

(2010) 07 AP CK 0073

In the Andhra Pradesh High Court

Case No : Appeal Suit No's. 719, 723 and 725 of 2005

Durga Matha House Buildings Constructions Cooperative
Housing Society Ltd. and Another

APPELLANT

Vs

Sada Yellaiah and Others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16
Registration Act, 1908 — Section 17, 17(1)

Citation : AIR 2010 AP 231

Hon'ble Judges : R. Kantha Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : A.K. Narasimha Rao, for the Appellant; Y. Ashokraj, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—The plaintiffs in the Court below are the respondents herein, who filed against the decrees and common judgment delivered in the suits, namely O.S. Nos. 109 of 2002, 178 of 2003 and 179 of 2003 on the file of learned V Addl. District Judge, Ranga Reddy District, dismissing the suits.

2. A.S. No. 719 of 2005 was filed by the plaintiffs in O.S. No. 109 of 2002 while A.S. No. 725 of 2005 was filed by the plaintiffs in O.S. No. 178 of 2003, wherein the appellant No. 1/Plaintiff No. 1 is a society common, along with other parties. Whereas, the appellant in A.S. No. 723 of 2005 is the plaintiff in O.S. No. 179 of 2003, which is an employees cooperative building society.

3. For convenience sake, the parties referred to as per their array and ranks in the suits. The defendants in all the three suits are common.

4. The case as set up in the plaint and the defence raised in all the three suits is akin excepting the extents of property involved in the suits. While an extent of ac.16-00 Gts., of land is the suit property in O.S. No. 109 of 2002, an extent of

Ac. 50-00 gts., is involved in O.S. No. 178 of 2003 and a separate and distinct extent of ac.65-00 gts., is involved in O.S. No. 179 of 2003. All the extents involved in the three suits are comprised in Sy. No. 163 of Hydernagar village.

5. The case of the plaintiffs in all the suits is as follows:

6. Sy. No. 163 of Hydernagar village is vast in extent. One Dilawarunnisa Begum filed C.S. No. 14 of 1958 on the file of this Court for partition of huge extent of properties including the suit Survey Number, which was shown as item 38 of Schedule-IV in the said plaint. The Government of Andhra Pradesh represented by its Chief Secretary was Defendant No. 53 and Jagir Administrator was Defendant No. 43 in the said suit. Most of the defendants in the said suit have filed compromise memos and this Court passed preliminary decree on 28-06-1963 on the strength of compromise entered into between the parties thereto. The Government of Andhra Pradesh and Jagir Administrator did seriously contest the matter and exhibited volte face to the passing of preliminary decree. Nonetheless, at a subsequent stage, the Government of Andhra Pradesh filed a petition in I.A. No. 44/1982 before this Court to delete the suit Survey Number herein and two other survey numbers from the said compromise and the said petition was dismissed on 18-12-1982. The Government of Andhra Pradesh having slept over its rights almost for four decades have filed an appeal against the said preliminary decree and this Court dismissed the petition filed by it to condone the delay of about 38 years in filing the appeal. The said order was confirmed by the Hon"ble Supreme Court in S.L.P, which was rejected.

7. While the things stood thus, the decree holders in the said suit assigned their rights in an extent of Ac. 131-00 gts., i.e., Ac. 50-00 gts., each, under the assignment deeds Exs.A.2, dt. 18-4-1987 and Ex.A.48, dt. 16-4-1987 and an extent of Ac. 15-00 gts under Ex.A-32 dt. 22-5-1987 and an extent of ac.16-00 gts under Ex.A.49, dt. 22-5-1989. According to the plaintiffs, this Court recognized the said assignments. The possession of the suit property was delivered to the plaintiffs herein, but the Government had failed to mutate the names of the plaintiffs in the revenue records. Then the plaintiffs herein filed W.P. No. 389 of 2000 on the file of this Court and inspite of orders of this Court, dt. 04-08-2000 directing the revenue officials to record the names of the plaintiffs, they failed to do so. Whereupon the plaintiffs filed contempt application and it was then that the names of the plaintiffs were recorded in the pahanies. Thus, the plaintiffs are in legal possession of the suit land in their own right as owners thereof and the defendants have been interfering with their possession. Therefore, the plaintiffs filed these three suits for injunction.

8. It may be stated here that only Defendants 4, 8, 9, 10, 15 and 16 have contested the suits and the remaining defendants remained ex-parte during the trial. While Defendant No. 4 and Defendant No. 8 filed their individual written statements, Defendant No. 9 and Defendant No. 10 filed a common written statement and Defendant No. 15 and Defendant No. 16 filed yet another common written statement in all the three suits, to the following effect:

9. They denied the title and possession of the plaintiffs in all the suits. It is stated that the suit survey number, and Sy. No. 145 and 172 of Hydernagar village and the lands in Sy. Nos. 77 to 80 of Hafeezpet in Sherlingampalli village belong to Khurhseed Jha Paigah of late Nawab Khursheed Jah Bahadur. However, the entire extents of the said survey numbers were and are in the occupation of tenants, that Paigah is not in possession on any part thereof, that after the preliminary decree was passed in C.S. No. 14 of 1958 on 28-6-1963, the High Court appointed an advocate-commissioner-cum-receiver to effect division and allot the shares to different decree holders. The High Court appointed an advocate commissioner who visited the land and reported to the High Court that the lands are in the occupation of the tenants and he filed I.A. No. 107 of 1970 whereunder he sought permission to enter into compromise with the tenants in occupation and as a matter of fact he showed such tenants as R-101 to R-117 in the said petition. The High Court passed orders on 14-06-1971 permitting the receiver to enter into negotiations with the tenants whereupon he discussed with the tenants in occupation. An agreement was reached at between the advocate-commissioner and the tenants according to which, the tenants have to surrender 50% of the land to the owners, i.e., decree holders in C.S. No. 14 of 1958 and shall retain the remaining 50% with them as its absolute owners. The Commissioner had reported the same to the High Court which had approved the same. I.A. No. 107/1970 was ultimately allowed whereupon the tenants became owners of 50% of the above survey numbers. The father of D-9 to D-10 was in occupation of an extent of A.28-04 gts., in suit survey number as tenant and in view of the compromise he secured half of it, namely, Ac. 14-02 gts and on his death, D-9 to D-10 became full owners thereof. The ancestors of D-4 and D-8 were R-105 and R-16 respectively in I.A. No. 107/1970 referred to above and they too got lands in the suit survey number towards 50% of the land in their occupation. D-16 herein and his brothers Veeraiah, Rajamallaiah, Prabhakar along with his uncles and forefathers were R-113 to R-116 in I.A. No. 107/1970 and they got Ac. 24-25 gts in Sy. No. 163. One Bandari Dasarath, who is a purported G.P.A of ancestors of D.4 and who played fraud and misused G.P.A given to him for the limited purpose of defending the rights of the ancestors of D-4 and others in protecting their land before Tenancy Tribunals, had accepted the validity of the alleged assignment deeds but the same does not bind the principals. Some proceedings were initiated before the Special Court for Land Grabbing Cases vide L.G.C. No. 1 to 6 of 1990 against the plaintiffs herein and tenants, which were dismissed and the appeal preferred by the Government was also dismissed by the High Court, holding that the tenants including the ancestors of the contesting defendants were in possession of the suit survey number. The alleged assignment deeds are the result of collusion between the assignors and assignees and the result of fraudulent act of Bandari Dasarath, the alleged G.P.A of the some of the tenants. The Baliff who is said to have delivered possession in pursuance of the orders of the District Judge, Ranga Reddy District in E.P. No. 18 and 19 of 1987 had not taken the assistance of Surveyor to demarcate the boundaries and identify the land and the alleged delivery of

possession is thus only a paper delivery. At any rate, the names of the plaintiffs never appeared in the pahanies and as such, their exclusive possession over the suit land is not established. The tenants filed O.S. No. 79/1978 on the file of Addl. Sub-Judge, Ranga Reddy against Jung and others for partition wherein Mr. Jung left Ac. 39-23 gts in their favour. Therefore, the defendants are now in possession of the suit land, hence prayed for the dismissal of the suit.

10. The Court below framed the following issues:

O.S. No. 109 of 2002

1. Whether the plaintiff is entitled to permanent injunction against the defendants from interference over the schedule property?

2. Whether the plaintiff is in possession of the schedule property?

3. To what relief?

O.S. No. 178 of 2003

1. Whether the plaintiff is entitled to injunction restraining the defendants from interfering with its possession and enjoyment over the suit lands?

2. To what relief?

O.S. No. 179 of 2003

1. Whether the plaintiff is entitled to injunction restraining the defendants from interfering with its possession and enjoyment over the suit lands?

2. To what relief?

11. All these three suits were clubbed together, as per the orders of this Court in C.M.A. No. 3797 and 3798 of 2004 and accordingly common evidence was recorded in O.S. No. 178 of 2003.

12. During the course of trial, on behalf of the plaintiffs, PWs.1 to 3 the Secretary of the Society as PW.1, President of the Society as PW.2 and a Member of the Society as PW.3 were examined and Exs.A-1 to A-70 were marked. On behalf of the defendants the Defendant No. 8 was examined as DW-1, the Defendant No. 4 was examined as DWs-2 and Defendant No. 10 was examined as DW-3 and Exs.B.1 to B.42 were marked.

13. On examination of the evidence and material placed, the trial Judge dismissed all the suits with costs, holding that the plaintiffs are not entitled to the relief of permanent injunction. Being aggrieved by the same, the plaintiffs in all the three suits filed these appeals.

14. Heard the learned Senior Counsel Sri D. Prakash Reddy, Sri. N.V. Suryanaryana Murthy and Sri A. Ramakrishna on behalf of the appellants and the learned Counsel Sri V.L.N.G.K. Murthy and S. Sri Ram on behalf of the respondents.

15. It is contended by the learned Counsel for the appellants mainly that the learned judge had not properly appreciated the evidence and went by mere technicalities, that the judicial record, namely, recognition of assignment deeds exs.A-2, A-32, A-48 and A-49 by the High Court and the consequent delivery of possession in pursuance of the delivery warrants issued by the learned District Judge, Ranga reddy is sufficient enough to hold that the plaintiffs are not only in possession of the suit property but their possession is lawful in the own right, that the defendants, who are totally strangers to the suit property having no semblance of right are causing interference to the possession of the plaintiffs and members of the plaintiff-society and as such, they are liable to be enjoined.

16. On the other hand, the learned Counsel for the respondents in all the suits sought to repel the aforesaid contentions and submitted that the defendants are in fact are the true owners of the property, that the assignment deeds are not admissible in evidence being hit by Section 17 of Indian Registration Act, that the alleged delivery of possession to the plaintiffs by the Bailiff is only a make believe story and that the possession of the land continues to rest with the contesting defendants, that the rival claims in the case disclose that serious question of title is involved and as such, the suit for bare injunction is not maintainable. So submitting, the learned Counsels seeking to sustain the findings of the Court below prayed for dismissal of all the appeals.

17. Both sides made detailed further submissions taking us through the entire record and material relied on each side in support of their respective claims.

18. On the basis of the above submissions, the following points arise for consideration:

1. Whether the assignors have right to execute the assignment deeds Exs.A-2, A-32, A-48 and A-49?
2. In the event of the finding on point No. 1 being affirmative, do the unregistered assignment deeds create any title in favour of the plaintiffs in the suit land?
3. Whether the recognition of assignment deeds by the High Court is in respect of the land covered by assignment deeds?
4. Whether the plaintiffs have established their physical and exclusive possession over the suit land?
5. Whether the plaintiffs are entitled to injunction prayed for?
6. To what relief?

Point No. 1

Having regard to the dispute as to right, title and interest, apart from possessions set forth by both sides, it calls for taking into consideration the documentary evidence at the first. Ex.A-2 assignment deed, dt. 18-4-1987 and

Ex.A-48, dt.16-4-1987 another assignment deed, are for an extent of Ac. 50-00 gts each. While Durga Matha Society is assignee under Ex.A-2, I.D.P.L Society is assignee under Ex.A-48. The assignors who executed the above deeds are Nawab Kazim Nawab Jung Nahadur represented by Bansilal Monka, M/s. Monka Enterprises represented by Bansilal Monka, Dr. Vinay Kumar and M/s. Shalivahana Builders Pvt. Ltd. The recitals of Ex.A-2 and A-48 show that a preliminary decree in C.S. No. 14 of 1958 was passed, that Mr. Jung entered into agreement with M/s. Monka Enterprises in respect of item No. 38 in Schedule -IV of the plaint in C.S. No. 14 of 1958, i.e., Survey number involved in this case, that H.E.H Nizam transferred his rights to M/s. Cyrus Investments Pvt. Limited and it was recognized by the High Court in 1967, that the said Cyrus under an agreement, dt.18-06-1983 assigned their rights in Ac. 40-00 gts in favour of Dr. Vinay Kumar and that in view of the delay in securing the final decree, the assignment deeds were executed. It is thus clear that by the time the assignment deeds were executed, no final decree was passed in pursuance of the preliminary decree in C.S. No. 14 of 1958 on the file of the High Court.

It is well settled principle of law that notwithstanding passing of preliminary decree in a suit for partition, the suit is supposed to be pending till a final decree is passed allotting specific item of the property to the parties to the suit inasmuch as even during the stage of passing final decree parties and properties can be added. The parties to the suit will not accrue any rights over specific items of property until allotment is made and the principle that each shareholder will have right over every inch of property will continue till the passing of a final decree. Inasmuch as no final decree is admittedly passed in C.S. No. 14 of 1958, the assignors under Exs.A-2 and A-48 did not have rights over the property covered by the said assignment deeds so as to transfer their rights in the said property.

Apart from it, it is seen from the record that the tenants, namely, the predecessors of the contesting defendants, filed O.S. No. 79 of 1987 on the file of I Addl. Subordinate Judge, Ranga Reddy District against Mr. Jung, one of the decedents of the plaintiff in C.S. No. 14 of 1958 claiming partition. The said suit ended in compromise and the tenants were allotted ac.39-23 gts., in the suit survey number herein. The said facts were suppressed in the assignment deeds and in the plaints in this case and there is no explanation. When the assignors have no marketable title in the lands covered by Ex.A.2 and A-48, they cannot convey anything better than they have in favour of the assignees. The agreement between Cyrus and Dr. Vinay Kumar and M/s. Shalivahana Builders whereunder Cyrus is said to have conveyed the title is neither filed in the trial Court nor in the High Court in the collateral proceedings in C.S. No. 14/1958. Therefore, it is held that the assignors suffer from lack of title to execute Exs.A.2 and A.48. The agreement between assignors No. 1 to 3 and M/s. Shalivahana Builders was also not filed in this case. Thus it is to be held that the plaintiffs have suppressed the material documents referred to above and, therefore, they are guilty of suppression of material facts and nothing is forthcoming from their

side to justify the omission.

As regards the other two assignment deeds, Exs.A.32 and A-49, both dt.22-5-1989 for ac.15-00 gts and aC.16-00 gts respectively executed in favour of the plaintiffs. The assignors are Mr. Jung represented by Jithender Kumar, Bandari Dasharath, the alleged GPA of ancestors of D-4, M/s. Shalivahana Builders Pvt. Ltd., and the assignee is Durga Matha Society under Ex.A-32 and I.D.P.L Employees" Association is the assignee under ex.A-49. It is mentioned in both these assignment deeds that 23 tenants mentioned in Exs.A.30, and GPA have forcibly occupied Ac. 31-00 gts., without any title, that M/s. Shalivahana Builders entered into agreement with the above tenants through their GPA Dasharath for purchasing the total extent of suit survey number and joined execution of the assignment deeds for effective transfer of the land covered by them. It was further stated that M/s. Shalivahana Builders requested Mr. Jung to leave Ac. 31-00 gts occupied by the tenants for which he had agreed. By the time of the above two assignment deeds, the litigation in O.S. No. 79 of 1987 referred to above was launched and an extent of Ac. 39-23 gts was allotted to the tenants, namely, the ancestors of the contesting defendants, but its reference was not made in the assignment deeds inasmuch as it is suppressed even though the first two assignors had full knowledge about the same. The Judgment in O.S. No. 79 of 1987 is dated 08-06-1987 marked as Exs.B-25 and in spite of two years being elapsed therefrom, its reference is not made in Exs.A.32 and A-49 and it, again, remained unexplained.

For the aforesaid reasons, the assignment deeds are not valid for want of title in the assignors. Therefore, we hold under this point that the assignors who executed Exs.A.2, A-32 and A-49 have no right to execute the same and, therefore, they are invalid.

Point No. 2:

Under Point No. 1 we held that the assignment deeds are not valid for want of title in assignors. Nonetheless, we shall examine as to whether such deeds create any rights in the assignees, namely, the plaintiffs. The assignment deeds are admittedly unregistered. It is to be seen firstly as to whether they are admissible in evidence. The contention of the plaintiffs before the trial Judge and during the hearing of the appeal is that what was transferred was only right in preliminary decree and not interest in the particular item of the property. A perusal of the assignment deeds show that specific extents were assigned with boundaries. Nowhere in the assignment deeds, it is stated that the rights in the preliminary decree alone were transferred. On the other hand, the terms of the document clearly indicated that full rights in the immovable property mentioned therein was transferred.

In a decision reported in Surjit and others Vs. Harbans Singh and others etc. etc., it was held that a decree relating to immovable property worth more than Rs. 100/-, if being assigned, is required to be compulsorily registered.

In IDPL Employees Co-operative Housing Building Society Ltd. and Another Vs. B. Rama Devi and Others, arising out of C.S. No. 14 of 1958 (this litigation), two applications were filed, one to implead the petitioners therein as defendants in C.S. No. 14 of 1958 and the other to recognize the assignment deeds of decree said to have been made in their favour in respect of various extents in the suit survey number herein. In the said cases, three petitioners claimed that Cyrus and LRs of Mr. Jung being absolute owners of an extent of Ac. 175-00 gt., in Sy. No. 163 transferred their rights by way of assignments in their favour. The plaintiffs herein filed applications to implead them as respondents on the ground that under assignment deeds Ex.A-2, A-32, A-48 and A-49 they acquired almost entire extent in Sy. No. 163. They were impleaded as R-6 and R-7. The High Court after tracing the history of C.S. No. 14 of 1958 held that since the assignment deeds conveyed nothing shorter than the title in the immovable property worth Rs. 100/-, the assignment deeds are liable to be compulsorily registered u/s 17(1)(e) of the Registration Act, as per Som Dev and Others Vs. Rati Ram and Another, Therefore, the assignment deeds Exs.A-2, A-32, A-48 and A-49 are inadmissible in evidence being hit by Section 17 of Indian Registration Act.

In the light of the above facts and circumstances and legal position, we hold that the assignment deeds are not admissible in evidence. Concomitantly we hold that they do not create any rights in favour of the plaintiffs in the suit land.

Point No. 3:

The plaintiffs very much harp upon the fact that the High Court had recognized assignment deeds Exs.A-2, A-32, A-48 and A-49. Exs.A-3, A-4, A-51 and A-52 are the orders of the High Court whereunder the above assignment deeds were recognized.

Exs.A-32 and A-49 were executed on 22-05-1989 but the assignment deeds recognized are dated 29-05-1989 and 22-03-1989, as seen from Exs.A-31 and A-50. Therefore, it is clear that Exs.A-32 and A-49 are not and cannot be the assignment deeds which were recognized by the High Court under Exs.A-31 and A-50 in respect of which delivery of possession was ordered. Therefore, we hold that what the High Court had recognized are not assignment deeds under Exs.A-32 and A-49 but something else on account of discrepancy in the dates of assignment deeds since it is there on record that number of assignments took place in respect of the suit survey number. As far as the other two assignment deeds Exs.A-2 and A-48 are concerned, they were recognized by the High Court under Exs.A-3 and A-4. In view of our observation that the assignment deeds are hit by Section 17(1)(e) of Indian Registration Act for want of registration, even if they were recognized by the High Court to be genuine and even if they are held to be proved, they are inadmissible and they will not create any rights in the plaintiffs. There is no legal requirement of recognition of an assignment of decree, as laid down in Dhani Ram Gupta and Others Vs. Lala Sri Ram and Another, wherein the earlier contra view of the Full Bench of this Court in

Arvapalli Ramrao Vs. Kanumarlapudi Ranganayakulu and Others, was overruled.

Hence, if the Court recognizes and takes cognizance of an unregistered document which otherwise do not create any right in the immovable property, it neither cures legal defect from which it is suffering under substantive laws like Stamp Act and Registration Act nor does it take away the right of the parties who are entitled to oppose the document and question its admissibility. Therefore, the recognition of the assignment deeds Ex.A.2, A.32, A.48 and A.49 which are otherwise hit by Section 17 of Registration Act by the High Court has no effect on the rights of the parties since they are themselves inadmissible in evidence and are not competent to confer any rights on the plaintiffs and as such no claim basing on these proceedings can be upheld. (under Order 21 Rule 16 of the CPC, the assignment is only for the purpose of execution.

Point No. 4:

The plaintiffs rely on the fact that in pursuance of the orders of the High Court recognizing the assignment deeds they obtained possession of the suit land by filing Execution Petitions before the District Judge, Ranga Reddy District. It is seen from the record that the plaintiffs filed Execution petition Nos. 18 and 19 of 1987 before the District Judge, Ranga Reddy district for possession of Ac. 50.00 gts of land and the District Judge issued delivery warrants Ex.A.5 and A.53. In the said Execution Petitions, the parties are Mr. Jung, D-157 and Mr. Cyrus D.206. The tenants were not made parties to the Execution Petitions and so the receiver who took possession of 50 % of the property. It is relevant to mention here on 28th June 1963 in C.S. No. 14 of 1958 this Court appointed an Advocate Commissioner cum receiver to effect the shares to decree holders. The said Advocate Commissioner cum Receiver found that tenants were in possession and occupation of the land and filed an application by way of I A No. 107 of 1970, seeking permission to enter into a compromise with them. The said application was ordered on 11.3.1975 permitting the receiver to enter into compromise but there is no record or evidence to show that the receiver has entered into any compromise. There is no order of the Court in CS.14 of 1958 about any such compromise with the tenants. The entire episode of delivery of possession in the above said E.Ps took place within two or three hours as seen from the panchanama of delivery of possession conducted by the Bailiff. The land said to have been delivered to Mr. Jung and Mr. Cyrus is a part of Sy. No. 163. The delivery panchanama Ex.A.6 and A.55 do not show that the Bailiff took assistance of the Surveyor in identifying the land from out of large extent in Survey No. 163. The Bailiff's report shows that the Mandal Revenue Officer did not allow him to affix the panchanama on the notice board of his office. The Secretary of Durga Matha Society, the plaintiff herein, was taken as one of the panch witnesses to the panchanama and it creates any amount of suspicion on the genuineness of panchanama. P.Ws 1 and 2 admitted in their oral evidence that no survey took place at the time of delivery proceedings. They made an admission in their evidence that the tenants who were in possession were not

physically evicted from the suit lands. None of the occupants including the defendants signed the delivery panchanama, but the learned Trial Judge made an observation that the document of General Power of Attorney Ex.A.30 which was disputed by the defendants was not proved by the plaintiffs. Therefore, the General Power of Attorney document of Dasarath marked as Ex.A.30 is not properly proved and it is for that reason that the learned Judge also made an observation that his consenting to recognize the assignment deeds and the delivery panchanamas do not bind the defendants. None of the witnesses for delivery panchanamas Ex.A.6 and A.55 were examined to prove that physical possession was handed over, without which it can be said that the same was proved. There could not be any such delivery unless there is a final executable decree. We confirm his observations and findings of the Court below in this regard.

The plaintiffs filed only two pahanies, viz., Ex.A.26 for the year 2001-02 and Es.A.68 for the year 2004-05. It is to be seen as to how the names of the plaintiffs came to be recorded in these pahanies. Ex.A.26 is for the year 2001-02 in respect of Ac. 15.00 gts in favour of IDPL Employees Association and Ac. 16.00 Gts in favour of Durga Matha Building Constructions. Ex.A.68 is for the year 2004-05 in respect of the land involved in the three suits. After recognition of the assignment deeds, the plaintiffs approached the revenue officials and since they failed to mutate their names, they filed writ petition and in spite of its being allowed the revenue officials did not record their names and as such, they resorted to contempt proceedings. The plaintiffs approached the Collector who directed them to approach the Mandal Revenue Officer concerned and it was then that the entries in Ex.A.698 were made in the pahani for the year 2004-05. The suits were filed much prior to Ex.A.68 and as such, the entries in Ex.A.68 which came to be made during the pendency of the suit, have no bearing on the suits nor the civil Court can take cognizance of entries in such pahanies, by placing any reliance.

As regards Ex.A.26 for the year 2001-02 it is no doubt that it is prior to the filing of the suit. The very delivery of possession to the vendors of the plaintiffs was doubted by the learned trial Judge and we have already confirmed the said finding, and, therefore Ex.A.26 recording possession of the plaintiff, in the absence of any other material has no effect. It is only a stray appearance but not continuous one.

As far as the defendants are concerned, they placed abundant revenue records before this Court in the shape of pahanies marked as Ex.B.2 to B.12 and B.38 and Khasra Pahani under Ex.B.37. The Khasra Pahani Ex.B.37 and the report of the Revenue Divisional Officer marked as Ex.B.13 wherein it is stated that the suit survey number is sub divided as Survey No. 163/1 to 12 and the names of the tenants were recorded. A conjunctive reading of entries in Ex.B.13 and B.37 would indicate that the names of the tenants/ancestors of the defendants are recorded in the Khasra Pahani in respect of the suit land as farmers. The

pahanies under Ex.B.2 to B.12 and B.38 find their names as possessors of the suit land. Apart from the above mentioned evidence, it is to be noticed that P.W.1 who is the Secretary of Plaintiff society in O S No. 178 of 2003 has admitted that the tenants had delivered 50 % to the receiver and suit schedule properties were in possession of the defendants" till 1997. He has witnessed the delivery proceedings dated 13.11.1987 which can be called out from Exhibits in A.6 and A.55 in O S No. 178 of 2003. The claim of the appellants that they have taken possession in the year 1987 do not stand in the teeth of admission of P.W.1 in O.S No. 178 of 2003 which goes to establish the fact that possession of the lands were with the respondents till 1997. In those proceedings there is no challenge nor any warrant to go into or adjudication of the status. Therefore, the claim of the appellants is false and untruthful.

In the light of the above factual situation, the plaintiffs have failed to prove their possession and hence they are not entitled to any relief. The plaintiffs filed sale deeds Ex.A.41 to A.46 whereunder they are said to have purchased the suit property from the alienees under Ex.A.2, A.32, A.48 and A.49. We have already held that the assignors of the vendors therein of the plaintiffs have no title to assign the suit land and as such, the alienees who are the vendors of the plaintiffs do not acquire any rights and so, they have no right to execute the sale deeds.

At any rate, as the plaintiffs have claimed rights under the assignment deeds Ex.A.2, A.32, A.48 and A.49 even though they are inadmissible in evidence; and the defendants claimed rights as tenants and on account of proceedings in O S No. 79 of 1987 on the file of the I Additional Subordinate Judge, Ranga Reddy where under they got Ac. 39.23 gts in suit survey number, this is a clear case where the plaintiffs failed to establish either title or possession by filing relevant documents and more so when their claim is based on inadmissible documentary evidence mentioned above.

The plaintiffs very much rely on a decision of the Apex Court in M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, wherein, it was held that the plaintiff on the strength of possession can resist interference from the defendants who have no better title than himself and secure injunction.

In this case, the plaintiffs have failed to establish that their predecessors in title vendors have better title over the defendants. However, since the entire burden is on the plaintiffs to establish their possession, which they having failed, it is not necessary to go into the claim or title as such of the defendants in those proceedings. It has been pointed out during the course of arguments by the parties that final decree is already passed in regard to some portion of the property and these parties can work out their remedies in appropriate proceedings.

Another important piece of evidence of possession the defendants placed before the Court is the judgment of the Special Court for Land Grabbing Cases marked

as Ex.A.23 in L.G.C Nos. 1 to 6 of 1990. The said cases were filed by the Government against the plaintiffs herein and the tenants, viz., the ancestors of the contesting defendants for their eviction. The Special Court by judgment under Ex.A.23 held that the defendants herein or their ancestors were in possession of the suit property as tenants and a Division Bench of this Court by its judgment dated 23.5.1999 marked as Ex.A.24 had confirmed the same. Therefore, apart from serious question of title being involved in the case, the defendants have established only the possession over the suit property. We accordingly hold under this point that the plaintiffs have hopelessly failed to establish their title or physical possession over the suit property.

Point No. 5:

In view of our findings on point No. 4 whereunder, we held that the plaintiffs have failed to establish their title or possession over the suit property, we hold under this point that the plaintiffs are not entitled to injunction as prayed for.

Point No. 6:

19. In view of our findings on point Nos. 1 to 5, we hold that the learned Trial Judge is perfectly justified in dismissing the suits and as such, we find no grounds to interfere with the well reasoned judgment rendered by the Court below.

20. In the result, all the three appeals are dismissed confirming the decrees and judgments under appeal. However, there shall be no order as to costs.