
(2009) 06 AP CK 0033
In the Andhra Pradesh High Court
Case No : S.A. No. 1206 of 1999

M. Bojji Raju

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 04-06-2009

Acts Referred:

Citation : (2009) 6 ALD 100 : (2009) 4 ALT 635 : (2009) 3 APLJ 179

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : K.S. Gopalakrishnan, for the Appellant; G.P. for Arbitration, for the Respondent

Judgement

G.V. Seethapathy, J.—This second appeal is directed against the judgment and decree dated 01-11 -1999 in A.S. No. 19 of 1995, on the file of the V-Additional District Judge, Tirupati, wherein the said appeal filed by the appellant herein was dismissed, confirming the judgment and decree dated 31-03-1995 in O.S. No. 33 of 1900, on the file of the Subordinate Judge, Puttur, whereunder the said suit filed by the appellant herein for declaration and injunction in respect of the plaint schedule lands, was dismissed.

2. Arguments of the learned Counsel for the appellant and the learned Government Pleader for Arbitration for the respondents are heard. Perused the record.

3. The appellant herein filed the suit with the following averments: The plaint schedule lands of Ac.8-16 cents in R.S. No. 157, Ac.3-45 cents in R.S. No. 158 and Ac.7-53 cents in R.S. No. 159/1 are situate in Vengalrajukuppam village, which is part of Zamindari of Karvetinagar and part of Zamin was purchased by the Tirumala Tirupati Devasthanam long back. The suit lands were bearing dry Paimash Nos. 276 to 279 and 281 to 283 and they were held on Zamindari patta by the plaintiff's grandfather M. Venkatrama Raju. Subsequent to the death of Venkatrama Raju, the plaintiff's senior paternal uncle was paying the rent. The

plaintiff's father Krishnam Raju and his brother Chengam Raju were members of the joint family. The suit lands were ryoti lands within the meaning of Section 3(15) of the Madras Estates Land Act. The entire Zamin of Karvetinagar, including the suit lands, was notified and taken over by the Government and got vested therein. Notwithstanding the same, the plaintiff continued to be in possession of the aforesaid paimash numbers and their possession is protected under the proviso to Section 3(d) of the Estates Abolition Act. After abolition of the Estates, the lands were surveyed under the Madras Survey and Boundaries Act and the suit lands were situate in R.S. Nos. 157, 158 and 159. The plaintiff's father filed a petition u/s 11(a) of the Madras Estates Abolition Act for issue of ryotwari patta for the suit lands. The said petition bearing S.R.5/11(a)/66 was posted for hearing on 06-05-1966 before the Assistant Settlement Officer, Chittoor. Subsequently, the matter was not getting posted for hearing.

The plaintiff's father died in the year 1966. No notice was served on the plaintiff's father regarding the date of hearing. Subsequently, the plaintiff came to know that several cases remained unattended after shifting of the office of the Assistant Settlement Officer from Chittoor to Nellore. Neither the plaintiff nor was his father responsible for the delay in disposal of the case by the settlement authorities. The plaintiff came to know that one M. Govindarajulu, s/o Chengam Raju also made an application for issue of patta and the same was granted for an extent of Ac.4-00 in S. No. 158 and Ac.4-00 cents in Sy. No. 159 and sub-division also took place as R.S. Nos. 158/2 and 159/2. Thus, for part of the lands covered by Zamindari patta, a ryotwari patta was granted in favour of cousin of the plaintiff. The plaintiff came to know that the Tahsildar is taking steps to assign the suit lands in favour of certain persons who are opposed to him. The Government is not entitled to dispossess the plaintiff, who is a ryot, from the suit land, which is a ryoti land, pending the claim of the plaintiff for ryotwari patta u/s 11(a) of the Madras Estates Abolition Act. It will be open to the Government to deal with the lands under Darkasth rules only if and when the claim of the plaintiff's father is ultimately rejected u/s 11(a). Hence, the suit for declaration of the right and title of the plaintiff as pattadar and absolute owner for the suit lands and for a permanent injunction, restraining the defendants from interfering with the plaintiff's possession and enjoyment of the same.

4. The defendants filed a written statement contending, in brief, as follows: The plaintiff's grandfather Venkatarama Raju held the lands in Paimash Nos. 276, 278, 279, 281, 282 and 283 on patta in Vengalrajukuppam, which is a zamin village. Karvetinagar Zamindari was taken over by the Government on 07-09-1950 under Estates Abolition Act 1948. Subsequently, all poramboke waste lands and other non-ryoti lands, including the entire estate, became vested in the Government free from all encumbrances. During the survey and settlement operations, the lands in S. Nos. 157 to 159/1 were classified as "Adavi Mitta Poramboke" and the suit lands are part of the same. They were classified as poramboke lands as they were not occupied by anybody and they were non-ryoti. The protection of possession contemplated u/s 3(d) of the

Estates Abolition Act is only in respect of ryoti lands, but not in respect of non-ryoti lands classified as poramboke lands. At no time, the plaintiff and his family were in lawful possession of the suit lands. The plaintiff's father filed a petition u/s 11(a) of the Estates Abolition Act for grant of ryotwari patta. M. Krishnamraju, S.K. Narasimharaju and Govinda Raju also filed similar applications. On 06-05-1966, the plaintiff's father Krishnamraju and Narsimharaju did not attend the enquiry or produce any evidence in support of their claim. The advocate appearing for them reported no instructions and consequently they were set ex parte. Govinda Raju, who alone appeared before the Assistant Settlement Officer, was examined and a patta was granted in his favour by order dated 29-06-1967. Admittedly, the plaintiff's father died pendente lite. No steps were taken by the plaintiff to pursue the matter. The order of the Assistant Settlement Officer has become final and the same is binding on the plaintiff. The plaintiff's suit is misconceived and is intended to circumvent the provisions of the Estates Abolition Act. The civil court has no jurisdiction to try the suit, as the civil court cannot sit in judgment over the orders of the special tribunal. As per the adangal for 1361 F, the suit lands, which were situate in paimash Nos. 276, 277 and 278 were classified as "Anadi Banjara" and "Anadi Aranyam" and they were not covered by Zamindari pattas. An extent of Ac.5-00 covered by Sy. No. 159 was assigned to one M. Rama Swamy Raju on DKT patta after following the prescribed procedure and issuing notice inviting objections. If the plaintiffs aggrieved with the assignment of the land, his remedy is to file an appeal before the RDO. As the suit land is classified as "adavi" mitta poramboke" in survey and settlement operations, they got vested in the government u/s 3(b) of the Estates Land Act and hence protection of possession of the plaintiff u/s 3(d) does not arise, In fact, the plaintiff or his predecessors were never in possession of any part of the schedule lands.

5. On the strength of the above pleadings, the trial Court framed the following issues.

- (i) Whether the plaintiff is ryot in respect of the plaint schedule property?
- (ii) Whether the plaintiff is entitled for declaration and consequential injunction against the defendants?
- (iii) Whether the court has no jurisdiction to try the suit?
- (iv) Whether the suit is barred by limitation?
- (v) To what relief?

6. During the course of trial, P.Ws.1 to 3 were examined and Exs.A-1 to A-25 were marked on behalf of the plaintiff. D.W.1, the Mandal Revenue Officer, was examined and Exs.B-1 and B-2 were marked on behalf of the defendants.

7. On a consideration of the evidence available on record, the trial Court held on issue No. 1 that the schedule lands are not ryoti lands and the plaintiff is not a ryot and consequently the plaintiff is not entitled for the relief of declaration or

injunction. On issue No. 3, the trial Court held that the civil court has got jurisdiction to decide the real nature and character of the land. Consequently, the suit was dismissed. Aggrieved by the same, the plaintiff preferred an appeal in A.S. No. 19 of 1995 on the file of the V-Additional District Judge, Tirupati. The learned District Judge, by the impugned judgment dated 01-11-1999, dismissed the appeal and further held that civil Court has no jurisdiction to interfere with the orders passed by the revenue authorities. Hence, the present second appeal.

8. The appeal was admitted in view of the substantial question of law projected through Clauses (a) to (h) at Para No. 2 of the grounds of appeal.

9. The learned Counsel for the appellant/plaintiff would contend that in the absence of any appeal or cross-objections by the respondents, the first appellate Court was not justified in reversing the finding of the trial Court that civil Court has got jurisdiction to decide the nature and character of the land. He would further contend that the suit lands are ryoti lands within the meaning of Section 3(16) of the Estates Land Act and the plaintiff is a ryot within the meaning of Section 3(15) of the said Act and the expression "agriculture" defined u/s 3(1) of the said Act include; horticulture. Therefore, the plaintiff; possession is protected under the provisc to Section 3(d) of the Estates Abolition Act He would further contend that no communication or order is received from the settlement authorities rejecting the claim of the plaintiff's father for issue of ryotwari patta u/s 11(a) of the Estates Abolition Act and, therefore, the said application must be deemed to be pending. He would further plead that classification of the lands as "adavi mita poramboke", during the survey and settlement operations in 1959 is not binding on the plaintiff, as the suit lands are ryot lands as seen from the pre-abolition records also. He would contend that the plaintiff is entitled to seek declaration regarding his preexisting rights in the suit land with a direction to approach the settlement authorities for grant of patta.

10. The learned Government Pleader for Arbitration for the respondents, on the other hand, would contend that the application filed by the plaintiff's father was not pursued by him or after his death by the plaintiff and no appeal or revision was filed against the orders passed by the Assistant Settlement Officer setting the plaintiff's father ex parte. He would further contend that both the Courts below found the suit land to be "adavi mita poramboke" and not cultivable and, therefore, not a ryoti land.

11. It is not disputed that the suit lands, which are situate in R.S. Nos. 157, 158 and 159 were originally co-related to paimash Nos. 276, 277 and 278 and Zamindari patta Nos. 27 and 52. In para 4 of the written statement, the respondents/defendants have specifically stated that no doubt the grandfather of the plaintiff viz., M. Venkatarama Raju held the lands on patta. The said extents of six items mentioned in para 4 of the written statement pertain to paimash numbers 276, 278, 279, 281 to 283 and patta Nos. 27 and 52. It is also not disputed that the estate was abolished and taken over by the Government on 07-09-1950 under the provisions of the Estates Abolition Act, 1948. It is further

admitted that the plaintiff's father viz., Krishnam Raju and two others viz., Narasimha Raju and Govinda Raju filed applications u/s 11(a) before the Assistant Settlement Officer for grant of ryotwari patta and by order dated 29-06-1967, ryotwari patta was, in fact, granted in favour of Govinda Raju for the extents of Ac.4-00 out of Ac.11-57 cents in Sy. No. 158, Ac.4-00 out of Ac.7-45 cents in Sy. No. 159 and Ac.1-50 cents out of Ac.9-35 cents in Sy. No. 160, whereas no such orders granting patta was passed in favour of the plaintiff's father viz., M. Krishnam Raju or the other claimant Narasimha Raju in respect of the remaining land. According to the respondents, when the matter stood posted to 06-05-1966 for enquiry, after several adjournments, the plaintiff's father Krishnam Raju or Narasimha Raju did not attend or participate in the enquiry and they were set ex parte and Govinda Raju alone was present and was examined by the Assistant Settlement Officer and ryotwari patta was granted in his favour. No record is produced by the respondents to show that the claim of the plaintiff's father for ryotwari patta was rejected by the Assistant Settlement Officer.

12. In *P. Sundaramma v. The Board of Revenue A.P. and Ors.* 1973 (1) APLJ 92 (SN), this Court held as under:

There is no provision in the Act which empowers the Assistant Settlement Officer to reject the claims of a party who makes an application u/s 11 of the Act without rendering a decision as to whether that party is entitled or not to a ryotwari patta. The dismissal of a petition filed u/s 11 of the Act for default cannot be said to be a decision rendered on merits, when the statute lays an obligation on the Settlement Officer to hold an enquiry and render decision on merits.

Admittedly, the claim of plaintiff's father for ryotwari patta in respect of the lands u/s 11(a) of the Act was not disposed of on merits by the Assistant Settlement Officer, though a similar application for grant of patta in respect of certain other lands covered by the same R.S. number co-relating to the same paimash numbers was decided on merits and ryotwari patta was granted in favour of Govinda Raju holding that it was a ryoti land and Govinda Raju was entitled to ryotwari patta. There appears to be some contradiction in the stand of the Government in contending on the one hand that the suit land and other lands in the same R.S. numbers and paimash numbers are non-ryoti lands and, therefore, the plaintiff is not entitled for grant of ryotwari patta and is also not entitled for protection under the proviso to Section 3(d) of the Estate Lands Act and on the other hand admitting that ryotwari patta was granted in respect of a part of the land in the same R.S. numbers co-related to the same paimash numbers in favour of Govinda Raju, who is a co-owner. M. Venkatarama Raju, who is grandfather of the plaintiff, is a common ancestor for the plaintiff and Govinda Raju. A statutory duty is certainly cast on the settlement authorities to decide on merits as to whether the plaintiff's father was entitled for grant of ryotwari patta or not in respect of the lands claimed by him. The plaintiff

contends that no notice of enquiry was ever served nor any order communicated either during the life time of his father or subsequently and consequent upon re organization of the settlement office and transfer of cases from Chittoor to Nellore, several cases including the application of plaintiff's father remained unattended. Though the respondents plead that the application of the plaintiff's father was disposed of setting him ex parte for non-prosecution, no record is placed to show the same. Even otherwise any such ex parte order passed by the Assistant Settlement Officer without deciding the claim of the plaintiff's father on merits, is without jurisdiction and hence not valid or binding on the plaintiff.

13. The question as to whether or not the plaintiff is entitled for a ryotwari patta u/s 11(a) of the Act in respect of the suit lands is certainly a matter to be enquired into on merits by the settlement authorities concerned.

14. It cannot for a moment be disputed that the civil Court has certainly got jurisdiction to determine the real nature and character of the land. In *Sri Krishna Salt Works Vs. State of A.P.*, , a Division Bench of this Court following the decision of the Supreme Court in *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, and *Kosuri Venkata Krishnaiah v. Molakala Sidda Reddy* 1990 (1) ALT 163, held that the civil suit is maintainable against the orders passed by the statutory authorities u/s 11 of the Estates Abolition Act.

15. In *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, , the Apex Court held as follows:

...It was observed that there is no provision in Section 11 of the Tamil Nadu Act for an enquiry into the nature and character of the land before granting or refusing to grant patta to the applicant and that a summary decision of this type in an enquiry conducted for revenue purpose could not be regarded as final or conclusive so as to constitute a bar to the jurisdiction of a Civil Court adjudicating upon the same issue arising in a suit for injunction filed by a ryot on the basis of title and/or long uninterrupted possession. It further held that even where the statute gave finality to the orders passed by the Special Tribunal which excludes the jurisdiction of the Civil Court only when there is adequate remedy to do what the Civil Court would normally do in a suit, then only the Civil Court's jurisdiction would be barred....

Following the above decision, this Court held as under:

...the said judgment is no longer good law in view of the decision of the Supreme Court and held that the order passed u/s 11 of the Estates Abolition Act is not final and conclusive and that the jurisdiction of the Civil Court to examine the issue of nature of the land which is incidentally determined by the Tribunal, has not ousted either expressly or impliedly and, therefore, the Civil Court has jurisdiction to entertain the suit and to go into the question of the nature of land and decide the same on the material placed before it. In fact, while there is a provision in the Tamil Nadu Act excluding the jurisdiction of the Civil Court, there is no such provision in A.P. Act. Hence, we respectively agree with the judgment

of the Supreme Court and the decision of our own High Court in Kosuru Venkata Krishnaiah's case and hold that a civil suit is maintainable against the order passed by the statutory authority u/s 11 of the Estates Abolition Act.

The jurisdiction of the Civil Court to go into the question of nature of the land and to decide the same, cannot therefore be disputed in the light of the principles of law enunciated in the above decisions. In the present case, the trial Court has rightly held on issue No. 3 that the Civil Court has got jurisdiction. As rightly held, the jurisdiction of the Court is not ousted to find out the real nature and character of the land, but the first appellate Court by a cryptic observation in para 13 of the judgment held that the Civil Court has no jurisdiction to interfere with the orders passed by the revenue authorities. In fact, the impugned judgment of the appellate Court does (sic. does not) reflect due application of mind to the question of law and fact relevant for consideration, inasmuch as a reading of the said judgment would only show that by narrating the pleadings and contentions of both parties, the appeal was disposed of by one paragraph in para 13, in a laconic way. The observation of the first appellate Court that the appellant did not file any appeal or revision before the Assistant Settlement Officer against the orders passed u/s 11 setting him ex parte by the Assistant Settlement Officer and, therefore, the civil Court has no jurisdiction to interfere with the said orders, is untenable, as the plaintiff contends that no such order was ever communicated to him and the defendants did not place any material to show that such an order was passed and communicated to the plaintiff's father or to the plaintiff. Even if any such order is passed, the same is non est as it was not an order passed on merits by the Assistant Settlement Officer in discharge of statutory obligation to decide the claim for ryotwari patta on merits.

16. The trial Court, however, held on issues 1 and 2 to the effect that the schedule lands are not ryoti lands and the plaintiff is not a ryot and, therefore, the plaintiff is not entitled for declaration or injunction and the appellate Court confirmed the said finding observing that the suit lands are poramboke lands vested in the Government. The plaintiff never admitted that the suit land is a poramboke land. According to the defendants, during the survey and settlement operations, the suit lands were classified as "adavi mitta poramboke". The trial Court also observed that the evidence of D.W.1 and the entries in Exs.B-1 and B-2 also substantiate the contentions of the defendants that the plaintiff and his ancestors have neither title nor possession in the plaint schedule lands and the entire extents were described as "adavi mitta", but not a private land nor a cultivable land. The Courts below ignored the admission of the defendants made in para 4 of the written statement that M. Venkatarama Raju, the grandfather of the plaintiff, held the lands mentioned therein, which admittedly included the suit lands on patta. Consequent upon abolition of the estate, the lands no doubt vested in the government free of all encumbrances u/s 3 of the Estates Abolition Act. Section 3 of the Estates Abolition Act states as follows:

(a)

(b) the entire estate including minor imams (post-settlement) included in the assets of the zamindari estate at the permanent settlement of that estate; all communicable lands and porambokes; other non-ryoti lands; waste lands; pasture lands; lanka lands; forests; mines and mineral, quarries, rivers and streams; tanks and irrigation works; fisheries and ferries, shall stand transferred to the Government and vest in them free of all encumbrances; and the A.P. Revenue Recovery Act, 1864, the A.P. Irrigation Cess Act and other enactments applicable to ryotwari areas shall apply to the estate.

(c) all rights and interests created in or over the estate before the notified date by the principal or any other landholder shall as against the Government cease and determine;

(d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to that estate which the Government may require for the administration thereof;

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta

(i) if such person is a ryot, pending the decision of the SO as to whether he is actually entitled to such patta;

The proviso to Clause (d) mandates that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta - if such person is a ryot pending decision of the SO as to whether he is actually entitled to such patta. Section 11 of the Estates Abolition Act declares - every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of all ryoti lands which immediately before the notified date were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect of which a landholder or some other person is entitled to a ryotwari patta under any other provision of this Act. It is u/s 11 of the Act, the plaintiff's father admittedly filed an application seeking ryotwari patta and his claim as to whether he is actually entitled to such patta or not is required to be determined by the Settlement Officer on merits and pending such decision, a ryot is not to be dispossessed by the Government by virtue of the protection contained in the proviso to Clause (d) of Section 3 of the Estates Abolition Act. The respondents would contend that as the land was not a ryoti land and was only a poramboke land classified as "adavi mitta", the question of affording protection under the proviso to Clause (d) of Section 3 of the said Act, does not arise. The trial Court was also carried away by the description of the land as "adavi mitta poramboke" during the survey and settlement operations conducted in 1959. D.W.1, the Mandal Revenue Officer, in his evidence admitted that he inspected the plaint schedule land and found palmyra and mango trees therein

and also a well and underground pipelines from the well. He further admitted that in Ex.B-2, No. 2 adangal for Fasli 1362 in column 8 pertaining to nature of the crop it is noted as mango and the contents of Ex.B-2 are correct. The testimony of D.W.1 would show that part of the land was cultivated by raising fruit bearing trees. Section 3(1) of the Estates Land Act defines the expression "agriculture" as including horticulture. Section 3(15) of the said Act defines the expression "ryot" as meaning a person who holds for the purpose of agriculture, ryoti land in an estate. Thus, a person who holds the ryoti land even for the purpose of agriculture comes within the meaning of ryot, as defined u/s 3(15). Section 3(16) of the said Act defines the expression "ryoti land" as meaning cultivable land in an estate other than private land but does not include:

- (a) beds and bunds of tanks and of supply, drainage surplus or irrigation channels;
- (b) thrashing floor, cattle stands, village sites, and other lands situated in any estate which are set apart for the common use of the villagers;
- (c) land granted on service tenure.

Thus, ryoti land means cultivable land in an estate other than private land. Only those types of lands which are enumerated in Clauses (a) to (c) are excluded from the purview of the expression "ryoti land". All other lands, other than private lands, come within the ambit of the expression "ryoti land".

17. The question which, therefore, arises for consideration is whether the suit land is a ryoti land or not. Admittedly, the suit land is not a private land. It is also not the case of the respondents/defendants that the suit land falls in the category of the lands specifically excluded in Clauses (a) to (c) of Section 3(16) of the Estates Land Act. When the suit land is not a private land and when the same does not fall within any of the categories of the lands excluded, it certainly becomes a ryoti land.

18. In Sri Krishna Salt Work's case (supra), it was held by this Court as under:

From this, it is seen that even though the land is classified as waste land in the revenue accounts, it is always open to the landholder to get it reclaimed by his own servant or hired labourers and by contract in writing, can convert it into ryoti land and the person who converts, reclaims the waste land, is entitled to prevent any person from acquiring a permanent right of occupancy at least for a period of thirty years from the date of his first cultivation or reclamation.

It was further held as follows:

In President of the Dist. Board, Tanjore v. Kannuswamy Thondam, while considering the ambit and scope of the Madras Land Act, which became A.P. Act after formation of Andhra Pradesh, held that the whole policy of the Act is in favour of raising presumption that a land in an extent is ryoti land. It is further held that Sub-section (4) of Section 6 is clearly confined to waste land which is

admitted to be waste land other than ryoti land and which is sought to be brought under the head of ryoti land by reason of its temporary letting by the landlord for cultivation.

After referring to the judgments in K. Ranga Reddy v. M. Venkatrami Reddy 1980 (2) An.W.R. 332 wherein the scope and ambit of the Estates Abolition Act was considered, this Court further held as under:

From these two decisions, it is seen that while there is a presumption that all the lands in the Estate are ryoti land, the Estates Abolition Act is intended to regulate the new pattern of relationship between the State and the owner with regard to the terms on which the property is to be held.

19. In the light of the principles laid down in the above decisions, it must be held that the policy of the government is in favour of raising a presumption that the land in estate is a ryoti land and notwithstanding that it was classified as a waste land in the revenue accounts a person claiming ryotwari patta can still show that the land is cultivable land and does not fall within any of the excluded categories which are meant for common use and, therefore, is a ryoti land. In Sri Krishna Salt Works's case (supra), it was further held that the authorities are expected to look into the old records to decide the nature of land at the time of taking over the estate, but not the present position. By referring to a decision in M. Ramanamma Vs. Commissioner of Survey Settlement and Land Records, Hyd. and another, wherein after a lapse of 15 years, site inspection took place and the same cannot be relied on to come to a firm conclusion that the entire land is non-cultivable land and it was further held that the report in 1960 submitted by the Subordinate Revenue Officials clearly indicate that was a ryoti land and that it was capable of cultivation. In the present case also, the trial Court appears to have been carried away by the report of Advocate-Commissioner appointed in I.A. No. 99 of 1992 who made a local inspection and found that Sy. No. 157 is to the south of a hillock and the entire land is uneven and not cultivated and it is full of shrubs and uneven growth. The Commissioner further found that Sy. No. 158 is to the south of 157 and there is one well in the said land and Sy. No. 159 is to the south of Sy. No. 158 and the same is partly even and partly uneven. The Commissioner also found a pipeline existing in the land in Sy. No. 159, but the trial Court observed that from the existence of the said pipeline, it cannot be said that the land is irrigated. The observation made by the Commissioner in his report and plan regarding the physical features are based on the inspection held in 1992, whereas application filed by the plaintiff's father for ryotwari patta u/s 11(a) was filed in 1966. As held in M. Ramanamma Vs. Commissioner of Survey Settlement and Land Records, Hyd. and another, , there is every possibility of changes in surface and soil of the land and the situation of the site as available on the date of confirmation of the patta was to be taken into consideration. The testimony of D.W.1 coupled with Ex.B-2 would go to show that the land was certainly cultivable land situate in an estate and the same was admittedly not a private land and is also admittedly in a communal land meant for common use.

When that is so, the suit land would certainly answer the description of ryoti land, as defined u/s 3(16) of the Madras Estates Land Act. The finding of the Courts below to the contra that it is not a ryoti land because the same is classified as "adavi mitta poramboke" during the survey and settlement operations, is clearly erroneous. By such description, the land does not get excluded from the definition of ryoti land u/s 3(16) of the Act. The finding of the Courts below that the suit land is not a ryoti land is, therefore, held liable to be set aside and the same is accordingly set aside. The finding of the first appellate Court that the Civil Court has no jurisdiction to entertain the suit is also set aside. It is, however, left to the jurisdiction of the settlement authorities concerned to decide the question as to whether or not the plaintiff's father was a ryot entitled for a ryotwari patta. As no material is placed before the Court to show that the application filed by the plaintiff's father u/s 11 of the Estates Abolition Act was decided on merits and any order was communicated to the plaintiff's father or to the plaintiff, it must be deemed that the said application is still pending. In the event of the said application not being traced on account of reorganization of the Settlement Office and transfer of case from Chittoor to Nellore, it is open to the plaintiff to again approach the settlement authorities concerned and make an application for issuance of a ryotwari patta, if so advised and on such application being made, the settlement authorities concerned shall dispose of the same on merits without in any way being influenced by any of the observations made hereinabove.

20. In the circumstances, the impugned judgments and decrees of the Courts below are set aside and the suit land is held to be a ryoti land within the meaning of Section 3(16) of the Estates Land Act and it is left open to the settlement authorities concerned to decide on merits, the question as to whether or not the plaintiff is entitled for ryotwari patta in respect of the suit lands, without in any way being influenced by any of the observations made hereinabove.

21. The second appeal is disposed of accordingly. There shall be no order as to costs.