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**(1972) 10 AP CK 0008**

**In the Andhra Pradesh High Court**

**Case No :** Transfer Appeal No. 59 of 1968 and Writ Petition No. 2057 of 1965

Cherukuru Muthayya

APPELLANT

Vs

Gadde Gopalakrishnayya and Others

RESPONDENT

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**Date of Decision :** 11-10-1972

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 9

**Citation :** AIR 1974 AP 85 : (1973) 2 APLJ 209

**Hon'ble Judges :** Gopal Rao Ekbote, C.J.;Chennakesav Reddy, J;A.V. Krishna Rao, J

**Bench :** Full Bench

**Advocate :** J.V. Narayana, for D. Venkatappayya Sastry, in Tr.A. No. 59 of 1968 and W.P. Nos. 2057 of 1965, for the Appellant; K. Jagannadha Rao, B. Anjaneyulu and K.S. Prasad for Respondent No. 1, 4th Govt. Pleader for Respondent Nos. 2 and 3 in W.P. No. 2057 of 1965, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ekbote, C.J.—This appeal is from the judgment of the principal District Munsif originally filed with the Subordinate Judge, Vijayawada but transferred to the High Court to be heard along with W. P. No. 2057 of 1965.

2. One Guruvaiah had five sons and four daughters. The 2nd plaintiff is the eldest daughter. One of his sons Narasaiah died issueless. By 1942 there were four shareholders representing the branches of four sons. The contention was that the 1st plaintiff's Father was illatom son-in-law of Guruvaiah. As such he was also given one share in the partition that took place in 1942. The 2nd plaintiff, who had managed the estate after the death of Guruvaiah and who had lost her husband when she was just a child, was also given half share in the partition.

3. In the partition, two suit items fell to the share of the 2nd plaintiff. She executed a registered settlement deed on 19-9-1950 in respect of the first item and executed a gift deed in regard to Item 2 on 20-3-1952 in favour of the 1st

plaintiff and put him in possession. The 2nd plaintiff had reserved life estate in first item. She died during the pendency of the suit. On a contention that the defendants are trying to interfere with the possession of the plaintiffs the suit for injunction was laid.

4. The defence set up by the defendants was that in the partition properties were divided into four shares only among the four sons. No share was given to the 1st plaintiff or even to the 2nd plaintiff. They contended that they are in possession of the suit properties and that the settlement deed and gift deed are sham and bogus. The plaintiffs have no title. Nor are they in possession. They further alleged that since the 1st defendant filed an application u/s 56 (1) of the Estates Abolition Act, the Civil Court has no jurisdiction to try the suit. The trial Court framed in all ten issues. The parties adduced oral evidence. They marked several documents. On an appreciation of this material, the principal District Munsif by his judgment dated 31-3-1965 held that the suit property had fallen to the share of the 2nd plaintiff in a family arrangement effected in 1942. She also had perfected her title over the suit property by adverse possession. It was also held that the settlement deed Exhibit A-3 and gift deed Exhibit A-4 were executed by the 2nd plaintiff in favour of the 1st plaintiff. It was found that there was no difference in boundaries given in Ex. A-3 and those stated in the plaint regarding the first item of the suit property. The trial Court also held that the plaintiffs were in possession and enjoyment of the suit property since the time of partition and family settlement in 1942. The 1st plaintiff has acquired title to the suit properties.

5. In spite of all these findings, the trial Court, dismissed the suit in regard to Item No. 1 on the ground that the dispute between the parties in effect is as to who the lawful ryot is and although the suit is for injunction, it is not a claim beyond, the purview of Section 56 of the Act. So the jurisdiction of the Civil Court is barred in view of the proceedings before the Settlement Officer. Since the proceedings under Section 56 related only to Item No. 1, the suit was dismissed to that extent. In regard to Item No. 2, however, it was decreed. No appeal is preferred by the defendants regarding Item No. 2. It has therefore become final. The plaintiffs have preferred the appeal in regard to Item 1 only.

6. At this stage it is convenient to mention that the 1st defendant filed an application u/s 56 (1) (c) of the Estates Abolition Act, S. R. 66 (1) 48 of 1960. The Assistant Settlement Officer dismissed the application on 21-4-1960 on the ground that the dispute can be got settled by a Civil Court.

7. The 1st defendant preferred Appeal T. A. S. No. 22 of 1960 to the Estates Abolition Tribunal Krishna. The Tribunal set aside the order of the Assistant Settlement Officer by its order dated 30-7-1961 and remitted the case to the Assistant Settlement Officer for fresh disposal.

8. After the remand, the Assistant Settlement Officer, Ankapalli allowed the application by his order dated 2-6-1963. The Assistant Settlement Officer found

that the settlement deed and the gift deed have no bearing on the suit properties. The petitioner (1st defendant) therefore was held to be the owner of Item 1 and the Assistant Settlement Officer said "he will therefore be granted a ryotwari patta".

9. The Estates Abolition Tribunal on an appeal by the plaintiff by its orders dated 2-6-1963 found that the suit land is in possession of respondent-plaintiff in pursuance of Civil Court order. Till then it was in the occupation of petitioner, 1st defendant. It was further found that the two lands are covered by O. S. 394/2 and O. S. 394/3. Agreeing with the view taken by the Assistant Settlement Officer, the Tribunal rejected the appeal. It is to challenge this concurrent view that W. P. No. 2057 of 1965 has been filed.

10. When the appeal, and the writ petition came on for hearing before our learned brother Obul Reddi, J., he noticed conflict of decisions on the points raised. He therefore thought it proper to refer them to a larger Bench. The Division Bench, agreeing with the learned Single Judge has referred the cases to the Full Bench and that is how the matter has come before us.

11. The first contention to which we have to address ourselves is whether an application u/s 56 (1) (c) can lie as was filed in the present case, for getting a decision as to who the lawful ryot is, irrespective of the context in which Clause (c) of that section appears. In order to appreciate the contention that Section 56 is a transitory provision and applies only to cases where immediately after the abolition of an estate dispute arises between the land-holder and his ryots regarding the payment of any rent, it is necessary to read Section 56.

"(1) Where after an estate is notified, a dispute arises as to (a) whether any rent due from a ryot for any fasli year is in arrear or (b) what amount of rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer.

(2) Any person deeming himself aggrieved by any decision of the Settlement Officer under Sub-section (1) may within two months from the date of the decision or such further time as the Tribunal may in its discretion allow appeal to the Tribunal; and its decision shall be final and not be liable to be questioned in any court of law." Before we analyse the section, it is necessary to bear in mind its contextual relationship with other provisions of the Chapter in which the section appears. The section appears in the Chapter headed "Miscellaneous". Section 55, which is the first section of that Chapter, relates to Collection of arrears of rent which accrued before the notified date. The section enjoins that after the notified date the land-holder shall not be entitled to collect any rent which accrued due to him from any ryot before and is outstanding on that date. It is the manager who is appointed u/s 6 who shall be entitled to collect all such rent together with interest and costs relating thereto. These amounts were to be collected as if they were arrears of land revenue. These amounts when collected shall be paid to the land-holder after making deductions referred to in that

section. All these amounts are treated as first charge upon the land in respect of which the amounts are payable.

12. It is then that Section 56 appears and which relates to "decision" of certain disputes arising after an estate is notified.

13. Section 57 then declares that Peshkash, Jodi or quit rent in respect of an estate shall cease to accrue with effect from the end of the Fasli year immediately preceding the notified date.

14. Section 58 enjoins that a landholder of an inam village which is not an inam estate from the notified date shall be liable to pay annually to the Government such Jodi, Kattubadi, or other amount as he was liable to pay to the landholder before the notified date.

15. Section 58 (a) directs the stay of execution proceedings and setting aside of certain court sales and foreclosures.

16. Then comes the somewhat relevant Section 59, the marginal note of which reads: "Transitional provision in regard to other liabilities of land-holder, etc." It states that no claim or liability enforceable against the principal or any other landholder or other person whose rights stand transferred to the Government in pursuance of Section 3 (b) shall after the notified date be enforceable against the interest he had in the estate. They shall be enforceable on the other hand only against the interim payments, the compensation or other sums payable under the Act and against his other property. It further directs the courts not to continue the proceedings, if pending, for the enforcement of any such claim or liability.

17. Section 60 then makes provisions for absorbing the staff of the abolished estates.

18. Section 61 then states that educational or charitable institutions maintained during the prescribed period by the land-holder may be maintained by the Government if they think fit.

19. Section 63 empowers the Settlement Officer to decide the question relating to forests.

20. Section 64 then enjoins that where a person is entitled to the ownership or to the possession or occupation of any land or building before the notified date but has transferred his right to the possession or occupation thereof or has been temporarily dispossessed or deprived of his right to the occupation and has not lost his right on the day of the notification he is entitled to recover possession of such property as he shall be deemed to be the owner or in possession or in occupation of such property.

21. Section 64-A relates to res judicata. Section 64-B relates to the saving of limitation and Section 65 provides immunity to the officers and bars jurisdiction of courts in certain cases.

22. Sections 66, 67 and 68 relate to repeals, power to make rules and power to remove difficulties.

23. Two things come to the surface on a survey of this chapter. Firstly apt to the heading various unconnected and miscellaneous provisions have been put in this chapter. Secondly there is a faciculus of Sections 55 to 59 both inclusive which make provision for settling the disputes between the landholder and the ryots relating to the claims of the landholder against the ryots pending on the date of notification or arising thereafter. All these disputes relate to the payment, of rent or arrears due. Since after the abolition of the estate it is taken over by the Government, the Legislature apparently did not want the landholders, whose right title and interest in their totality were abolished and taken over by the Government to carry on disputes or litigation against their erstwhile ryots. That is why Section 55 prohibits the landholder from collecting any rent due to him from any ryot. The manager on the other hand is declared to be entitled to collect such rents and make them over to the land-holder after permissible deductions. Section 56 has to be read therefore in the context of Section 55. It empowers the Settlement Officer to decide any of the disputes mentioned in the section. Clauses (a) and (b) relate to arrears of rent due from a ryot to the landholder. And Clause (c) relates to the dispute as to who the lawful ryot in respect of any holding is. Clause (c) cannot be read in isolation and out of context with the other clauses of Section 56 (1). Clause (c) if so read in the context of the two other clauses and keeping in view Section 55 of the Act can leave no one in doubt that the dispute under Clause (c) would be required to be decided only in regard to the disputes covered by Clauses (a) and (b). In other words, whenever a dispute arises as to from which ryot the arrears of rent are due to the landholder in regard to a particular holding, it is ONLY then that the Settlement Officer would decide the question as to who the lawful ryot is with a view to fasten the liability of arrears of rent due. Clause (c) is not an independent provision nor it is a substantive provision whose scope and operation travel beyond the purpose of Sections 55 and 56 of the Act. The section does not postulate any independent enquiry and decision on question covered by Clause (c) without having any reference to any other provision of the Act. The places where Section 56 occurs, its contextual relationship with Section 55 and the purpose of Section 56 read as a whole make it plain that the purpose of an enquiry into a question covered by Clause (c) is intimately and integrally connected with Sections 55 and 56 only.

24. Look at it from another point of view. If the purpose of deciding as to who the lawful ryot is not meant for fastening the liability of rent due, then there must be some other and independent purpose in empowering the settlement officer to decide the dispute under Clause (c) of Section 56 (1).

25. Now there are only two sections which empower the Settlement Officer to make necessary enquiries and grant patta to the persons entitled thereto. Section 15 is one section which empowers the Settlement Officer to examine the

nature and history of a land in respect of which the land-holder claims a ryotwari patta under Sections 12, 13 or 14 and decide in respect of which lands the claims should be allowed. For determining the said questions, it is evident that it is not necessary to decide any question as to who the lawful ryot is u/s 56 (1) (c). Section 15 read with Sections 12 to 14 provide a complete code in themselves for the purpose of grant of patta to the land-holder. Section 15 makes the decision of the Tribunal final and it is not liable to be quashed in any court of law. Section 56 (1) (c) therefore has no relevance whatever with Section 15 of the Act.

26. The next section is Section 11. That section declares lands in which ryot is entitled to ryotwari patta. The section does not indicate any procedure for the grant of such patta. Nor it invites any application for that purpose. It is well known that inquiry u/s 41 can commence suo motu or on an application of a ryot. Section 11 impliedly empowers the Settlement Officer to decide firstly that the land in question is a ryoti land and secondly that a particular ryot is entitled to the ryotwari patta of such a land. The question whether a particular land is a ryoti land or not is a jurisdictional question decision upon which depends the jurisdiction of the Settlement Officer to grant patta. Any determination of such preliminary question is not conclusive. It is always open to judicial review and can be questioned in a civil suit. Section 11, unlike Section 15, does not make an order under that section final and does not prohibit that being questioned in a court of law.

27. The question then is can Section 56 (1) (c) be connected with Section 11? We do not think there is any possibility or justification for connecting that section with Section 11. If the legislature wanted to make the decision u/s 11 final and not open to any question in court of law, nothing could have been easier than to say so in Section 11 itself as is said in Section 15. The fact that the Legislature did not want to clothe orders u/s 11 with finality is patent. If the scheme and purpose of the Act are kept in view, it would be plain that while the legislature wanted every dispute between the State and the landholder and between the land-holder and his ryots to be finally decided only under the Act, it did not think it necessary or even desirable to allow the disputes of title between the rival ryots to be finally decided under the Act except for the purpose of Section 15 as mentioned above. Thus if the purpose and scheme of Section 11 is borne in mind, it will not be difficult to reach the conclusion that Section 56 (1) (c) has no relation whatsoever with determination of any question u/s 11. They are independent and mutually exclusive provisions. They do not supplement each other. Their Scope of operation and their effect are entirely different. We are therefore satisfied that Section 56 (1) (c) can have no relation to Section 11 but it is closely related to the other clauses of Section 56 (1) read with Section 55 of the Act.

28. With due respect to me learned Judge who said in *Chipurupati Venkatasubbiah v. Ravi Punneya*, (1957) 2 AWR. 204, that dispute envisaged in

Section 56 is in relation to grant of patta u/s 11 and that the machinery for the grant of patta is set up in Section 56, we find it difficult to agree with him.

29. In *Kulandaiswami Madurai and Others Vs. Murugayya Madurar and Others*, , Alagiriswami, J., held that the power of the Settlement Officer u/s 56 to decide who the lawful ryot in respect of any holding is, is only for the purpose of the other two clauses, that is, for the purpose of realisation of the arrears of rent and not for the purpose of issuing patta.

30. In *Appanna V. Sri Ramamurthy*, 1958 ALT 491, the second appeal had arisen out of a suit filed by the land-holder for recovery of rent alleged to be due from the tenant. The facts reveal that the rent was due for the year 1448-49 as well as for the years 1949-50 and 1950-51. The defence was that since he is a ryot, the plaintiff land-holder had no right to collect rent from him and that the District Munsif had no jurisdiction to entertain the suit. The Bench held that Section 56 confers on the Settlement Officer jurisdiction to decide whether a person is a lawful ryot or not and the two other disputes referred to in that section. It was held that when a statute confers a power on any person for public purposes, if the mode of redressing the injury is pointed out, the jurisdiction of the ordinary courts is ousted. And where a special tribunal is appointed to determine question as to rights which are the creation of that Act, then the Tribunal's jurisdiction to determine those questions is exclusive.

31. In the course of the judgment, their Lordships at page 498 considered the argument that the disputes raised do not come u/s 56 of the Act. The argument was repelled. While repelling that contention, their Lordships referred to an observation made by Rajagopala Ayyangar J., in *Arunachalam Chettiar v. Narayana Chettiar*, 1957 MLJ 183. The observation reads:

"The entire argument of the Tribunal is rested on the collocation of the words "dispute arising after an estate is notified". In the first place. Section 56 occurs in the chapter headed "Miscellaneous". Its position is just after Section 55, which deals with collection of arrears of rent by the land-holder after the notified date." Sub-sections (a) and (b) of Section 55 (1) refer to disputes which might arise in connection with the liability of the ryot to pay rent or its quantum. A reference to Section 55 would show that the liability for the rent or its quantum may be in respect of a period anterior to the notification. If Section 56 were to be the machinery for deciding the disputes in relation to the rent payable for faslis 1356 and 1357 it would follow that; the disputes referred to in the opening words of Section 56 (1) would not exclude disputes whose origin was earlier than the notified date but which have continued since then. If, therefore, a dispute in relation to matters mentioned in Section 56 (1) (a) and (b) would take in disputes originating earlier than the notified date but continuing even afterwards, the nature of the dispute referred to in Sub-clause (c) of Section 56 (1) would not be different. In my opinion, the proper construction of that section is to hold that all disputes which are factually present after the notified date come within the jurisdiction of the Settlement Officer and within Section 56 (1). Disputes

which are excluded are only those in regard to which there have been binding adjudications by the ordinary Courts before that date or matters pending before other authorities before the notified date. In regard to all others the dispute "arises" after the notified date within the meaning of Section 56 (1) if notwithstanding its having originated at an earlier date it continues, thereafter, for the dispute is a difference which exists until it is settled and it is the existence of the dispute that is referred to in the section and not its origin In this view the order of the Abolition Tribunal Madurai, in R. A. No. 373 of 1954 is set aside as erroneous."

32. The learned Judges entirely agreed with the aforesaid observation.

33. The abovesaid observation would support the view which we have taken about the scope and operation of Section 56 of the Act.

34. In Adakalathammal Vs. Chinnayyan Panipundar, , Rajamannar, C. J. said that Clause (c) of Sub-section (1) of Section 56 of the Act should be read along with the other provisions of the Act and the rights and privileges conferred by or under the Act.

35. Since the function of Section 56 was of a transitory character and if the section has outlived its utility in reference to certain estates abolished then that section cannot be pressed into service at all. That is why the Madras Legislature repealed Section 56 by the amending Act XXXIV of 1958.

36. We are unable to agree with the view expressed by Rarnaswami, J. in Pachai Ammal v. Anguswami Grammani, (1958) 71 MLW 635. That was a case in which the plaintiff based her title on the patta granted by Zamindar of a ryoti land. The defendant also claimed that the patta was granted by the Zamindar to him and Others. It was held that u/s 56 (1) (c) and Section 56 (2) of the Act Civil Court is impliedly barred from trying this question and the proper forum is the Settlement Officer u/s 56 of the Act. We have observed that to such a case Section 56 does not apply.

37. For the aforesaid reasons, we are satisfied that Section 56 (1) (c) is not an independent or substantive provision unconnected with Section 56 (1) or Section 55 of the Act. No enquiry into the questions covered by Clause (c) therefore can be made if its purpose is not related to Section 56 (1) and Section 55 of the Act. Since in this case, the application was not made for the purpose of Section 55 or Section 56 but was made for purposes other than these, the application was misconceived and ought not to have been entertained by the Settlement Officer. His order therefore is made without jurisdiction and as a result the appellate order of the tribunal would also be an order made without jurisdiction. These orders are of no legal effect.

38. We then come to the second contention that unless and until a patta is granted under the Estates Abolition Act, no suit for possession or injunction by a person who claims dispossession or non-interference in his possession can lie. In

so far as this argument stems from Section 56 (1) (c) of the Act we have already dealt with the scope and extent of Section 56 and since we held that the order made u/s 56 (1) (c) is ineffective that order would not come in the way of instituting a civil suit for injunction. The other contention in this behalf was that u/s 3 of the Estates Abolition Act the entire estate, stands transferred to the Government and vests in them free of all encumbrances. The Government becomes the absolute owner of all the lands in the estate. Unless the Government grants patta and confers title on any person under the Act, he cannot institute a suit for injunction in order to protect his possession.

39. Now the aim and object of the Estates Abolition Act as seen from the preamble is threefold. Firstly it provides for the repeal of the permanent settlement. Secondly as a necessary result of the repeal, the rights of Landholders in permanently settled and certain other estates are acquired by the Government and thirdly to introduce ryotwari settlement in the estates thus abolished and taken over by the State of Andhra Pradesh.

40. The central section which seeks to achieve the first two objects is Section 3. It speaks out the consequences of notification of estate. Save as otherwise expressly provided in the Act on and from the notified date, the following consequences would flow.

41. Firstly the entire estate included in the assets of the Zamindari estate at the permanent settlement and all communal and poramboke lands, other non ryoti lands, waste, pasture and lanka lands, forests, mines etc. shall stand transferred to the Government and vest in them free of all encumbrances.

42. It is pertinent to note that there is no mention of ryoti lands in the list of properties which stand transferred to and vest in the Government. The expression "other non ryoti lands" which stand transferred to the Government and non-mention of ryoti land in Clause (b) of Section 3 is not without significance.

43. Secondly the effect of Section 3 is that all rights and interests created in or over the estate by the principal or any other landholder before the notified date as against the Government cease and determine. The necessary implication of Clause (c) is that rights and interests thus created may operate against the principal or landholder although they cease and determine as against the Government.

44. Thirdly the Government Is empowered to take possession of (a) the estate and (b) all accounts etc., relating to the estate which the Government may require for the administration thereof.

45. The proviso to that clause however inhibits the Government from taking possession from any person if they consider that he is prima facie entitled to patta. Such person may be a ryot or he may be a landholder who is entitled to patta. In other words, a ryot who is entitled to patta u/s 11 of a ryoti land or a

land-holder, who is entitled to such patta of a private land u/s 15 of the Act shall not be dispossessed. What is plain is that while Clause (b) excludes ryoti lands from being transferred to and vest in the Government. Clause (d) prohibits the Government from dispossessing ryots who prima facie are entitled to a patta of a ryoti land.

46. Fourthly, Clause (e) declares that the principal of the land-holder, whose rights stand transferred under Clause (b) or cease and determine under Clause (c) are entitled only to compensation from the Government under the Act. It is relevant to note that for the right, title or interest of a ryot in a ryoti land since not transferred to the Government or determined as against the Government, Clause (e) does not provide for any compensation.

47. Fifthly the relationship of landholder and ryot as between them stand extinguished under Clause (f). What the underlined words mean is that while the relationship of a ryot as such with the landholder is extinguished, his relationship with the Government is established the moment ryoti lands in the estate are converted into ryot-wari settlement That is made clear in Clause (g).

48. Finally Clause (g) declares that ryots in the estate and persons holding under them shall as against the Government be entitled only to such rights and privileges as are recognised or conferred on them by or under the Act. One must necessarily note the words "recognised or conferred" used in the said clause. What follows is that in regard to ryoti lands in an estate, no right, title or interest of a ryot stands transferred and vest in the Government. The relationship of the ryot is extinguished. The relationship of the ryot as a pattadar u/s 11 is established with the Government. The person i.e., the ryot who prima facie is entitled to patta cannot be dispossessed and since no right of his has been acquired by the Government he is not paid any compensation. He gets patta in pursuance of the realisation of the third object of the Act. that is to say, introduction of a ryotwari settlement. The Act does not allow the Government to acquire the ryoti lands and then allow it to grant the same to or assign the lands thus acquired to any one the Government chooses. On the other hand, the ryoti lands are not acquired nor any compensation is paid. The pre-existing, right of a ryot is recognised by the Act and that is why he is neither dispossessed nor left to the mercy of the Government but is declared entitled to a patta in recognition of his rights in the ryoti land and is conferred with a patta so as to establish the relationship with the Government in a ryotwari settlement.

49. What becomes thus plain is that even the property mentioned in Clause (b) stands merely transferred to the Government and vest in them. No qualifying words such as "absolute transfer" or "absolute vesting" are used in the section which sometimes are found used in some of the judgments. The definition of the word "estate" given in Section 2 (3) of the Act is relevant. It is that estate which stands transferred to and vest in the Government. It is the right, title and interest of the land-holder which stand transferred and vest in the Government. All rights and interests created by the landholders in or over the estate cease and

determine. The landholders, whose rights have thus been transferred and determined, are paid compensation and their relationship with the ryots is extinguished. Thus a triangular relationship is declared in the process of abolition of an estate and its conversion into a ryotwari settlement what must follow is that in so far as the ryots are concerned their rights in the ryoti land have been recognised and are not extinguished and their relationship with the Government is established under the Act. It would not therefore be correct to contend that their old rights have been extinguished and when patta is granted new rights are conferred on them. Any such contention would not only be inconsistent with the express aims and objects of the Act but would be quite contrary to Section 3 and other provisions of the Act. It would be contrary to the scheme which is spelled out in Section 3 of the Act as discussed above.

50. In support of their contention reliance was placed by the respondents on some decisions of this Court. We will deal first with the latest case which takes, if we may say so an extreme view and supports the contention advanced before us.

51. In *Someswaraswamy Varu v. Srirajitam*. (1971) 1 AWR 14 the plaintiff, a darmilla inamdar, leased out the lands to a particular person in the year 1900. Subsequently these lands continued to be in the possession, of the original lessee's successors-in-interest and their cultivating tenants who were defendants in the suit. After the estate in which lands were situated was abolished and taken over by the Government the plaintiff filed the suit for possession. The defendant's contention was that they have occupancy rights and are entitled to pattas and therefore the jurisdiction of the Court is barred by Section 56 of the Act, The learned Judges held that after the notified dab) the plaintiff ceased to have title. As per Section 3 the tenants have a right to continue in possession until their claims are adjudicated upon by the Settlement Officer. The Bench further observed that Section 56 has taken out the jurisdiction of the civil court with regard to the disputes mentioned therein. The dispute was not a question relating to who has the lawful title to the land as title vested only in the "Government, but as to who is lawfully entitled to a patta, the question relating to the granting of patta as between the landlord and the tenant is a question to be decided by the Settlement Officer under Sections 11 and 12 of the Act The Bench consequently held;

"Until that is determined (question of patta) and the plaintiffs succeed in getting the patta in their favour, they have no right to recover possession from the defendants, who are now in possession. Only when their right is so declared and possession is denied to them, they can resort to a Civil Court. Until then their right for possession does not ripen. It is premature for them to file suit for recovery of possession now. Their main relief for possession depends entirely on their right to the issue of a patta. Therefore they must first approach the Settlement Officer for a patta and having obtained it, then sue for possession in a Civil Court."

52. With great respect we find ourselves unable to agree with some of the

reasonings of the learned Judges. Once it is found that that was a dispute between a land-holder and his tenant, we fail to see how Section 56 (1) (c) was applicable. Even otherwise the scope of Section 56 as laid down by us above does not prohibit a suit for possession by a landlord against a tenant provided no other provision comes in the way of such a suit. In so far as the reasoning relates to Section 56, we find it difficult to agree with the same.

53. Section 11 was also not applicable because that was not a dispute between the two ryots claiming patta of a ryotwari land. The inamdar sued on the basis of his title while the tenant claimed occupancy rights and his right to get patta u/s 11 of the Act.

54. Under what provision of the Act that is to say whether Sections 12, 13 or 14 of the Act, the inamdar had claimed the patta treating it as his private land is not clear. What is, however, plain is that u/s 3, the estate stood transferred and vested in the Government. The inamdar, if he had any right to get patta under the Act, could have got the patta only u/s 15 of the Act. The real question therefore in that case was whether a landholder inamdar Without acquiring a patta u/s 15 of the Act can institute a suit in the presence of Section 15, for possession against his tenant who claims occupancy rights and his right to continue in, possession and grant of patta u/s 11 of the Act.

55. We do not propose to consider the correctness or otherwise of the said decision on that basis as we are not concerned in the present case with any such question. The present dispute is not between the landholder and his ryot but is a dispute between two rival ryots claiming title and patta to the land in question. The said decision therefore is not applicable to the facts of the present case.

56. It is relevant to notice that support for the view taken is sought from 1958 Andh LT 491 equal to 1958-1 Andh WR 420. We have already referred to this case. We have noticed that that case squarely falls within the purview of Section 56 (1) as the suit was for rent instituted by the land-holder against his ryots. In view of Sections 55 and 56, the Court rightly held that the Civil Court had no jurisdiction to entertain the suit. This decision cannot be said to be an authority for the view that Clause (c) of Section 56 (1) applies to cases independent of Sections 55 and 56. On the other hand, it supports the view which we have taken of Section 56 (1) (c) of the Act

57. The next case to be considered is *Manikyamma v. State of A. P.*, 1965 ALT 301. Chandrasekhara Sastry, J., said that the effect of Section 3 is that all the rights of ryots cease and the same would vest absolutely in the Government. The old tenure is abolished and the new one is granted under the Act. The new right which is the creation of the Act can be claimed under the Act. In so far as the right to obtain a ryotwari patta u/s 11 is concerned, undoubtedly it is a right created by the Act. But we do not agree with the view that the rights of ryots are extinguished, and they vest absolutely in the Government. We are of the view that the old rights of the ryots are recognised and it is only in recognition of the

pre-existing right that patta is granted.

58. The following decisions which more or less use the same language will have to be considered in the light of what it stated above: Venkateswara Rao v. Kamala Devi, 1963 Andh LT 309; Rao Gopal Rao V. Official Receiver, 1962 ALT 14 and State of Madras v. Karuppiiah Ambalam, 1959 MLT 185.

59. We do not propose to deal with them separately as the same criticism as mentioned above would apply to them.

60. The learned Advocate for the respondent strongly relied upon the following two Supreme Court decisions: Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, and Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, . We do not, however, flunk that these decisions provide any analogies to the present case. The first was under the U. P. Act the language of which in material respects was different. The second was relating to Bihar Land Reforms Act, the language of which is far removed from the language of Sec. 3 of the Act. As is seen the word "vest" does not necessarily mean the vesting of title nor the word "transfer" means absolute transfer of title or rights. The transfer and vesting in regard to the lands mentioned in Clause (b) can be for the purpose of administration and ultimate conferment of pattas on the landholder. We have already said enough about the ryoti lands.

61. Our view finds considerable support from the following decisions: Venkniah v. Subbarama Sastry, 1959 AWR 539; State of A. P. v. Lakshminarasimha Raju, 1960 ALT 633; Venkata Subba Rao v. State of Andhra Pradesh. 1961 AWR 329; Ramulu v. Appalu Naidu, 1969 ALT 303 and Penumatcha Neelakanteswaraju and Others Vs. Jaddu Mangamma and Others, .

62. The Madras High Court has also taken the same view in the following two decisions: Adakalathammal Vs. Chinnayyan Panipundar, equal to 1959-1 Mad LJ 314 and Sanjeevi Naicker v. Shanmuga Udayar, 1965 MLJ 204.

63. What follows is that when the pre-existing rights have been recognised under the Act and a ryot in possession of the land cannot be dispossessed if he is found prima facie entitled to patta, it will be unrealistic to say that any such person, if dispossessed, or is threatened with dispossession cannot institute a suit to protect his right of possession. The abovesaid decisions in our view rightly take the view that such a suit can be filed in a Civil Court even though the person in possession may not have been granted patta. Section 9, CPC does not stand in the way of such suit. We are therefore satisfied that the suit which the plaintiff in possession has filed was quite cognisable by the Civil Court and was not barred by any provision of the Act. In a way Section 64 of the Act supports the view. It is unnecessary to consider what judgments of Civil Court or tribunal operate as res judicata as that question does not arise in the instant case in the view which we have taken. (The judgment then discussed the merits of the cases in the writ petition and appeal in paras 64 to 72 and finally allowed them.)