(2008) 12 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23945 of 2000

K. Pratap Reddy and Others — APPELLANT

Vs

The Joint Collector and Others — RESPONDENT

Date of Decision : 26-12-2008

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 166B
Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 43
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 10, 10(2), 12, 13, 14
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 13, 13(2), 32, 9(1)
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (2009) 2 ALD 212 : (2009) 2 ALT 742

Hon'ble Judges : P.V. Sanjay Kumar, J

Bench : Single Bench

Advocate : G.P. for Revenue for Respondents 1 and 2, for the appearing parties; M.V. Durga Prasad, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

P.V. Sanjay Kumar, J.—The extent and scope of jurisdiction of Revenue Authorities in exercise of powers conferred by Sections 5 and 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short, ''the Act of 1971'') fall for consideration in this writ petition.

2. The order passed by the Joint Collector, Ranga Reddy District, Hyderabad, the 1st respondent herein, in Proceedings No. D5/9418/1997 dated 24.07.2000 in exercise of revisional jurisdiction u/s 9 of the Act of 1971 and the consequential order passed by the Mandal Revenue Officer, Ghatkesar Mandal, Ghatkesar, Ranga Reddy District, the 2nd respondent herein, in proceedings No. B/2186/2000 dated 10.11.2000 in exercise of powers conferred by Section 5 of the Act of 1971 are under challenge.

3. The petitioners claim that they and respondents 3 and 4 herein share a

common lineage. According to them, Kommidi Kanna Reddy and his brothers Kommidi Venkat Reddy, Kommidi Laxma Reddy, Kommidi Tirumal Reddy and Kommidi Ramachandra Reddy had several ancestral properties. Kommidi Ramachandra Reddy had three sons, Narsimha Reddy, Jagga Reddy and Narayan Reddy. Jaipal Reddy, respondent 3 herein, is the grandson of Sri Jagga Reddy through his son Ramachandra Reddy. The petitioners on the other hand are the descendents of the other brother Laxma Reddy. Laxma Reddy had one son Ram Reddy. Ram Reddy had two wives and the sons of one wife were Siddha Reddy and Gopal Reddy. Petitioners 1 to 4 herein are the sons of Gopal Reddy, while petitioners 5 and 6 and respondent 4 are the sons of Siddha Reddy.

4. According to the petitioners there was a partition in the family whereby the subject ancestral lands admeasuring Ac.23.07 guntas at Kondapur Village were retained by two sections of the family, namely Jagga Reddy who had 50% share and Siddha Reddy and Gopal Reddy, who jointly had 50% share. After the death of their predecessors-in-title, the petitioners lay a claim to 50% share with respondent 4 in these lands and state that the remaining 50% fell to the share of respondent 3, claiming through his grandfather Jagga Reddy.

5. The petitioners state that the names of Gopal Reddy, Siddha Reddy and Jagga Reddy were entered in the khasra pahani of 1954-55 under the ownership column and that the entries found under the column ''pattadar'' in the revenue records continued to show the names of Gopal Reddy and Siddha Reddy also.

6. While so, it is stated that respondent 3 approached the Revenue Authorities in 1988 as he intended to sell away Ac.7-22 guntas out of his half share in the land admeasuring Ac.15-04 guntas in Sy. No. 244 in Kondapur Village which formed part of the larger extent of Ac.23-07 guntas. When the other half sharers, Gopal Reddy and Siddha Reddy, questioned the same, respondent 3 challenged the correctness of the entries in the khasra pahani of 1954-55 by filing an appeal u/s 15(2) of the Andhra Pradesh (Telangana Area) Record of Rights in Land Regulation of 1358 Fasli (for short, ''Regulation of 1358- F'') before the District Revenue Officer, Ranga Reddy District. Thereupon, Gopal Reddy filed a partition suit, O.S. No. 348 of 1989 on the file of the Principal Subordinate Judge, Ranga Reddy, against respondent 3 and others seeking partition of the land at Kondapur admeasuring Ac.23-07 guntas. Gopal Reddy filed a counter bringing this aspect to the notice of the District Revenue Officer who dismissed the appeal filed by respondent 3 by his order dated 26.10.1989, recording that the parties had approached the civil Court for establishing their rights. It is the petitioners'' case that after the dismissal of the appeal before the District Revenue Officer there was a compromise between the parties and the G.P.A. Holder of respondent 3 submitted a ''no objection form'' stating to the effect that half of land in Sy. No. 244 of Kondapur Village was owned by Gopal Reddy and Siddha Reddy. In view of this admission, it is stated that Gopal Reddy got his suit, O.S. No. 348 of 1989 dismissed for default on 07.08.1996.

7. As matters stood thus, respondent 3 filed an application before the Joint

Collector, Ranga Reddy District, to re-open his appeal which had been dismissed on 26.10.1989. It is further stated that without notice to the petitioners herein, the said case was re-opened and numbered as Case No. D5/9418/97 converting the appeal into a revision u/s 9 of the Act of 1971. It is alleged that the said revision was not maintainable as it was not filed against an order of the Mandal Revenue Officer or of the appellate authority, the Revenue Divisional Officer. The Joint Collector, Ranga Reddy, passed orders in the revision on 24.07.2000 advising respondent 3 to move the Mandal Revenue Officer, Ghatkesar Mandal, the second respondent, for deciding the succession in respect of the subject property. Thereupon, the second respondent came to the erroneous conclusion that only the name of the grandfather of respondent 3 was recorded as the pattadar of the lands in question. This was in contradiction with the khasra pahani of 1954-55 which showed the names of Gopal Reddy and Siddha Reddy, the predecessors-in-title of the petitioners and respondent 4, as the joint pattadars and the entries in the revenue records in the same vein. It is stated that merely because the possession of the land was shown to be with respondent 3 the same did not have the legal implication that the joint pattadars had no rights in the lands. The possession of one joint owner should be presumed to be and treated as joint possession of all the owners. The petitioners participated in the proceedings before respondent 2 but were unable to convince him of their rights over the subject lands. The orders passed by the Joint Collector, Ranga Reddy District, u/s 9 and the Mandal Revenue Officer, Ghatkesar Mandal u/s 5 of the Act of 1971 are challenged before this Court.

8. Respondent 3 filed a counter affidavit stating to the following effect: He denied the sharing and enjoyment of the family''s ancestral properties under the alleged partition put forth by the petitioners and more specifically, the claim put forth by them that the grandfather of respondent 3, Jagga Reddy, and their predecessors-in-title, Gopal Reddy and Siddha Reddy, jointly owned the lands at Kondapur. The petitioners, without making a distinction between a great grandfather and a grandfather, were trying to lay a claim spanning five generations when law posited that a coparcenary can extend only upto three generations from the holder. Even in O.S. No. 348 of 1989, respondent 3 had denied the relationship alleged to exist between him and the predecessors-in-title of the petitioners herein. The said suit was dismissed for non-prosecution after being dragged on for seven years. Petitioners 4 and 5 had come on record in the said suit after the death of Gopal Reddy. The dismissal of the suit had become final as no appeal was preferred and no steps were taken to restore the case to the file.

9. According to respondent 3, Gopal Reddy and Siddha Reddy, the predecessors-in-title of the petitioners herein, with a view to grab the subject lands got their names interpolated in the khasra pahani of 1954-55 in collusion with the Village Patwari, who was their first cousin. It is asserted that they did not have any right in respect of the subject lands and the mere fabricated entry in the revenue record did not vest them with any entitlement over the subject lands. In the Sethwar of 1953 only the name of respondent 3''s grandfather, Jagga Reddy,

found mention both as the pattadar as well as the possessor. Similar is the case with the Wasool Baqi of the year 1354-F. The Village Patwari, Sri K.Surender Reddy, was in the habit of making illegal entries and was ultimately removed from service. Respondent 3''s grandfather, Jagga Reddy, had filed an appeal u/s 15(2) of the Regulation of 1358-F and the Tahsildar submitted a report on 21.06.1967, which was in favour of Jagga Reddy. However, owing to the expiry of Jagga Reddy and the ignorance of his heirs about the filing of the said appeal, the same was dismissed for default. Having come to know of the wrong entries in the revenue records, respondent 3 filed an appeal afresh u/s 15(2) of the Regulation of 1358-F. The said proceedings were closed owing to the fact that Gopal Reddy had filed O.S. No. 348 of 1989 before the Principal Subordinate Judge, Ranga Reddy District, and brought it to the notice of the District Revenue Officer. While closing the proceedings by his order dated 26.10.1989, the Revenue Authority stated that he had no jurisdiction to interfere with the civil dispute until final orders were passed by the Civil Court and stating so, dismissed the appeal.

10. As the only ground for the dismissal of his appeal was the pendency of the suit and as the suit had been dismissed on 07.08.1996, it was lawful and appropriate for the Revenue Authority to re-open the proceedings upon an application. Reliance is placed upon Rule 32 of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (for short, ''the Rules of 1989) which states that after the disposal of the civil suit the party is required to communicate the result to the Revenue Authority which shall take necessary steps in the matter thereafter.

11. The petitioners failed to participate in the proceedings before the Joint Collector in spite of notices being served upon them. Substituted service of notice was permitted on 08.04.2000 which was carried out by publication of the notice in Eenadu Newspaper. In spite of these steps, as the petitioners failed to put in an appearance, they were set ex parte and the matter was heard on merits. Thereupon, the Joint Collector directed respondent 3 to approach the Mandal Revenue Officer by his order dated 24.07.2000. Before the Mandal Revenue Officer, Ghatkesar, the petitioners responded to the notices issued and filed their objection petition. It is specifically pointed out that the petitioners did not choose to challenge the order of the Joint Collector dated 24.07.2000 at that stage and merely acted in pursuance thereof, by agitating their claim before the Mandal Revenue Officer who was seized of the matter, solely because of the order dated 24.07.2000 passed by the Joint Collector. The Mandal Revenue Officer passed orders in favour of respondent 3 after due and proper enquiry. The said order is appealable u/s 5(5) of the Act of 1971 and circumventing the said statutory remedy, the petitioners had approached this Court by way of the present writ petition.

12. Respondent 3 also placed reliance upon the fact that he and his father had filed a declaration under the provisions of the A.P. Land Reforms (Ceiling on

Agricultural Holdings) Act, 1973 (for brevity, ''the Act of 1973) and proceedings were issued in their favour showing the subject lands in their land holding. Respondent 3 claimed to have sold part of the land to the knowledge of one and all and stated that the petitioners had not taken any steps at that point of time. Respondent 3 also relied upon the fact that the sale deed executed by him did not allude to any admission on his part that Gopal Reddy and Siddha Reddy, the predecessors-in-title of the petitioners herein were the joint owners of 50% share of the subject lands. In summation, it is contended that if the petitioners are aggrieved by the entries made in the revenue records in respect of the land which was in their alleged possession, their remedy is to institute a suit under the provisions of Section 8(2) of the Act of 1971 or in the alternative, file an appeal u/s 5(5) of the Act of 1971 and that the present writ petition is not maintainable.

13. No counter affidavit is filed by respondents 1 and 2.

14. Heard Sri V. Ramakrishna Reddy, learned Counsel for the petitioners, learned Government Pleader for Revenue for respondents 1 and 2, Sri M.V. Durga Prasad, learned Counsel for respondent 3 and perused the original record pertaining to the Revision. Respondent 4 remained ex parte.

15. The learned Counsel for the petitioners contended that the finding of title recorded by the revenue authorities in favour of respondent 3 is devoid of jurisdiction. The authorities, according to him, failed to note that the petitioners and respondent 3 along with respondent 4 were members of a joint family and were co-owners of the subject property under a family partition. The counsel contended that the title of the co-owners was not ousted merely because of the fact that one amongst them alone was in possession. He submitted that it was not open to the revenue authorities to go into complex questions or disputes of title over immovable property. He contended that the objections raised by the petitioners, with regard to the entitlement of respondent 3 being limited to only a half share in the subject lands, were not considered in the proper perspective by the revenue authorities.

16. He placed reliance upon the judgment of a Division Bench of this Court in Commissioner of Survey, Settlements and Land Records, Govt. of A.P. and others Vs. G. Padmavathi and others, to support his contention that a person whose name finds place in the records will have a right to assert that he is entitled to make a claim as an owner unless the same is negatived by rebuttal evidence. It is however to be noticed that in the very same judgment, the Division Bench held that a person who asserts ownership over a property shall establish the same by resorting to a civil suit. The learned Counsel also relied upon observations made in this judgment to the effect that the authority exercising revisional power, be it on an application or suo motu, should do so within reasonable time. In that case, the revisional power involved was that u/s 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F. The learned Counsel for the petitioners submitted that on an analogy of the provisions u/s 9

of the Act of 1971, the same proposition of law would stand extended and the exercise of revisional power by the Joint Collector, Ranga Reddy District, in the present case was ''well beyond reasonable time''.

17. He also placed reliance in this regard upon the judgment of the Supreme Court in The State of Gujarat Vs. Patil Raghav Natha and Others, . The Supreme Court, in the said case, held that revisional power must be exercised in reasonable time even if no period of limitation is prescribed and that the length of reasonable time must be determined on the facts of the case and the nature of the order revised. The Supreme Court also observed that when the title of an occupant is disputed and the dispute is serious, the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant.

18. The judgment of a learned single Judge of this Court in K. Siddiah Naidu Vs. District Collector and Others, is relied upon to support the contention that the Mandal Revenue Officer in exercise of powers u/s 5 of the Act of 1971 cannot effect changes of entries in the revenue records under the Act of 1971, if there was a dispute with regard to the title over a property. Therein, the Court upheld the action of the Mandal Revenue Officer refusing to exercise powers u/s 5 of the Act of 1971 until the title over the disputed property was decided one way or the other.

19. The learned Counsel also drew the attention of this Court to the judgment of the Rajasthan High Court in Shanti Lal v. Board of Revenue 2001 AIHC 1990, wherein a learned Judge of the Rajasthan High Court held that once there was a dispute about the right to succession, it was not open to the revenue authorities to adjudicate upon such right and the matter should be referred to the civil Court or the parties should be directed to get their rights adjudicated through appropriate proceedings before the civil Court.

20. Another judgment relied upon by the learned Counsel for the petitioners is that of a learned Judge of this Court in V. Goutham Rao Vs. Revenue Divisional Officer and Another, . In that case, the learned Judge relying upon the Division Bench judgment of this Court in Sannepalli Nageswar Rao and Another Vs. District Collector, Khammam and Others, , reaffirmed that where a special statute prescribed remedies before a hierarchy of authorities, a person aggrieved has to take recourse only to such forum by the method and manner in which it is prescribed under the said law. The learned Judge also held that wherever there is a serious dispute of title or claims of rival title, it would not only be proper for the authorities to refrain from proceeding with the enquiries under the provisions of the Act of 1971 but also pragmatic for the parties to approach the civil Court for establishing their right, title and interest.

21. It is pointed out that the Supreme Court in Mahila Bajrangi (dead) through Lrs. and Others Vs. Badribai and Another, held that the Tahsildar or authorities exercising powers of mutation (original, appellate or revisional) have not been

accorded the status of civil Courts or Courts of exclusive jurisdiction and such orders cannot be used as a basis or source for asserting a claim of res judicata before a competent civil Court in a subsequent suit involving adjudication of title to the immovable property. The Supreme Court also observed that mutation proceedings before the revenue authorities were not judicial proceedings in a Court of law and do not decide questions of title to immovable properties.

22. The learned Counsel also relied upon the judgment of the Supreme Court in Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, , wherein it was held that orders attaining finality, the certainty of rights of the parties accrued in the light of such orders must have sanctity. Stating so, the Supreme Court also observed that exercise of suo motu power ''at any time'' only means that no specific period such as days, months or years are prescribed from a particular date. But that does not mean that ''at any time'' should be unguided and arbitrary, and must be understood as being within a reasonable time depending on the facts and circumstances of the case.

23. The judgment of a learned single Judge of this Court in B. Pushpamma and Others Vs. Joint Collector and Others, is relied upon to support the contention that any person aggrieved by an entry made in the record of rights under the provisions of the Act of 1971 must institute a suit against such person who is denying or who is interested to deny his title for a declaration. This is as per Section 8(2) of the Act of 1971. In that case, the revenue authorities had held that issues relating to disputes over title could not be decided in the summary enquiry which would be held under the provisions of the Act of 1971 and the same found favour with this Court.

24. The judgment of the Supreme Court in Faqruddin (Dead) through L.Rs. Vs. Tajuddin (Dead) through L.Rs., is cited for the proposition that mutation takes place only for certain purposes and that it is well settled that an entry in the revenue records is not a document of title. The Supreme Court held that revenue authorities cannot decide a question of title. A title does not remain in vacuum and must be determined keeping in view the law operating in the field viz. religious law or statutory law or customary law. Reference was made therein to its earlier judgment in Suraj Bhan and Others Vs. Financial Commissioner and Others, , wherein it was held that entries in the revenue records do not confer title and are only intended for achieving the fiscal purpose and no ownership is conferred on the basis of such entries. It was also held therein that so far as the title to the property is concerned, it could only be decided by a competent civil Court. The Supreme Court also held in Faqruddin''s case (supra) that once the revenue authorities had no jurisdiction to decide the question of title, their decision being without jurisdiction would be a nullity.

25. The learned Counsel relied upon the above decision to support his other contention that the orders challenged in this writ petition passed by the revenue authorities in exercise of the powers conferred by the Act of 1971 being without jurisdiction were nullities in the eye of law. He drew the attention of this Court to

the observation made in Faqruddin''s case (supra) that a jurisdictional fact would not attract the principles of estoppel as there can be no estoppel against a statute and the decision of the Board of Revenue in that case, being a decision on the question of title, was held to be without jurisdiction and consequently, a nullity.

26. The learned Counsel also supported this contention with the judgment of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, , wherein it was stated that "... It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject- matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties ...".

27. Another judgment of the Supreme Court in this regard is that in Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , wherein a Constitution Bench of the Supreme Court held that where the decision of a Tribunal is challenged on a pure question of law which if upheld, would make such a decision as having been given by an authority suffering from inherent lack of jurisdiction, such decision cannot be sustained by invoking either the doctrine of res judicata or estoppel.

28. Lastly, the learned Counsel placed before this Court a judgment of the Supreme Court in Bihar State Mineral Dev. Corpn. and Another Vs. Encon Builders (I) Pvt. Ltd., , wherein it was held that an order which lacks inherent jurisdiction would be a nullity and thus, the procedural law of waiver or estoppel would have no application in such a situation.

29. Basing upon the above precedential law, the learned Counsel for the petitioners submitted that the entries in the revenue records which have been in existence since 1954-55 ought not to have been disturbed by the revenue authorities. He contended that the orders under challenge had the effect of adjudicating serious disputes of title over the subject lands, which were beyond the authority of the revenue authorities while exercising jurisdiction under the provisions of the Act of 1971. Such orders, he urged, were therefore in the nature of nullities and the mere participation of the petitioners in the consequential proceedings before the Mandal Revenue Officer, Ghatkesar Mandal, did not have the effect of validating the revisional order of the Joint Collector, Ranga Reddy District dated 24.07.2000. Relying on the judgments of the Supreme Court aforestated, he asserted that there could be no estoppel or waiver against the jurisdictional error underlying the order of the Joint Collector dated 24.07.2000. It is his contention that if respondent 3 was aggrieved by the entries in the revenue records showing the names of the predecessors-in-title of the petitioners as Pattadars basing upon the Khasra pahani of 1954, he ought to

have taken resort to Section 8(2) of the Act of 1971 and approached the civil Court. The learned Counsel submitted that the orders under challenge were unsustainable, be it on facts or in law, and accordingly prayed for the same to be set aside.

30. Sri M.V. Durga Prasad, learned Counsel appearing for respondent 3 urged various contentions, factual and legal, to counter the arguments advanced by the learned Counsel for the petitioners. He stated that as per the tenets of Hindu Law there could be no jointness beyond three degrees from the holder. He pointed out that a coparcenary would only extend over four generations and as per the genealogy put forth by the petitioners in the present case, respondent 3 and the petitioners herein along with respondent 4 cannot, by any stretch of imagination, be said to be coparceners. He also pointed out that the revenue authorities had passed the orders under challenge in exercise of the powers conferred by the Act of 1971 and therefore it could not be said that there was an inherent lack of jurisdiction. According to him, the exercise of powers conferred by the Act of 1971 was entrusted only to the revenue authorities and the orders under challenge manifested the exercise of such powers within the scope provided.

31. The learned Counsel contended that the issue of delay had not been urged earlier by the petitioners and in fact they had participated in the proceedings before the Mandal Revenue Officer, Ghatkesar Mandal, consequent to the revisional order passed by the Joint Collector, Ranga Reddy District. No steps had been taken by them at that stage to raise the issue of the so-called delay, be it before the Authorities or by way of independent legal proceedings. Further, he contended that there was no delay, so to speak of, on facts. He pointed out that respondent 3''s grandfather, Jagga Reddy, had initiated proceedings seeking correction of the entries in the revenue records as long back as in the year 1963, but owing to his death, the proceedings lapsed. However, the Revenue Inspector submitted a report dated 01.02.1967 in those proceedings recording the fact that in the Wasool Baqi and Sethwar the name of Jagga Reddy alone had been shown as the Pattedar of the lands admeasuring Ac. 22-00 guntas situated at Kondapur. He pointed out that as per the executive instructions, the Act of 1971 came into force in totality in the State of Andhra Pradesh only in the year 1989 and respondent 3 filed the proceedings before the District Revenue Officer during that time. He also pointed out that the proceedings before the District Revenue Officer had not been disposed of but were only closed to await the decision of the Civil Court in the suit, O.S. No. 348 of 1989. As the said suit was dismissed for default, there was no illegality in respondent 3 seeking reopening of the said proceedings.

32. Owing to the lack of representation on behalf of Gopal Reddy and Siddha Reddy in the reopened proceedings, the Joint Collector decided the matter on the basis of the material on record and passed orders dated 24.07.2000 advising respondent 3 to approach the Mandal Revenue Officer for sanction of succession over the subject lands.

33. Strong reliance is placed by the learned Counsel for respondent 3 upon the fact that the petitioners thereafter participated in the proceedings before the Mandal Revenue Officer, Ghatkesar Mandal, having received the notices issued in those proceedings and they never sought to question the order of the Joint Collector, Ranga Reddy District at that stage. Their participation, according to the learned Counsel, resulted in their waiving any objection that they may have raised as against the said order and accordingly, it was not open to them to challenge that order in the present writ petition.

34. The learned Counsel also relied upon the Written Statement filed by his client in O.S. No. 348 of 1989 to show that his client had been consistent in denying the claim of the petitioners herein. He pointed out that the said suit had been dismissed for default on 07.08.1996 as the plaintiffs, had been called absent and contended that legal consequences are bound to follow from the said dismissal and would attach to the petitioners herein who were laying a claim through late Gopal Reddy, the original plaintiff in that suit. The learned Counsel pointed out that no application had been filed to set aside the dismissal order and as per the provisions of Order-9, Rule-9 of the Code of Civil Procedure, 1908, such dismissal bars the institution of a fresh suit.

35. In support of his contention that the entries in the Khasra pahani of 1954-55 had been fabricated by the predecessors-in-title of the petitioners herein with the active connivance of their cousin Surender Reddy, the Patwari, the learned Counsel drew the attention of this Court to the order passed by the Joint Collector, Hyderabad District in a separate proceeding on 30.04.1963 wherein the Patwari, Surender Reddy, was indicted. The Wasool Baqi and the Sethwar referred to in the 1967 report of the Mandal Revenue Inspector were also placed before this Court to show that the name of respondent 3''s grandfather alone was recorded as the Pattadar over the subject lands. The learned Counsel also relied upon the fact that in the proceedings of the Land Reforms Tribunal under the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, respondent 3 and his father alone were parties to the computation of holdings in respect of the subject lands. This order, as pointed out by the learned Counsel was relied upon by the Joint Collector, Ranga Reddy District.

36. The learned Counsel also pointed out that under Rule-9 of the Rules of 1989 and more specifically Rule-9(1)(a)(iv), the Recording Authority is required to pass orders for change of registry after verifying that such change is not in contravention of any of the provisions of, among other statutes, the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. Under Rule-9(1)(c)(ii), the Mandal Revenue Officer is required to hold a summary enquiry as to who has the right to succeed to the property of the deceased registered holder. It would be apposite to extract hereunder the provision in its entirety.

9(1)(c)(ii). In respect of cases falling under Rule 9(1)(a)(i), the Mandal Revenue Officer shall hold a summary enquiry as to who has the right to succeed to the property of the deceased registered holder, according to the principles of the Law of Succession which govern the case and give notice to all persons known or believed to be interested to the effect that the registry will be made in the name of the person found to be entitled, unless a declaration if filed, within three months from the date of the notice, by any person objecting to the registry, stating that he has instituted a suit in a Civil Court to establish his superior title and an authenticated copy of the plaint in the suit is produced. If no declaration is filed, the registry should be made as stated in the notice, at the expiration of three months. If a declaration is filed, the result of the suit should be awaited before taking further action.

37. The learned Counsel therefore submits that it is not open to the petitioners to allege that the orders under challenge are inherently without jurisdiction. The provision aforestated, according to him, vested the authorities with the power to undertake an enquiry into the issue of title.

38. The learned Counsel relied upon various judgments in support of the contentions urged by him as set out herein above.

39. The judgment of the Supreme Court in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, is relied upon to support the proposition that a Hindu coparcenary is a much narrower body than the joint family and it includes the three generations next to the holder in unbroken male descent.

40. The learned Counsel relied upon the judgment of the Supreme Court in Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another, , wherein the Court relying upon its earlier judgment in Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, observed that once there was a dismissal of the suit for default there could be no escape from the position that a further application for the same relief would be clearly barred by the principle contained in Order-9, Rule-9 of the CPC. In Suraj Ratan Thirani''s case (supra) the Supreme Court held that the bar under Order-9, Rule-9 would not only attach to the person of that particular plaintiff, but would also apply to those claiming under him.

41. The learned Counsel relied upon the judgment of a Division Bench of this Court in Singamaneni Pullamma v. Joint Collector, Ongole, Prakasam District 2004(7) ALT 963 in support of his contention that the Revenue Authorities could undertake a summary enquiry into the issue of title under the provisions of the Act of 1971. In the said case, the Court was seized of a situation where the revisional authority had not passed orders in the matter awaiting the resolution of the disputes by the Civil Court. The Court observed that '' ... It is true that the entry made in the revenue records can be challenged in a civil suit, but that does not mean that the revenue authorities will not exercise any discretion which they are required to do under the Act. Pattadar pass books are governed by the Act and in case of grievance about the entries in pattadar pass books or about issuance or non-issuance of pattadar pass books the revenue authorities are supposed to do their job under the Act. Whether a revision had to be allowed or

dismissed was a matter which had to be decided by the revisional authority. In case anybody or any party before it was aggrieved of that order, they could workout their remedies. ...''

42. The learned Counsel stated that in the present case the orders passed by the revenue authorities were within jurisdiction and in proper exercise of the powers conferred by the Act. According to him, there were no serious questions or disputes pertaining to the title over the subject lands in the light of the material placed on record by respondent 3. Except for the entry in the khasra pahani of 1954-55 which was fraught with suspicion and which formed the basis for the subsequent entries in the revenue records, the petitioners had no basis for their claim before the revenue authorities. The powers of the revenue authorities while exercising jurisdiction under the Act of 1971 are circumscribed by Sections 4, 5, 10 of the Act of 1971 and Rule-9 of the Rules of 1989.

43. The learned Counsel pointed out that u/s 5(2) of the Act of 1971, the Mandal Revenue Officer is under an obligation to take note of the acquisition of any right over land and ''shall'' carry out the amendment in the record of rights. The learned Counsel stressed upon the use of the word ''shall'' to support his contention that it was not so much a discretion as it was a duty and a legal obligation on the part of the Mandal Revenue Officer to effect changes in the revenue records taking note of the subsequent developments in the matter of acquisition/change of title. It is pointed out that under Rule-28 of the Rules of 1989, the Recording Authority, the Appellate Authority or any other Authority holding an enquiry under the Act of 1971 has such powers as are vested in a civil Court for the purpose of entering upon and inspecting any land. He pointed out that in the present case also the Mandal Revenue Officer, Ghatkesar, had made an inspection as is evident from his order dated 10.11.2000 and on the basis of such inspection, he came to the conclusion that respondent 3 and his predecessor-in-title alone were the owners and possessors of the subject lands. He also found that the petitioners herein had never been in possession of the subject lands.

44. The learned Counsel also pointed out that the scheme of the Act of 1971 is such that the revenue authorities, while recognizing the acquisition of any right, be it as an owner, a pattadar, a mortgagee, an occupant or a tenant over a land, is also required to take into consideration the right determined by the civil Court as per Explanation I to Section-4 of the Act of 1971. This fact, stressed the counsel, is further exemplified by Section 8(2) of the Act of 1971, which recognizes the right of a party to seek a declaration from the competent civil Court that the entry made under the Act of 1971 was incorrect.

45. He pointed out that Section 43 of the Andhra Pradesh Court- Fees and Suits Valuation Act, 1956 refers to suits for alteration or cancellation of any entry in a register of the names of proprietors of revenue paying estates. This is the ''suit for declaration'' which is referred to in Section 8(2) of the Act of 1971. Rule-32 of the Rules of 1989 is referred to by the learned Counsel in this regard to show

that the result of the proceeding u/s 8(2) of the Act of 1971 is to be intimated to the Mandal Revenue Officer and the details of the suit in this regard during its pendency and after its disposal are to be entered into the relevant register by the Mandal Revenue Officer.

46. The learned Counsel also pointed out that under Rule-9(1)(c)(ii) of the Rules of 1989, reference is made to the institution of a suit for declaration of title and a person instituting such a suit is required to make a declaration before the Mandal Revenue Officer to that effect.

47. Except for these bars upon the jurisdiction and exercise of power by the revenue authorities under the Act of 1971, the learned Counsel contended that there could be no fetters upon such Authorities in so far as the subject matter of the Act of 1971 and the Rules of 1989 were concerned.

48. The learned Counsel pointed out that under Rule-9(1)(c)(ii) of the Rules of 1989, the Mandal Revenue Officer is required to await the result of the suit before taking further action, and in the present case, after the dismissal of the suit O.S. No. 348 of 1989, necessary action was initiated, which is in accordance with the statutory provisions. Learned Counsel submitted that the orders under challenge were therefore within jurisdiction and in any event, could not be categorized as being inherently lacking in jurisdiction. The judgments cited by the learned Counsel for the petitioners on the aspects of nullity, estoppel and jurisdiction are therefore said to be inapplicable to the facts of this case.

49. The learned Counsel also pointed out that the order of the Mandal Revenue Officer, Ghatkesar Mandal, which is under challenge before this Court is an appealable one u/s 5(5) of the Act of 1971 and in the light of the judgment cited by the learned Counsel for the petitioners himself, once the statute provided a methodology of remedies thereunder, duly providing a hierarchy of authorities, it was not open to the petitioners to circumvent the appellate remedy and approach this Court by way of the present writ petition.

50. In reply, Sri V.Ramakrishna Reddy, the learned Counsel for the petitioners reiterated that the issues dealt with by the revenue authorities involved disputed questions of fact and complicated questions of law relating to the definition and scope of a joint family and partition of its properties. The learned Counsel submitted that such issues could only be decided by a civil Court of competent jurisdiction on the basis of evidence. He relied upon the judgment of the Supreme Court in MAHILA BAJRANGI''s case (supra) to support his contention that the Tahsildar was not a Court. According to him, the Khasra pahani entry of 1954-55 which had been incorporated under the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F could not be disturbed under the Act of 1971. He submitted that Revisional Jurisdiction u/s 166-B of the Act of 1317 F alone could be invoked and not the Revisional power u/s 9 of the Act of 1971. He alleged that the procedure prescribed under the Act of 1317 F had not been followed and the orders under challenge were therefore unsustainable. He also

pointed out that the revenue authorities had not placed any reliance upon the report of the Mandal Revenue Inspector of the year 1967 and stressed upon the fact that the names of the petitioners'' predecessors-in-title found place under the column pertaining to pattadar in the revenue records. He attacked the order of the Mandal Revenue Officer, Ghatkesar, on the ground that the said Officer had directed expunction of the entries of these names in the records, though there was no direction to that effect by the Joint Collector, Ranga Reddy or a civil Court of competent jurisdiction.

51. He also asserted that the proceedings under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 were not binding upon his clients and that the entries in the revenue records in favour of his clients dated long prior to the said proceedings. According to the learned Counsel, the revenue authorities, upon the reopening of the matter built up a new case altogether for respondent 3. The revenue authorities failed to take note of the fact that a co-owner''s possession is not to the exclusion of the other owners and cannot be said to be adverse to them. According to the learned Counsel, there was a partition in the year 1953, which was not taken note of by the authorities at all.

52. The learned Counsel also asserted that revisional power under Section-9 could be exercised only on the grounds of fraud, illegality or irregularity in procedure. No such grounds were made out for intervention by the Joint Collector, Ranga Reddy in this case. He reiterated that the revenue authorities had adjudicated serious disputes of title and that it was for respondent 3 to have invoked the remedy available u/s 8(2) of the Act of 1971. He also submitted that the dismissal of the suit for default did not preclude his clients from seeking relief as there was no decision on merits.

53. The learned Government Pleader supported the orders under challenge. He submitted that the authorities had exercised power and jurisdiction correctly and that no grounds were made out for interference by this Court.

54. It is noticed that in the affidavit filed in support of the writ petition, the petitioners contended that no notice was given to Gopal Reddy or Siddha Reddy or the petitioners about the reopening of the case before the Joint Collector, Ranga Reddy District. In view of this submission, the records pertaining to the Revision were called for. It is found that the Mandal Revenue Officer, Ghatkesar Mandal addressed letter dated 08.02.1999 to the Collector, Ranga Reddy District stating to the effect that the served copy of the notice was enclosed therewith. It was further stated that K.Indrasena Reddy, K.Ram Reddy and K.Pratap Reddy were not residing in the village and that their address particulars were not known. Along with the said letter, a signed copy of the notice dated 29.01.1999 is found. Therein, it is stated: ''Please take notice that the above case is posted for hearing on 13-2-99 at 11.00 A.M. before the Joint Collector, Ranga Reddy district. Therefore you are required to be present before this Court either in person or through an advocate on the said date and time, failing which order will be passed on the material available on record.''

55. The above notice was issued in the case between K. Jaipal Reddy and K.Gopal Reddy (died) per L.Rs and K. Sidda Reddy (died) per L.Rs. The notice was addressed to K. Pratap Reddy, K. Sudhakar Reddy, K. Ravinder Reddy and K. Upender Reddy as the L.Rs. of K. Gopal Reddy and to K. Indrasena Reddy, K. Ram Reddy and K.Laxma Reddy as the L.Rs. of K. Sidda Reddy. On the rear of this notice, four signatures are found in proof of receipt of the notice on 02.02.1999 and it is endorsed thereunder that the remaining persons were not residing in Ghatkesar Village. This endorsement is made by the Mandal Revenue Inspector under his signature dated 05.02.1999. The above notice is said to have been served upon K. Sidda Reddy, K. Ravinder Reddy, K. Upender Reddy and K.Laxma Reddy, four out of the six petitioners herein.

56. In so far as the failure of the service of notice upon the other two petitioners is concerned, it appears that respondent 3 moved an application before the Joint Collector, Ranga Reddy District seeking to cause substituted service of notice and the same was permitted by order dated 08.04.2000. In pursuance thereof, publication of the notice was caused in Eenadu Telugu Newspaper, Ranga Reddy Edition dated 08.04.2000. The original newspaper, evidencing this publication, is also available in the record and shows that K. Pratap Reddy, K. Sudhakar Reddy, K. Ravinder Reddy and K. Upender Reddy, being sons of late Gopal Reddy, and K. Indrasena Reddy, K. Ram Reddy, K. Laxma Reddy, being the sons of late Siddha Reddy, were put on notice that a petition had been filed by respondent 3 herein for rectification of the record of rights against K. Gopal Reddy and K. Siddha Reddy and that they were required to be present in person or through advocate on the next date of hearing of the case fixed on 17.04.2000. In view of the above facts which emerge from the original records, it is quite clear that it is not open to the petitioners to allege any procedural lapse or irregularity in the service of notice in so far as the proceedings before the Joint Collector, Ranga Reddy, are concerned.

57. There is no evidence on record to show that the petitioners ever raised any contention with regard to the alleged delay in the exercise of revisional power by the Joint Collector, Ranga Reddy, earlier. No such ground was raised before the Mandal Revenue Officer, Ghatkesar Mandal. Without a foundation it is not open to the petitioners to raise this issue for the very first time in this writ petition. This aspect is therefore eschewed in the present adjudication.

58. On an analysis of the material on record the following factual matrix emerges.

59. Initially, the grandfather of respondent 3, Jagga Reddy, filed an appeal u/s 15(2) of the Regulation of 1358-F, being aggrieved by the entries in the khasra pahani of 1954-55 recording the names of the predecessors-in-title of the petitioners. The said appeal was dismissed for default. Jagga Reddy is said to have expired in the year 1969 and thereafter, Ramachandra Reddy, the father of respondent 3, is said to have died in the year 1979. Pertinent to note, no steps were taken after the dismissal of the appeal filed by Jagga Reddy during the lifetime of Ramachandra Reddy. During this period, it appears that the names of

the predecessors-in-title of the petitioners continued to be reflected in the revenue records intermittently.

60. Thereafter, respondent 3 himself filed an appeal u/s 15(2) of the Regulation of 1358-F. This appeal was filed in the year 1988, contending that respondent 3''s grandfather, Jagga Reddy, alone had ownership and possessory rights over the subject lands admeasuring Ac.23-07 guntas at Kondapur Village, Ghatkesar Mandal, Ranga Reddy District and that the names of the predecessors-in-title of the petitioners had been interpolated with a mala fide intention, though they had no right or interest in the subject lands.

61. It appears that the predecessors-in-title of the petitioners contested the maintainability of the above appeal on the ground that the Regulation of 1358-F stood repealed by the Act of 1971 and also on merits. It was further contended that a suit, O.S. No. 348 of 1989 had been instituted on the file of the Principal Subordinate Judge, Ranga Reddy District, for partition and division of the respective shares of the parties. Taking note of the pendency of the case before the civil Court, the District Revenue Officer, Ranga Reddy District, stating to the effect that he had no jurisdiction to interfere in a civil dispute until final orders were issued by the civil Court, dismissed the appeal by his order dated 26.10.1989.

62. The suit, O.S. No. 348 of 1989 was dismissed for default on 07.08.1996. Thereupon, respondent 3 filed a petition dated 28.11.1997 seeking the reopening of the case filed u/s 15(2) of the Regulation of 1358-F and to rectify the wrong entries in the record of rights. As per the array of the respondents shown in the said application, Gopal Reddy and Sidda Reddy, the predecessors- in-title of the petitioners, were shown to have died and were represented by their legal representatives, the petitioners and respondent 4 herein. It appears that this application was taken on file u/s 9 of the Act of 1971 by the Joint Collector, Ranga Reddy. Whether the said action of the Joint Collector, Ranga Reddy, in treating an application seeking reopening of a proceeding filed u/s 15(2) of the repealed Regulation of 1358-F as one u/s 9 of the Act of 1971 is proper and correct would have to be ascertained from the scheme and the provisions of the Act of 1971.

63. An examination of the Act of 1971 and the Rules framed thereunder would show that this Act, as compared to other Revenue Laws such as the A.P. (Telangana Area) Land Revenue Act, 1317-F, stands on a different footing altogether. Section 3-A of the Act of 1971 gives it overriding effect over the provisions of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F. The argument of the learned Counsel for the petitioners to the contrary therefore does not hold water and is liable to be rejected.

64. Under the normal Revenue Laws mutation is effected for the purpose of achieving a fiscal objective, i.e. collection of land revenue from the person in occupation. The entries made in the revenue records under such laws do not

confer title and are merely indicative of possession. However, the Act of 1971, having undergone several amendments, enjoys a unique status as compared to other Revenue Laws in as much as it attaches certain presumptions in respect of title to the revenue records maintained thereunder. This aspect is demonstrated by Section 6 and Section 6-A of the Act of 1971. u/s 6 of the Act of 1971, every entry in the record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. u/s 6-A of the Act of 1971, every owner/pattadar is required to apply for the issue of a title deed and pass book under the provisions of the Act of 1971. Even if such an application is not made, the Mandal Revenue Officer is authorized suo motu to issue a pass book after collecting the fee prescribed therefor.

65. The Section posits that the issuance of the title deed and pass book is to be on the basis of the record of rights, which has been brought upto date. u/s 6-A (5), it is laid down that the title deed issued u/s 6-A(1) shall be the title deed in respect of an owner/pattadar and it shall have the same evidentiary value with regard to title for the purpose of creation of an equitable mortgage under the provisions of the Transfer of Property Act, 1882, as a document registered in accordance with the provisions of the Registration Act, 1908, has under the law.

66. In the light of the value and importance which attach to the record of rights maintained under the Act of 1971 it would be necessary to insist on strict maintenance of such record in accordance with the provisions of the Act and the Rules. It is only when such record is kept in conformity with the requirements prescribed by the Act of 1971 and the Rules of 1989 that the presumptions enjoined by Sections 6 and 6-A would arise and enure to the benefit of the holder of such rights.

67. The Rules of 1989 framed under the Act of 1971 detail the procedure to be followed by the revenue authorities in the course of preparation of the record of rights as envisaged by the Act. The scheme of the said Rules clearly indicates that the revenue authorities are required to hold a summary enquiry into issues of title also in certain circumstances while deciding disputes as to the entries to be incorporated in the record of rights. The decision of a learned Division Bench of this Court in Singamaneni Pullamma''s case (supra) is also to this effect. However, this authorization to the revenue authorities is subject to judicial determination of disputes over issues of title and as demonstrated by Rule 9(1)(c)(ii), once a declaration is filed by a party that he has instituted a suit in a civil Court to establish his title, the revenue authority is required to await the result of such suit before taking further action. This Rule makes it clear that even in cases involving disputes as to succession to the property of the deceased registered holder, the Mandal Revenue Officer in exercise of his powers under this Rule is required to hold a summary enquiry and decide as to who has the right to succeed to such property by applying the law of succession governing the case.

68. The decisions in Mahila Bajrangi''s (supra), Shanti Lal''s case (supra), Faqruddin''s case (supra) and Suraj Bhan''s case (supra) relied upon by the

learned Counsel for the petitioners stating to the effect that the revenue authorities cannot decide questions of title were rendered in the environment of general revenue laws which stand on a different footing when compared to the Act of 1971. In the light of the scheme of the Act of 1971, it cannot be said that the record of rights maintained thereunder are only for the purpose of achieving a fiscal objective, as is the case with other revenue laws of this nature. The judgments relied upon therefore have no application to the facts of the present case.

69. It is however to be noted that revenue authorities are not substitutes for the Courts of competent civil jurisdiction and it is for the party concerned to invoke such jurisdiction so as to bar the summary enquiry by the revenue authorities into issues of title in particular given circumstances. Needless to state revenue authorities, in such a ''summary enquiry'', would not be capable of deciding complicated questions of title. The scope and circumstances of such enquiry by revenue authorities into issues of title is circumscribed by Section 5 of the Act of 1971 read with Rule 9(1)(a)(i), (ii) and (iii) of the Rules of 1989. Under Rule 9(1)(a)(i), the Mandal Revenue Officer is empowered to deal with change of Registry owing to the death of the registered holder. Under Rule 9(1)(a)(ii), the Mandal Revenue Officer is authorized to entertain a dispute where there is a break in the chain of registered documents, if the change of registry is based on a sale, gift etc. through registered documents. Under Rule 9(1)(a)(iii), disputes pertaining to grant of joint pattas of a joint Hindu family shall be referred to the Mandal Revenue Officer. Under Rule 9(1)(c)(iii), the Mandal Revenue Officer is entitled to resolve disputes involving a break in the chain of registered documents by relying on certain other evidence such as statements of other ryots and cist receipts. Under Rule 9(1)(c)(ii), the Mandal Revenue Officer is empowered to hold a summary enquiry as to who has the right to succeed to the property of a registered holder. These, then, are the only disputes that can be resolved by the Mandal Revenue Officer under the scheme of the Act of 1971 and the Rules of 1989.

70. The aforesaid provisions demonstrate that the revenue authorities, under the Act of 1971 and the Rules of 1989, are empowered to undertake a summary appraisal and enquiry of particular disputes in respect of title. Such enquiry is obviously not a substitute for an adjudication by a Civil Court of competent jurisdiction. In the course of such enquiry, it would not be open to the revenue authority to set aside transactions or adjudicate complicated issues falling out side the scope of Rule 9(1)(a)(i), (ii) and (iii) of the Rules of 1989.

71. Coming to the facts of the present case, it is noticed that u/s 3(1) of the Act of 1971, after the commencement of the Act of 1971 in any area, the recording authority is required to prepare and bring up to date from time to time the record of rights of all the lands in every village in that area. u/s 3(2) of the Act of 1971 after the preparation of the record of rights u/s 3(1), the fact of such completion is required to be notified in the Andhra Pradesh Gazette or the

District Gazette. u/s 3(3) of the Act of 1971, any person affected by an entry in such record of rights is permitted within a period of one year from the date of notification caused u/s 3(2) of the Act to apply for rectification of the entry. The Officer to whom such an application is made is required to give a decision on the said application after enquiry and direct rectification of the record of rights in accordance with such decision. The said decision, subject to Revision u/s 9 of the Act of 1971 attains finality.

72. There is no evidence on record as to whether and when any steps were taken under Sections 3(1) and 3(2) of the Act of 1971 in the area covering the subject lands. The fact of the matter is that the names of the predecessors-in-title of the petitioners were incorporated in the khasra pahani of the year 1954-55. The khasra pahani is a record of land ownership. Basing on this khasra pahani it appears that the names of the predecessors-in-title of the petitioners continued to be reflected in the revenue records for the subsequent years, though intermittently. The Wasool Baqi and the Sethwar however present a different picture as only the name of Jagga Reddy, grandfather of respondent 3, is shown as the pattadar and possessor. Thus, there is a discrepancy in the revenue records, which by its very nature, was not amenable to resolution by way of a summary enquiry by the Mandal Revenue Officer under Rule 9 of the Rules of 1989.

73. The executive instructions issued by the Government of Andhra Pradesh for implementation of the Act of 1971 demonstrate that the Act came into force with effect from 15.08.1978 and was enforced in the State in four phases from 15.08.1978 to 01.07.1980. It is yet to be implemented in certain areas, which is of no concern in the present case. Thus, in the absence of material and foundation, it is difficult to state as to whether the situation u/s 3(3) of the Act of 1971 had arisen in the present case. In any event, once the entries in the revenue records reflecting the names of the predecessors-in-title of the petitioners were existing at the time the Act of 1971 came into force in Kondapur Village, Ghatkesar Mandal, Ranga Reddy District and there was a discrepancy with the entries in the Wasool Baqi and the Sethwar, it was for the party aggrieved to move the officer concerned for an appropriate decision u/s 3(3) of the Act of 1971 with regard to the rectification sought by him. Such decision would have been subject to Revision u/s 9 of the Act of 1971.

74. u/s 4 of the Act of 1971, a person who acquired any right over land, be it by succession, survivorship, inheritance, partition etc. is mandated to intimate in writing his acquisition of such right to the Mandal Revenue Officer within ninety days from the date of such acquisition. u/s 5 of the Act of 1971, upon receipt of such intimation u/s 4, the Mandal Revenue Officer shall determine as to whether, and if so in what manner, the right of records may be amended in consequence thereof and shall carry out the amendment in accordance with such determination. Such order is made appealable before the Revenue Divisional Officer u/s 5(5) of the Act of 1971. In turn the order passed u/s 5(5) is revisable

u/s 9 of the Act of 1971.

75. In the present case, the father of respondent 3, Ramachandra Reddy, admittedly died in the year 1979. No application seems to have been made by respondent 3 u/s 4 of the Act of 1971 claiming a right of succession thereafter. Similarly, the petitioners and respondent 4 who claim through their predecessors Gopal Reddy and Sidda Reddy, also failed to take steps in this regard after the death of their predecessors-in-title. Thus, as the matter stood, some of the revenue records showed the names of respondent 3''s grandfather and the predecessors-in-title of the petitioners as the pattadars of the subject land.

76. An appeal was filed by respondent 3 u/s 15(2) of the Regulation of 1358-F. Section 15(2) of the Regulation of 1358-F reads as follows:

15. Appeal:- (1) ... ...

(2) The "Collector" may of his own motion or on the application of a party call for and examine any records made u/s 4 or Section 6 and pass such orders as he may think fit:

Provided that no order which would adversely affect any person shall be passed except after hearing that person.

77. There is no provision in the Act of 1971 which is identical to Section 15(2) of the Regulation of 1358-F. Though Rule 13 of the Rules of 1989 seems to grant general powers of supervision which could be exercised suo motu by a host of revenue authorities to test and revise the entries in the confirmed record of rights, there is no provision in the parent statute, the Act of 1971 conferring such wide powers. In any event, the power conferred by Rule 13(2) is with regard to the revision of entries in the confirmed record of rights prepared under Rule 13(1). As stated earlier, no material has been placed before this Court as to whether such steps were initiated by the revenue authorities for the preparation of the draft record of rights and the confirmation thereof following the due procedure prescribed under the Act and the Rules in so far as the subject lands are concerned.

78. The power of revision provided u/s 9 of the Act of 1971 is with reference to calling for and examining the record under Sections 3, 5, 5-A or 5-B of the Act of 1971 in respect of any record of rights prepared or maintained. In the present case, there is no evidence of any orders having been passed under any of the above sections warranting invocation of the revisional power u/s 9 by the Joint Collector, Ranga Reddy. The application filed by respondent 3 seeking reopening of a proceeding under a repealed enactment which, in effect, was not even in existence as on that date, ought not to have been converted into a Revision u/s 9 of the Act of 1971. No such power of conversion is vested in the Joint Collector, Ranga Reddy District under the provisions of the Act of 1971. There was thus an inherent lack of jurisdiction in the Joint Collector, Ranga Reddy, to do so as is evident from the provisions of Section 9 itself.

79. It is no doubt true that notice of the proceedings initiated by the Joint Collector, Ranga Reddy, u/s 9 was served upon the petitioners, be it personally or by way of substituted service through publication in a newspaper. However, they did not participate in the said proceedings. A perusal of the order dated 24.07.2000 passed by the Joint Collector, Ranga Reddy, in exercise of such revisional power reflects that the said authority took note of the fact that the khasra pahani for the year 1954-55 reflected the names of Jagga Reddy, Gopal Reddy and Sidda Reddy, grandfather of respondent 3 and the predecessors-in-title of the petitioners in the column pertaining to the name of the pattadar and cultivator.

80. The order also reflects that the pahanis for the years 1968-69, 1972-73, 1976-77, 1979-80 and 1982-83 to 1988-89 showed the names of the same three persons in the column pertaining to the name of the pattadar, while the name of respondent 3 alone is shown in the column pertaining to the name of the cultivator. Having extracted the above, the Joint Collector, Ranga Reddy, referred to the proceedings of the Land Reforms Tribunal, Hyderabad East Division, dated 08.03.1976 showing that the subject lands in addition to others were computed to the holding of respondent 3 and his father jointly, duly declaring them to be non-surplus holders under the Act of 1973.

81. The Joint Collector, Ranga Reddy, also referred to the fact that the pahani for the year 1996-97 continued to show the names of Sidda Reddy and Gopal Reddy, predecessors-in-title of the petitioners along with the name of respondent 3 as pattadars while respondent 3 alone was shown as the possessor/cultivator. Thereupon, the authority acted upon the aspect of possession alone, holding that respondent 3 was in exclusive possession and enjoyment of the lands and that the predecessors-in-title of the petitioners did not have possession. He also took note of the fact that the petitioners, having been brought on record, failed to contest the matter and that their names had not been entered in the pahanies. The conclusion of the Joint Collector is in the following terms:

However since the other recorded joint pattadars, Sidda Reddy and Gopal Reddy have already died, the petitioner may approach, the Mandal Revenue Officer for sanction of succession over the lands.

82. With the above observation, the Revision was disposed of. It is pertinent to note that the advice given by the Joint Collector was not in the nature of any extraordinary relief as the same was already provided for u/s 4 of the Act of 1971, but as pointed out earlier, neither the petitioners herein nor respondent 3 took recourse to the statutory provisions in this regard. It is no doubt true that u/s 4, a time limit is posited for making an intimation to the Mandal Revenue Officer about the acquisition of a right by succession, but under the provisions of Section 10(2) of the Act of 1971, the Limitation Act, 1963 and more specifically Sections 5 and 12 to 24 thereof are made applicable for the purposes of expiration and computation of the period prescribed in Section 4(1) of the Act of 1971. Therefore the petitioners and respondent 3 could, in any event, have

approached the Mandal Revenue Officer u/s 4(1) of the Act of 1971 along with an application for condonation of delay u/s 10(2) in so far as their alleged right of succession is concerned.

83. However, the matter is not that simple. While the petitioners claim only half share in the subject lands in succession to the alleged rights of their predecessors-in- title, Gopal Reddy and Sidda Reddy, respondent 3 seeks to exclude them altogether and claims full ownership and title over the subject lands, as the successor of his grandfather, Jagga Reddy. He disputes the correctness of the entries in so far as the incorporation of the names of Gopal Reddy and Sidda Reddy is concerned. Under Rule 9(1)(c)(ii), the dispute which can be enquired into by the Mandal Revenue Officer is only with regard to rival claims as to who would succeed to the property of a deceased registered holder. Such was not the factual scenario in the present case. There were three deceased registered holders in the revenue record and the heirs of one such registered holder wanted to exclude the heirs of the other two altogether. This dispute did not fall within the ambit of Rule 9(1)(c)(ii) and could not have been enquired into by the Mandal Revenue Officer by way of a summary enquiry.

84. By its very nature, this dispute raised complicated questions of fact and law. Allegations are made that the original entry in the khasra pahani of 1954-55 was with the active connivance of one Surender Reddy, patwari, who was allegedly related to Gopal Reddy and Sidda Reddy. Such allegations would require to be tried and tested by way of adducing of evidence in a regular trial before a competent civil Court. On the other hand, the petitioners claim that there was a partition within the family in the year 1953 and also a compromise thereafter. It is not clear as to whether such a partition and the subsequent compromise were reduced into writing or were only oral. No document appears to have been placed on record in proof of such partition or compromise. In the event such partition or compromise was an oral one, the same would have to be proved before a civil Court of competent jurisdiction by adducing acceptable and credible evidence. Such steps could not have been initiated before or entertained by the revenue authorities in the course of their summarily deciding limited issues of title, as provided under Rule 9(1)(c)(ii) and (iii) of the Rules of 1989.

85. The learned Counsel for respondent 3 placed strong reliance upon the fact that the Joint Collector, Ranga Reddy, referred to the proceedings initiated under the Act of 1973 and as per Rule 9, no order could be passed by the revenue authority, either for changing of the registry or for splitting of joint pattas, unless the authority was satisfied that the said order was not in contravention of the provisions of the Act of 1973. However it is to be noticed that the Rule requires that an order passed by the revenue authority in respect of the record of rights should not be in contravention of ''the Act of 1973''. The meaning of this would necessarily be that by way of an entry in the record of rights, the holder thereof is not permitted to have a holding in excess of that permitted by the Act of 1973. The emphasis is on contravention of the provisions of ''the Act of 1973'' and not

with the proceedings passed thereunder. No doubt, the proceedings initiated under the Act of 1973 which culminated in the order in favour of respondent 3 and his father would be a strong piece of evidence in support of their case, but the same cannot be the sole foundation for exclusion of the petitioners'' rights, if any, claiming through their predecessors-in-title, whose names found mention in the revenue records earlier.

86. A reading of the proceedings dated 10.11.2000 passed by the Mandal Revenue Officer, Ghatkesar Mandal, clearly demonstrates that the matter was taken on file only in pursuance of the Joint Collector''s order dated 24.07.2000. Before the Mandal Revenue Officer, Ghatkesar Mandal, the petitioners chose to participate. The learned Counsel for respondent 3 placed strong reliance on this to support his contention that the petitioners, having participated in these proceedings must be deemed to have waived their objections, if any, with regard to the revisional orders of the Joint Collector, Ranga Reddy, dated 24.07.2000 u/s 9 of the Act of 1971. However, as pointed out earlier, the said order, innocuous in itself, was inherently lacking in jurisdiction. Once that is so, there is no question of any estoppel or waiver against the statute. The decisions in Faqruddin''s case (supra), Kiran Singh''s case (supra), Dikshitulu''s case (supra) and Encon Builders''s case (supra) support this view. Further as pointed out earlier the said order did not have any effect substantively inasmuch as the Joint Collector only directed respondent 3 to make an application for succession, ostensibly u/s 4 of the Act of 1971.

87. The order dated 10.11.2000 passed by the Mandal Revenue Officer, Ghatkesar Mandal, would also show that the Mandal Revenue Officer personally conducted a panchanama regarding the possession of the subject land at Kondapur Village as provided for under Rule 20(1)(c). Having conducted this inspection, the Mandal Revenue Officer, Ghatkesar, recorded his finding that respondent 3 and prior thereto his predecessor were the owners and possessors of the subject lands and also that the petitioners had never been in possession thereof. In this connection, it is relevant to note that it is not the case of the petitioners that they were in possession of the subject lands. According to them they are joint owners of the subject lands along with respondent 3 and they specifically assert that the possession of one joint owner cannot be to the exclusion or adverse to the other joint owners.

88. Therefore, the spot inspection by the Mandal Revenue Officer, Ghatkesar Mandal, could throw light only on the fact of possession which was not even in dispute. So far as the ownership is concerned, the same could not have been decided on the basis of a spot inspection; all the more so, when there is a dispute with regard to the title. It is to be noted that all the parties are members of the same family and though not falling within a coparcenary, it would have to be examined as to whether there is any foundation in the case of the petitioners that there was a partition, whereby the subject lands fell to the joint shares of the grandfather of respondent 3 and the predecessors-in-title of the petitioners.

The Mandal Revenue Officer placed reliance upon the Wasool Baqi which showed the name of the grandfather of respondent 3 alone as khatadar and pattadar and came to the finding that the respondent 3 alone was in exclusive possession and enjoyment of the subject lands and that the petitioners herein had never been in possession and had no concern with the same.

89. It appears that the Mandal Revenue Officer, Ghatkesar Mandal, lost sight of the fact that in exercise of the powers conferred by the Act of 1971 and in preparing the record of rights thereunder, he was not only dealing with the aspect of possession but was also required to record a finding with regard to title. However the approach of the Mandal Revenue Officer as demonstrated by the order shows that he was swayed only by the exclusive possession and enjoyment of respondent 3 and did not toil over the issue of title though the dispute pertaining thereto loomed large.

90. Even if the proceeding before the Mandal Revenue Officer, Ghatkesar, could be taken to be one u/s 4(1) of the Act of 1971, the enquiry u/s 5 of the Act of 1971 required the officer to determine as to whether, and if so in what manner, the record of rights was to be amended. Under Rule 9(1)(a)(i), (ii) and (iii), the scope of the enquiry into such determination is clearly circumscribed. The dispute raised in the present case with regard to the deletion of the existing names in the revenue records clearly did not fall within the enquiry permissible under Rule 9. Therefore, the Mandal Revenue Officer, Ghatkesar Mandal, had he even chosen to do so, could not have resolved the dispute.

91. The Mandal Revenue Officer, Ghatkesar Mandal, in fact, did not venture into this issue and merely basing on the possession aspect came to the conclusion that respondent 3''s name should be incorporated in the pattadar column in respect of the subject lands and that he would be entitled to obtain the title deed and the pass book as per the provisions of the Act of 1971. This order had the effect of extinguishing the rights, if any, of the petitioners who were laying a claim through Gopal Reddy and Sidda Reddy, whose names were in existence under the ownership column in the revenue records even upto the year 1996-97.

92. Therefore, the said order was devoid of jurisdiction and far in excess of the powers conferred by the Act of 1971 and the Rules of 1989. The Revenue Authorities, be it the Joint Collector or the Mandal Revenue Officer, acting in exercise of the powers conferred by the Act of 1971 could not have resolved the disputed questions of title which were thrown up by the facts of the present case. The decisions in G. Padmavathi''s case (supra), Patel Raghav Natha''s case (supra), K. Siddiah Naidu''s case (supra), V. Goutham Rao''s case (supra), Sannepalli Nageswar Rao''s case (supra) and B. Pushpamma''s case (supra) are of guidance and support in this regard.

93. Complex and serious disputes of title falling beyond the ambit of Rule 9 of the Rules of 1989 are not within the ken of the adjudicative authority of revenue authorities even under the Act of 1971. It is for the parties to initiate appropriate

proceedings before a civil Court of competent jurisdiction to resolve their dispute and it is not open to either party to turn to the Act of 1971 to steal a march over the other. Needless to state, in the event of either party approaching a civil Court of competent jurisdiction, it is open to them to raise all the issues and contentions raised in this writ petition, including the effect and consequences of the dismissal of the suit O.S. No. 348 of 1989 for default, and the same would be decided independently without being influenced by any observations made herein.

94. In the result, the order dated 24.07.2000 passed by the Joint Collector, Ranga Reddy District, in exercise of revisional jurisdiction u/s 9 of the Act of 1971 is found to be without jurisdiction and hence, unsustainable. The consequential order dated 10.11.2000 passed by the Mandal Revenue Officer, Ghatkesar Mandal, Ranga Reddy District, in exercise of powers conferred by Section 5 of the Act of 1971 had the effect of resolving serious and complex disputes of title far beyond the scope of the summary enquiry which could have been initiated by the said Officer under Rule 9 of the Rules of 1989. The said order is in excess of jurisdiction and is accordingly held to be null and void.

95. The writ petition is therefore allowed. There shall be no order as to costs.

