
(2011) 07 AP CK 0041

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No: 126 of 1997

Krishna, (died), Mrs. Shodhana Phadke, Sadashiv Krishna
Phadke, and Rajesh Krishna Phadke

APPELLANT

Vs

The Indian Institute of Economics and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 66
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17(2)
Criminal Procedure Code, 1973 (CrPC) — Section 144
Hyderabad (Abolition of Jagirs) Regulations, 1358 — Section 6

Citation : (2011) 6 ALT 447

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : Manjari S. Ganu, for the Appellant; B. Narasimha Sarma, Counsel for the Respondent No. 2: G.P. for Arbitration and Counsel for the Respondent Nos. 3 to 9: Smt. A. Anasuya (Not Present), for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Sri Justice V.V.S. Rao

1. This Letters Patent Appeal by the Plaintiff is against the judgment of the learned Single Judge in CCCA No. 49 of 1983 dated 12.2.1996 confirming the judgment of the Court of the V. Additional Judge, City Civil Court, Hyderabad in O.S. No. 109 of 1968 dated 29.7.1982. In this judgment, the parties are referred to as they are arrayed in the suit.

2. The Plaintiff, Sri Krishna, instituted the suit for declaration of title to the suit schedule property admeasuring 2096.7 Sq.yards out of Acs. 1.02 guntas in S. No. 122 of Mallepalli Village of Hyderabad District, and for recovery of possession. The Indian Institute of Economics was, initially, the sole Defendant. Subsequently the Government of Andhra Pradesh, represented by the District Collector, Hyderabad, was impleaded as the second Defendant since the first

Defendant came up with the plea that the land was allotted to them by the Government for construction of the building of the first Defendant. Be that as it is the case of the Plaintiff, in a nutshell, is as follows. The suit schedule land was owned by Mallepalli Jagirdar, Ahmed Ali Mirza. He granted perpetual lease in 1345 Fasli in favour of one Parasuram. The lease was also confirmed by the Tahsildar in a letter to the Cantonment Officer as the land originally belonged to the Military. This resulted in recognition of the lessee as the possessor in Faisal Patti and Pahani of 1346 Fasli and, after issue of Circular No. 2, dated 18.10.1949, Parasuram became the pattadar. The Jagirdar issued letter of confirmation dated 21.8.1957 confirming the lease. The Plaintiff purchased the suit schedule land from Parasuram under registered sale deed dated 03.9.1964. The Hyderabad Municipal Corporation (HMC) granted permission on 22.11.1965 for construction of a compound wall.

3. The Director and officials of the first Defendant began interfering with the possession of the Plaintiff, and they trespassed into the land on 10.7.1966. A case, being M.C. No. 785 of 1966, was filed u/s 144 of the Code of Criminal Procedure, 1973 before the learned III City Magistrate, City Criminal Court to restrain the officials of the first Defendant. The same was, however, dismissed. In the meanwhile, the Director and the Registrar assured the Plaintiff that they would not interfere. They addressed the Government for allotment of alternative land. The Plaintiff then erected a hut. But, on 11.10.1968, the first Defendant engaged coolies, dumped stones and dug foundation pits. The Government or the first Defendant have no right over the property and, therefore, the suit for declaration.

4. Defendants 1 and 2 filed separate written statements. The gist of the statement of the first Defendant is as follows. The suit schedule land is an Ex-Army land under the control and possession of the District Collector. It was handed over by the Government of India to the State Government in 1951. Being Non-Indian State Force's land, it had fallen under the share of the State Government. The Government of Andhra Pradesh issued orders in G.O. Ms. No. 1043, dated 17.7.1965 allotting 2000 Sq.yards by way of lease in favour of the first Defendant for 99 years. The lease deed was executed on 17.3.1966. The land was also handed over to the lessee on 30.3.1966 by the Deputy Tahsildar, Hyderabad. Ever since the date of taking over, the suit schedule land is in the uninterrupted and effective possession of the first Defendant. The grant of land by the Jagirdar, and the particulars thereof, are fictitious and the documents relied upon by the Plaintiff do not represent the true state of affairs. The perpetual lease in favour of Parasuram is void in law as the same was not registered and, therefore, the Plaintiff cannot derive any title to the suit schedule property.

5. The Government of Andhra Pradesh, in their written statement, claimed their title making the following averments and allegations. In 1345 Fasli all the heirs of Mallepalli Jagirdar were minors. The property, therefore, was under the control

and supervision of the Court of Wards. The alleged lease in favour of Parasuram in 1345 Fasli is not true. The grantor was neither competent nor was he authorized by the Government by means of publication in the notification. As the land was under Military occupation, the question of grant of lease does not arise. Further, in 1345 Fasli, there was no land with S. No. 122 in Mallepalli village. The survey of Mallepalli village was conducted in 1335 Fasli and, according to the said survey, there were only 68 Survey Numbers in the entire Village. The land was in Military occupation prior to 1345 Fasli and, after 1345 Fasli, Mallepalli was under the supervision of the Court of Wards. The lease and possession of Parasuram is false and without any basis nor has he perfected the title as pattadar by virtue of circular No. 2. Mallepalli Jagir was abolished and the administration was transferred to the Government vide Gazette Notification No. 14, dated 24.5.1949. Therefore any confirmation of lease after 1949, as alleged by the Jagirdar has no validity. The Government allotted the land to the first Defendant for 99 years free of cost pursuant to which possession was also handed over to them. The permission granted by the Municipality in favour of the Plaintiff does not confer any title nor has the Plaintiff derived valid title from his vendor who himself had no title to grant lease of the land.

6. The trial was conducted with reference to nine issues. The Plaintiff examined six witnesses and marked Exs.A1 to A19. The Defendants examined seven witnesses and marked Exs.B1 to B14. In addition, Exs.C1 to C6 and Ex.X1 were also marked. The original Plaintiff deposed as P.W. 2. During the pendency of the proceedings he died, and his legal representatives - the wife and sons were brought on record.

7. Whether the Plaintiff got title to the suit schedule land and whether the possession of the first Defendant was lawful? These were the two main issues considered by the trial Court. On considering the evidence, the trial Court recorded a finding that, as per the Muntakab Ex.B8, the Nizam gave grant of Mallepalli Village Jagir in 1938 only and, therefore, the Jagirdar could not have granted perpetual lease in favour of Parasuram in 1938 itself under Ex.A3. Nextly the trial Court rejected the confirmation letter Ex.A7 dated 21.8.1957 observing that the Jagir was itself abolished in 1948 and, therefore, the successor of the original Jagirdar could not have given confirmation letter. The trial Court also came to the conclusion that the alleged lease by the Jagirdar does not contain boundaries, and no evidence was adduced by the Plaintiff as to the authority who delivered possession to the lessee under Ex.A3. The Court also disbelieved the other documents relied on by the Plaintiff, and denied the declaration of title. The learned Single Judge gave importance to the factum that the Jagirdar himself got the right from the Nizam in 1938 in which event he could not have granted lease to Parasuram.

8. The Counsel for the Appellant/Plaintiff, Ms. Manjari S. Ganu, submits that the grant in favour of Ahmed Ali Mirza, the Jagirdar, was made prior to 1348 Fasli. The same was only confirmed under Ex.B8 in 1348 Fasli as found in Ex.A16

dated 31.7.1964 i.e., the judgment in O.S. No. 162 of 1963 on the file of the Court of II Assistant Judge; Ex.A18 dated 13.12.1976 - the order in W.P. No. 4250 of 1975; and Ex.A19 dated 13.12.1968 - Judgment in S.A. No. 218 of 1967. She would also contend that Exs.A3, A4 and A5 - the letter of the Jagirdar granting perpetual lease, Faisal patti and Pahani - would furnish sufficient evidence to draw inference in favour of the Plaintiff that the land was granted by the Jagirdar to Parasuram which was also recognized in Exs.A4 and A5. In this regard she also relies on Exs.C2 to C6 under which the Plaintiff summoned the documents, in response to which the District Collector addressed stating that the records are not traceable. She, therefore, would like this Court to draw an adverse inference against the Defendants for non-production of the documents as they failed to produce the copy of the original grant under which the Jagirdar was granted Mallepalli Jagir land. Nextly she would rely on Ex.A7 issued by the grandson of the Jagirdar and submit that the trial Court, as well as learned Sessions Judge, were not correct in rejecting Ex.A7. She relies on the decision of the Division Bench, in Taher Hussain v. Mohd. Abdul Waheed (1976) ILR 106 (AP), in support of the contention that, after abolition of Jagirs in 1358 Fasli, the person in possession of the Jagir land acquired pattadar rights as per the orders of the Government in Circular No. 2 dated 18.10.1949.

9. The matter was heard by this Court on 8th and 9th June, 2011. On both the days, none appeared for the Respondents/Defendants and, therefore, the matter is being proceeded with under Order XLI Rule 17(2) of the Code of Civil Procedure, 1908 (Code of Code of Civil Procedure) duly setting the Respondents ex parte.

10. The only point that would arise for consideration is whether grant of perpetual lease by the Jagirdar in favour of Parasuram, from whom the Plaintiff purchased the land, was valid and whether the Plaintiff proved his title and possession to the land.

11. The plaint case set up by Sri Krishna/Krishna Rao is that the land in S. No. 122 of Mallepalli was originally owned by the Jagirdar who granted perpetual lease under Ex.A3 dated 04.1.1345 Fasli, and this was confirmed by the Tahsildar who wrote to the Cantonment Officer vide Ex.A8 dated 27.3.1951. In between, the name of Parasuram was entered in the Faisal Patti Ex.A4, and Pahani Ex.A5 during 1346 Fasli. The plaint is silent as to when Mallepalli Jagirdar was granted the land by the Sovereign or the Nizam. This is very crucial because Exs.A3, A4, A5 and A8 would at best support the grant by the Nizam in favour of the original Jagirdar. The Plaintiff Sri Krishna/Krishna Rao deposed about the purchase of the land from Parasuram under Ex.A1 dated 03.9.1964, and marked Exs.A3 to A7 which were only subsequent to the grant. He did not say anything about the original grant by the Nizam to the Jagirdar. Unless it is shown that there was surveyed land with Field No. 122 in Mallepalli Jagir, and that such land formed part of the Jagir, the other evidence does not strengthen the case of the Plaintiff. Ex.A7 dated 21.8.1957, which is the confirmation letter given by the scion from

the Jagir's family and attested by P.W. 3, is also of no use because P.W. 3 himself does not speak about the details of the original grant. In fact, he admitted that he does not know on what basis Nuzool amount was worked out when Parasuram did not pay the arrears of Nuzool amount. He was examined only to prove Ex.A7, and the factum that Parasuram was the leaseholder of the Jagir land.

12. D.W.5 is the Deputy Tahsildar in the Office of the Revenue Divisional Officer. His evidence, based on records, gives some insight to crucial aspects of the grant of Jagir and its administration. This evidence shows that the total area of Mallepalli was Acs.970.00. Out of this an extent of Acs.660.00 was taken over by the Military. The remaining area was granted to the Jagirdar, Sardar Ali Mirza. He died leaving behind a minor son Mehdi Mirza. Therefore the Jagir came under the supervision of the Court of Wards. The brother of the Jagirdar, Hasan Ali Mirza, was managing the Jagir on behalf of the minor, who later died issueless. The Manager also died leaving behind his two minor sons and four minor daughters and, therefore, the property again came under the supervision of the Court of Wards in 1345 Fasli. It was only in 1348 Fasli that the Jagir was released in the name of Ahmed Ali Mirza, S/o. Hasan Ali Mirza. All the children of Hasan Ali Mirza became sharers in the Jagir. In the Jagir register, the name of Ahmed Ali Mirza was shown in respect of 141 Bigas (Acs. 105.30 guntas). This was not part of Acs.660.00 which was taken over by the Ex-Military of Nizam.

13. Another important and relevant aspect of the matter is regarding the very existence of S. No. 122. D.W.5 deposed that the settlement in Mallepalli was announced in 1335 Fasli, and it was only thereafter that S. No. 122 was shown as part of the Jagir land. Prior to that, it was not one of the pieces of land which was regranted to the Jagirdar. Regarding Ex.B8, which is an important document, D.W.5 deposed that, under the said Muntakab, Ahmed Ali Mirza, his brother and four sisters had shares in land admeasuring 141 Bigas 17 baams. The evidence of D.W.5 was not seriously challenged. These would prove that, by the time the Jagirdar allegedly granted perpetual lease, the land was not surveyed, the entire Jagir property was under the supervision of the Court of Wards and that, till Ex.B8 was issued, none of the legal heirs of Sardar Ali Mirza had any alienable right.

14. The Counsel for the Plaintiff would contend that the land in S. No. 122 and other S. Nos of Mallepalli formed part of the Jagir granted to the original Jagirdar long prior to the issue of Muntakab, Ex.B8 dated 18 Farwardi, 1348 Fasli by the Office of the Nizam. To buttress the argument she relies on Exs.A16, A18 and A19. Ex.B8, admittedly, was issued in 1348 Fasli (1938 AD) whereas the Jagirdar, Ahmed Ali Mirza, issued Ex.A3 dated 04.1.1345 Fasli (1935 AD) granting perpetual lease. If it is shown that Ex.B8 is not the grant, it cannot be said that the Plaintiff has discharged the burden of proving the valid grant. If it is taken that Ex.B8 itself is the confirmation of the earlier grant of the Jagir, Ahmed Ali Mirza could not have validly issued Ex.B3 perpetual lease when, ? indisputably, the Jagir was under the supervision of the Court of Wards.

15. Ex.B8 was issued on 18 Farwardi 1348 Fasli (29 Zilhajj 1357 Hijri). It gives the particulars of the claimant (Ahmed Ali Mirza Khan, S/o. Hasan Ali Mirza Khan), the names of other sharers, the details of Mash (grant), the extent of the land (74 Bigas 10 baams of wet land and 67 Bigas 7 baams of dry land) and order of the grant. It reads as follows, "as per Firman Mubarak dated 29th Si-quaidda 1354 Hijri, on receipt of letter from Oziz Committee 636 dated 29th Farwardi 1345 Fasli, as per the opinion of the Committee of the Mallepalli Jagir after deducting one fourth assessment be released in the name of Ahmed Ali Mirza and the supervision of the Government be wound up. As per the compromise the share of Abbas Ali Mirza, Khairunnisa Begum, Sughra Begum, Shaher Banu Begum, Sashra Begum be given from Ahmed Ali Mirza.... The amount of compensation of Jagir in respect of acquisition of Jagir by City Improvement Board and other areas etc., be kept in deposit in Amanath of CIB after payment of one fourth share he deposited before Government and as per separate endorsement". From this, it is very clear that Ex.B8 is a regrant after realizing the property from the Court of Wards. Reading Ex.B8 and the evidence of D.W.5 together, the conclusion is inevitable that when the perpetual lease was granted to Parasuram, and the same was entered in the Faisal Patti, Pahani under Exs.A4 and A5, the Jagir land was under the supervision of the Court of Wards. Ahmed Ali Mirza could not have issued perpetual lease without proper sanction by the Court of Wards. It is also not possible to infer from Ex.B8 that the grant/regrant was made prior to issue of Ex.A3.

16. Ex.A16 is the certified copy of the judgment dated 31.7.1964 in O.S. No. 162 of 1963 on the file of the Court of the II Assistant Judge, City Civil Court, Hyderabad. One Kishan Singh filed the suit against the State of Andhra Pradesh for declaration of his title in respect of the land admeasuring 3333 Sq.yards in S. No. 128 of Mallepalli. He also sought a declaration that the two notices, issued under the Andhra Pradesh Land Encroachment Act, 1905, were illegal and for consequential perpetual injunction. The suit was opposed by the State contending that Balaram, from whom Kishan Singh purchased the property, had no title and the property was in the custody of the Court of Wards. Incidentally a question arose whether the Jagirdar could have validly given the land to Balaram. The trial Court came to the conclusion that after, abolition of Jagirs, Balaram to whom the property was given by the Jagirdar became the pattadar and, therefore, his sale is valid. Ex.A17 is the judgment in A.S. No. 10 of 1965 on the file of the Court of II Additional Chief Judge, City Civil Court confirming Ex.A16. Against the appellate decree, the State carried the matter in S.A. No. 218 of 1967. Ex.A19 is copy of the judgment which was dismissed for default. On reading Exs.A16, A17 and A19, it is not possible to accept the submission of the Counsel for the Plaintiff that there was a valid grant in favour of the Jagirdar or that the Jagirdar had the right to grant perpetual lease to Parasuram.

17. Ex.A18 is the copy of the order in W.P. No. 4250 of 1975. The writ petition was filed by one Ramachander against the Board of Revenue, District Collector and Ors. seeking a Mandamus restraining the Respondents from interfering with

the possession of the Petitioner therein. Ex.B8 referred to herein above, according to the Counsel, was also considered therein, and it was observed that, "Muntaqab is only a confirmation of the earlier grant. The muntaqab only records, after enquiry, the extent of the mash granted to the jagirdar. It is only a confirmatory grant and not the original grant". Relying on this observation, the Counsel would emphasise that Ex.B8 would conclusively prove the grant of the Jagir and, therefore, perpetual lease under Ex.B3 in favour of Parasuram is valid. This submission cannot be accepted.

18. The jagir is an inalienable grant of tenure in respect of specified agricultural land or estate by the Sovereign to be enjoyed till the life time of the grantee namely, Jagirdar. If the Jagirdar leaves no legal heirs, the estate would revert back to the Sovereign. As the jagir would be heritable, the legal heirs would be granted succession subject to the acceptance of the claim. Even in such a case there ought to be a fresh grant by the Sovereign, and the succession granted to the legal heirs is always treated as a regrant. Indisputably, when the legal heirs are minors and there is nobody to manage the property, the jagir land would be in the custody of the Court of Wards till the minors attain majority and claim the land under the Hyderabad Court of Wards Act, 1307 Fasli, which stood repealed by the Andhra Pradesh (Telangana Area) Court of Wards Act, 1350 Fasli.

19. Here, we may make a reference to an unreported judgment of a Division Bench of this Court in *State of Andhra Pradesh v. Mahamed Hasan Khan* CCCA No. 84 of 1982, dated 16.8.1985. The following facts therein are some what similar to the facts in this case. The Nizam granted jagir to Nawab Salarjung-III. This includes Kuthubullahpur and Saheb Nagar Kalan villages. One of the relatives of grantee, namely, Mohd. Hasan Khan, a Zamindar of Uttar Pradesh, intended to start a dairy farm at Hyderabad. On being approached, Salarjung-III granted patta for huge extent of lands in the two villages, which was duly implemented in the revenue records and possession was delivered to the pattadar. Even after the abolition of Jagirs in 1949, the name of Mohd. Hasan Khan continued to appear in the revenue records. The pattadar was forced to leave Hyderabad, during Police action, for Uttar Pradesh. Finding that the lands were in possession of the Government, he made futile attempts to get the revenue records corrected from which his name was deleted, and thereafter he instituted a suit for declaration of title and recovery of possession of land admeasuring more than 2000 acres. The State defended the suit on the plea that the grantee Salarjung-III had no right to grant patta and that the jagir was tenure, which is heritable and inalienable. It was also urged that the jagir as tenure would stand terminated on the death of the Jagirdar and his lineal heirs would get a fresh grant and in no event the Jagirdar can transfer or alienate the jagir property. In the above context, the Division Bench inter alia considered the following questions namely what is the nature of right which the Jagirdar was granted by the Nizam? whether he had only a right of usufruct, or whether he had a right to assign any patta in favour of others. After referring to the decisions of this Court in *Ahmad-un-nisa Begum v. The State* AIR 1952 Hyd 163 and *Ratnamma v.*

Kishan Rao (1963) I.L.R.A.P.431 , and of the Supreme Court in Raja Rameshwar Rao and Another Vs. Raja Govind Rao, this Court summarized the principles in this regard.

1. The Jagir was a tenure common among the Mohammaddan Governments under the General appellations of Inam-al-Thmgha, and Madad-ma-ash in which the public revenue of a given tract of land was made over to a servant of the State. This was either for stated term or for the life time of the holder, lapsing on his death to the State although renewable to his heir on the payment of a Nazrana; and sometimes specified to be hereditary assignment, without which specification it was held to be a life-tenure. This is based on the concept that the Ruler was the absolute owner of all the lands and that he granted only usufructary rights in some of the lands which were called "tenures" and the Jagirdars were one such tenure holders.

2. The concept of Atia Shahi implies an atia or grant by the King for the life time of the grantee or inamdar. The Jagirdar does not get proprietary rights in the Jagir. It is inalienable and non-hereditary and his rights are limited to its usufruct for life subject, of course, to his good conduct. The grantor may even resume the land during

life time and regrant it to any one he chooses. After the death of the Jagirdar, the lands will necessarily revert to the grantor.

3. The Jagirdar could not grant a permanent lease, unless he was specifically entitled to do so under the Sanad.

4. The Jagirs were inalienable and terminable on the death of the grantee, each Jagirdar though a heir of the deceased holder, was deemed a fresh grantee of the estate, the right to confer such an estate being uncontrolled, absolute and beyond the jurisdiction of the Civil Court.

(Emphasis supplied)

20. Applying the above principles, it has to be held that the Jagirdar, Ahmed Ali Mirza could not have alienated the land in favour of Parasuram under Ex.A3 by way of perpetual lease. Ex.A3, therefore, does not confer a valid title nor the subsequent documents Ex.A4 Faisal Patti and Ex.A5 Pahani for 1346 Fasli or Ex.A8 the confirmation letter sent by the Tahsildar would lend support to the case of the Plaintiff. After the death of the original Jagirdar, Sardar Ali Mirza, his brother Hasan Ali Mirza was managing the property as his nephew Mehdi Ali Mirza was a minor. By that time, the jagir property came under the supervision of the Court of Wards. Mehdi Ali Mirza died issue less. Therefore the children of Hasan Ali Mirza, namely, Ahmed Ali Mirza, his brother and four sisters, applied for succession after they attained majority. Considering the same, the appropriate authority issued the succession as is evident from Ex.B8. This shows that, immediately after death of Sardar Ali Mirza, the jagir property was under the custody of the Court of Wards till issue of Ex.B8 in October, 1938.

21. As has been held by a Division Bench of this Court in Mahamed Hasan Khan, even if the jagir land is allotted to the heirs of the original Jagirdar, it was only a regrant. Hence by the time Ex.A3 perpetual lease was granted, there was no valid grant in favour of the Jagirdar. It may be noticed that, as per the Court of Wards Act, a minor i.e., a person below the age of 21 years is disqualified to manage and control the jagir, and the Board of Revenue acting as the Court of Wards shall manage the property. Further when a specific plea was taken in the written statement that, during the relevant period, the jagir property was in the custody of the Court of Wards, no effort was made by the Plaintiff to lead contra evidence. Before us, the Counsel relied on Ex.A7 dated 21.8.1957. It is a statement on Non-Judicial Stamp paper of four (4) Annas given by Yousuf Ali Mirza Khan on 21.8.1957. It is to the effect that Parasuram, who was in arrears of lease amount for a plot of land admeasuring 21/2 Acres in S. Nos. 122, 128 and 163, paid Rs. 37.8 Annas towards Nuzool for the period prior to 1950 AD and that there were no dues from Parasuram. Even if it is treated as receipt for the amount paid by Parasuram to clear off the arrears of rent for the period prior to 1950, it does not validate the lease of land under Ex.A3. By 1957, indisputably the jagirs were abolished and former grantees had no power to deal with the jagir lands. Therefore, on this ground also, the Plaintiff must fail.

22. The next issue is with regard to the identity of the land allegedly demised to Parasuram. Ex A3 does not mention the boundaries of the land, which was actually transferred by way of perpetual lease. Exs.A4, A5 and A8 are also of no assistance in this regard. Ex.A7 to which a reference is already made also does not mention the boundaries, and it speaks of arrears of rent for the land admeasuring 21/2 Acres in S. Nos. 122, 128 and 163. In a suit for declaration of title, in respect of immovable property, the Plaintiff has to give description of the property sufficient to identify it and, if the property can be identified by boundaries, they must be given. This essential rule of pleadings has been given a go-bye by the Plaintiff. There is no evidence whatsoever as to when possession was handed over to Parasuram. Exs.A4 and A5, by themselves, would not prove possession because, when the property was in the custody of the Court of Wards, the Tahsildar could not have given Faisal Patti and Pahani. Secondly Exs.A4 and A5 do not contain the official seal or the signature of the issuing authority. Ex.A11 is a communication which shows that all the pahanis and Faisal Pattis relating to the jagir of Ahmed Ali Mirza were transferred to the concerned Office of the Tahsildar subsequent to the release of the estate. According to Ex.B8, the estate was released to the legal heirs of the original Jagirdar only in 1938. Therefore, in 1936, whoever was the officer could not have issued Exs.A4 and A5 to Parasuram. The version of the Plaintiff that, pursuant to Ex.A3, he was given possession and his name was entered in the Faisal Patti and Phanai in 1346 Fasli under Exs.A4 and A5 is, therefore, highly improbable.

23. The Plaintiff alleged that, pursuant to Ex.A3, he was delivered possession, and that in 1965 he applied to HMC for permission to construct a compound wall, which was granted vide Ex.A9; and that the first Defendant committed trespass

and occupied the plaint schedule property. On the contrary, Defendants 1 and 2 averred that the suit land formed part of a large extent of land which is a Non-Indian State Force land and, after it was released from the Military control, it was under the custody of the District Collector, Hyderabad. According to them, all Ex-Army lands were handed over to the State Government by the Government of India in 1951 AD. In 1965, on the request made by the director of the second Defendant, the Government of Andhra Pradesh allotted the suit schedule land for construction of permanent building to the Institute, the lease agreement Ex.B6 was entered into on 17.6.1966, and the possession was delivered under Ex.B3 dated 30.3.1966. As already observed supra, Ex.A3 does not confer title on the Plaintiff for the reason that, at the relevant time, the property was under the custody of the Court of Wards as the children of Hasan Ali Mirza were minors. Secondly, the evidence of the Deputy Tahsildar, D.W.5, regarding the nature of the land being non-ISF land handed over to the Government of Andhra Pradesh in 1951 and the same being continuously in possession and control of the District Collector, remains unshaken. The Counsel for the Plaintiff relied on Ex.A9 permission granted by the HMC. Merely because HMC grants permission for construction of a house or a compound wall, does not lead to any inference that the person is in possession of the land. The Plaintiff has not pleaded or proved the acts of possession except relying on Exs.A4, A5 and A9, which are not sufficient enough to probablise the handing over of possession pursuant to Ex. A3.

24. The last submission of the Counsel for the Plaintiff is that, in spite of Exs.C2, C3 and C4, copies of summons to the Deputy Collector (Land Enquiries) to produce the documents, they were not produced and, therefore, an adverse inference should be drawn that the Defendants withheld the relevant documents. After receiving Ex.C2, C3 and C4, the District Collector sent Ex.C6 dated 12.10.1971 to the V. Additional Judge, City Civil Court, Hyderabad. Similarly the Joint Secretary of the Board of Revenue addressed Ex.C5 dated 04.9.1971. In both these letters, it was pointed out that the file bearing No. 12/2, on being summoned, was sent to the Court in connection with suit No. 27 of 1962, and that the file is being traced out. The copies of the covering letters, by which the records were sent to the City Civil Court and the High Court, were also annexed to Ex.C5. These two documents are not sufficient to draw any adverse inference. The Plaintiff did not specifically summon or ask the officials in the District Collectorate or the Board of Revenue to produce the original grant of the Nizam to Sardar Ali Mirza.

25. In Ex.C1 the Plaintiff summoned the list of Nuzooldars in the estate of Ahmed Ali Mirza, and the document regarding payments by them, original pahani and faisal patti of Mallepalli for the year 1345 Fasli, the letter of the Tahsildar dated 27.3.1951 to the Cantonment Officer and the notification dated 13.11.1956 regarding release of the Estate of Mallepalli village in favour of Yousuf Ali Mirza. In Exs.C3 and C4 the same documents were summoned. In fact, by sending for these summons, the Plaintiff was attempting to seek production of the originals

of Exs.A4, A5 and Ex.A8. When these documents were already marked, it is for the Court to draw appropriate inference from them having regard to their evidentiary value. The burden of proving his title and demonstrating the relevance of various documents marked by the Plaintiff to such title is always on the Plaintiff. By sending summons to produce the same documents which were already marked in evidence, the Plaintiff cannot expect the Court to draw adverse inference. Admittedly the Plaintiff did not ask for production of the original grant although it is now contended before this Court that Ex.B8 is the confirmation of the original grant. Therefore it was for the Plaintiff to prove the original grant in favour of the Jagirdar, and he cannot find fault with the Defendants especially when the response was sent on behalf of the second Defendant pursuant to the summons that the documents were submitted to the City Civil Court and the High Court in connection with some other litigation. Nothing prevented the Plaintiff from approaching these Courts and obtain certified copies if he had reason to believe that production of those documents would have made any difference to his claim in the suit. Therefore this Court is not inclined to accept the contention of the Counsel for the Plaintiff on the question of drawing adverse inference.

26. The Counsel relies on Taher Hussain in support of her contention that Parasuram became absolute owner and pattadar by virtue of the Government Circular No. 2, dated 18.10.1949. This submission is wholly misconceived and devoid of any merit. After abolition of jagirs by the Hyderabad (Abolition of Jagirs) Regulation 1358 Fasli, the administration of all jagirs was taken over by the Government. The tenants of jagirs were always treated as tenants without any patta rights. To get over such a situation, the Government having regard to Section 66 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli directed that the Jagirdar or hissadar who is in possession of the land personally cultivated by him referred to as jagir rights would be entitled to patta and all the field level officers were directed to implement the same. In Taher Hussain the Division Bench was concerned with the question as to whether a Jagirdar who is not cultivating the land personally but was cultivating the land through somebody was entitled to grant patta under Circular No. 2. While observing that the circular has no statutory force, the Division Bench held that if the land is cultivated as a jagir right, the question of granting patta by Jagirdar could not arise, that by virtue of operation of Section 6 of the Hyderabad (Abolition of Jagirs) Regulation the jagirs were included in the Diwani and that the Jagirdars are deemed to be the pattadars of the land. This does not help the Counsel for the Plaintiff. As already concluded above, by the time Parasuram was given perpetual lease, the jagirdar had no right and, after the death of his predecessor, the jagir itself stood abolished and the property was vested in the Court of Wards. After attaining majority, when the legal heirs of Jagirdar sought for succession, a fresh grant was made under Ex.B8. Therefore, any alienation made by the Jagirdar prior thereto would not have any legal sanctity nor anybody could claim right under Circular No. 2.

27. In the result, for the above reasons, the appeal fails and is, accordingly, dismissed with costs.