(2011) 10 AP CK 0023

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 4141 of 2003

Indukuru Ramachandrareddy and Another APPELLANT

Vs

Agnigundala Venkata Ranga Rao RESPONDENT

Date of Decision : 28-10-2011

Acts Referred:

- Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 17, 17(1)
- Andhra Pradesh Record of Rights in Land Act, 1971 — Section 3(3), 4, 5(5), 5(B), 5A(4)
- Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 2, 6, 6(A), 6(B), 6(C)
- Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 15, 15(1), 16, 16(1), 17(1)
- Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 14 Rule 2, Order 6 Rule 1, Order 6 Rule 2(1), Order 6 Rule 6
- Constitution of India, 1950 — Article 13, 13(1), 19(1)
- Contract Act, 1872 — Section 23, 70
- Evidence Act, 1872 — Section 91, 92
- Penal Code, 1860 (IPC) — Section 34, 379
- Specific Relief Act, 1963 — Section 31, 9
- Transfer of Property Act, 1882 — Section 41, 43, 54
- Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 5

Citation : (2012) 4 ALT 569

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : B.V. Subbaiah, for the Appellant; Challa Sitaramaiah, for the Respondent

Final Decision : Allowed

Judgement

Honourable Sri Justice B. Chandra Kumar

1. This appeal is directed against the judgment and decree dated 22.09.2003 passed in O.S.No.98 of 1998 by the Additional Senior Civil Judge, Narsaraopet, whereby and whereunder, the suit filed by the plaintiff was decreed. The

appellants herein are the defendants and the respondent herein is the plaintiff in the suit and the parties will be hereinafter referred to as they are arrayed before the Court below for the sake of convenience.

2. In Ritesh Tewari and Another Vs. State of U.P. and Others, the Apex Court observed as follows:

Every trial is voyage of discovery in which truth is the quest.

3. When the people have no regard for truth, it becomes a difficult job to the Court to know the true version. However, the Courts have to examine the entire evidence with analytical approach and conclusions have to be drawn on proper appreciation of evidence and on the basis of settled legal principle. A study of chronological events rationally reveals probabilities of the case of each party.

The brief facts of the case are as follows:

The plaintiff, who was having approximately 60 acres of land, filed a declaration before the Land Reforms Tribunal on 11.04.1975 and had shown the suit schedule land in his declaration. Out of the total extent of Ac.22.76 cents of the suit schedule land, Ac.13.32 cents is in D.No.436/1 and Ac.9.38 cents is in D.No.826, situated in Agnigundala Village, Ipuru Mandal, Guntur District. The plaintiff worked as Village Karanam till 1959 and subsequently as Village Sarpanch for 15 years. The first defendant is the father of the second defendant and they are from Kotapalli Gudur Village and Mandal, Nellore District. According to the first defendant, he sold away his landed property at his native village and came over to Agnigundala Village, Guntur District and purchased the suit land for cultivation. It is not in dispute that the plaintiff executed a sale deed on 16.07.1975 in Ex.B.1 in favour of defendants in respect of the suit land and the said sale deed was registered on the same day. The recitals of Ex.B.1 go to show that the plaintiff had delivered possession of the suit land to the defendants. It also shows that there was an agreement of sale between the parties agreeing to sell the suit schedule land to the first defendant dated 06.06.1958 (Ex.A.29). The plaintiff himself has filed Ex.A.29. Defendants 1 and 2 and the wife of the first defendant mortgaged the suit schedule land and some other property at their native place to State Bank of India, Vinukonda Branch, Guntur District, and obtained loan of Rs.27,000/- on 26.04.1976 and the plaintiff stood as guarantor for the said loan transaction. Ex.B2 copy of the plaint reveals that revival letters were also executed in favour of the said bank in 1977 and 1979. Though the plaintiff pleaded before the Land Reforms Tribunal that he sold the suit schedule land to the defendants and executed Ex.B.1 - registered sale deed on 16.07.1975 and that the said sale deed was executed in pursuance of the earlier agreement of sale executed by him under Ex.A.29, the Land Reforms Tribunal did not accept the said contention of the plaintiff on the grounds that he did not file any document in support of his contention and the registration was done after the notified date and, accordingly, computed the land to the holding of the plaintiff. Admittedly, the defendants are not the parties to the said proceedings. The plaintiff also surrendered four acres of land which was found to be in excess of the ceiling area in some other land covered by Survey Nos.807/1, 21/2, 102/2C and 176. The Land Reforms Tribunal passed the said order under Ex.A.3 on 21.08.1976. Thus, the plaintiff did not surrender the suit schedule land though he was declared as excess land holder. Since defendants 1 and 2 and the wife of the first defendant failed to discharge the loan amount, the State Bank of India filed the suit in O.S.No.14 of 1980 against them and also the plaintiff. The said suit was decreed on 17.11.1980 (The subsequent events go to show that in E.P.No.122 of 1989 filed by the Bank, auction notice to sell the suit schedule land was also issued. But however, before conducting the auction, the first defendant had paid the entire decreetal amount and consequently E.P. was closed in September, 1999). It appears that the wife of the first defendant died in 1988. He admitted that he had kept the land fallow from 1983 till 1991. One Madineni Kotaiah claims that he had taken the suit land on lease from the first defendant from 1994 to 1998. Though the first defendant did not admit the same but, he had admitted the said fact in Ex.A31. He also seems to have admitted that he left Agnigundala village in 1989 and returned in 1994. Thus, it appears that the defendants were not regularly residing at Agnigundala village, but were visiting the said village now and then.

4. The plaintiff claims that he was issued Ex.A.1 and A.2 but alleges that the Village Administrative Officer took the Pattadar Pass Book in Ex.A.2 on the ground of preparing title deed and returned it on 10.10.1996 by deleting two survey numbers pertaining to the suit schedule land in the Pattadar Pass Book at the instance of the first defendant. Then, he filed a representation before the Revenue Divisional Officer, Narsaraopet, for inclusion of the suit survey numbers in his Pattadar Pass Book and Title Deed on 15.10.1996. As his representation was not considered, he filed a Writ Petition before this Court in W.P.No.1148 of 1997 seeking a direction to the Revenue Divisional Officer, Narsaraopet, to finalise his appeal and this Court directed the Revenue Divisional Officer to dispose of the appeal filed by the plaintiff within three months from the date of receipt of the said order. Then the plaintiff issued a notice to the Revenue Divisional Officer that he would move to the High Court for contempt of Court, if his appeal is not disposed of.

5. In the meanwhile, one Madineni Kotaiah filed a suit against the plaintiff for perpetual injunction on the ground that he was a tenant of the suit schedule land from 01.04.1994 to 01.04.1998, having obtained the land on lease from the defendants and that he had raised crops in the suit schedule land and that the plaintiff was interfering with his possession. Subsequently, said Madineni Kotaiah filed a memo not pressing the suit on the ground that the purpose of filing of the said suit was not served. In the meanwhile, the first defendant paid Rs.600/- towards cist for the suit schedule land into the Treasury on 29.01.1998. He had also applied for grant of Pattadar Pass Books and Title deeds for the suit lands on 17th and 19th January, 1998 to the Tahsildar, Ipuru Mandal, which were received in the office of the Tahsildar, Ipuru Mandal, on 21.01.1998 (However, no orders

were passed on the said application till 24.09.2009). Then the first defendant filed a suit in O.S.No.63 of 1998 before the Junior Civil Judge, Vinukonda, against the State of A.P. represented by its District Collector, Guntur, Revenue Divisional Officer, Narsaraopet, Mandal Revenue Officer, Ipuru Mandal, and also against the plaintiff herein restraining the officials from issuing the Pattadar Pass Book and the Title Deed to the plaintiff herein and for consequential reliefs on 17.04.1998. Ultimately, the said suit was dismissed for default on 17.10.2003. The plaintiff appeared through his Advocate in the said suit. In the meanwhile, the Revenue Divisional Officer, Narsaraopet, passed orders directing the Mandal Revenue Officer, Ipuru Mandal, to include the suit schedule survey numbers in the Pattadar Pass Book of the plaintiff on 02.06.1998 (Ex.A.5). Challenging the same, the first defendant preferred a revision before the Joint Collector, Guntur District, on 08.09.1998. In the meanwhile, the first defendant got issued legal notice to the revenue officials and the plaintiff in Ex.A.31 on 13.08.1998. Then the first defendant lodged a complaint to the police, Ipuru, on 10.10.1998 under Ex.B.5 alleging that the plaintiff''s followers attacked him with deadly weapons, but somehow, he escaped with minor injuries and that the plaintiff and his men were trying to destroy the cotton crop and other crops raised by him in the suit schedule land. Basing on the said report, the police, Ipuru, registered a case in Crime No.147 of 1998 u/s 379 read with 34 IPC against the plaintiff. Then the plaintiff filed the present suit on 29.10.1998.

6. As seen from the averments made by the plaintiff in his pliant, his simple case is that the suit schedule land is his ancestral property and that he has been in possession and enjoyment of the same and paying land revenue regularly. It is also his case that the State Government issued Pattadar Pass Book and Title Deed to him and that he raised cotton crop in an extent of six acres and maize and red gram in eight acres and tobacco in one acre and remaining land was ploughed and made ready for seedling. It is also his case that the Revenue Divisional Officer, Narsaraopet, vide his proceedings dated 02.06.1998, directed the Mandal Revenue Officer, Ipuru Mandal, to issue Pattadar Pass Book to him. Alleging that the defendants are very powerful in the village and that they got the support of their community people, Congress-I Party and evil elements in the village and that they are making hectic attempts to grab the suit schedule land by dispossessing him and that he cannot resist the highhanded acts of the defendants, the plaintiff filed the suit for permanent injunction.

7. The defendants filed a written statement and denied the averments made by the plaintiff. The contentions of the plaintiff that he is the owner and possessor of the suit schedule land or that he raised crops in the suit schedule land have been denied. Referring to the orders passed by the Revenue Divisional Officer, Narsaraopet, the defendants contended that they had preferred an appeal before the Joint Collector, Guntur District in Appeal Case no.3864 of 1998 challenging the said orders and that the same was pending. They denied that they are powerful people in the village or that they have support of their community people or Congress-I party or that they were making efforts or attempts to grab

the suit schedule land.

8. The specific case of the defendants is that they have purchased the suit schedule land under a registered sale deed Ex.B1, dated 16.07.1975, from the plaintiff and ever since they have been in possession and enjoyment of the suit schedule land. It is also their case that the plaintiff, having sold the suit schedule land to them, cannot claim that he is the owner of the suit schedule land. It is also their case that after purchasing the suit schedule land from the plaintiff, they raised a loan from the State Bank of India, Vinukonda Branch, by mortgaging the suit schedule land and the plaintiff is the guarantor to the said loan transaction and that subsequently, the said bank filed the suit against them and the plaintiff and the said suit was decreed and that subsequently, they, from time to time, paid amount due thereunder to the said bank and ultimately in September, 1999, the execution proceedings were closed. Their specific case is that the plaintiff, having executed a registered sale deed in their favour and delivered the possession to them, is estopped from raising any contention contrary to the recitals of Ex.B.1 sale deed. It is also their specific case that the plaintiff is out of possession of the suit schedule lands from 16.07.1975 and that the plaintiff worked as Karanam and Sarpanch of the village and commands power over the village, but whereas the defendants are not the native of the village and they are no match to the plaintiff.

9. The plaintiff also filed I.A.No.874 of 1998 seeking temporary injunction. Though initially interim injunction was granted, but subsequently, the same was vacated as per the orders passed by the learned Additional Senior Civil Judge, Narsaraopet, in I.A.No.874 of 1998 on 29.10.1998. Challenging the same, the plaintiff preferred A.A.O.No.1108 of 1999 and this Court dismissed the said appeal. Challenging the appeal, he had preferred L.P.A.No.299 of 1999 and a Division Bench of this Court, while directing the trial Court to dispose of the main suit itself, directed the parties to maintain status quo. Then the plaintiff filed I.A.No.353 of 2000 praying to receive the rejoinder but the learned Additional Senior Civil Judge, Narsaraopet, passed orders dismissing the said petition. Though the same was carried in revision in C.R.P.No.2782 of 2000, but subsequently, the plaintiff had withdrawn the said revision and accordingly, the said revision was dismissed as withdrawn on 03.08.2001.

10. Basing on the above rival pleadings, the Court below settled the following issues for trial:

1. Whether the plaintiff is in lawful possession of the suit schedule property?

2. Whether the plaintiff is entitled for injunction as prayed for?

3. To what relief?

11. On behalf of the plaintiff, he himself was examined as P.W.1 and P.Ws.2 and 3 were examined and Exs.A.1 to A.31 were marked. On behalf of the defendants, the first defendant was examined as D.W.1 and D.Ws.2 to 4 were examined and

Exs.B.1 to B.8 were marked.

12. The Court below, on appreciation of the oral and documentary evidence available on record, held that the prohibition u/s 17 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, apply to the sale transaction of Ex.B.1 and, therefore, the same is null and void and that the defendants did not prove passing of sale consideration under Ex.B.1 and, therefore, no title passed to the defendants and Ex.B.8 was issued on the basis of Ex.B.1 and that a presumption has to be drawn in respect of the entries made in Exs.A.1 and A.2 and that the land revenue receipts filed by the plaintiffs and the Adangals under Exs.A.24 and A.25 prove that the plaintiff has been in possession of the property and that no significance can be attached to Exs.B.2 to B.4 since the property was mortgaged basing on Ex.B.1 and holding so, decreed the suit with costs. Challenging the same, the defendants preferred this appeal.

13. The sum and substance of the arguments advanced by Sri B.V. Subbaiah, learned counsel for the appellants/defendants, is that the defendants have purchased the suit schedule land from the plaintiff after paying sale consideration and the plaintiff, in pursuance of the earlier agreement of sale in Ex.A29, executed a registered sale deed in Ex.B1 and subsequent events go to show that the sale deed was acted upon. It is also his submission that the defendants, who were in need of money, approached State Bank of India, Vinukonda Branch and obtained a loan of Rs.27,000/- by mortgaging the suit land and that the plaintiff himself had stood as guarantor to the defendants in the said transaction. It is also his submission that if at all Ex.B.1 sale deed is a sham and nominal document, the plaintiff would not have stood as a guarantor to the defendants to obtain loan from the Bank and he would not have allowed the defendants to mortgage the suit land to the said Bank and obtain loan. It is also his submission that the plaintiff cannot argue contra to the recitals of Ex.A.29 and Ex.B.1 and the revival deed executed by him in the bank u/s 91 and 92 of the Indian Evidence Act 1872.

14. His next submission is that the revenue records will not confer any title and any presumption with regard to its correctness is rebuttable. It is further submitted that the Revenue Divisional Officer, while passing orders in Ex.A5 did not follow the required procedure and in fact, it is the Mandal Revenue Officer who had powers to make corrections in the entries made in the Pattadar Pass Book and Title Deed under the provisions of the A.P. Rights in Land and Pattadar Pass Book Act. His next submission is that the land revenue receipts filed by the plaintiff either do not pertain to the suit land or the survey numbers of the suit land were subsequently interpolated in the revenue receipts and that some receipts reveal that for the same year the land revenue was paid twice. It is also his submission that the plaintiff had earlier worked as Village Administrative Officer and subsequently as Sarpanch of the village and he had every chance of manipulating the revenue records.

15. His next submission is that the plaintiff did not make any specific averment

that Ex.B.1 is a sham and nominal document or that no consideration was passed under it or that there was an oral agreement contra to the recitals of Ex.B1 or that Ex.B.1 sale deed would not be acted upon in case it is not accepted by the Land Reforms Tribunal. It is vehemently argued that in the absence of any such pleadings, the contentions of the plaintiff on these aspects cannot be accepted. It is also his submission that the plaintiff had in fact filed I.A.No.353 of 2000 praying to receive the rejoinder when his contentions in respect of interim injunction order were not accepted by the trial Court and this Court and ultimately status quo order was granted by this Court and the said application was dismissed and then he carried the matter in revision and ultimately, he had not pressed the said revision and, therefore, the rejoinder filed by the plaintiff cannot be taken on record. It is also his submission that the Court below committed a blunder in taking into consideration all the averments made by the plaintiff in the rejoinder. It is also his submission that no evidence can be looked into in the absence of any specific plea. As far as revenue entries and the entries in the Pattadar Pass Book and Title Deed are concerned, it is submitted that subsequently, the revenue authorities have passed orders in favour of the impleading party who is the subsequent purchaser and, therefore, the earlier orders passed by the revenue authorities stood modified and cancelled. It is also his submission that the plaintiff is guilty of suppression of facts. It is also his submission that though there was prohibition of sale of lands during the relevant period by virtue of Section 17 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred as ''Land Reforms Act''), but the sale deeds may be void when they are being considered by the authorities while implementing the provisions of the said Act, but the same cannot be void inter se between the parties and that the plaintiff who received sale consideration under Ex.B.1 sale deed and who executed a registered sale deed cannot turn around and say that Ex.B.1 sale deed is a void document.

16. Per contra, the sum and substance of the arguments advanced by Sri Challa Sitaramaiah, learned Senior Counsel, representing the counsel for the respondent/plaintiff, is that as per the provisions of Section 17 of the Land Reforms Act, there was prohibition of sale of agricultural land and that Ex.B1 sale deed is void and against public policy. It is also his submission that a void instrument is non est in the eye of law and a party can simply ignore the same and there is no need to file a suit for cancellation of the said document. It is also his submission that there was an oral agreement between the plaintiff and the first defendant and that the plaintiff was apprehending that major portion of his land had to be surrendered by virtue of the Land Reforms Act and in the above circumstances, to secret some of his land, he had entered into an agreement with the first defendant with a clear understanding that in case if Ex.B.1 sale deed is accepted by the Land Reforms Tribunal, Ex.B1 sale deed would be acted upon. It is also his submission that no consideration was passed under Ex.B.1 and that the plaintiff can lead evidence u/s 91 and 92 of the Indian Evidence Act to show that the parties never intended to act upon Ex.B.1 sale deed and that

there was an oral agreement between the parties to that effect. His next submission is that the agreement of sale merges with the final document, i.e., the sale deed and, therefore, the agreement of sale cannot be taken into consideration. It is also his submission that with regard to the other entries made by the land revenue authorities, particularly, under the provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, a presumption has to be drawn to the effect that such entries are true and correct and made as per the procedure prescribed under the said Act and that if a party wants to challenge those entries, he has to file a suit under sub-section 2 of Section 8 of the said Act and since no such suit has been filed by the defendants, the entries made in the Pattadar Pass Book and Title Deed have become final. It is also his submission that the plaintiff has been paying the land revenue continuously and that the defendant did not pay the land revenue till the date of filing of the suit and that since the plaintiff has been in settled possession of the suit land, he is entitled for injunction order. It is also his submission that the plaintiff is not guilty or suppression of facts since he had already referred to the orders passed by the Revenue Divisional Officer in his plaint which in turn refers to the suit filed by the defendants in O.S.No.63 of 1998 and, therefore, he is not guilty of suppression of facts. It is also his submission that the plaintiff has filed a bare suit for injunction and in the circumstances there is no need to file a suit for declaration of title since he is not seeking any declaration of title.

17. I have considered the above rival contentions. The points that arise for consideration in this appeal are as follows.

1. Whether the plaintiff had been in possession of the suit schedule property as on the date of filing of the suit?

2. Whether the plaintiff ought to have filed a suit for declaration of title?

3. Whether the agreement of sale Ex.A29 can be taken into consideration?

4. Whether Ex.B.1 sale deed can be taken into consideration?

5. Whether the order passed by the Revenue Divisional Officer is valid?

6. Whether title can be decided on the basis of revenue entries?

7. Whether the plaintiff is guilty of suppression of facts?

8. Whether the pleas raised in rejoinder could be taken into consideration?

9. Whether oral evidence could be adduced to contradict recitals of a document?

10. Whether the third party who purchased the suit schedule land from the defendants pendente lite can be impleaded as a party to this appeal?

11. Whether the suit is liable to be dismissed?

Point No.1:

18. Sri Sitaramaiah, learned Senior Counsel, relying on the judgments reported in Nallam Veera Stayanandam and Others Vs. The Public Prosecutor, High Court of A.P., Babu Khan and Others Vs. Nazim Khan (dead) by Lrs. and Others, and Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, , submitted that proof of possession is sufficient to grant the relief of permanent injunction.

19. Sri Subbaiah, learned Counsel, relying on the judgment reported in Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, submitted that no injunction can be granted against the true owner.

20. In the instant case, since the plaintiff was not in possession of the property as on the date of filing of the suit and in all probabilities there was scramble for possession, the above referred decisions need no further discussion. Since we are not touching the aspect of title, there is no need to consider the judgment reported in Vimal Chand Ghevarchand Jain and Ors. Vs. Ramakant Eknath Jadoo AIR 2009 (5) SCC 713, relied on by Sri Subbaiah, that title passes to the vendee on the date of execution of the sale deed.

21. Anyhow, in view of my findings in subsequent Point Nos.5 and 6 that the orders passed by the Revenue Divisional Officer are without jurisdiction and only the Mandal Revenue Officer is alone authorized to rectify the entry in the preparation and updating the record of rights the entries made subsequently in Exs.A1 and A2 as per the orders of the RDO cannot be taken into consideration.

22. As far as the oral evidence is concerned, both the parties have let in evidence asserting their claim. It has to be examined along with the documentary evidence. However, the conduct of the plaintiff that he himself stated before the Land Reforms authorities that he sold the suit land to the defendants and before the State Bank of India, Vinukonda Branch, that the defendants are in possession and the fact that he himself stood as a guarantor when they obtained loan from the said bank appear to be relevant. All the events prior to the date of filing of the suit have to be considered critically.

23. Ex.A.3 is the proceedings of the Land Reforms Tribunal, Vinukonda. It only shows that the plaintiff had shown these lands in his declaration, but at the same time he had taken a specific plea before the Land Reforms Tribunal that he sold the suit land in favour of the defendants under Ex.B1 in pursuance of the agreement of sale executed by him in 1958 and delivered possession to them. But the Land Reforms Tribunal did not accept the same on the ground that the registration of sale deed was done after the notified date and held that the suit lands had to be computed to the holding of the declarant. Ex.A4 is the inspection report of the Tahsildar filed before the Land Reforms Tribunal. The persons who prepared this report is not examined. Admittedly Ex.B.1 is subsequent to the date of filing of the declaration by the plaintiff. Ex.A.5 is the proceedings of the RDO. Ex.A6 is the copy of order of the Joint Collector. Ex.A7 is the copy of W.P. No.1148 of 1987 where a direction was given to the RDO to dispose of the

appeal filed by the plaintiff.

24. The other documents are cist receipts, Adangals and the documents pertaining to the court litigation between the parties. Ex.A8 is the cist receipt dated 02.06.1977. Ex.A9 is the cist receipt dated 19.02.1981. Ex.A10 is the cist receipt dated 17.03.1983. Admittedly, the suit survey Nos.436 and 826 measuring Ac.13-38 cents and Ac.9-38 cents respectively are not shown in the above receipts and the above referred receipts pertain to some other survey numbers of the plaintiff. Ex.A11 is the cist receipt dated 14.05.1984. This does not show any of the suit schedule survey number. Exs.A12 and A13 are the cist receipts dated 11.03.1986 and 03.03.1989, which show the suit survey numbers. Though according to the learned counsel for the defendants these two survey numbers have been interpolated but it cannot be said that those two survey numbers have been interpolated in Exs.A12 and A13. Ex.A14 is the cist receipt dated 21.03.1987. Survey NO.826 alone is mentioned in this receipt but Sy.NO.436 is not mentioned. Ex.A15 is the cist receipt dated 02.02.1989. Sy.NO.826 is written but the other survey number is not mentioned in this receipt. Ex.A16 is the cist receipt dated 19.02.1990, wherein the suit survey numbers do not find place in this receipt. Ex.A17 is the cist receipt dated 30.03.1990 and it shows that the suit survey numbers have been mentioned in this receipt. Ex.A18 is the cist receipt dated 21.02.1992 for Fasli 1400 and Ex.A19 is the cist receipt dated 21.03.1992 for 1401 Fasli. As far as Ex.A18 is concerned it appears that though these survey numbers have been written, but they are written with ball pen on the duplicate carbon copy of the revenue receipt. Thus, it is clear that the entries with ball pen were made subsequently. Therefore, this Ex.A.18 cist receipt cannot be taken into consideration. Of course, Ex.A.19 shows these two survey numbers. Ex.A.20 to A.23 are the cist receipts dated 06.04.1994, 19.04.1994, 06.05.1995 and 04.05.1996 respectively, wherein these two survey numbers have been mentioned. It appears that Ex.A.14 pertains to the receipt Books printed in 1983. It shows the date of printing of the receipt book on the top as 05.02.1983 ''K'' Series bearing No.138312 and shows the payment of land revenue on 21.03.1987. Ex.A.22 also pertains to the same year dated 05.02.1983, however pertain to book No.L. Thus, Exs.A.14 and A.22 seems to have been supplied during the same year, but under Ex.A.14, land revenue was paid on 21.03.1987 and under Ex.A.22, land revenue was paid on 06.05.1995. Whereas Ex.A.15 pertains to ''L'' series dated 17.11.1982. From 1988 onwards, it appears that the print of the revenue receipt Books is different. The cist receipts Exs.A16 to A21 reveal that for the same years i.e., for the years 1990, 1992 and 1994 land revenue was paid twice. Therefore, the probability of using the old receipt Books for the subsequent years cannot be ruled out. Anyhow, merely basing on the payment of land revenue it cannot be said that the party who paid the land revenue is in possession of the land.

25. Ex.A.24 is the Adangal for 1405 Fasli and Ex.A.25 is the Adangal for 1407 Fasli. Of course in these two adangals the name of the plaintiff has been shown

as possessor of the suit land. Ex.A26 is the copy of the plaint filed by one M. Kotaiah in O.S. No.9 of 1998 on the file of the Junior Civil Judge, Vinukonda. It shows that the said Madineni Kotaiah averred that the defendants have purchased the land from the plaintiff in 1975 and that they were in possession of the property and subsequently he had entered into a lease agreement with the first defendant on 01.04.1994 and the agreed lease period is from 01.04.1994 to 01.04.1998 and that he had raised brinjal crop in the suit land and that the plaintiff herein was interfering with his possession. The first defendant, though denies the contention of Madineni Kotaiah on earlier occasion in his legal notice in Ex.A.31, he seems to have admitted that he had leased the suit land to said Madineni Kotaiah from 1994 to 1998. He had also admitted in Ex.A.31 that his wife died in the year 1989 and, therefore, he had been to his native village in Nellore District. In Ex.A31 the first defendant admitted that his wife died in 1989 and therefore he had been to his native village in Nellore District. Ex.A27 is the memo filed by the said Kotaiah withdrawing the said suit on the ground that the crops raised by him were spoiled by the plaintiff herein and therefore the suit has not served the purpose for which it was filed and it became infructuous. Ex.A28 is the certified copy of judgment in O.S. No.9 of 1998. Ex.A29 is the original agreement, which shows that the plaintiff and the defendants had entered into an agreement on 06.06.1958 wherein the plaintiff agreed to sell Ac.11-30 cents of land i.e., half of the suit schedule land in suit survey numbers. Ex.A.29 gives an impression that there was some other agreement probably to sell only half of the suit land to the defendants. But since the parties seems to have not come up with true version, I cannot set up a new case, though it is probable from the contents of Ex.A.29. Ex.A.30 is the copy of plaint filed by the first defendant against the District Collector, RDO, the MRO and the plaintiff herein on alleging that the defendants were in possession of the property and that the plaintiff herein was illegally trying to obtain pattadar passbook and title deed in his favour. Ex.A31 is the copy of legal notice dated 13.08.1998 issued by the first defendant to the MRO, wherein the first defendant seems to have stated that he had leased out the suit schedule land to M. Kotaiah from 01.04.1994 to 01.04.1998 and that subsequently the plaintiff tried to obtain pattadar passbook and title deed in his favour and therefore he filed O.S. No.63 of 1998 and that the plaintiff should not interfere with his possession and should not obtain pattadar passbook and title deed illegally.

26. As far as the documents filed by the defendants are concerned, Ex.B1 is the extract of sale deed executed by the plaintiff in favour of defendants 1 and 2. Ex.B2 is the certified copy of plaint in O.S. No.14 of 1980 on the file of the Sub-Judge, Narasaraopet. Ex.B3 is the certified copy of decree in O.S. No.14 of 1980. Ex.B4 is the notice in E.P. No.122 of 1989. Ex.B5 is the certified copy of FIR of Ipuru Police Station.

27. It has to be seen that the plaintiff himself has shown the addresses of both the defendants as residents of Agnigundala village in the plaint cause title. Therefore, his oral version that the defendants were not residing at Agnigundala

cannot be accepted. Admittedly, they are not natives of Agnigundala village. They have no residential house of their own in that village. But by that, it cannot be said that they had lost the possession of the land. As on the date of mortgage, the plaintiff, by standing as surety to the defendants, deemed to have admitted the title and possession of the defendants in 1976. He has not come with any specific plea as to when the defendants had lost their possession subsequently.

28. Sri Subbaiah further submitted that a person who is not the real owner and who trespassed into the land of another cannot claim that he has been in settled possession and with reference to the issue of "settled possession", reliance has been placed on the judgment in the case Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, wherein it was held as follows:

A person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. "Possession contra omnes valet praeter eur cui ius sit possessionis (he that hath possession hath right against all but him that hath the very right). In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. When the defendant fails in proving his title to the suit land, the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on a averment of previous possession of the plaintiff and dispossession by the defendant."

The ''settled possession'' must be (1) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase ''settled possession'' does not carry any special charm or magic on it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as a agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Supreme Court in Puran Singh and Others Vs. The State of Punjab, para 12, has laid down tests which may be accepted as a working rule for determining the attributes of ''settled possession''.

29. It is argued that Ex.A.29 agreement of sale merges with Ex.B.1 and Ex.B.1 is void and non est in the eye of law. However, subsequent developments such as defendants approaching the State Bank of India and obtaining loan from the said Bank by mortgaging the suit schedule land and the fact that the plaintiff himself had stood as guarantor for the said loan, in my view, clinches the issue. If at all the plaintiff had not executed Ex.B1 sale deed and had not received consideration and delivered possession and Ex.B1 is only a nominal document, in all probabilities the plaintiff would not have stood as guarantor on behalf of the defendants when they had obtained loan by mortgaging the suit schedule lands. Normally, no owner of immovable property would allow some other person to

mortgage his land. Moreover, Section 6-C of Pattadar Pass Books Act envisages that every owner, Pattadar, mortgagee or tenant shall apply for issue of passbook and title deed. It means as soon as the property has been mortgaged in favour of the bank, the bank would be entitled for Pattadar passbook and title deed as if owner and admittedly the defendants have discharged the debt amount and redeemed the mortgage. Admittedly, the plaintiff never objected for the defendants mortgaging the property to the bank. Ex.B.2 copy of plaint in O.S. No.14 of 1980 filed by the State Bank of India, Vinukonda reveals that revival letters were issued in 1977 and 1979 in favour of the said bank. Even if Ex.A.29 and Ex.B.1 are not taken into consideration, the conduct of the plaintiff in stating before the Land Reforms Tribunal that he had executed Ex.B.1, delivered possession to the defendants and standing as surety for the defendants in obtaining loan from State Bank of India, Vinukonda Branch, appears to be relevant. Probabilities of the case can be inferred from the subsequent events and conduct of the parties. Anyhow, burden lies on the plaintiff to prove that he was in settled possession as on the date of filing of the suit.

30. Admittedly, the first defendant filed a suit in O.S. No.63 of 1998 on 17.04.1998 against the revenue authorities and the plaintiff herein. Then he filed an appeal before the Joint Collector challenging the order of the RDO on 08.07.1998. Therefore, it cannot be said that the order of the RDO became final as on the date of filing of the suit. Ex.B5 reveals that the first defendant also lodged a police complaint against the plaintiff and others on 10.10.1998 and the police registered a case in Crime No.147 of 1998 against those persons. In the said complaint, the first defendant alleged that he sowed jawar in an extent of six acres, hybrid redgram in eight acres and tobacco in one acre of land. It is alleged that the plaintiff and others attacked on him and caused minor injuries to him. Thus, it is clear that in the year 1998 there was scramble for possession between the parties. In Ex.A27 is filed by the plaintiff himself. Said Madineni Kotaiah, in O.S.No.9 of 1998 before the Junior Civil Judge, Vinukonda, seems to have alleged that the plaintiff herein had destroyed the crops raised by him. Ex.B.5 is the police complaint lodged by the first defendant dated 10.10.1998 which shows that there was scramble for possession. Ex.B.8 appears to be the most crucial document. Ex.B.8 is the Adangal for the period from 01.07.1998 to 23.11.1998 for 1408 Fasli. Much has been argued about Ex.B8. Ex.B8 shows that the first defendant has been in possession of the property. Of course it is mentioned "as per the entries of (Ex.B.1) document No.1499, dated 16.07.1975" in column No.15. The first defendant also admitted "as per entry in Ex.B.8, it was made basing on the entries of original of Ex.B.1". Normally, when a purchaser of an agricultural land is in possession by virtue of a registered sale deed, source of title such as sale deed or nature of the document by which land has been transferred, will be mentioned to clarify in what capacity he has been in possession of the land. It is mentioned in Ex.B.8 that the first defendant as possessor as per Ex.B.1. It cannot be inferred that all the entries in Ex.B.8 have been made only by virtue of Ex.B.1. It may be probable to say that for the

purpose of showing in what capacity the first defendant had been in possession, the Village Administrative Officer have seen the original of Ex.B.1 and seems to have been referred it. However, column No.21 of Ex.B.8 shows that the defendants raised crops of maize, redgram, cotton and tobacco. Thus, the entries showing the nature of crops cannot be said to be made on the basis of Ex.B.1. Ex.B.6 is the copy of charge sheet filed by the police on the police complaint given by the first defendant. It has to be seen that the plaintiff has not filed any documents of the year 1998 to show that he had been in peaceful possession of the suit schedule land as on 29.10.1998. Whereas Exs.B.5 to B.8 all these documents pertain to the year 1998. Though the contention of the defendant that he had been in continuous possession of the property cannot be accepted in view of the contents of Ex.A31 notice wherein the first defendant admitted that he had left Agnigundala village in 1989 after the death of his wife and had been living at his village in Nellore District and that he had leased out the suit schedule lands to one M. Kotaiah from 01.04.1994 to 01.04.1998. These circumstances give an impression that the first defendant was not personally cultivating the land from 1994 onwards. But, however, it is clear that he seems to have returned to the village prior to filing of the suit in O.S. No.63 of 1998 probably in March or April 1998 and tried to cultivate the land. The circumstances such as the first defendant filing a suit in April 1998 against the revenue authorities and the plaintiff herein and an appeal before the Joint Collector in July 1998 and lodging a complaint to the police on 10.08.1998 just before filing of the suit by the plaintiff and entries made in the Adangal for the relevant year i.e., Ex.B8 in my view reveal that the first defendant had been in possession of the property as on the date of filing of the suit. Even otherwise in all probabilities there was scramble for possession and by no stretch of imagination it can be said that the plaintiff had been in settled peaceful possession of the property as on the date of filing of the suit. Therefore, I am of the view that the plaintiff is not entitled for the suit relief.

Point No.2:

31. Sri Challa Sitaramaiah, learned Senior Counsel, submitted that the suit filed by the plaintiff for bare injunction is maintainable and that the plaintiff has been in settled possession of suit land, hence there is no need to file a suit for declaration of title. He has also submitted that there is no need to file a suit for cancellation of a void document. In support of his contention, he has relied on a decision reported in Seera Simhachalam and another Vs. Pediredla Simhachalam and others, . In that case, the plaintiff, claiming to be the owner of the suit property, executed a nominal sale deed Ex.B1 in favour of the first defendant who was his close friend, apprehending that he might loose some of his lands in view of the impending Land Ceiling Legislation and that the first defendant executed an agreement of re-conveyance in his favour admitting the said facts and promising to re-convey the suit property to him whenever demanded and that Ex.B1 was without any consideration and it was never intended to be acted upon and that he himself continued to be in possession and enjoyment of the

suit land. Alleging that the defendants therein unlawfully began to interfere with his possession and enjoyment of the suit property, he filed the suit for injunction. The defendants resisted the suit contending that Ex.Bl sale deed was an out and out sale deed fully supported by consideration and that the first defendant was in possession of the property. The defendants also denied the truth and validity of the alleged agreement of re-conveyance. Both the lower Courts found that the plaintiff was in possession and decreed the suit. The matter was carried in second appeal before this Court. Admittedly, in that case there was a re-conveyance deed executed by the first defendant in Ex.A5 and the Courts below (in that case) found that Ex.A5 was true and the same was executed by the first defendant. Coming to the facts of the case on hand, admittedly, there is no such re-conveyance deed in this case.

32. If at all the version of the plaintiff is true that he agreed to receive sale consideration and deliver possession only in case if Ex.B.1 is accepted by the Land Reforms Tribunal, he should have obtained a re-conveyance deed from the first defendant to that effect. Having executed sale deed and having stood as guarantor for the loan taken by the defendants in the bank and having witnessed the defendants mortgaging the property claiming to be the owners of the property and having stated before the Land Reforms Tribunal that he had executed Ex.B1 in favour of the defendants, the plaintiff cannot turn around and say before the revenue authorities for the purpose of obtaining pattadar pass book or before the Courts that his version before the Land Reforms Tribunal was incorrect and that he had taken such a plea only for the purpose of defeating the provisions of the Land Reforms Act. The plaintiff cannot change his stand according to his convenience from time to time and he cannot blow hot and cold at his whims and fancies.

33. Reliance has also been placed on the judgment in Suraneni Lakshmi Vs. Badugu Venkata Durga Rao and another 2011 (3) ALD 721 (DB). In that case, a suit was filed for declaration of title and injunction. It is alleged that certain documents were obtained under coercion and by playing fraud. Those allegations were not proved. Moreover, evidence adduced by the defendants show that the consideration was paid. The question that came up for consideration is whether the suit was maintainable without seeking cancellation of the document. It was held as follows:

...the suit for declaration is more exhaustive to determine the title or validity of the transactions and when the relief of declaration of title is granted, it is in substance ignoring or setting aside the transactions under dispute though no separate prayer is made for cancellation of the documents. Many a time it so happens in a suit for declaration of title apart from challenges to the alienation against some defendants, there may be connected issues to be decided different to the other parties to the suit. Therefore, the suit for declaration of title is more comprehensive.

34. In the instant case, admittedly, the plaintiff has not filed any comprehensive

suit for declaration of title.

35. Reliance has also been placed on the judgment in the case between Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, wherein the Apex Court formulated general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, which are as follows:-

(a) Where a cloud is raised over plaintiff''s title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff''s title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff''s lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Aanaimuthu Thevar (Dead) by LRs. Vs. Alagammal and Others, Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

36. In the instant case, the main controversy is whether the plaintiff has

executed Ex.B.1 sale deed for consideration and whether the plaintiff had delivered the possession of the suit schedule land to the defendants under Ex.B.1 and whether there was any prior agreement as in Ex.A.29 between the parties before executing Ex.B.1 sale deed and whether there was any oral agreement between the parties to the effect that Ex.B.1 is only a sham and nominal document and it would not be acted upon. Even if Ex.B1 is not taken into consideration, whether the plaintiff is bound by the principle of promissory estoppel? When the plaintiff has surrendered excess land and the proceedings under the Land Reforms Act have come to an end, whether the defendants can seek protection u/s 43 of the Transfer of Property Act because even if it is held that on 16.07.1975, the plaintiff had no right to execute sale deed, but subsequently after the proceedings arising under the Land Reforms Act had been concluded the plaintiff would have absolute right to deal with the suit land.

37. Sri B.V. Subbaiah, learned Counsel, has also referred to Section 43 of the T.P. Act, which is as follows.

43. Transfer by unauthorized person who subsequently acquires interest in property transferred.-Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

38. Admittedly, the plaintiff had surrendered excess land to the State of A.P and the proceedings under the Land Reforms Act have been over. The plaintiff becomes the owner of the property as spes successionis and, therefore, it appears that the defendants are entitled to protection u/s 43 of the T.P. Act. Even if the argument of the learned counsel for the plaintiff is accepted that the plaintiff had no right to execute Ex.B1 sale deed as on the date of 16.07.1975 and Ex.B.1 is void and Ex.A.29 cannot be looked into and the doctrine of promissory estoppel also comes to the rescue of the defendants. Since the defendants seem to have believed the version of the plaintiff and purchased the property and subsequently mortgaged the same to the State Bank of India and subsequently redeemed the said mortgage. It is settled law that the principle of promissory estoppel depends upon the facts of each case. However, the general principle that emerges is that once a representation has been made by one party and the other party acts upon such representation and thereafter the first party cannot say that his promise was not intended to be acted upon, such an act, cannot be stated to be fair and reasonable. Even the Government is also bound by the principle of promissory estoppel unless fraud and other exceptions have been specifically pleaded.

39. Hence whether the defendants could claim protection u/s 43 of the Transfer

of Property Act, when the plaintiff did not file any suit for cancellation of Ex.B1 sale deed; Whether he can say that it is a void document after a period of 22 years; Whether he can argue that no consideration was passed thereunder or that there was an oral agreement between the parties contra to the recitals of Ex.B1; Whether he can dispute the recitals of Ex.A.29 and Ex.B.1 in the absence of any specific plea; Whether revenue authorities have passed orders without following due procedure or principles of natural justice, as alleged by the defendants. These are the important questions that arise for consideration. Thus, it is clear that there is serious title dispute between the parties. However above referred questions cannot be answered in a simple suit for injunction. I am convinced that there is a serious dispute with regard to the title of the property and this Court has to follow the decisions of the Apex Court and the Apex Court, in the above referred case, has categorically held that in the case where there is a serious dispute with regard to the title, the parties have to file a suit for declaration of title. I hold accordingly.

40. Since the relief of declaration is not sought and since there is no pleading with regard to oral agreement that Ex.B.1 is a nominal document though in certain circumstances where the stand of one another is clear and there is sufficient evidence to decide the issues and where consequential findings have to be given, probably in those circumstances in the absence of any plea the Court may consider the evidence and decide the real dispute between the parties. But, as it is observed in the above para when the plaintiff has not pleaded seeking declaration of his title and the suit is filed for bare injunction the Courts are not bound to examine the complicated issues in detail.

POINT No.3:

41. Referring to the agreement of sale in Ex.A29, Sri Challa Sitaramaiah, learned Senior Counsel, submitted that an agreement of sale does not survive after a sale deed has been executed in pursuance of the said agreement of sale. In support of the said contention, he has relied upon the judgments in A.B.C. India Limited, rep. by its A.B.C. India Limited and Others Vs. The A.P. Industrial Infrastructure Corporation Limited and Others, Sanga Thevar Vs. Thanukodi Ammal ; AIR 1954 Madras 116 Leggott Vs. Barrett 15 CHD 306

42. In Sanga Thevar''s case (12 supra), the plaintiff filed a suit for specific performance basing on an oral agreement of sale said to have been entered with the first defendant. Subsequently, the sale deed was executed and it was presented for registration, but somehow, it was not registered. The second defendant had purchased the property from the first defendant. Then the plaintiff filed a suit basing on the oral agreement of sale. There was no plea that the second defendant had notice about the agreement of sale entered into between the plaintiff and the first defendant or that the sale was not for value. When the question as to whether the suit for specific performance was maintainable basing on the oral agreement of sale came up for consideration, the Madras High Court held as follows:-

When once in pursuance of the contract which is alleged to have been oral, a document came into existence and that the document went to the extent of being presented to the registering officer for being registered and was not registered for some reason or other, it follows that there was no further contract to be enforced. The contract had in fact become executed by reason of the execution of the sale deed so that on this ground also the plaintiff was bound to be non-suited.

43. It was further observed that the plaintiff had adequate remedy for enforcing her rights by the registration of the document submitted for registration in spite of the proceedings of the Court to enforce the oral contract.

44. In A.B.C. India Limited''s case (11 supra), the petitioners were awarded industrial plots by APIIC Limited about two decades ago. Sale deeds were also executed transferring the title in the immovable property in their favour. One decade thereafter, on the ground that the allottees flouted the conditions of allotment and agreement of sale, the allotment was cancelled. The question that came up for consideration is when once a contract is concluded, the conditions or the covenants of agreement of sale cannot be enforced. This Court further observed as follows:-

When once the contract is concluded, the allotment conditions or convenants of agreement of sale ordinarily cannot be enforced having regard to various provisions of TP Act, Indian Contract Act, 1872, the Registration Act, 1908 and Specific Relief Act, 1963 (these constitute Civil Code of India), which govern the transfer of immovable property from one person to another person. The sale agreement does not survive when once the contract is concluded on execution of registered sale deed resulting in alienation, conveyance, assignment and transfer of title. Any contrary view would be opposed to the Civil Code of India.

45. In the same judgment, it was further observed as follows:

Once a sale deed is registered, the transaction goes out of the realm of contract ad such sale deed can be cancelled or annulled only with the participation of parties to such transaction.

46. In Leggott''s case (13 supra), the plaintiff and the defendant were partners of the firm of Barrett and Leggott. They filed an agreement of dissolution of the partnership deed and in terms of the said agreement, the stock in trade, book debts and goodwill should be taken by Leggott, who would continue the business on his own account; that Barrett should retire from the business, and not commence business as an ironmonger either on his own account or in partnership with any others on, or take any situation in Bradford or within ten miles thereof for the space of ten years, except in Leeds: and in that case he undertook not to do business in Bradford directly or indirectly. In the circumstances, it was held as follows:

Where there is a preliminary contract in writing which is afterwards reduced into a deed, the rights of the parties are governed in the first case entirely by the writing, and in the second case entirely by the deed; and if there be any difference between the words and the written document in the first case, or between the written agreement and the deed in the other case, the rights of the parties are entirely governed by the superior document and by the governing part of that document.

47. No doubt when there are two documents and if there be any difference between the words of those two documents, the rights of the parties have to be entirely governed by the superior document. But again a question would arise when it is argued that subsequent document is void and invalid, whether the earlier agreement between the parties can be said to have merged with such void document? In my considered view, no, that should not happen. For example, there may be prohibition of sale of liquor from January, 1972 to December, 1973 and if the parties have entered into an agreement for supply of liquor before the date of prohibition and another agreement in pursuance of earlier agreement during the period of prohibition and when the two documents come for consideration, it is clear that the subsequent agreement is void because it was executed during the period of prohibition and that cannot be enforced. But by that, it cannot be said that the earlier document would also become invalid or void and cannot be enforced. I think the first document can be taken into consideration to decide the rights and liabilities of the parties. Though several decisions have been cited across the bar, but in all the above referred decisions, the subsequent sale was not sought to be declared as void by the same party who executed agreement of sale as in this case. Therefore, on facts, I am of the view that the above decisions are not applicable to the facts of the case on hand. In the instant case, it has to be seen that the agreement of sale has been referred in Ex.B.1 and the plaintiff himself referred about it before the Land Reforms Tribunal and moreover the same has been produced by the plaintiff himself. It has to be seen that the defendants have not filed any suit for specific performance basing on Ex.A-29. The plaintiff also did not file any suit for cancellation of said document.

48. It is argued that the agreement of sale was brought into existence at the instance of the first defendant on an old stamp paper secured by the first defendant only for the purpose of defeating the provisions of the Land Reforms Act and that the parties were not even known to one another on the alleged date of execution of the said agreement of sale. This contention may be true and also appears to be true. It appears from the evidence that the plaintiff and the defendant were not known to one another on the alleged date of agreement. It appears that they came into contact with one another only in 1974. However, the question that falls for consideration is whether the plaintiff can argue against the recitals of Ex.A-29 - Agreement of Sale. It is clear to my mind that, the plaintiff had committed a blunder by not making specific pleas with regard to agreement of sale in Ex.A-29 and sale deed Ex.B-1 in his plaint averments. Whether the mistake was intentional or not, I will consider it in later paras. Since there is no

such pleading by the plaintiff that the agreement of sale was executed for the purpose of defeating the provisions of Land Reforms Act and that it is only a sham and nominal document and it cannot be considered, the contentions of the plaintiff cannot be considered in the absence of any specific plea. Therefore, I am of the view that the agreement of sale can be looked into.

POINT NO.4:

49. According to Sri Challa Sitaramaiah, learned Senior Counsel, once a document is null and void u/s 17 of the Land Reforms Act, it has no legal force at all and it is non est in the eyes of law and it cannot be otherwise between the inter se parties. It is also his submission that such document cannot be said to be void only against the Government and otherwise in respect of private parties. In support of the said contention, reliance has been placed on the judgments in Karnail Singh Vs. State of Haryana and another, 1995 Supp (3) SCC 376 Rajendra Singh and Others Vs. State of U.P. and Others, B.R. Koteswara Rao Vs. G. Rameswari Bai @ G. Rameswari Devi and Another, and Y. Latchi Raju Vs. State of A.P. and others,

50. In Karnail Singh''s case (14 supra), the appellant''s election to the Legislative Assembly was set aside by the Tribunal for improper rejection of nomination paper of another candidate. The question that came up for consideration before the Apex Court was whether the appellant was entitled to pension and other benefits for the period he served as a Member of Legislative Assembly. In the circumstances, the Apex Court observed as follows:

Even though the appellant did serve as member for a period of nearly one year, but his membership was in consequence of his being elected as a member of the Legislative Assembly. Once the election was set aside, the natural consequence of it was that the appellant ceased to be a member. The order passed by the Tribunal which has been extracted above, declared the appellant''s election as void. The effect of the declaration was that it shall be deemed that no election had taken place in law. The order of the Tribunal could not be read in two parts, one upholding the election of the appellant for a period of one year, and other declaring it void for the remaining period. In fact, no such declaration could be granted.

51. Thus it was held that the void is non est in the eyes of law.

52. In Y. Latchi Raju''s case (17 supra), the petitioner purchased the land under registered sale deed dated 28.08.1978. The Land Reforms Tribunal and the appellate authority held that the sale deed was executed subsequent to 01.01.1975 is not valid. Though the petitioner contended that he was a tenant, but he failed to prove the same. It was further held that until a declaration u/s 8 has been furnished and the extent of land to be surrendered has been determined by the Tribunal, no transaction of sale of any land which is in excess of ceiling area as on 24.01.1971 is valid. In that case, the holder of the land had failed to submit the surrender statement till the date of accepting the land under

impugned orders which were passed accepting the land in question for surrender. It was held that the sale deed was invalid in law and it cannot be treated as an encumbrance on land.

53. The only distinction between the above referred case of Y. Latchi Raju and the present case is that the land holder failed to submit the surrender statement in that case whereas in the present case, the plaintiff filed declaration prior to the date of execution of Ex.B-1 sale deed and also surrender statement surrendering some other land, of course after execution of Ex.B1.

54. Reference has also been made to Chitty on Contracts - Volume 1 General Principles - 27th Edition, wherein, it was observed as follows:-

If a contract is deliberately made to do a prohibited Act, that contract will be unenforceable.

55. Reliance has also been placed on G. Gangareddy died per his LRs and others v. The Tahsildar, Armoor, Nizamabad District and another 1976 ALT 616 In that case, the lands of the petitioner were brought to sale for recovery of Abkari dues by sale of his agricultural lands. The same was challenged in a writ petition before this Court. Referring to Section 17 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, this Court held as follows:

No alienation by way of sale in execution of a decree or order of a civil Court or of any award of order of any authority can be made until the extent of the land to be surrendered in respect of holding of a person or his family unit, has been determined and an order has been passed by the Revenue Divisional Officer under the Act taking possession of the land in excess of ceiling area.

56. Thus, it was held that till the petitioner''s holdings were finalized, as required u/s 17(1) of the Act, the land could not be brought to sale.

57. Reliance has also been placed on Mulamchand Vs. State of Madhya Pradesh, In that case, the appellant had purchased the right to pluck the forest produce. By virtue of the Act under the provisions of M.P. Abolition of Proprietary Rights (Estates, Mahals Alienated lands) Act, 1950 (Act 1 of 1951), the right which was accrued to the appellant vested in the state of Madhya Pradesh. The appellant filed a suit contending that he was entitled to refund the amount deposited by him and also for the damages. It was observed that the contract was void and could not be enforced and that there is no question of estoppel for ratification. However it was observed that if money is deposited and goods are supplied or services are rendered in terms of the void contract, the provisions of Section 70 of the Indian Contract Act may be applicable and the petitioner is entitled for compensation. It was further observed that the appellant would have been entitled to compensation u/s 70 of the Indian Contract Act. The apex Court held that in the judgment in Bibrosa Vs. Fairbairn (1943 AC 32) Lord Wright has stated the legal position as follows:-

....any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep.

58. Reliance is placed on Ritesh Tewari''s case (1 supra). In that case, the original tenure-holders filed declarations as required under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 which came into force in the State of Uttar Pradesh with effect from 17.02.1976. Consequently, ex parte assessment orders were passed. They did not challenge the said assessment orders. Thus the orders attained finality. Then it is stated that the said tenure-holders transferred the major part of land so declared as surplus with them on 20.04.1982 in favour of Mayur Sahkari Awas Samiti and certain members of Mayur Sahkari Awas Samiti had sold their land to M/s. Savy Homes (P) Limited who in turn further sold the land to the appellants. It was held that in view of the provisions of Sections 5 and 10 of the 1976 Act, transfer of such land by them in favour of anyone was not only prohibited but null and void. Sale deeds were not filed in that case. There is nothing to ascertain who had been the transferors and who were the transferees therein. There was no pleading required for proper adjudication of the case. It was held that since the alleged sale deed dated 20.04.1982 in favour of Mayur Sahkari Awas Samiti has been a void transaction, all subsequent transactions have merely to be ignored.

59. In B.R. Koteswara Rao''s case (16 supra), a suit was filed for declaration of receipt dated 05.12.1974 is void and inoperative. The defendant also filed a civil suit seeking an injunction restraining the plaintiff from interfering with his possession over the plaint schedule property. Both the suits were tried together. It was held that since the transaction was intended to defeat the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the question of enforcing such a contract, even if it is true and valid, does not arise. It was also found that there was tampering of Ex.B1 receipt.

60. Reliance is also placed on Firm of Firm of Pratapchand Nopaji Vs. Firm of Kotrike Venkata Setty and Sons and Others, Badla transactions on forward contracts came up for consideration in that case. It was observed that Badla transactions on forward contracts known as ''continuation'' or ''carrying over'' are nothing short of contracts for speculation in rise and fall of prices of goods purchased only notionally without any intention to actually deliver them to the purchasers. In such a transaction, a purchaser is not at all expected to make a demand for actual delivery of goods ostensibly sold. It was further observed that if an agreement is merely collateral to another or constitutes an aid facilitating the carrying out of the object of the other agreement which though void, is not in itself prohibited within the meaning of Section 23 of the Contract Act, it may be enforced as a collateral agreement. If, on the other hand, it is part of a mechanism meant to defeat what the law has actually prohibited, the Courts will not countenance a claim based upon the agreement because it will be tainted with an illegality of the object sought to be achieved, which is hit by Section 23

of the Contract Act. The Apex Court observed that the contracts between the plaintiffs and defendants were not wagering contracts. Where such contracts are illegally opposed the public policy a reference is made to the remarks made by Lord Atkin in para 7 of the said judgment, which is as follows. The doctrine, as Lord Atkin remarked in a leading case, "should only be invoked in clear cases in which the harm to the public is substantially incontestable, and does not depend upon the idiosyncratic inferences of a few judicial minds......In popular language......... the contract should be given the benefit of the doubt.

61. Reliance is also placed on Sanjay Kaushish Vs. D.C. Kaushish AIR 1992 DE 118. In that case a suit was filed alleging that defendant No.1 devised a scheme of affecting a colourable and sham partition of the assets and properties including business and he got filed a collusive and a sham suit for partition. It was held that such a plea cannot be decided without taking evidence and it is further observed that if a particular document or decree is void the person affected by the said document or decree can very well ignore the same and file a suit seeking substantive relief which may be available to him without seeking any declaration that the said decree or document is void or any consequential relief of cancellation of the same.

62. Reliance is placed on P. Parameshwar Yadav Vs. The Govt. of A.P. rep. by the Spl. Tahsildar (Land Reforms) RR. Dist 1989 (2) ALT 32. In that case third party purchasers basing on an agreement of sale dated 22.09.1977 objected surrender of certain lands by the landholders. It was held that the agreement is void and opposed to Section 17 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973.

63. Reliance is placed on Rapeti Veerinaidu (died) by LRs. Vs. Thota Gangadhara Rao and Another, In that case a suit was filed for specific performance of an agreement of sale dated 10.05.1970. Payments of balance sale consideration was paid in part on 15.04.1972, 10.05.1973 and 18.02.1974. The defendant admitted the fact of execution of agreement and also receipt of amounts by her. Her case is that the plaintiff did not pay the sale consideration amount and that the plaintiff was not in possession of the property. The plaintiff also contended that the he could not get the document registered because of the prohibition under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act. It was observed that the agreements or decrees that are passed between the parties, though not binding on the State, but are valid inter se between the parties. It was further observed that the defendant-vendor having entered into an agreement and received substantial portion of the consideration, cannot be permitted to take the protection of law under the Ceiling Act, which is intended for a different purpose, to defeat the rights of the purchaser under the agreement for his own benefit.

64. Reliance is placed on Shankerlal Gupta Vs. V. Jagadishwar Rao, wherein a Full Bench of this Court while considering the provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, where there is prohibition of creating tenancy in

contravention of the provisions of Section 3(3) of the Hyderabad Act, held that transaction of creation of tenancy in contravention of the provisions of the Tenancy Act is not illegal and void inter se between the parties though it is void against the controller and the same is not hit by the provisions of Section 23 of the Contract Act.

65. Reliance is also placed on Jambu Rao Satappa Kocheri Vs. Neminath Appayya Hanammannaver, In that case, the appellant agreed to sell certain land to the respondent, but failed to execute a conveyance of the land. The respondent filed a suit for specific performance of the agreement and for possession of the land. The trial Court dismissed the suit holding that the agreement, if enforced, would result in "transgression of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948". The High Court of Mysore granted a decree for specific performance. The matter was carried to the Apex Court. One of the contentions raised by the appellant is that the respondent was already holding Ac.31-02 guntas of jirayat land, and by acquiring Ac.41-26 guntas of jirayat land, the respondent''s holding would exceed the ceiling prescribed by the statute. The Apex Court observed thus.

By S.23 of the Contract Act, consideration or object of an agreement is unlawful if it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent. Both the parties to the contract are agriculturists. By the agreement the appellant agreed to sell jirayat land admeasuring 41 acres 26 gunthas for a price of Rs.32,000. The consideration of the agreement per se was not unlawful, for there is no provision in the Act which expressly or by implication forbids a contract for sale of agricultural lands between two agriculturists. Nor is the object of the agreement to defeat the provisions of any law. The Act has imposed no restriction upon the transfer of agricultural lands from one agriculturist to another. It is true that by S.35 a person who comes to hold, after the appointed day, agricultural land in excess of the ceiling the lands having been acquired either by purchase assignment, lease, surrender or by bequest, the acquisition in excess of the ceiling is invalid...........

66. It was further held that there is nothing to indicate that the Legislature has prohibited a contract to transfer land between one agriculturist and another.

67. Reliance is also placed on Government of Andhra Pradesh and Others Vs. V. Swarajyalakshmi and Others, to which decision I am also a party, wherein it was observed that in view of the bar contained u/s 17, the decree obtained by bank cannot be enforced by way of execution where the land was declared surplus.

68. Reliance is also placed on Duggirala Sadasiva Vittal Vs. Bolla (sic)attain and others, In that case the suit was filed for specific performance of an agreement of sale executed by the first defendant on his own behalf and also on behalf of his minor son, the second defendant. One of the contentions raised on behalf of the defendants was that the daughter of the first defendant for whose marriage the debt was contracted was a minor and that the mortgage contravened the

provisions of the Child Marriage Restraint Act XIX of 1929. Repelling the contentions, this Court observed that there is no evidence that the mortgagee was ever aware that the daughter of defendant No.1 was a minor and it cannot therefore be said that his object in lending the amount was unlawful. In this case also there is no averment that the defendants had knowledge that the plaintiff had filed a declaration under the Land Reforms Act and that he had to surrender excess land on the date of sale deed in Ex.B1.

69. Reliance is also placed on Gurmukh Singh Vs. Amar Singh, In that case the appellant and the respondent entered into an agreement that the appellant would participate in a public auction for sale of evacuee property on his and the respondent''s behalf. The appellant agreed to convey half the property purchased at the auction. Six bidders participated in the auction. Ultimately the respondent became the highest bidder. The appellant and respondent contributed their shares. Then the appellant thereafter failed to perform his part of the contract. The respondent thereupon laid a suit for specific performance of the contract or refund of the amount advanced by him. The appellant pleaded that the contract was void being opposed to public policy. The Apex Court observed that Section 23 of the Contract Act is concerned with only the object or consideration of the transaction and not the reasons or motive which prompted it. The word object would mean the purpose and design which is the object of the contract. If it is opposed to public policy which tends to defeat any provisions of law or purpose of law, it becomes unlawful and thereby it is void u/s 23. A contract tending to injure public interest or public welfare or fraudulent to defeat the rights of the third parties is void u/s 23. Whenever a plea of illegality or against public policy is raised as a defence to a contractual claim, the test to be applied is: Does public policy require that this claimant, in the circumstances which have occurred, should be refused relief of which he would otherwise have been entitled with respect to all or part of his claim? In addition, once the court finds that the contract is illegal and unenforceable, a second question should be posed which would also lead to greater clarity: Do the facts justify the granting of some consequential relief (other than enforcement of the contract) to either of the parties to the contract. It was further held that an agreement between the parties to purchase property at an auction sale jointly and not to bid against each other at the auction is perfectly lawful, though the object may be to avoid competition between the two. It was further observed as follows. The public policy is not static. It is variable with the changing times and the needs of the society. The March of law must match with the fact situation. The facts of the present case demonstrate that the agreement between the appellant and the respondent was only a combination to participate at an auction of the evacuee property.

70. Reliance is placed on Prem Singh and Others Vs. Birbal and Others, In that case the plaintiff filed a suit for declaration and partition of land alleging that his father had a share therein. After the death of his parents, he was living with appellant No.4 who allegedly executed a deed of sale on 01.12.1961 in respect of

certain land and shown the age of the plaintiff to be 26 years. The plaintiff filed a suit. Though the suit was dismissed on the ground that it was barred by limitation, but the validity of the sale deed came up for consideration. The Apex Court observed that when a document is void, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law as it would be a nullity. Section 31 of the Specific Relief Act, 1963 refers to both void and voidable documents. It was further held that the fraudulent misrepresentation as regards character of a document is void but fraudulent misrepresentation as regards contents of a document is voidable.

71. In State of U.P. Vs. Amar Singh etc., the U.P. Imposition of Ceiling on Land Holdings Act, 1960 was amended and the amendment came into force with effect from January 24, 1971. Prior to the amendment Act came into force on September 10, 1970, Kishun Singh had alienated by registered sale deeds his holdings in favour of his sons and daughters-in-law. When the computation was sought to be made of the surplus land u/s 5 of the Act, the respondents claimed land as of their own. The Apex Court referring to the alienations observed as follows. The object of the Amendment2 Act of 1972 is to see that the transactions effected on or after January 21, 1971 were null and void and were intended to defeat the provisions of the Act unless it is established that valid consideration has been passed and the alienation was for compelling legal necessity; that it was supported by adequate consideration and it was not a benami transaction. It was further observed that since the alienations were made in favour of his sons and daughters-in-law appears to be only to see that the provisions of the Act are defeated and the lands do not pass into the hands of strangers. Thus, it appears that the points whether valid consideration had been passed and whether the document was supported by adequate consideration and whether it was not a benami transaction. Whether there was any fraudulent misrepresentation with regard to the contents of the document may arise for consideration even when it is argued that the document is void.

72. We are mainly concerned with Section 17(1) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act 1973 (for short ''Land Reforms Act'').

73. Section 17(1) of the Land Reforms Act is as follows.

17. Prohibition of alienation of holding:-(1) No person whose holding, and no member of a family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January, 1971 or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease, gift exchange, settlement, surrender, usufructuary mortgage or otherwise, or effect a partition thereof, or create a trust or convert on agricultural land into non-agricultural land, until he or the family unit, as the case may be, has furnished a declaration u/s 8, and the extent of land, if any, to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal and an order has been passed

by the Revenue Divisional officer under this Act tacking possession of the land in excess of the ceiling area and a notification is published u/s 16; and any alienation made or partition effected or trust created in contravention of this Section shall be null and void and any conversion so made shall be disregarded.

74. The above provision makes it clear that the prohibition is only in certain circumstances and till certain period. That is (1) until the declarant or the family unit as the case may be furnish a declaration as required u/s 8, (2) until the extent of land if any, to be surrendered in respect of his holding or that of his family unit has been determined by the tribunal, (3) until an order has been passed by the Revenue Divisional Officer under the Act taking possession of the land in excess of the ceiling area and (4) a notification is published u/s 16. Thus, the prohibition is till the surrender proceedings come to an end. How such sales have to be considered after the surrender proceedings are over is the main question to be decided in this case.

75. No doubt the transaction is hit by the above referred provision and it is clear that a person holding more than Ceiling area is prohibited from transferring by way of sale or any other mode. It is void against the State. It is void against a third party. It is also void as the law prohibits the same. But, in a case, where the prohibition is for a limited period and if there is an agreement between the parties prior to the coming into force of the prohibition though the agreement cannot be enforced during the period of prohibition, whether it could be enforceable after the period of prohibition? Similarly, even if a sale deed is executed during the period when the sale is prohibited, whether the sale deed would be void after the limited period is over and once the prohibition is lifted? Whether the person who executed such document can say that it is void? Whether after the proceedings under the relevant Act come to an end i.e., when it is no more illegal and when it would not result in defeating the provisions of any law or no more against the public policy whether a person who executed such document can take advantage of such document?

76. Section 23 of the Indian Contract Act, 1872, is as follows:

23. What considerations and objects are lawful, and what not - The consideration or object of an agreement is lawful, unless

It is forbidden by law; or

Is of such a nature that, if permitted, it would defeat the provisions of any law; or

Is fraudulent; or

Involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

77. Section 31 of the Specific Relief Act is as follows:

31. When cancellation may be ordered - (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered and such officer shall note on the copy of the instrument contained in his Books the fact of its cancellation.

78. In Government of Orissa Vs. Ashok Transport Agency and Others, it was observed as follows:-

The expression void has several facets. One type of void acts, transactions, decrees are those which are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceedings or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate preceding the transaction becomes void from the very beginning. Another type of void act may be one, which is not a nullity, but for avoiding the same, a declaration has to be made.

79. In the case between Bhikaji Narain Dhakras and others Vs. The State of Madhya Pradesh and another 1952 (5) SCR 589 it was held as follows:

The meaning to be given to the word "void" in Article 13 of the Constitution of India is no longer res integra for the matter stands concluded by the majority decision of the Court in Keshavan Madhava Menon Vs. The State of Bombay, We have to apply the ratio decidendi in that case to the facts of the present case. The impugned Act was an existing law at the time when the constitution came into force. That existing Law imposed on the exercise of the right guaranteed to the citizens of the India by article 19(1) (g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under article 13(1) that existing law became void "to the extent of such inconsistency". As explained in Keshaan Madhaa Menon''s case (supra) the law became void in toto or for all purposes or for all times or for all persons or for all times or for all persons but only "to the extent of inconsistency", that is to say to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens. It did not become void independently of the existence of the rights guaranteed by Part III.

80. In the case between State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri

Manikoth, Naduvil (dead) and others, it was held as follows:-

The word ''void'' has a relative rather than a absolute meaning. It only conveys the idea that the order is invalid or illegal. In Halsbury''s Laws of England, 4th Edition, (Re-issue) Vol 1(1) in Para 26, P.31, it is stated, thus: "If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a Court of competent jurisdiction. Until its validity is challenged, its legality is preserved.

81. It appears that there are exceptional cases in which a person would be relieved on the consequences of an illegal contract into which he has entered - cases to which the maxim does not apply. They fall into three classes: (a) where the illegal purpose has not yet been substantially carried into effect before it is sought to recover money paid or goods delivered in furtherance of it; (b) Where the plaintiff is not in pari delicto with the defendant; (c) where the plaintiff does not have to rely on the illegality to make out his claim.

82. But the peculiar circumstance of this case is that the plaintiff has already furnished declaration u/s 8 and shown the suit schedule land in his declaration before executing Ex.B1 sale deed. The plaintiff and the defendants had entered into an agreement of sale Ex.A-29 and subsequently in pursuance of said agreement of sale the plaintiff executed a sale deed in Ex.B1. Of course before the extent of land, if any, to be surrendered in respect of the holding of the plaintiff was determined by the Tribunal and before taking possession of the land in excess of the ceiling area. The plaintiff himself admitted execution of Ex.B1 before the Land Reforms Tribunal and also when the defendants obtained a loan from the bank. The plaintiff was declared as surplus holder and he himself had surrendered Ac.4-00 of excess land on 21.08.1976. Thus, proceedings under the Land Reforms Act came to an end, the question of defeating the object of the Act would not be there after 21.08.1976. Moreover the fact remains that it is not a suit filed by the defendants for specific performance of contract nor they are seeking any relief basing on Ex.B1. In fact, the plaintiff had not taken a plea that Ex.B1 is a void document. He has not whispered about Ex.B1. According to Sitaramaiah, the plaintiff can ignore Ex.B1 since it is a void document. Mr. Sitaramaiah may be right in saying that a party can ignore a void document and no consequences would flow from a void document. But each case has to be considered on its own facts and circumstances.

83. Suppose the purpose of an enactment has been over or if the Act is subsequently repealed or amended, then whether the agreement of sale entered into between the parties prior to coming into force of the Act or a sale deed executed between the parties during the period of prohibition have to be treated as void or voidable documents? At whose instance it has to be treated as void and at whose instance it has to be treated as voidable? and whether a party can take such a plea after a period of 22 years as happened in this case? These are

the important questions that arise for consideration. Having examined all the decisions cited by both sides and facts and circumstances of the case, I am of the view that the principles of paridelicto potier est condition possidentis and parin parem imperium non habet would apply. That means when a party itself is equally responsible or derives benefit out of such transaction the same party cannot say that it is void. Public policy is not static. It is variable with changing times and the needs of the society. Therefore, a sale deed or an agreement of sale when it is no more inconsistent with any law, no more illegal and opposed to public policy i.e., no more defeat the object of any Act it can be considered though executed during the period of prohibition. Void documents do not bind the State, authorities, third party, but would bind a party who executed the same. When it is no more inconsistent with any law as referred above or when a party seeks to recover money paid or goods delivered in furtherance of it, such document can be taken into consideration but not for the purpose of defeating any law. As far as the present case is concerned, admittedly, the plaintiff has filed a declaration. He has declared as surplus holder to the extent of land he had to surrender. He had already surrendered four acres of excess land. So, now the question of defeating the provisions of the Land Reforms Act or a public policy for enacting such act would not arise even if Ex.B.1 sale deed is treated as valid document. Anyhow, I am of the view that since the plaintiff has not taken any specific plea that Ex.B.1 sale deed is void document and moreover he did not seek any declaration that no sale consideration was passed under Ex.B.1 sale deed and therefore it is void. I am of the view that the plaintiff, who pays the Court fees for the relief of mere injunction, cannot seek such a declaration in a simple suit for injunction. Therefore, as far as title of the parties are concerned, the issue whether the title passed to the defendant under Ex.B.1 sale deed or not or whether Ex.A.29 and Ex.B.1 sale deed are void documents or not, have to be finally decided in a comprehensive suit for declaration of title and declaration of other reliefs in the said suit. Anyhow, even if Ex.B1 and Ex.A-29 are not taken into consideration, subsequent events such as mortgaging the suit land to the State Bank of India, Vinukonda, by the defendants and the conduct of the plaintiff that, he himself had stood as guarantor to the said transaction and the fact that subsequently the defendants have discharged the debt can be taken into consideration and cumulative effect of all these circumstances tilt the balance in favour of the defendants.

Point Nos.5 and 6:

84. In fact, Ex.A1 is the title deed, but it is shown as pattadar pass book in the appendix of evidence and Ex.A2 is the pattadar pass book, but it is shown as title deed in the appendix of evidence. Anyhow, we will refer them as the exhibits marked before the lower Court for the sake of convenience. It is submitted that as far as title deed is concerned, even there is no such correction in the earlier entry and only three survey numbers i.e., Sy.Nos.166, 201 and 204 have been shown and the total extent is recorded as Ac.8-58 cents. The suit survey numbers have been subsequently included in Ex.A1 as per the orders of the RDO.

85. Referring to the provisions of the Pattadar Pass Books Act, Sri Subbaiah, learned Counsel, submitted that the owner does not include a person who is in mere possession and, therefore, a person who claims to be an occupant cannot obtain title deed or pattadar pass book. It is also his submission that previously though word ''Occupant'' was there, but by virtue of the amendment and introduction to Section 6(a) of the Act, the word ''Occupant'' now stands deleted. Learned Counsel further submits that only owner, Pattadar, mortgagee or tenant shall be entitled to the Pattadar Passbook and an occupant is not entitled for Pattadar Passbook or Title Deed. The submission of Sri Subbaiah, learned Counsel, that an occupant is not entitled to pattadar passbook and title deed need not be considered since both the plaintiff and defendants claimed title to the suit land. It is not the case of the plaintiff that he is entitled to pattadar passbook and title deed merely on the basis of his possession i.e., as an occupant. He has taken me through the provisions of Section 6(b), 6(c), Rule 9, 9(1), 9(2) of the Pattadar Pass Books Act and Rules and submitted that whenever a sale deed has been executed, i.e., transfer of title takes place, the revenue authorities must alter the records in favour of the purchasers and Pattadar Pass Books should be issued to the purchasers. He has also referred to Rule 22, 26(2) and submits that a vendee continues to be the owner and a person who had divested his title cannot be treated either as an owner or an occupant.

86. Referring to orders passed by the revenue authorities, it is submitted that the first defendant is not a party to these proceedings and that no opportunity was given to him and, therefore, the orders passed by the RDO is not in accordance with the provisions of the ROR Act and, therefore, no importance can be attached to it.

87. Sri B.V. Subbaiah, learned Counsel, also submitted that the revenue officials cannot decide the title of the parties or the validity of Ex.B.1. It is also his submission that Rule 6 of the A.P. Rights in Land and Pattadar Pass Books Rules makes it clear that Pahanis or the Adangals do not constitute record of rights and presumption to be drawn is not absolute but rebuttable.

88. The main submission of Sri Challa Sitaramaiah, learned senior counsel, is that every entry in the record of rights shall be presumed to be true unless contra to it is proved and since the orders passed by the RDO and the Joint Collector attained finality and not challenged in any civil Court under the provisions of Section 8(2) of the Act, the said orders became final. He further submits that the RDO has passed orders in the presence of the first defendant and categorically held that the Land Reforms Tribunal did not accept Ex.B.1 and that the RDO had taken into consideration all the facts and circumstances.

89. It is also submitted that the order passed by the RDO is not an order of rectification. It is also his submission that when defendants 1 and 2 are claiming their right through a void document and when they could not acquire right or title to the property under Ex.B.1 sale deed, they have no right to alienate the

property in favour of a third party and that the third party will not get any right or title. It is also his submission that though impleading party subsequently approached the revenue authorities and at his instance the RDO passed orders mutating his name in the revenue records granting him Pattadar Pass Books , but the plaintiff had challenged the said order in W.P.No.21347 of 2010 and in a miscellaneous petition filed therein being W.P.M.P.No.22730 of 2010, the said order was suspended on 13.10.2009 and, therefore, no importance can be given to the circumstances even if mutation has taken place in favour of the impleading party. It is also his submission that admittedly there was status quo order and when the plaintiff has been in possession of the property, the third party cannot take possession of the suit land.

90. On this issue, Sri B.V. Subbaiah, learned Counsel, has relied upon the judgments in the case between Velupadas Veeraswamy Vs. The Secretary, Revenue Department, State of Andhra Pradesh and Others, State of U.P. Vs. Amar Singh etc''s case (30 supra), V. Goutham Rao Vs. Revenue Divisional Officer and Another, Ande Gangaiah (died) per LRs. and Another Vs. M. Krishna Reddy and Others, Yeluri Vijayabharathi and Others Vs. Yeluri Manikyamma and Others, K. Pratap Reddy and Others Vs. The Joint Collector and Others, Gaddam Madusudhan Reddy and others Vs. Chief Commissioner of Land Administration, Govt. of A.P., Hyderabad and others 2009 (2) ALD 444 Shri Raja Durga Singh of Solan Vs. Tholu, Ganta Chinna Shankaraiah Vs. Nadunoori Swamy, State of Madras Vs. Kunnakudi Melamatam and Another, Kondaveti Francis Vs. M. Ludramma and others, State of West Bengal and others Vs. Suburban Agriculture Dairy and Fisheries Pvt. Ltd. and another, and Mahila Bajrangi (dead) through Lrs. and Others Vs. Badribai and Another,

91. Whereas, Sri Challa Sitaramaiah, learned Senior Counsel, has relied on the decisions reported in State of Andhra Pradesh Vs. Prameela Modi and Others,) Pinninti Kistamma and Others Vs. Duvvada Parsuram Chowdary and Others, and Airabelli Prabhakar Rao Vs. Emmadi Koteshwar and Others, 5.

92. Let me refer to some of the relevant provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971. Under sub-section (3) of Section 3 of the ROR Act, any person affected by an entry in such record of rights may, within a period of one year from the date of the notification referred to in sub-section (2), apply, for rectification of the entry to such officer as may be prescribed and the said officer may, after such inquiry as may be prescribed, give his decision on such application and direct the rectification of the record of rights in accordance with such decision which shall, subject to the provisions of Section 9, be final.

93. Rule 15(1) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 envisages that every application for the rectification of an entry in a Record of Rights made under sub-section (3) of Section 3 of the Act shall be to the Mandal Revenue Officer of the Mandal in which the village is situated. Rule 16(1) of the Rules envisages that on receipt of such application for the rectification under Rule 15, read with sub-section (3) of Section 3 of the Act, the Officer referred to

in Rule 15 shall hold an enquiry after giving notice thereof to:

(a) the person making the application;

(b) any person referred to in the application as having right or interest or as not having such right or interest in the lands to which the entry relates;

(c) any person whose name has been entered in the Record of Rights as having interest in the land; and

(d) any other person known or believed to be having an interest in the land to which the entry relates.

(2) The notice referred to in sub-rule (1) shall be in Form V.

94. Rule 17(1) of the Rules also prescribe the procedure that the Officer shall take into account any written representation received or any oral representation made by any person referred to in Rule 16, or any other persons having interest in the matter and may:

(a) summon the attendance of any person for the

purpose of examining him;

(b) require any person to produce any document; or

(c) enter upon, inspect and measure or cause to be

measured any land.

95. And Sub-Rule (2) of Rule 17 envisages that on the completion of the enquiry referred to in Rule 16, the said Officer shall give his decision on the application for rectification of an entry and direct such rectification of the Record of Rights as may be required in accordance with such decision to be made. The decision shall be intimated to all the persons referred to in sub-rule (1) of Rule 16.

96. Section 4 of the Act pertain to the cases of the persons who acquired by succession, survivorship, inheritance, partition, Government patta, decree of a Court or otherwise any right as owner, pattadar, mortgagee, occupant or tenant of a land. It also envisages that any person acquiring any right as occupant of a land by any other method shall intimate in writing his acquisition of such right, to the Mandal Revenue Officer. Thus, it is clear that Section 4 of the Act is not applicable to the case of the plaintiff.

97. Section 5 of the Act envisages the procedure to be followed on receipt of intimation of the fact of acquisition of any right referred to in Section 4. Sub-section (5) of Section 5 deals with the appeals against every order of the recording authority either making an amendment in the record of rights or refusing to make such an amendment passed u/s 5 of the Act.

98. Section 5-A deals with the regularisation of certain alienations or transfers of land made or effected otherwise than by registered document. As against any

order passed by the Mandal Revenue Officer under sub-section (4) of Section 5-A, appeal lies to the Revenue Divisional Officer u/s 5-B of the Act.

99. Section 6 deals with the presumption of correctness of entries in record of rights until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. Section 6-A envisages that every owner, Pattadar, mortgagee, or tenant of any land shall apply for the issue of a pass book and title deed to the Mandal Revenue Officer on payment of such fee as may be prescribed. Sub-section (3) of Section 6-A provides that the entries in the title deed and passbook may be corrected either suo motu or on an application made to the Mandal Revenue Officer in the manner prescribed. Section 6-B deals with pass book holder to have entries of alienation etc., recorded in pass book. Section 6-C deals with recording of grant of loans and encumbrances etc., in the pass book and punishment or contravention thereof. Section 6-D makes it obligatory on the part of the authorities to make entry of every transaction of sale, gift, purchase, mortgage, lease or exchange in such title deed and pass book. Section 8 of the Act is as follows.

8. Bar of Suits:-(1) No suit shall lie against the Government or any officer of Government in respect of a claim to have an entry made or in relation to any entry made in any record of rights or to have any such entry omitted or amended.

(2) If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration.

100. Section 9 of the Act deals with the revisional powers to the authorities. Proviso to Section 9 also makes it clear that the opportunity of making a representation should be given to the affected person. Thus, it is clear that a comprehensive procedure has been prescribed under the provisions of the Act.

101. Of course, it is also relevant to note that under Rule 9 (1)(a)(iv) no order shall be passed for the change of registry or splitting of joint pattas unless the recording authority is satisfied that the change of registry or splitting of joint patta is not in contravention of any of the provisions of:

(1) The A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Act 1 of 1973);

(2) The Urban Land (Ceiling and Regulation) Act,

1976 (Central Act 33 of 1976);

....

....

102. The sum and substance of the above referred judgments on this issue are that (1) entries in the sethwar prepared and maintained under the provisions of A.P. (Telangana Area) Land Revenue Act, 1317 Fasli cannot be equated to that of mere revenue entries for the purpose of collection of land revenue; (2) Mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but they do not confer any title to the land; (3) Section 6 of the aforesaid Act dealing with the presumption of correctness of entries in record of rights specifies that every entry in record of rights shall be presumed to be true until the contrary is proved or until it is other wise amended in accordance with the provisions of the Act; (4) the true effect of the entries made in the ROR Act is not to create rights where non-existed, but entries raise a presumption that such rights exist and the entries are prima facie evidence of possession and right to hold land; (5) whenever a party disputes the entry registered in the ROR Act, his remedy is only by way of civil suit to declare his right under the provisions of Section 8(2) of the Act and not otherwise (6) Such entries in the record of rights divest the rights where they existed; (7) Wherever there is serious dispute or a civil suit is pending with regard to the title, it would be proper for the revenue authorities to refrain from proceedings with the enquiries under the provisions of the Act, but also pragmatic for the parties to approach Civil Court for establishing their right, title and interest of whatsoever nature; (8) When a party is complaining of tampering of records and seeking to correct the same, he has to approach the Mandal Revenue Officer who is competent to correct the same u/s 5(6) of the Act; (9) The Revenue Divisional Officer straightway entertaining such dispute as an appeal and passing suo motu ex parte orders even without hearing the affected party is without jurisdiction and also violative of principles of natural justice (10) exercising revisional powers without notice to affected parties and basing on the enquiry report submitted by the Mandal Revenue Officer or Sub-Collector, would amount to misuse of statutory provisions; and (11) Where the entries in the recorded of rights are relied on and there is a conflict between them, it is the later entry which must prevail.

103. A reading of the above referred provisions reveals that there is difference between sub-section (5) of Section 5 and Section 9 of the Act. u/s 9 of the Act, the Joint Collector can take up suo motu revision in relation to the record of rights or order, any recording authority/appellate authority to satisfy himself as to regularity, correctness, legality or propriety. This ''suo motu'' power is conspicuously absent in sub-section (5) of Section 5 of the Act. Reading Section 5(5) and Section 9, and sub-section (6) of Section 5 of the Act together, it becomes clear that when once the PPB/TD is issued to the person claiming to be the owner of the agricultural land, the same can be cancelled by an appellate authority on an appeal being presented to him or by revisional authority either suo motu or on an application.

104. The case of the plaintiff is that the suit two survey numbers were originally included in Exs.A1 and A2 pattadar passbook and title deed book, but the VAO

asked him to return the pattadar passbook and title deed to obtain the signatures of the R.D.O in the title deed and when he had handed over the Pattadar passbook and title deed, the VAO struck off those two survey numbers and therefore he applied to the RDO for necessary orders. It is also his case that when his appeal was not disposed of, he filed a writ petition and this Court in W.P. No1148 of 1997, by an order dated 28.01.1997 directed the R.D.O to dispose of the appeal. It appears that when it was represented before this Court that the plaintiff had filed an appeal before the RDO and that the RDO was not disposing of the same a direction was given to the RDO. But, that does not mean that the RDO automatically gets jurisdiction though not vested in him to treat the representation of the plaintiff as if an appeal, when under sub-section 3 of Section 3 of the Act as discussed above only the MRO is having original jurisdiction to correct the entries. Therefore, it is clear that the order passed by the RDO in Ex.A.5 dated 02.06.1998 is without jurisdiction. It is also clear that no notice was issued to the first defendant and no enquiry as per rules was conducted. Therefore, the order of the RDO and consequential orders of the Joint Collector and the entries made in Exs.A1 and A2 in pursuance of the order of the RDO cannot be taken into consideration. Moreover the version of the plaintiff that the VAO subsequently deleted those two suit survey numbers appears to be not correct. The original entries in Ex.A2 are as follows.

Sl.No.

Survey No.

Classification of land

Extent

1.

166

Dry

Ac.3-02 cents

2.

201

Dry

Ac.2-05 cents

3.

204

Dry

Ac.3-51 cents

Total:

Ac.8-58 cents

105. As seen from the above entries, the total extent of land is given as Ac.8-58 cents and the same is also written in words as eight acres fifty eight cents. The signature of the VAO and MRO is dated 01.06.1995. Of course, Survey Nos.436 and 826 have been struck off. Now it has to be seen whether those survey numbers were struck off when Exs.A1 and A2 were handed over to the VAO as alleged by the plaintiff or when entries in pattadar pass book were originally made. It has to be seen that the total extent of survey Nos.166, 201 and 204 comes to Ac.8-58 cents only and the same extent has been originally shown in Ex.A2. If at all the suit survey Nos.436 and 826 were not originally struck off at the time of preparation of Ex.A2 itself the total extent would have been shown as Ac.31-28 cents and not as Ac.8-58 cents. Since originally the total extent is written as Ac.8-58 cents in figures and words it is clear that the total extent of Survey Nos.166, 201 and 204 were only taken into consideration and not the suit schedule survey numbers when passbook was originally prepared. This means though Sy.Nos.436 and 826 were initially written but they were struck off immediately and the correction was made at the initial stage itself but not subsequently as alleged by the plaintiff. It has to be seen that P.W.1 himself admitted that he did not mention in the plaint that village Karanam took his Pattadar Passbook and struck off the entries relating to the suit land and delivered the Pattadar Passbook to him in 1996. This aspect was not considered either by the RDO or subsequently by the Joint Collector. In fact the defendants also did not point out this discrepancy. Whatever it may be, now the plaintiff sought rectification of those records. As discussed above, the procedure for rectification of the entry made at the time of preparation and updating of the record of rights is prescribed under sub-section 3 of Section 3of the Act and as referred above the plaintiff ought to have applied for rectification of entry to the Mandal Revenue Officer. As discussed above, the Mandal Revenue Officer was bound to follow the procedure prescribed under Rule 16(1) and 17(1) of the Act. It has to be seen that no application for rectification of records was made to M.R.O. The RDO had entertained the representation of the plaintiff and did consider whether he had powers to entertain the matter as an appeal when no order was passed by the MRO.

106. A reading of the orders passed by the Revenue Divisional Officer, dated 02.06.1998 marked as Ex.A5 makes it clear that the procedure prescribed under the relevant rules has not been followed. There is nothing on record to show that any notice has been issued to the first defendant. Admittedly, the representations filed by the first defendant on 17.01.1998 and 19.01.1998 were pending with the Mandal Revenue Officer as on the date of passing of orders by the Revenue Divisional Officer. As observed above, the finding of the Revenue Divisional Officer that the recording authority prepared pattadar pass book in favour of A.V. Ranga Rao including the lands in Sy.Nos.436 and 826 in his holding

and subsequently the entries relating to the said survey numbers were struck off is absolutely incorrect and the version of the plaintiff was bluntly accepted even without taking into consideration the total extent of lands mentioned in the pattadar pass book. Therefore, the authorities were seem to be under a mistaken impression that the VAO had struck off the entries and therefore held that the VAO has no such power to strike off the entries once made by him without following the procedure. The report of the Mandal Revenue Officer dated 21.01.1998 (on the top of the report it is shown as Rc.No.273/97, dated 19.01.1997) was referred by the Revenue Divisional Officer in his proceedings. In the said report the Mandal Revenue Officer had categorically stated that the VAO reported that the plaintiff sold the suit lands in favour of Ramachandra Reddy (the first defendant) and his son Venkata Krishna Reddy (the second defendant) under a registered document dated 16.07.1975 and hence the land pertaining to the above survey numbers were not included in the pattadar pass book issued to A.V. Ranga Rao. The Mandal Revenue Officer had also categorically mentioned that the plaintiff had not produced any documentary evidence cancelling the sale deed Ex.B.1 executed by him as referred above and therefore the title of the land as per the records of the registration department is still in the name of benami purchasers defendants 1 and 2. Thus, though the Revenue Divisional Officer claims to have relied upon the report of the Mandal Revenue Officer, but the same appears to be otherwise. Though the dispute is still pending before the Joint Collector, but one thing is clear that the orders of the revenue authorities are not consistent on this issue. A reading of the order of the R.D.O in Ex.A5 makes it clear that (1) no notice was issued to the first defendant and statement of the first defendant was not recorded, (2) the required procedure is not followed, (3) the R.D.O has no jurisdiction to entertain such representation as an appeal, (4) there is no order passed by the MRO who is the appropriate authority, (5) the applications of the first defendant before the MRO were not taken into consideration. In view of the same, I am of the view that the order of the RDO is illegal and non est in the eye of law. So the entries made as per the orders of the RDO in Ex.A1 and A2 cannot be taken into consideration. Since the order of the Joint Collector is an order confirming the order of the RDO, the same also need not be taken into consideration. The Joint Collector also did not consider who is the primary authority to rectify the entries and whether the procedure prescribed by the Act and Rules has been followed or not, but basing on Exs.A1 and A2, it cannot be said that the title is passed to the plaintiff or that the plaintiff has been in possession of the property as on the date of filing of the suit.

107. The authorities are not expected to act on the representations made by the parties and they have to follow the procedure prescribed under the Act and relevant Rules. Even if any representation is made to the higher authorities such as to Revenue Divisional officer or to the Joint Collector, but if the primary authority i.e., the Mandal Revenue Officer has to exercise the powers, then such superior officers shall forward those representations to the primary authority to

deal with such representations as per the procedure prescribed. They must have a clear idea as to how to treat such representations and under what provision they have to entertain the same. They must ascertain whether it is for rectification of records or whether it should be treated as an appeal or revision. Merely because they have over all supervisory powers under Rule 9 it does not mean that they can deviate the procedure prescribed under the Act and Rules. Moreover whenever rival claims are there, the party going to be affected by the orders should be given a notice and reasonable opportunity as prescribed under the Rules. They have to make independent enquiry and shall not depend upon the reports of the subordinate officers. Though the entries made by the revenue authorities have evidentiary value and presumption about their correctness can be raised, but such presumption is a rebuttal presumption. The valuable rights of the parties cannot be finalised by passing ex parte orders in the absence of the affected party. Unless it is shown that the authorities have followed the prescribed procedure and the principles of natural justice, it cannot be said that the orders passed by such authorities have attained finality and presumption has to be automatically raised with regard to their correctness. Where the orders have been passed by the authorities who have no jurisdiction or power to pass such orders and with utter disregard to the prescribed procedure or principles of natural justice i.e., when orders are passed behind the back of a party without notice to him, such orders would be non est in the eye of law and no value can be given to such orders. The presumption of the correctness of such orders can be raised only in case where the authorities have followed the prescribed procedure. In such circumstances, the remedy to the affected party is as provided under sub-section (2) of Section 8 of the Act to file a civil suit for rectification of the entries made in the revenue records. However, a party even without filing a suit as referred above can always argue that the impugned order is without jurisdiction. When there is a serious dispute with regard to title or when a validity of document has to be decided or when a declaration has to be given, whether a document is void or not or whether title has been passed to a party under a registered document or not, all such complicated civil disputes cannot be decided in the summary proceedings and the authorities should direct the parties to approach the Civil Court in such a situation. Moreover when a civil case is pending between the parties, it may be appropriate for the authorities to wait till the decision of a civil Court comes. In this case, the suit in O.S. No.63 of 1998 filed by the first defendant was pending as on the date of passing orders by the RDO in Ex.A5. Therefore, the settled legal position is that even if any entries have been made by the revenue authorities while exercising powers under the ROR Act or otherwise such entries though prima facie show the title and possession of a party, but the same cannot be said to be the conclusive proof of title of the party in whose favour the entries have been made and may be rebutted by sufficient evidence and the decision of a civil Court on the issue of title and possession shall always prevail over the decisions of the revenue authorities.

108. In view of the above discussion, I am of the view that even if Ex.B.1 sale deed is not taken into consideration and entries made in Exs.A.1 and A.2 are also not taken into consideration, the other documentary evidence has to be looked into for the purpose of determining whether the plaintiff had been in possession of the suit schedule land as on the date of filing of the suit.

Point No.7:

109. It is settled law that the injunction relief, being an equitable remedy, a party who does not come to the Court with clean hands is not entitled for injunction relief. A reading of the entire material on record gives an impression that as on the date of filing of the suit, the plaintiff knows very well that the first defendant had already filed a suit in O.S.No.63 of 1998 on the file of the Junior Civil Judge, Vinukonda, and that he had taken a specific plea with regard to Ex.B.1 sale deed executed by the plaintiff and also about the mortgaging of the suit land with State Bank of India, Vinukonda Branch, etc. It is not in dispute that the first defendant had already filed an appeal challenging the orders passed by the Revenue Divisional officer and also lodged a police complaint on 10.10.1998 in Ex.A31 and, therefore, the plaintiff knows very well about the stand of the defendants, but admittedly, he has not whispered about the claim of the defendants in his plaint averments. It has to be seen that the plaintiff does not deny the fact that he had executed Ex.A.29 and Ex.B.1. However, he had not whispered about the same in his plaint averments. The plaintiff has simply averred that the suit land is his ancestral property and that he has been in possession of the property and that he was issued Pattadar Pass Book and Title Deed and that he had raised certain crops and that the defendants were interfering with his possession. Admittedly, the plaintiff did not whisper the fact that he had referred about Ex.B.1 sale deed before the Land Reforms Tribunal or that he had stood as guarantor to the loan obtained by the defendants when the suit land was mortgaged by the defendants. A reading of the entire material on record also gives an impression that there is some force in the contention of Sri B.V. Subbaiah, learned Counsel, that the plaintiff had avoided to file a civil suit in the Court of Junior Civil Judge, Vinukonda, because, the suit filed by the first defendant in O.S.No.63 of 1998 was already pending before that Court and, therefore, the plaintiff seems to have purposefully enhanced the value of the relief and filed a suit before the Senior Civil Judge, Narsaraopet. It appears that had the plaintiff filed a suit before the Junior Civil Judge, Vinukonda, he would not have got injunction order and, therefore, by suppressing all those facts, he filed the present suit before the Senior Civil Judge, Narsaraopet. Therefore, in all probabilities, it appears that had the plaintiff referred about (1) execution of sale deed in Ex.B1, (2) mortgaging of suit land to the State Bank of India by defendants and himself standing as guarantor to the said transaction, (3) filing of suit by the defendants in O.S. No.63 of 1998 and (4) lodging of police complaint by the defendants, he would not have got interim injunction order in I.A. No.874 of 1998 filed in this case. Therefore, he seems to have omitted to mention the above facts in his plaint in this suit. Thus, it is crystal clear to my mind that the

plaintiff is guilty of suppression of facts.

Point No.8:

110. Admittedly, though at the initial stage injunction order was granted in favour of the plaintiff, but subsequently, it was vacated. He was also unsuccessful before this Court at the initial stage, but however, the orders were modified as status quo order by a Division Bench of this Court. At that stage, the plaintiff had filed I.A. No. 353 of 2000 praying to receive the rejoinder, but admittedly the same was dismissed and as observed earlier, the plaintiff himself had withdrawn the revision filed against the said order. Therefore, it is clear that the rejoinder was not received and, therefore, pleas raised by the plaintiff in the rejoinder are not before the Court. Thus, it is clear that there are no pleas before the Court that there was an oral agreement between the parties to that effect that in case if Ex.B.1 is accepted by the Land Reforms Tribunal, the plaintiff would receive the sale consideration and deliver possession of the suit land to the defendants or that Ex.B.1 is a sham and nominal document and it was never intended to be acted upon and no consideration passed thereunder.

111. The main submission of Sri B.V. Subbaiah is that the pleadings of the parties being foundations of the case, no party can set out a new and a different case. It is also his submission that any amount of evidence, even if let in, would be valueless, unless s specific plea has been made. His main submission is that the Court below, ignoring the fact that I.A.No.353 of 2000 filed by the plaintiff to file rejoinder had been dismissed, had taken into consideration all the pleas raised by the plaintiff in the rejoinder and, therefore, the Court below committed an error in accepting or relying on the version of the plaintiff which the plaintiff himself had not averred in his plaint averments. In support of his contentions, learned Counsel had relied upon the judgments in the cases between Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by L.Rs (10 supra), Siddik Mahomed Shah Vs. Mt.Saran AIR 1930 Privy Council 57 S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, Allam Gangadhara Rao Vs. Gollapalli Gangarao, Abubakar Abdul Inamdar (dead) by LRs. and others Vs. Harun Abdul Inamdar and Others, and Ritesh Tewari''s case (1 supra). It is also his submission that since there is no averment by the plaintiff that the recitals in Ex.B1 with regard to delivery of possession or receiving of sale consideration are not correct or that there was an oral agreement between the parties no issues were framed and, therefore, the defendants had no opportunity to adduce the evidence repelling the subsequent version of the plaintiff.

112. On the other hand, Sri Challa Sitaramaiah submits that where a party has let in evidence and knows the pleas of one another, even in the absence of pleadings, the evidence can be looked into. In support of his contention, he has relied on Nagubai Ammal and Others Vs. B. Shama Rao and Others, Bhagwati Prasad Vs. Shri Chandramaul, and P.V. Ayyappa Reddiar Vs. Ayyappan Pillai Janardhanan Pillai and Another,

113. In Anathula Sudhakar''s case (10 supra), it was observed that when specific pleas were not pleaded the question of defendant denying or traversing them did not arise. In that case, the plaintiffs contended that their vendor Rukminibai was the ostensible owner of the property with the express or implied consent of Damodar Rao and that the plaintiffs after taking reasonable care to ascertain that the transferor or Rukminibai had power to make the transfer, had acted in good faith in purchasing the sites for valuable consideration. When the High Court formulated a point whether the acts and deeds of Damodar Rao (DW.2) made the plaintiffs to believe that Rukminibai is the ostensible owner of the suit property and thus made them to purchase the suit property for valid consideration and, therefore, the provisions u/s 41 of the Transfer of Property Act are attracted and as such DW.2 could not pass on a better title to the defendant under Ex.B1, the Apex Court observed that these pleas were not made in the plaint and when these were not pleaded the question of defendant denying or traversing them did not arise. It is specifically observed as follows. "In the absence of any pleadings and issue, it is understandable how a question of law relating to section 41 of TP Act could be formulated by the High Court".

114. In Bhagwati Prasad''s case (54 supra), the plaintiff filed a suit for ejectment against the defendant. The defendant admitted the title of the plaintiff, however, pleaded that he should remain in possession of the house until the amount spent by him in its construction was returned by the plaintiff. The plaintiff had adduced evidence about the tenancy set up by him and the defendant led evidence about the agreement on which he relied. Both the pleas were clear and specific and the common basis of both the pleas was that the plaintiff was the owner and the defendant was in possession by his permission. The High Court in the first appeal held that in the absence of proof of tenancy and of defendants agreement it has to be held that the defendant was in possession of the suit premises by the leave and licence of the plaintiff. The Apex Court observed as follows. When it was disputed that the plaintiff was owner and defendant was in possession with his permission, in such a case, the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession of it by the owner''s licence. No other alternative is logically or legitimately possible. Therefore, there was no error of law if the decree for ejectment was passed. It was further observed that if a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it, if it is satisfactorily proved by evidence.

115. Admittedly, the facts of that case are entirely different and do not apply to the facts of the present case. It is not the case of the plaintiff that pleas raised by him are covered by an issue by implication.

Order VI Rule 1 is as follows:

1. Pleading - ''Pleading'' shall mean plaint or written statement.

Order VI Rule 2(1) is as follows:

2. Pleading to state material facts and not evidence:-(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved

Order VI Rule 6 is as follows:

6. Condition precedent - Any condition precedent, the performance of occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading."

Order VI Rule 9 is as follows:

9. Effect of document to be stated - Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

116. It has to be seen that issues arise when the material preposition of fact or law is pleaded by one party and denied by the other party. Order XIV Rule 2 CPC envisages that material prepositions are those prepositions of law or fact which the plaintiff must allege in order to show the right to sue or a defendant must allege in order to constitute as defence. It is clear that pleading shall contain only a statement in a concise form of the material facts but not the evidence by which averred facts are to be proved. Order VI Rule 9 C.P.C. would apply wherever the contents of any document are material and it shall be sufficient to state the effect thereof as briefly as possible. Thus, even when the contents of any document are material, they have to be referred in the pleading. Therefore, even if the plaintiff had referred about the order of the Revenue Divisional Officer in Ex.A5, it cannot be said to be complying with the above referred provisions. Unless the contents of any document which are material have been referred briefly, it cannot be said that the plaintiff had made any pleading about its contents. Basing on pleadings, issues will be framed and basing on the issues, parties will let in evidence. Thus, unless there is a specific plea, no purpose will be served by letting in evidence, otherwise, there will be every possibility to change the stand from time to time or set up new pleas and there will be no end to the litigation.

117. The pleas not taken by the plaintiff in the original plaint which are material cannot be inferred. Only in a few cases where a plea, though not specifically taken, can be inferred logically, the evidence let in by a party with regard to such plea can be accepted. Therefore, the pleas raised in the rejoinder cannot be looked into. It is settled law that any amount of evidence, even if let in, is of no value when there is no specific pleading with regard to the same.

Point No.9:

118. Sri B.V. Subbaiah, learned Counsel, appearing for the appellants/defendants submitted that there was an agreement of sale entered into between the parties in 1958 itself and at that time, an amount of Rs.8,318/- was paid to the plaintiff, but somehow the defendants could not obtain the sale deed. His main submission is that the recitals of Ex.B.1 go to show that entire sale consideration was paid to the plaintiff and possession was delivered to the defendants and that the plaintiff cannot argue contra to the recitals of Ex.B.1. It is also his submission that though the plaintiff had executed a sale deed after filing of the declaration and before he had surrendered the land, but he cannot say that the sale deed is a void document. His main submission is that a person who, having received substantial amount towards sale consideration and executed a sale deed and got it registered and delivered possession, cannot be allowed to turn around and say that he had executed a sham and a nominal document.

119. Sri Challa Sitaramaiah, learned Senior Counsel, submitted that the plaintiff can lead evidence u/s 92 of the Indian Evidence Act that no consideration was paid to him. Referring to Section 54 of the Transfer of Property Act, his submission is that once a registered sale deed is executed, the vendor ceases to be the owner of the property and the plaintiff, on his own admission, executed Ex.B.1 sale deed and the recitals of the said sale deed go to show that the possession has been delivered and, therefore, the plaintiff cannot be allowed to depose contra to the recitals of Ex.B.1 sale deed.

120. Sections 91 and 92 of the Evidence Act are as follows.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents.-When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Explanation 3.-The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

92. Exclusion of evidence of oral agreement.-When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1) - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contradicting party, want or failure of consideration, or mistake in fact or law:

Proviso (2) - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Proviso (3) - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).-The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).-Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract:

Proviso (6).-Any fact may be proved which shows in what manner the language of a document is related to existing facts.

121. Sri Challa Sitaramaiah, learned senior counsel representing the learned counsel for the plaintiff had relied upon the judgment in the case between Tyagaraja Mudaliyar and another Vs. Vedathanni AIR 1936 Privy Council 70 In that case, there was a concurrent finding by both the Courts below that when the document was presented to be executed three days after her husband''s death, she refused to sign it, and was only induced to do so two days later by representation that it would not be acted on, and was only intended to provide evidence of the undivided status of the family. In the above circumstances, it was observed as follows:-

...........evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there is not an agreement at all is admissible.

122. Reliance has also been placed on the judgment in the case between Narandas Morardas Gaziwala and Others Vs. S.P. Am. Papammal and Another, In that case, there was a collateral oral agreement not to make a demand until prescribed condition is fulfilled with regard to a promissory note, though express terms of the said promissory note reveal payable on demand. It was observed as follows:

......Such an oral agreement constitutes a condition precedent to the attaching of the obligation and is within the terms of proviso 3 of Section 92 of the Indian Evidence Act, 1872.

123. Reliance has also been placed on the judgment in the case between R. Janakiraman Vs. State represented by Inspector of Police, CBI, SPE, Madras, It was a case arising out of the Prevention of Corruption Act, 1947. The accused was prosecuted under the Prevention of Corruption Act, 1947 as the value of assets acquired by him was found to be beyond his known sources of income. As regards the explanation for excess income, the accused took the plea in relation to a certain amount (Rs.2,50,000/-) that he had taken a loan of the said amount from moneylenders P.Ws.11 and 15. In that regard, the accused relied upon the documentary evidence of promissory notes executed and entries made in account Books by the said P.Ws. But in Court, P.Ws.11 and 15 gave evidence denying the grant of the said loan and they admitted that the said documents and entries were created only to help the accused to explain the huge amounts of cash found in his possession. The accused contended that the evidence of P.Ws.11 and 15 was contrary to the documentary evidence and therefore, should be excluded u/s 92 of the Indian Evidence Act, 1872. In the circumstances, the Apex Court observed as follows:

The bar u/s 92 would apply when a party to the instrument, relying on the instrument, seeks to prove that the terms of the transaction covered by the instrument are different from what is contained in the instrument. It will not apply where anyone, including a party to the instrument, seeks to establish that the transaction itself is different from what it purports to be. To put it differently, the bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different. Oral evidence can always be led to show that a transaction under a particular document or set of documents is sham or fictitious or nominal, not intended to be acted upon.

124. For the same preposition, Sri Challa Sitaramaiah, learned senior counsel placed reliance on the judgment in the case between Hindu Public and Another Etc. Vs. Rajdhani Puja Samithee and Others Etc., and also on Sah Lal Chand Vs. Indarjit ILR 22 All 370 (PC), wherein, it was held that it is open to a party to prove that no consideration of money was actually paid notwithstanding anything in Section 92 of the Indian Evidence Act, 1872.

125. Of course, oral evidence could be given to show that actually transaction was intended for some other purpose. It appears that there is a strong reason underlying the prohibition of oral evidence to contradict the terms of a written agreement, it is only after the terms and conditions of the contract are crystallized between the parties that a written contract is brought about. Law attaches certainty and sanctity to such terms, unless they are tainted with the factors such as fraud, undue influence, incapacity, misrepresentation etc., no evidence can be allowed to let in contra to the terms of the document. Otherwise the very purpose of execution of the document would be defeated. Even in case

of alleged fraud, no oral evidence is admissible unless specific pleadings of fraud were made in the plaint to prove that the recitals of the said documents are not correct.

126. Thus, it appears that u/s 92 of the Evidence Act, a vendor is not prevented from adducing evidence to show that recital in the said deed to the effect that consideration has been paid is incorrect and in fact no consideration is paid to him. As far as the alteration of the terms are concerned, only a subsequent document can alter, rescind or vary terms of a registered document, no oral contract or disposition can substitute the said requirement. Thus, the settled legal position is that a plaintiff cannot adduce oral evidence to disprove the contents of a document. The law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. Similarly, the question as to whether the transaction recorded in the document was never intended to be acted upon by the parties, and that the document was sham and bogus arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever, for the purpose, oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether not recorded in the document was entered into between the parties. When a party asserts that there is a different transaction altogether, then it is for such party to make a specific plea and adduce satisfactory evidence. So, as far as the facts of the present case are concerned, the plaintiff cannot argue that the contents of Ex.A.29 and Ex.B.1 are incorrect, because there is no pleading contra to the recitals of those documents as discussed above. The subsequent events such as the plaintiff himself becoming a guarantor to the defendants in the bank reveal that the recitals of those documents were subsequently admitted by the plaintiff. There is no pleading of fraud, misrepresentation or incapacity in this case.

127. I have read the entire evidence. The evidence of P.W.1 is self-serving. P.W.2, except saying that the plaintiff is in possession of the suit land since last sixteen years, did not whisper about Ex.A.29 or Ex.B.1 or any oral agreement, as claimed by the plaintiff. P.W.3 deposed that he does not know the transactions between the plaintiff and the first defendant. Therefore, there is no oral evidence to show that there was an oral agreement between the parties that Ex.B.1 and Ex.A.29 were not intended to be acted upon and that the intention was totally different.

Point No.10:

128. ASMP No.589 of 2009 is filed along with this appeal for impleading the subsequent purchaser as a party to the appeal.

129. Sri B.V.Subbaiah, learned counsel for the first defendant had relied upon the

judgment in the case between Sumtibal and others Vs. Paras Finance Co. Rg. Partnership Firm Beawer (Raj.) through Smt. Mankanwar W/o. Parasmal Chordia (D) and others 2007 (7) SCJ 686 In that case, one Late Kapoor Chand had entered into agreement to sell the property to the plaintiff. The plaintiff filed a suit for specific performance against said Kapoor Chand. Kapoor Chand died during the pendency of the proceedings. His wife and the sons applied to be brought on record. The questions as to what pleas the LRs of Kapoor Chand could take and whether they are necessary parties came up for consideration and the Apex Court found that the sale deed under which said Kapoor Chand purchased the property reveals that the property was purchased in favour of not only Kapoor Chand but also his sons. Thus, it was observed that it cannot be said that the sons have no semblance of right.

130. Reliance has been placed on the judgment in the case between Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, wherein, it was observed as follows:

An Alienee pendent elite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order I Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

131. Reliance has been placed on the judgment in the case between Ramachandra Deshpande Vs. Laxmana Rao Kulkarni AIR 2000 Kar. 298 wherein, it was observed that a transferee is also bound by the decree respecting the decree-holders easementary right of way and, therefore, a transferee from the judgment debtor is a necessary party.

132. Reliance is placed on the judgment in the case between

Krishnabai Pandurang Salagare and others Vs. Savlaram Gangaram Kumtekar AIR 1927 Bombay 93 wherein, it was observed as follows: The doctrine of lis pendens is not based on the equitable doctrine of notice, but on the ground that it is necessary to the administration of justice that the decision of a Court in a suit should be binding not only on the litigant parties but on those who derive title from the pendente lite, whether with notice of the suit or not.

133. No doubt the subsequent purchaser cannot claim any better title or rights than possessed by his vendor. His case stands or falls basing on the case of his vendor. It also appears that he cannot take any plea which is contra to the plea taken by his vendor. Thus, his right is subject to the result of the litigation between his vendor and his opponent in the suit. But however, when a litigation has been pending for years together and when a party, may be for their urgent necessities, intend to alienate the property and when a bonafide purchaser, for a valuable consideration, enters into the field, should we not allow him to contest the proceedings? Normally after execution of the sale deed, the vendor looses interest in the litigation. He may not evince interest in the litigation. There may

be some cases where the vendor may even collude with the opposite parties and may not prosecute his case as required. Moreover, even if the suit is disposed of and a decree is passed against a party though a pendent elite purchaser is not a bonafide purchaser or that his claim is put forth only to protract the litigation, then the Court may reject the application. It appears that at the instance of pendent elite purchaser, the matter cannot be re-opened, but he can be allowed to participate in all further proceedings. Therefore, to bind all the parties by a decree to be passed in a case, I think that it is desirable to allow the subsequent purchaser to come on record. Accordingly, ASMP No. 589 of 2009 is allowed.

Point No.11:-

134. In view of the above discussion, I hold that the Court below ought to have dismissed the suit. The Court below without considering the evidence in proper perspective and without any specific pleadings and considering the pleadings made in the rejoinder, though an application to receive the rejoinder was rejected, seems to have committed a mistake in relying on the pleadings of the rejoinder. Moreover, the findings of the Court below with regard to the possession of the parties over the suit land are not on proper appreciation of evidence. The Court below committed a mistake in disregarding Ex.B.8 and the events that occurred before filing of the suit from January, 1998 to till the date of filing of the suit.

135. In view of the above discussion and for the foregoing reasons, I am of the view that the appeal has to be allowed. Accordingly, the appeal is allowed setting aside the impugned judgment. However, in the circumstances, no costs.

136. In the light of the disposal of the main appeal, the miscellaneous petitions filed along with this appeal are disposed of in the following manner.

ASMP No.1444 of 2009

137. This petition is filed to receive the following documents as additional evidence and mar the same as Exs.C.1 to C.4, viz., (1) Claim Petition for Pattadar Passbook of the appellants dated 19.01.1998 to MRO, Ipur, received on 21.01.1998; (2) Claim Petition of the appellants dated 17.01.1998 (received by the MRO on 23.01.1998); (3) Report of the MRO in Rc.273/97 dated 19.01.1997 signed on 21.01.1998 submitted to the RDO, Narsaraopet; and (4) Report of the Tahsildar, Ipur in Rc.No.149/08 dated 05.02.2009 submitted to RDO, Narsaraopet. There is no dispute with regard to the genuineness of those documents and there is also reference with regard to some of these documents in the documents already marked.

138. Since the main controversy is with regard to the entries made in the Pattadar Pass Books and the orders passed by the RDO in Ex.A.5 and since there is reference to the report of the MRO which is now sought to be filed in the order of the RDO and since they appear to be necessary for adjudication of the matter, I am of the view that these documents can be received. Accordingly, this petition

is allowed and the above referred documents are received and marked as Exs.C.1 to C.4.

ASMP No.1846 of 2009

139. This petition is filed to receive the copy of the order of the Revenue Divisional Officer, Narsaraopet, dated 24.09.2009 passed in D.Dis No.21/2009-A and the order copy of R & T.M.P.No.34 of 2009 and R & T Petition No.26 of 2009 dated 24.09.2009 of this Court as additional evidence and mark the same as Exs.C.5 and C.6.

140. Since these documents show the subsequent developments and appear to be useful for the disposal of the main appeal, I am of the view that these documents can be received. Accordingly, this petition is allowed ad the above referred documents are received and marked as Exs.C.5 and

C.6.

ASMP No.2237 of 2010

141. This petition is filed to receive the CC of the judgment in O.S.No.63 of 1998 dated 17.10.2003 on the file of the Junior Civil Judge, Vinukonda, as additional evidence.

142. Since there is no dispute with regard to the fact that O.S.No.63 of 1998 has been dismissed for default, this petition is allowed and the above referred document is received and marked as Ex.C.7.

ASMP Nos.882 of 2010, 2294 of 2010, 2207 of 2005

143. In view of the above discussion, there is no need to receive the documents sought to be received in these ASMPs, and accordingly, these ASMPs are dismissed. Before parting with this judgment, It is pertinent to state here that both the learned senior counsel have advanced elaborate and persuasive arguments with their rich experience in advocacy and command over the question of law and I will be failing in my duty if I do not place on record my appreciation to both the learned senior counsel for their endeavor in assisting this Court in delivering this judgment.