 3 was decided against the Defendant on the ground that his own witnesses had testified that Yelmakanna was acquired with the aid of joint family funds.

6. The learned District Judge on appeal by the Plaintiffs agreed with the trial Court that in so far as the disputed Kodpalli watan was concerned the suit was barred by limitation but in regard to the patwarigiri of Yelmakanna he negated the plea of limitation and partly decreed the suit holding that the said watan belonged to the family.

7. The learned Counsel for the Plaintiffs abandoned the case as set up in the plaint. He, however, contended that though the Plaintiffs might have failed in their attempt to establish the alleged coercion on the Plaintiff's mother and the plea of Manik Reddy's adoption in Anr. family, yet they were still entitled to a declaration of their moiety in the annual emoluments of the kotwali patel's watan since the family watans had not undergone the process of partition. He further urged that the suit for the facts stated in the plaint and the material standing on the record cannot justifiably be held to be beyond time.

8. Taking up the question of limitation first, we are of the opinion that the suit was well within time. The Plaintiffs in para 8 of the plaint had stated that on appeal from the order of the Talukdar the appellate authority of the Paigah by its order of 13th Meher, 1353-F, decided in favour of the Plaintiffs. It was on review that the same authority reversed the order on 6th Azur, 1354-F, and found in favour of the Defendant. The Defendant in his reply did not specifically deny the fact of the appellate authority making an order favourable to the Plaintiffs.

With such an order securing to the Plaintiff's the object of his efforts, the Plaintiffs were under no obligation to have recourse to the civil court. It is admitted on all hands that Article 100 of the Hyderabad Limitation Act corresponding to Article 120 of the Indian Limitation Act applies to the facts of this case. According to that Article the limitation of six years starts when the right to sue accrues. The right to sue accrued to the Plaintiffs on 6th Azur 1354F. Within a year of that order the Plaintiffs brought the present suit which was well within time. For detailed reasons for our view, we may refer to the Full Bench case reported in *Kate Reddy v. Abdul Gafoor* 1355F. Nazair-e-Hyd 361(A). The learned advocate for the Defendant urged that the right to sue accrued to the Plaintiffs in 1323F when the Defendant got the disputed watan all to himself. As they were minors at that time they should have brought the suit within three years after the cessation of the disability. If this argument is accepted as sound, the suit would undoubtedly be beyond time. But as mentioned above, the Plaintiffs were fortunate enough to get a temporary success with respect to the desired right to the watan in dispute. Fresh right to sue therefore accrued to

them when again an adverse order was passed on 6th Azur 1354F. This aspect of the case escaped the attention of the courts below, otherwise they would have held the suit to be within time.

9. The plea of limitation being thus placed beyond controversy, the next question to be determined, as was contended for on behalf of the Plaintiffs, is whether they, having failed in the case as put forward by them, can claim to get themselves recorded as the pattadar of the disputed watan or alternatively as a sharer to the extent of a moiety in the prequisite attached thereto.

10. I find it difficult to accede to such a proposition. In order to get any general relief it was incumbent on the Plaintiffs to express consent and readiness to concede to the right of the Defendant to participate in the emoluments, of the Mali Patel's watan which the Plaintiffs had been and would continue to enjoy exclusively. The right of the Defendant in the said watan cannot be broached in the present suit for the simple reason that it does not form the subject-matter of the suit. We cannot grant any such relief as may drive the Defendant to a separate suit. In the second place, the separation of interest of each party in the family watan, in law and fact, amounted to a partition thereof. The learned counsel for the Plaintiffs has not been able to satisfy us that the mother acting as guardian was not competent to ask for arid consent to get one" whole watan by way of partition. The rule of law pertinent to the point under discussion" will be found in para 308 of the Mulla's Hindu Law which is to the effect that a partition by agreement though entered into during the minority of a coparcener is binding on the minor unless it is unfair and prejudicial to his interest.

If the partition is unfair or prejudicial to the minor's interest, the minor may, on attaining majority, have it set aside by proper proceeding so far as regards himself. In *Balkishen Das v. Ram Narain Sahu* 30 Ind App 139 (PC) (B), it is said.

There is no doubt that a valid agreement for partition may be made during minority of one or more of the coparceners. That seems to follow from the admitted light of one coparcener to claim a partition and if an agreement for partition could not be made binding on minors a partition could hardly ever take place.

This view of the law has been approved by the Supreme Court in the case of *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, . The separation of interest as was effected in 1323F, has not been shown to be unfair and prejudicial to the minor coparceners. The District Judge has found, and that fact has not been controverted before us, that the Plaintiffs Were allotted a more lucrative and influential watan than what the Defendant consented to accept.

There might have been an occasion for reopening of a fait accompli if the Plaintiffs were able to establish that the consent of the mother was obtained by coercion. It is difficult to see how the Plaintiffs in these circumstances can successfully claim an alternative relief u/s 68, Hyderabad Civil Procedure Code, which corresponds to Order 7, Rule 7 of the Indian Code.

11. Now turning to the Defendant's appeal we find that by framing the third issue in its present form the trial court has wrongly placed the onus on the Defendant to prove that the patwarigiri of Yelmakanna was the self-acquisition of the Defendant's father. As a matter of law, the burden should have been placed upon the Plaintiffs to establish that the said watan was purchased with the aid of the joint family funds. Be that as it may, none of their witnesses had a single word to say with respect to the mode of acquisition of the patwarigiri in dispute. Ram Reddy the first witness of the Defendant was not asked in the examination-in-chief to answer any question in that behalf but the Plaintiffs while cross-examining the witness elicited from him a statement that "the Defendant's father Manik Reddy purchased the patwarigiri of Yelmakanna with the aid of joint family property." The Defendant swore that watan in question was self-acquired property of his predecessor-in-interest but said that on the request of the panchas he had consented to give a share to the Plaintiffs on condition that they gave him "three mashas less nine tolas of gold and Rs. 300/- which was due to him but as the Plaintiffs had not paid that amount to him he refrained from getting their name recorded as a sharer."

Later in the cross-examination he reiterated his readiness to do the same if his offer was accepted. The fifth witness Narayan Reddy stated that the Defendant had insisted that his father had purchased the watan after obtaining a loan and not with the aid of joint family fund and that if the Plaintiffs gave him ii or 9 tolas of gold and Rs. 300/- in cash he would make them participants in the annawari. The trial court relying on the deposition of Ram Reddy and the statement of the Defendant extracted above felt himself constrained to hold that the patwarigiri of Yelmakanna was a joint asset of the family. "The lower appellate Courts found that from the evidence adduced by the parties the disputed watan appeared to be joint which fact according to him was reinforced by the Defendant's sworn statement.

12. I may straightway point out that the Defendant's statement before the court was not tantamount to an unqualified admission of the patwarigiri being purchased with the family fund. His statement on which the courts below have relied ought to have been read with the other portion of his testimony in which he had insisted that the patwarigiri was the self-acquisition of his predecessor-in-interest.

That he had been insisting like that before the panchas is apparent from the deposition of his fifty witnesses. Merely because he made a proposal to make the Plaintiffs his sharer if they gave some gold and cash in return would not be evidence of the joint character of the watan. The only evidence which went against the Defendant is that of his first witness. But it must be remembered that sworn testimony is not invariably enough for arriving at a just decision.

Most wrong judgments come from taking too much notice of what witnesses say and not enough of why and on what basis they say it. The witness in the opening lines of the cross-examination has clearly stated that he had not seen the

Plaintiffs' father. The pleader for the Plaintiff did not care to ask the witness whether he knew the Defendant's father. It was necessary that such a question be put to the witness to know the source of his knowledge on which he based his statement as to the joint purchase of the patwarigiri.

The Plaintiff's father Baga Reddy died in the year 1322F. This would show that upto that time he had not met Baga Reddy. The watan of patwarigiri was admittedly purchased in 1318-F. Therefore, it cannot be said that the witness drew the information from him. The witness does not claim to have come to know the mode of purchase from the Defendant's father or from the Defendant himself. Then there must have been evidence to prove that the witness was possibly conversant with the affairs of the family.

In the absence of such indication the witness's statement would amount to no more than an assumption or opinion. Even ignoring the fact that burden has wrongly been placed on the Defendant, there was no rebuttal on the part of the Plaintiffs to disprove the statement of the Defendant. In these circumstances, I feel extremely reluctant to find against the Defendant on the strength of a stray statement extracted from the witness in the cross-examination.

No explanation is forthcoming why if the watan was purchased with the family fund, it was not purchased in the name of the managing member of the family. Unfortunately the witness does not say that he was present when the purchase was made.

13. For the reasons stated above, I dismiss the Plaintiffs' appeal and allow that of the Defendants with costs in both the appeals. The Plaintiffs' suit would stand dismissed with regard to the Yelmakanna Patwarigiri as well.

Manohar Pershad, J.

14. These are two separate appeals, one on behalf of the Plaintiff's and the other on behalf of the Defendant, preferred against the judgment and decree of the District and Sessions Judge. Medak, who affirmed the order of dismissal (sic) the suit to the extent of the declaration of toted to Kotwali Patelgi watan of Kotpalli and (sic) the claim of the Plaintiffs to the extent of one fourth share in the Patwarigiri of Elmakana which had been dismissed by the trial court.

The facts which give rise to these appeals are that Chinam Reddy, the ancestor of the parties, was the Mali and Kotwali Patel, and on his death, the patta of the said watan was sanctioned in the name of Baga Reddy his son, and (sic) Reddy his other son and Durga Reddy his (sic) son by a ore-deceased son Ranga Reddy (sic) appointed to discharge the duties of Kotwali (sic) Mali Patelgi respectively: In Khurdad (sic) Baga Reddy and Manik Reddy both died.

In the virasat proceedings, the Patta of (sic) kotwali Patelgi was sanctioned in the name of the Defendant, and that of the Mali Patelgi in the name of the Plaintiff with the shikmi of Plaintiff No. 2. The Plaintiffs alleged that the Defendant taking advantage of the minority of the Plaintiffs brought pressure on their guardian

(mother) and obtained her consent for the Patta of the Mall Patelgi being transferred in his name. The Plaintiffs on coming to know, of this fact moved the Paigah authorities concerned to get the Patta transferred in their name, but they could not succeed.

Plaintiffs further alleged that their father was the sole Pattedar and that Manik Reddy his brother had gone in adoption to One Papamma and therefore they were exclusively entitled, to the Patta of the watan Kotwali Patelgi. They further claimed a share in the Patwarigiri which they say the Defendant acquired with the aid of the joint family funds when the family was joint. In the result the Plaintiffs prayed for a decree to the effect that Patta of the Patelgi in dispute be given in their favour and they may be given a decree to the extent of their share in the Patwarigiri also.

The Defendant admitting that the watans both Mali Patelgi and Kotwali Patelgi were ancestral denied that he got the Patta of the Kotwali, Patelgi transferred in his name by exercising undue influence over their mother and stated that during the lifetime of the Plaintiffs father alone the Patta of the said watan was made in (sic) name of the Defendant's father and alter his (sic) the same had been sanctioned in his name. The Defendant further denied that his father was ever given in adoption to Papamma. With (sic) to the patwarigiri the Defendant alleged (sic) it was the self-acquired property of the defence father. A legal objection was also raised (sic) the claim of the Plaintiffs was time-barred. On these pleadings the trial court framed seven (sic). On the evidence adduced by the parties, be court of first instance dismissed the suit having held that the suit was beyond time and hat the watan-patwarigiri was the self-acquired property of the Defendant's father.

On appeal the appellate court dismissed the claim of the Plaintiffs to the extent of the watan Kotwali Patelgi having held that the claim of the Plaintiff's was time-barred, but decreed the suit to the extent of one-fourth share in the patwarigiri having come to the conclusion that it was squired by the Defendant with the aid of the (sic) family funds. Against the aforesaid devises the Plaintiffs as well as the Defendant have me up in second appeal before us now.

15. I would first take up the appeal of the Plaintiffs. Shri Khaja Abdul Muqtadar, the learned Counsel argued first that both the Courts have erred in coming to the conclusion that the claim of the Plaintiffs to the extent of the declaration of the patta of the kotwali patelgi was time-barred. He contends that the question of limitation does not arise in view of the Full Bench decision of this Court in 1355F Nazaire Hyd 361 (A). His second contention is that though the Plaintiffs had failed to establish the alleged coercion, still when admittedly their father was the pattedar (sic) the watan in dispute was ancestral property (sic) the same has not been partitioned, the said (sic) does not arise.

16. Shri Lakshminarsia, the learned (sic) for the Respondent argued that the claim of (sic) Plaintiffs is clearly time-barred and both the (sic) have held it so,

and there is no reason to (sic) to a different conclusion. (sic) With regard to the contention that the Plaintiff are entitled to a decree irrespective of the fact that they had failed to prove coercion, and the plea of Manik Reddy's adoption on the basis that the watan in question was ancestral and not being partitioned, it is contended that since the lifetime of that Plaintiff's father the Defendant's father had been discharging the duties of Kotwali patelgi and after the death of the Plaintiffs' father, the Patta of the said Patelgi was transferred in the name of his father and the patta of the Mali Patelgi was left to the Plaintiffs and this has been the position from 1332 to 1354F, which is sufficient to prove that the Plaintiffs have no light and title to the Patelgi in question. He further argued that the Plaintiffs have not claimed the suit property on the ground of succession, but based their claim on the ground that Manik Reddy was given in adoption and the Plaintiff's mother was coerced to give her consent and therefore, they cannot be allowed to change there ground.

17. I would first deal with the question whether the claim of the Plaintiffs is time-barred. The Plaintiffs in para 6 of the plaint have stated that on appeal from the order of the. Taluqdar, the appellate authority on 13th Meher 1353F., decided in their favour and oh review the said order was reversed on 6th Azur 1354F. This fact has not denied by the Defendant. In view of this matter the Plaintiffs were not under any obligation have recourse to the civil court.

It is admitted by the parties that Article 106 Hyd. Lim. Act corresponding to Article 120 of the Indian Limitation Act is applicable to the case. This article prescribes six years period of limitation and the limitation starts from the time when the right to sue accrues. As stated above, right to sue accrues to the Plaintiffs from 6th Azure 1354F. when their claim was rejected in review.

The present suit is dated 12th Aban 1354F. It is within a year of that order and so no question of limitation arises, in the case. What is contended on behalf of the Respondent is that the right to sue for the patta of the watan patelgi accrued to the Plaintiffs in 1321F., when the said patta was sanctioned in the name of the Defendant, and even if the minority of the Plaintiffs is taken into consideration, the suit ought to have been brought within three years from the date of the attainment of majority, and as the suit was not filed within that period it is clearly time-barred.

No doubt there is substance in the argument, but it loses its force having regard to the fact that the Plaintiffs in 1353F., succeeded in their appeal and their claim to the right of the watan in question was accepted. This gave the Plaintiffs a fresh right. This aspect of the case I think escaped the attention of the courts below. The claim of the Plaintiffs in my opinion therefore is within time.

18. The next question that deserves consideration is whether the Plaintiffs can get any decree on the basis of their title as sharers in the watan. My learned Brother Justice Qamar Hasan has refused to grant a decree to the Plaintiffs on the ground that in order to get any general relief it was incumbent on the

Plaintiffs to express the readiness to concede to the right of the Defendant to participate in the emoluments of the mali patelgi and watan which the Plaintiffs had been and would continue to enjoy exclusively and also on the ground that the right of the Defendant in the said watan cannot be broached in the suit.

19. With due respect to my learned Brother, I cannot agree with his view. The claim of the Plaintiffs cannot be thrown out on the ground that they have not claimed it in the alternative. As a matter of fact they have set out all the facts in the plaint and have alleged that the watans were ancestral, Further both parties claim the exclusive right to the pattedari of the watan in dispute.

The Plaintiff's claim it on the ground that Manik Reddy had gone in adoption, whereas the Defendant's case was that Baga Reddy, the father of the Plaintiffs had relinquished his rights to the watan. If the Plaintiffs succeed in establishing their contention they become entitled to patta unless the Defendant defeats their claim by proving the relinquishment or that it was partitioned. There is no evidence at all that the Plaintiffs father had relinquished his right.

The Plaintiffs also have not proved that Manik Reddy went in adoption. In these circumstances the only thing that could defeat the Plaintiffs case would be the fact of partition. If the Defendant fails to prove partition, I cannot understand how the Plaintiffs' suit could be dismissed. They could be given a decree on the admission of that Defendant that the watans were ancestral. Of course if the Plaintiffs had prayed so in the alternative, the Defendant may also have put his cross-claim to the extent of his interest in the watan mali patelgi, which is not in dispute.

I agree that as the watan mali patelgi is not in dispute the question of the right of the Defendant in the said watan cannot be agitated in the present suit and the Defendant would be driven to a separate suit. But merely on this account I cannot refuse to consider the claim of the Plaintiffs court should have in my opinion allowed the Plaintiffs to amend the plaint after calling the Defendant,. as has been observed by their Lordships of the Supreme Court in the case of Gopal Krishnaji Ketkar Vs. Mahomed Jaffar Mohamed Hussein and Another, or passed a decree in his favour in the alternative case, as has been observed by their Lordships in the case of Srinivas Ram Kumar Vs. Mahabir Prasad and Others,

20. In the light of these pronouncements if I were to consider the present case of the Plaintiffs, I find that the Plaintiffs claim exclusive right of the patta on the ground that Manik Raddy had gone in adoption and the patta of the said watan was transferred in the name of the Defendant in 1323F., under duress. The Defendant on the other hand claims his exclusive right on the ground that the Plaintiffs' father in his lifetime relinquished his claim and patta was granted in his lather's name and after his death, the said patta was transferred in his name.

Even assuming that the Plaintiffs failed to establish the alleged adoption of Manik Reddy and the coercion of their mother, their claim cannot be thrown out unless the Defendant succeeds in establishing that the Plaintiffs' father had relinquished

his claim to the watan. The Defendant relies on Exs. 3 and 5, the taqta virasats of 1313F, and 1323 respectively. The former pertains to the virasat after the death of Ohinam Reddy, the ancestor. The Mr. Majlis of the Paigah sanctioned the patta of the watans in the name of Baga Reddy appointing Durga Reddy to discharges the duties of a police patel and Manik Reddy as mali patel.

No doubt in column 6 of the taqta it is shown that virasat was sanctioned in the name of Baga Reddy and Manik Reddy but it does not appear 60 from the operative portion of the order of the Mir Majlis. The taqta of 23rd Khurdad 1323F., is clear indication that the patta of the police patelgi was mutated in the name of the Defendant and that of the Mali patelgi in the name of the Plaintiffs with Plaintiff No. 2 as shikmidar. The question that falls for consideration is Whether this order of the First Taluqdar is sufficient to deprive the Plaintiffs of their right to the watan police patelgi and whether it would amount to a partition of the said watan. The Plaintiffs allege that the watans have not been partitioned and that the patta was mutated in the name of the Defendant with the consent of their mother which was obtained under duress.

The fact of duress has not been established. The order of the First Taluqdar of 1323F., was a clear indication of separation of interest of each party in the family watan. To my mind it would amount to partition in law as well as a matter of fact. I am further supported in my view by the fact that it is admitted by the parties that when the other family property was partitioned between them, these watans were not included.

Had the watans not been partitioned or had there been no agreement between the parties to that effect, I fail to understand how in partition this property could have been left out, I am, therefore, fortified in my view that the order of 23rd Khurdad 1323F., amounted to a partition, of the property.

21. The learned Counsel for the Plaintiffs could not satisfy us that the mother acting as guardian was not. competent to ask for and con-sent to get one whole watan by way of partition It is a well established principle of Hindu Law has been observed in the case off Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, that partition by agreement though interred into during the minority of a compared is binding on the minor unless it is set aside the ground of being unfair and prejudicial to interest.

The Plaintiffs, therefore, would only succeed if they prove that the alleged partition was until and prejudicial to their interest. The District-Judge has come to the conclusion that the plain-tiffs were allotted a more lucrative watan and that fact has not been challenged here in appeal. The Defendant has been in exclusive possession of the watan since 1323F., till today that is, for a period of more than 40 years. In para 6 of the plaint, the Plaintiffs themselves, admit that they started proceedings to (sic) the watan in dispute in Aban 1351F., that is (sic) 28 years after the grant of the patta in name of the Defendant. The Plaintiff's in their depositions (sic) that the parties used to discharge the (sic)

their respective watans as patels. If the (sic) was prejudicial or unfair, the Plaintiff would (sic) taken action to set aside the same after (sic) attainment of majority. I agree with the view of my learned Brother that there might have been an occasion to reopen the partition if the Plaintiffs were able to establish that the con-sent of their mother was obtained by coercion. In the absence of any proof of the (sic) coercion I also find it difficult to see (sic) Plaintiffs in these circumstances can (sic) fully claim an alternative relief under Order 7, CPC In the result I agree with the view my learned Brother that the Plaintiffs" (sic) should be dismissed.

22. I next turn to the Defendant's (sic). In this appeal the only point that has to be (sic) soldered is whether the watan patwarigiri is (sic) self-acquired property of the Defendant or whether it was acquired with the aid of the (sic) family funds. I find that the burden of proof was placed on the Defendant. It was strenuously argued before us on behalf of the Appellant that the burden of proof was wrongly placed.

I do not attach much Importance to this fact when parties have led evidence. Now I (sic) to see whether the evidence produced by the parties establishes the case of the Plaintiffs (sic) the Defendant, No doubt both the courts have held against the Defendant, but I find that (sic) have come to that conclusion having held (sic) the onus lay on the Defendant, and he had (sic) to discharge it. The watan patwarigiri in (sic) is said to have been acquired In 1318F., (sic) name of the Defendant's father. There is (sic) of the Plaintiffs or their father. It (sic) denied that at that time the family was (sic) It is not a presumption of Hindu (sic) Mad as the family was Joint, it possessed join (sic) the property also. In the like manner (sic) cause the Defendant's father was the (sic) cannot be presumed that it was his self-(sic) property. The question, therefore, whether it was self-acquired or whether it was (sic) with the aid of the joint family funds, is like any; other fact, a question of fact which has to (sic) determined on the evidence produced.

None of the Plaintiffs" witnesses depose (sic) the mode of acquisition of the patwarigiri in (sic). Ram Reddy, D.W. 1 no doubt support the case of the Plaintiffs and deposes that the watan patwariglri was purchased with the aid of the joint family funds. The Defendant in his Reposition has clearly denied that it was purchased with the aid of the joint family funds and stated that he had consented to give a share to the Plaintiffs on the request of the panchas on condition that they gave him three mashes less 9 tolas of gold and Rs. 300/- and as that as the Plaintiffs had not paid that amount he retrained from getting their names recorded as sharers.

D.W. 5 Narayan Reddy supports the statement of the Defendant and slates that the Defendant had insisted that the watan was purchased by his father without the aid of the joint family finds, and that if the Plaintiffs gave him 3 or 9 tolas of gold and Rs. 300/- in cash he would enter their names in the anewari. The courts below eying on the deposition of Ram Reddy and the statement of the Defendant

have held that the patwariglri was a joint (sic) of the family.

I may point out that the deposition of the Defendant is not tantamount to an admission on part that the patwariglri was purchased with the aid of the family funds. If that were so, he would not have insisted on the payment of Rs. 600/- and gold. The only evidence on the record is the oral testimony of D.W. 1. No doubt this Witness deposes that watan was purchased with the aid of the joint family funds, but he has not disclosed any source of his knowledge. He (sic) that he has not seen the Plaintiffs' father. (sic) question was put to him to find out whether (sic) knew the Defendant's father.

It is very difficult to rely on the statement (sic) witness who is not in a position to disclose (sic) source of knowledge. In the absence (sic) such evidence the statement of the wit-(sic) would be nothing more than a mere (sic) In these circumstances, I (sic) extremely to accept the statement of this witness.

23. In the result, the appeal of the Defendant would be allowed. Plaintiffs' appeal is, therefore, dismissed with costs throughout. The appeal of the Defendant is allowed and plain-tiffs' suit to the extent of the patwariglri is dismissed with costs. This judgment shall govern the other connected appeal.