
(1996) 02 AP CK 0010
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 10 of 1987

Mir Taher Ali Khan

APPELLANT

Vs

Chairman, A.P. Housing Board and Others

RESPONDENT

Date of Decision : 23-02-1996

Acts Referred:

Citation : (1996) 2 ALT 674

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : R. Vijayanandan Reddy, M.L. Ramakrishna Rao and K. Purushotham Reddy, for the Appellant; G.P. and C. Poornaiah, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—This appeal is directed against the Judgment and decree dated 12-2-1987 passed by the Additional Chief Judge-cum-I Additional Special Judge for SPE and ACB cases, City Civil Court, Hyderabad in OSNo. 277 of 1984 (Old OSNo. 106 of 1976). The present appellant was the plaintiff and the respondents were the defendants in the suit.

2. The appellant's father Nasab Mir Hasan Ali Khan was the owner and possessor of the suit land known as Ali Cottage at Mukaramjahi Road, Hyderabad, ad-measuring 1,300 Sq.yds. Nasab Mir Hasan Ali Khan gave possession of the said cottage to the appellant on 14th Amardad 1345 fasli by an oral gift. The appellant had been in possession of the said plot of land since then as its owner. Mir Hasan Ali Khan also executed an agreement dated 30th Meher 1347 fasli in favour of the appellant, and the appellant was in possession thereof continuously since 14th Amardad 1345 fasli corresponding to 19-6-1936. Prior to the appellant, Mir Hasan Ali Khan was in possession of the suit property as the successor of his father. The appellant raised construction thereon and carried on auction business under the name and style of "Ali Brothers". However, on 6-8-1971, the competent authority of A.P. Housing Board issued a notice to the appellant, which according to the appellant was illegal. It is the case of the

appellant that he was in possession of the suit land since 14th Amardad 1345 fasli as the owner thereof and he let out the property to tenants. The appellant caused a notice to be issued on the Chairman of the Housing Board, and to the Collector, Hyderabad District on 9-10-1971, but no reply to the notice was received by the appellant. Therefore, the appellant filed a suit for declaration that he was the owner of the suit property as also for consequential injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the said property.

3. The respondent No. 1 by his written statements denied the allegations and averments made in the plaint and contended that originally the property belonged to the Public Works Department of the erstwhile Hyderabad city. By G.O.Ms. No. 361 dated 21-2-1963, the Government transferred the buildings and vacant sites measuring Ac. 22-00 of land as per the details contained in the said GO for enabling the respondent No. 1 to construct a multistoreyed building therein. The Housing Board took possession of the said property on 1-4-1963. A public notice to this effect was published in the local newspapers on 9-4-1963. By the said public notice the occupants were called upon to submit applications within a week from the date of notice for securing temporary lease of the premises of the land occupied by them. Which could be granted after examining each case on merits. A caution was added to the public notice stating that the defaulting persons would be evicted if no application was made within the specified period for temporary lease or permission. The appellant thereupon issued a legal notice dated 19-5-1963 in which, according to the respondent No. 1, the appellant admitted that he was a tenant of P.W.D. in respect of the premises described in the schedule. The appellant caused a further notice dated 2-7-1963 to be issued u/s 80 C.P.C. The appellant also filed a Writ Petition bearing No. 507 of 1963 along with Mothers in this High Court in which the appellant admitted the ownership of the Housing Board in respect of the suit property and claimed no right, title or interest in the houses except as tenants thereof, and also paid rent in respect of the suit property to the Housing Board in the years 1963 and 1964 in the capacity of a tenant. The appellant while admitting the arrears of rent disputed its correctness and failed and neglected to deposit the arrears of rent. The respondent No. 1 therefore terminated the tenancy of the appellant and referred the matter to the competent authority being the Tribunal constituted under the A.P. Housing Board Act with a prayer that the appellant be evicted from the suit premises u/s 52 of the said Act. Further according to the respondents, these facts were not disputed by the appellant in his affidavit filed in support of W.P.No. 574 of 1969. The competent authority after issuing all the notices held enquiry and heard both the sides and passed an order on 25-11-1971 ordering eviction of the appellant from the premises 2/East Mukaramjahi Road, which was the suit property. The appellant was also directed to pay the arrears of rent.

4. The appellant in his application dated 1-1-1969 in reply to the notice issued by the Tribunal admitted that he was a tenant of the suit premises and that he could

not pay the arrears as then: was some dispute regarding the amounts deposited by him and that he was ready and willing to clear all the dues and to execute a fresh deed as per the directions of this High Court in WP No. 507 of 1963. However, the appellant filed an appeal u/s 55 of the Housing Board Act against the order dated 25-11-1971 in case No. 152 of 1968 of the competent authority. The appellate Court being the Chief Judge, City Civil Court, Hyderabad, by his order dated 20-2-1973 in CMA No. 151 of 1971 allowed the appeal and remanded the case to the competent authority with a direction that a decision as to the title be given after making necessary enquiry. The said proceedings were pending on the day when the suit question in this proceeding was instituted.

5. It is further contended by the respondents that the appellant along with 8 others filed another WP No. 574 of 1969 during the pendency of the proceedings before the competent authority and obtained an order of injunction. However, the above writ petition and other writ petitions on the same subject-matter were dismissed by the High Court on 14-7-1971.

6. Notices dated 13-12-1968 and 6-8-1971 were issued by the competent authority under the Housing Board Act, 1956 and the rules made thereunder. Therefore, the legality thereof could not be questioned by the appellant. The respondents denied that the appellant had vacated the suit property and handed over the same to the Housing Board. According to respondent No. 1, the entire suit property belonged to the Housing Board and the appellant was a tenant of the Housing Board in the suit property.

7. As regards the lease of six tenants given by the appellant, respondent No. 1 stated that the appellant unauthorisedly constructed some tenements on the open lands without the permission of the Housing Board during the pendency of the three writ petitions filed by the appellant, and that the appellant had sub-let the premises and committed the breach of contract by doing so. The respondent No. 1 therefore stated in his written statement that the proceedings would be taken by the competent authority to evict the unauthorised persons in accordance with law.

8. It is further contended by respondent No. 1 that the Housing Board was not aware of the notice dated 9-10-1971 as it was not available on their record. It is further contended that the appellant had no cause of action to file the suit and that it was barred by limitation u/s 68 of the Housing Board Act. The appellant with drew the W.P.No. 5724 of 1971 after filing the suit OS No. 157 of 1972 on the file of the IV Assistant Judge, City Civil Court, Hyderabad.

9. It is further contended by respondent No. 1 mat the Court of the Additional Chief Judge-cum-I Additional Special Judge for SPE and ACB cases, City Civil Court, Hyderabad, had no jurisdiction to consider the suit as the subject matter was pending before the competent authority constituted u/s 57 of the Housing Board Act, and that no injunction could be granted to the appellant by reason of the aforesaid provision of the said Act. The competent authority was the

appropriate Tribunal to examine the question concerned in Civil Appeal No. 151 of 1971 on the file of the Chief Judge, City Civil Court, Hyderabad. Further according to respondent No. 1 the appellant indulged into delaying tactics by filing OS 157 of 1971 on the file of the IV Additional Judge, City Civil Court, Hyderabad, and by preferring CRP No. 3 of 1976 before this High Court against the order of the competent authority dated 28-11-1975, and by obtaining interim stay of the order of eviction. It is also alleged by respondent No. 1 that the appellant had also filed WP No. 6321 of 1975 in the High Court, which was pending disposal along with CRP No. 3 of 1976. It was further alleged by respondent No. 1 that after securing interim orders of stay of eviction and making his possession safe, the appellant had been dragging on the matter in O.S.No. 1571 of 1972. For all these reasons, therefore according to respondent No. 1, the appellant's suit was required to be dismissed with costs.

10. According to respondent No. 2, as revealed from his written statements, the suit claim was speculative, vexatious and frivolous and that the appellant had indulged into suppression of material facts. Further according to him the appellant was not the owner of the suit premises at any point of time and that he had never been in possession of the suit property as its owner. The respondent No. 2 further stated that the A.P. Government was intending to beautify the city with multi-storeyed complexes through the Housing Board, and for that purpose transferred the vacant sites and buildings belonging to the Government abutting on both sides of Mukaramjahi Road, Hyderabad to respondent No. 1 under G.O.Ms. No. 361 dated 21-2-1963. By virtue of the said transfer of ownership, the respondent No. 1 became the absolute owner of the vacant site and buildings situated in an extent of Ac. 22-00 of land. Rest of the averments are almost the same as taken by the respondent No. 1 in his written statements.

11. With the above pleadings in view, the learned trial judge framed 24 different issues and eventually dismissed the appellant's suit.

12. The learned trial Judge observed that there was no evidence to show that the property was the ancestral property of the appellant. There was also no evidence to show how the grand-father of P.W.1 acquired the property in question and how it devolved on his own father subsequently. It was also not in evidence that the appellant's father had orally gifted this property to him and why after the oral gift the same had to be engrossed on Ex. A-16. It was also not registered. P.W.1 categorically stated that he did not know how his parents acquired the suit site. On the basis of surmises, according to P.W.1 the learned trial Judge came to the conclusion that the so-called claim of ownership of the suit plot by the appellant was a deliberate attempt to appropriate the property for himself as against the claims of the respondents. The learned trial Judge also took into consideration the fact that no official record was produced to show that any part of the suit property was mutated in the name of the appellant either with the Municipal Corporation of Hyderabad or in the revenue records of the Government in the appellant's own name or in the name of his ancestors. The learned trial Judge

further observed that Ex. A-21 to A25 were all relating to the period around 1975-76. The learned trial Judge also took into consideration the admission made by the appellant that the suit site had no survey number or T.S. number, nor was the land revenue paid at any time either by the appellant himself or by his ancestors. There was also no evidence on record to show how and in what manner the appellant's father or prior to him his grand-father enjoyed the suit property.

13. The learned trial Judge further observed that it was evident from Ex.B-19 that 8/East site was shown as the property under the tenancy of the Government Employees Co-operative Stores which was taken over by the Housing Board and that the name of the appellant was nowhere shown as the person in possession at any point of time. The Municipal permissions in Exs. A-6 and A-20, the plan enclosed being Exs.A-1 and A-5 as well as the corresponding plan in Ex. X-1 all relate to plot No. 2/East and not related to the suit site bearing Municipal No. 5-4-367/1, and in fact, according to the learned trial Judge, the property described as 5-4-367 was shown as the government property in the registers of the Municipal Corporation, Ex. B-20. The entries in Ex.B-20, according to the learned trial Judge, demolished the entire edifice of the appellant's case based on the plea that what was in his possession was the land bearing Municipal No. 5-4-367/1 which was his own property and did not relate to the lease-hold property of the Housing Board. The appellant had apparently taken advantage of the letters of the Valuation Officer Exs. A-21 to A-25 mentioning the inconsistent number as 5-4-367/1 and 5-4-367/1,2 and 3 to base his claim of ownership of the plot which manifestly was 2/East.

14. The learned trial Judge also considered the fact that originally the lease deed, Ex.B-25, under which the plot 2/East, CIB, an extent of 2403 Sq.yds, was leased to the appellant as far back as 3rd Meher 1357 fasli. He also observed that Ex. B-24 was the plan showing the actual plot 2/East in the Possession of the appellant and that Ex. B-29 was the consolidated plan of the buildings taken over from the PWD by the Housing Board on 1-4-1963. He further observed that even according to the admissions made by the appellant in his evidence plot No. 8/East could not be the plot which was taken by him on lease and subsequently surrendered. He further observed that the municipal permission was actually given for construction in the plot bearing No. 5-4-372 as revealed from Exs.A-6 and A-20, and that the rents were paid for plot No. 2/East as disclosed from the certificate issued under Ex.B-15.

15. The appellant was shown as tenant only in respect of 2/East plot from 1357 fasli on a monthly lease rent of Rs. 85-69 ps, as is evident from Ex.B-13. He also took into consideration the fact that the correspondence between the appellant and respondents was in respect of plot 2/East in relation to the payment of correct rents as seen from the letter addressed to the Executive Engineer, Buildings Division, PWD, Hyderabad with copy marked to the Chairman of the Housing Board on 15-8-1963 (Ex.B4). The learned trial Judge also took into

consideration the fact that the petition dated 9-10-1971, Ex. A-17, made by the appellant was a direct reply to Ex.A14 where for the first time the suit property was claimed as the appellant's own property having been obtained by way of a gift from his father in 1345 fasli and 1347 fasli. The property was described only as Ali Cottage without any reference to the Muncipal number or its boundaries, and according to the learned trial Judge, this was quite intriguing. In the notice, Ex.B-3, dated 19-5-1963 also the appellant described himself as a tenant of the Housing Board in the said premises, and that there had not been even whisper in the record prior to Ex.A-17 that the appellant was the owner of the house and not the tenant. In fact the appellant admitted in his oral testimony regarding the lease of 2/East plot within the specified boundaries corresponding to those pleaded by the Housing Board. The appellant stated in his oral evidence that the portion marked Ex.A-33 in the plan Ex. A-13 was the one which was in his possession as the lessee of the Housing Board and which was surrendered by him subsequently under Ex.A-19. The appellant also admitted as observed by the learned trial Judge that the plot shown as plot No. 8 in the plan while the suit land was given plot No. 2 in Ex.A-13, portion of which was marked as Ex.A-34. The appellant in his cross-examination recorded on 15-12-1982 admitted that what he had taken on lease from the Housing Board in 1948 was plot No. 2/East on a monthly rent of Rs. 100/- and that the extent of the land was 2403 Sq.Yds. In the consolidated plan, Ex. A-13, the portion marked as Ex.A-33 corresponding to Plot No. 8 was admitted by P.W.I to be the only plot in his occupation and no other site was stated to be in his possession as seen from Ex. A-13. Further according to the learned trial Judge, Ex.A-19 was a manipulated document calculated to create evidence of the hair splitting separate identity of the suit property claimed by the appellant. He further observed that the date of Ex.A-19 could also be viewed with suspicion as it was so timed, to start a new chapter of the so-called claim of proprietaryship to the suit property, abandoning the tenancy after P.W.I had failed to succeed in the proceedings taken by him in various Courts, including the High Court. The learned trial Judge also took note of the fact that same issue were raised in writ appeal Nos. 639 of 1976 and 55 of 1977, the order of which was marked as Ex. B-12 on the file of the High Court of A.P. in which it was held that:

"Our learned brother Ramachandra Rao, J, has rightly pointed out in his judgment that a serious dispute as to title exists as regards the property called "Ali Cottage" bearing No. 5-4-367/1 abutting the Mukaramjahi Road in Hyderabad.....It was also pointed out to us that the property of the extent of 2400 Sq.yds. Which was taken by him on lease in 1948, bears No. 5-4-372 and according to Mr. Shiv Shankar, this property which was taken on lease from the Government i.e. the Public Works Department of the erstwhile Hyderabad State, in 1948 was a distinct and separate property from "Ali Cottage". All these questions and the particulars pertaining to the questions of ownership will have to be decided ultimately by the Civil Court before which a suit for establishing title is pending."

16. Eventually, the learned trial Judge recorded a finding that from the scrutiny of the voluminous record he was thoroughly convinced that what was claimed by the appellant as being in his possession by means of gift under Ex. A-16 was not anything but the lease-hold property bearing Plot No. 2/East, originally leased from the erstwhile Government of Nizam in 1948, which subsequently devolved on the Housing Board by virtue of Exs. B-1 and B-2. The appellant having asserted and identified himself throughout as tenant of the Housing Board, cannot now turn round and say that he was the owner of the property, indulging in the jugglery of the boundaries to locate and identify the property and thereby their splitting the issues by taking advantage of Exs.A-21 to A-25 and creating a document of the nature of Exs. A-19 toA-25and creating a document of the nature of Ex. A-19 showing some sort of surrender which he had totally failed to establish, and therefore, the learned trial Judge came to the conclusion that the gift pleaded by the appellant under Ex. A16 was not true and genuine, and the appellant was found to be in possession of the suit property only as lessee of the erstwhile CIB and the successor A.P. Housing Board and not the owner thereof.

17. One of the main documents on which the appellant relies in support of his contention that the suit property was the property of his ownership is the document Ex. A-16, claimed as the gift made by Mir Hasan Ali Khan. It is stated in Ex. A-16 inter alia that

"one piece of land opposite Akdam Khana admeasuring about 2,300 Sq.yds., bounded by the boundaries mentioned here under, which is my own and possessed, and I was exclusively in possession and enjoyment of the same as absolute owner, having gifted orally on 14th Amarded 1345 fasli, to my son Taher Ali Khan, delivered the possession of the same but no document was executed. My son Taher Ali Khan is the absolute owner and possessor from the date of the gift. My heirs, successors, representatives and assignees whatsoever shall have no any kind of ownership and possessary right in respect of this property, except him. After careful consideration I have executed this deed in favour of my son Taher Ali Khan.

18. The learned trial Judge observed in his impugned judgment that there was no reference to house numbers or description of the property in the alleged oral gift of the house by the father of the plaintiff and that no such reference could also be found in Ex. A-16 and recorded a conclusion that the gift pleaded by the plaintiff (appellant) under Ex. A-16 is not a true and genuine document. The learned trial Judge also observed that Ex.A-16 referred to the property which was no other than the leasehold property bearing plot No. 2/East, originally leased from the erstwhile Government of Nizam in 1948, which subsequently devolved on the Housing Board by viture of Exs.B-1 and B-2.The learned trial Judge also observed that Ex.A-16 was not a registered document and that the appellant did not produce any evidence to show whether the property was mutated in his name in the revenue records after the oral gift, and on that account also the learned Trial Judge observed that the version of the appellant that the property

was gifted to him orally by his father cannot be believed.

19. From the perusal of the English translation of the writing Ex. A-16 in Urdu, it does appear that there is no reference to either the survey number or house number of the property alleged to have been gifted to the appellant by his father. Ex. A-16 merely describes the property as a piece of land measuring about 2,300 Sq.yds. situated opposite Akdam Khana. The boundaries of the property have been described in Ex. A-16 as follows:

North : House of neighbour.

South : Property of Lalgirji.

East : Garden to Lalgirji.

West : Road.

However, the boundaries so mentioned do not identify precisely the property allegedly gifted. The declaration of the gift does bear the signature of three witnesses over and above the signature of the donor. However, the document does not fulfil all the salient features of oral gift. According to Mohammedan Law it should have been recited in the declaration Ex. A-16 that the gift was made by the donor to the donee in the presence of two witnesses and that the donee had accepted the gift. The declaration Ex. A-16 is conspicuously silent about the same. Both on account of the ambiguity with regard to the identification of the property and non-compliance with the salient features of oral gift, the appellant's claim of ownership of the disputed property on the basis of the plea of oral gift cannot be accepted unless the same stands corroborated by other evidence on record.

20. The learned counsel for the appellant drew the attention of the Court of Ex. A-21 which is a letter addressed by the Valuation Officer/Circle No. VI, M.C.H. to the appellant in which it is stated that for determining the rateable value of the building/portion of the building bearing Assessment No. 5-4-367/1, Land bearing No. 5-4-367/1, the appellant was called upon to submit certain information under Sub-section (1) of Section 213 of Hyderabad Municipal Corporation Act, 1955. The learned counsel also drew the attention of the Court to Ex. A-22 dated 27-2-1976 by which the Valuation Officer communicated to the appellant that the gross annual rental value of "Your" property bearing No. 5-4-367/1 had been assessed at Rs. 5,400/- with effect from 1-4-75, and that the annual tax was fixed at Rs. 1,691-28. Ex. A-23 dated 9-2-75 is a notice issued to the appellant by the commissioner, Municipal Corporation of Hyderabad, to which the learned counsel drew by attention. It is stated in the said notice that in exercise of the power vested in the Commissioner, M.C.H., under the Hyderabad Municipal Corporation Act, 1955, the assessment in respect of House No. 5-4-367/1 had been fixed at Rs. 5,400/-. Ex. A-25 dated 13-3-1975 is the Challan from the appellant to the Manager, State Bank of Hyderabad, tendering a sum of Rs. 53/- for crediting to the concerned head. Prior to the same, the Municipal Corporation

issued a notice of demand, Ex. A-24 dated 9-2-76 to the appellant stated that the lands held by you (appellant) in the village of Urban-Taluq, District Hyderabad, for the year 1974-75 as per particulars shown in Ex. A-24.

21. It is true that the above exhibits could be read in support of the appellant's contention that he was in possession of house bearing No. 5-4-367/1, 2 and 3. However, the same cannot be treated as conclusive evidence to believe that the appellant was the owner of the property or whether the property was in his possession as a tenant or as the owner.

22. The Learned counsel for the appellant submitted that the property bearing House No. 5-4-367/1, 2 and 3 was the one which was known as "Ali Cottage", which according to him was the property which was gifted to the appellant by his father and that the one which was leased out by the Government through P.W.D. was the property bearing No. 5-4-372 which was situated near and adjacent to Lalji Meghji, Mukharamjahi Road. However, I fail to appreciate how a word of mouth could be believed that one property was of the ownership of the appellant and the other property was the property which was leased out by the Government.

23. It was further submitted by the learned counsel for the appellant that the property lost identity beyond recognition by lapse of time owing to (1) nearness, (2) widening of road, and (3) emergence of various buildings, which caused a confusion.

24. The learned counsel for the appellant also drew my attention to the local Urdu daily newspaper "Subah Deccan" dated 4-8-41, which gave a notice of auction to be held in the premises in question.

25. Ex. A-2 also notifies in the daily newspaper Nizam Gazette dated 23-7-43 that auction would commence from 11-00 A.M. and on the next day from 2-00 P.M. Ex. A-3, is the notice dated 5-7-43 of the same nature notifying the auction sale of furniture, crockery, silk and cotton clothes, Benaras and embroidery sarees, radio sets etc.

26. These are indeed notices, which appear to have been issued by Ali Brothers as Auctioneers, for auction sale to be held of the disputed property. However, the same cannot be treated as a strong evidence, which could lead to no conclusion other than that the disputed property was of the ownership of the appellant. It is also true as submitted by the learned counsel for the appellant that the aforesaid notices were sufficient to establish that the appellant was carrying on business of auction sales from that premises in the name of "AH Brothers"; but how an inference with regard to ownership of the appellant could be drawn remains unanswered.

27. The learned counsel thereafter drew the attention of the Court to the plan Ex. A-35, which according to him was submitted with an application dated 12-4-46 to the Municipality for obtaining approval in respect of additional

construction proposed to be raised on the suit site belonging to the appellant. The plan Ex. A-35 does give a reason to believe that the property in question was of the ownership of Nawab Taher Ali Khan, son of Mir Hasan Ali Khan, as he has signed the application in his capacity as the landlord. The plan is described as one for putting up the proposed Hall at Ali Cottage situated at Mukharamjahi Road behind Mozamjahi Market, and that it was caused to be produced on the record of this case from the file of the Metropolitan Magistrate, Hyderabad on 24-7-78, which was mentioned as Ex. D-2 in C.C.No. 1189/73. It is therefore true that the plan Ex. A-35 could not be treated as a concocted document. However, the plan does not contain either on the front side or on the reverse side any endorsement of any officer of the Municipality according to the additional proposed construction of Hall at Ali Cottage. The plan bears, apart from the signature of Taher Ali Khan as landlord, the signature of one Anwar Azam as the person who drew the plan, and his signature dated 12-2-46, But I am afraid, the plan Ex. A-35 does not render necessary satisfaction that the appellant was the owner of the premises shown in the plan in the absence of any endorsement by any officer of the Municipality.

28. The learned Counsel for the appellant thereafter referred to Exs. A-6 to A-9 in support of the appellant's version. Ex. A-6 is the Extract of Book No. 57 dated 16-12-65 from the record of the Municipal Corporation of Hyderabad, which reveals that permit No. 57/54 of 1965 was granted and that the file in respect thereof was 572/5/65. Mr. Taher Ali Khan's name is shown as the name of the applicant in Ex. A-6. The date 24-11-65, is stated to be the date of application. The locality is shown to be Mozamjahi Market, and 5-4-372 is shown as house number in the said exhibit, and it is stated in the last column that the permission is accorded on the conditions enumerated in the plan/sketch. However, as seen above, if the plan Ex. A-5 was to be considered as the one covered by Ex. A-6, the conditions would have been found enumerated in the plan/sketch, but Ex. A-35 does not contain any condition. A note is also required to be taken of the fact that in Ex. A-6 itself it is categorically mentioned as condition No. 3 that:

"This permit will neither establish the ownership nor effect the ownership over the land."

29. With these facts in view, therefore, Ex. A-6 read with plan Ex. A-35 does not help us in determining whether the appellant's ownership stood established on the strength of the particulars mentioned in Ex. A-6 read with Ex. A-35.

30. For the same reasons, Ex. A-7 dated 5-1-76 being the notice served by the Municipal Commissioner on Ali Brothers, Auctioneers, does not give us a definite reason to believe that the appellant was the owner of the same. Same is the case with Ex. A-8 dated 7-1-76, as also with Ex. A-9 dated 8-1-66, which are notices served upon Mir Taher Ali Khan, by the Municipal Corporation.

31. The learned counsel for the appellant further drew my attention to the order of the High Court, Ex. A-10 dated 10-4-68 in WP No. 35 of 1966, by which the

Court observed that no reason existed to believe that the commissioner would demolish the entire wall without examining as to what extent the construction was authorised, and therefore, the writ Petition was dismissed with costs. No observation is made in the above order which could be treated as lending any credence to the appellant's version that he was the owner of one plot and the tenant of another in the disputed premises.

32. On the other hand, by G.O. Ms. No. 361 dated 21-2-63, the Government transferred 22-00 acres of land, including the structures thereon to A.P. Housing Board for construction of multi-storied buildings, and for information of the occupants of the transferred area a public notice was issued in Deccan Chronicle and other local newspapers on 9-4-63 calling upon the occupants to submit applications within one week in a prescribed form for securing temporary lease of the premises occupied by them. It was clarified in the said public notice that the defaulting persons shall be evicted if no application is made within the time specified therein. In response to the same the appellant issued a legal notice dated 19-5-63, in which the appellant admitted that he was a tenant of the P.W.D. in respect of the premises prescribed in the schedule. Another notice dated 2-7-63 on behalf of the appellant was also served u/s 80 C.P.C., as stated in plaint para 3 in which it was inter alia contended as under:

"My client Nawab Mir Taher Ali Khan, Proprietor, M/s. Ali Brothers, Auctioneers, Mozamzahi Market, Hyderabad obtained CSB Plot No. 1 /East on lease from your department under lease deed executed by him on 30-8-48."

In paragraph 4 of the notice dated 19-5-63, Ex.B-3, it was stated that the appellant was running a show room in the premises held by him as a tenant and described in the schedule annexed to the notice since last more than 25 years. The property described in the schedule to the notice is as follows:

"House bearing Municipal No. 5-4-71 alongwith land measuring about 2100 Sq.yds, situated at Mukharamjahi Road, Hyderabad. Adjacent to Lalji Meghji".

While claiming lease in respect of the said property, the appellant nowhere clarified in the said notice that the adjoining premises bearing Municipal No. 5-4-367/1 was the property of his ownership.

33. It is also pertinent to note that W.P. No. 507 of 1963 was filed by the appellant along with fourteen others before this High Court, seeking to restrain the Housing Board from interfering with their possession of their houses and from evicting them from the same. The High Court in its order observed that the learned counsel for the petitioners frankly stated that the petitioners had to execute lease deeds in favour of the Housing Board because the Housing Board was the current landlord. The petitioners had not claimed any right or interest in the houses except as tenants thereof. It is further observed in the said order that his position was not disputed, and the only quarrel raised by the learned counsel for the petitioners was that the notice issued by the Housing Board, called upon the petitioners to execute temporary leases. From this writ petition also it could

be seen that the present appellant did not claim ownership of the disputed property.

34. It was also contended on behalf of the respondents that the plaintiff paid rent in respect of the disputed premises in 1963 and 1964, and therefore, he was estopped from pleading ownership. The appellant merely disputed the quantum of money due as arrears of rent, but did not dispute the fact that the rent was indeed in arrears. Further it appears that the respondent No. 1 terminated the appellant's tenancy and filed eviction suit u/s 52 of the A.P. Housing Board Act, 1956. It was submitted on behalf of the respondents that these facts stood corroborated by the petitioner's affidavit in WP No. 574 of 1969.

35. From these and other submissions made on behalf of the appellant and the respondents, it clearly emerges that the appellant was certainly in occupation of certain premises in the disputed area of land which was acquired by the Government for allotting the same to the Housing Board for raising multi-storied buildings, but none of the documents produced in evidence by the rival parties give us a clear indication of fact that the property which was in the possession of the appellant on lease was the one denoted by Municipal No. 5-4-372 or whether other property denoted by Municipal No. 5-4-367/1, was the property of the appellant's ownership. The burden was indeed very heavy on the appellant to render complete satisfaction to the Court that the property bearing Municipal No. 5-4-367/1, was the property of the appellant's ownership and that there was no ambiguity about its identity amidst the vast area of land which was acquired by the Government for enabling the Housing Board to raise construction thereon. The appellant's claim of ownership by virtue of the property having been gifted by his father is not quite convincing. The appellant's claim of ownership by virtue of gift cannot be readily accepted because the appellant failed to satisfy the Court why did it become necessary for his father to transfer the property to him during his life time by way of gift when nothing had been brought on record by the appellant to believe that if that property without being specifically gifted was left to be inherited after the death of Mir Hasan Ali Khan any other person would have come forward to claim any share in that property on the death of the appellant's father. In the declaration of gift, Ex. A-16, it is merely stated by the donor (appellant's father Mir. Hasan Ali Khan) that he was exclusively in possession and enjoyment of the property as absolute owner having gifted orally on 14th Amardad 1345 fasli to his son Mir Taher Ali Khan. It is further recited in the declaration of gift that his (donor's) heirs, successors, representatives and assignees, whatsoever shall have no kind of ownership and possessory right in respect of the property except his son Taher Ali Khan.

36. The appellant's oral evidence was recorded in OS No. 277 of 1984 on 11-6-90. In his deposition also he did not clarify whether any adverse claim was likely to be raised in the disputed property which motivated his father to give away the property to him in gift. In his examination-in-chief, he did say that he started business in the suit property in the name of Ali Brothers in the year

1940. However, he did not produce any partnership deed showing the names of his brothers as partners in "Ali Brothers".

37. It is also pertinent to note that the appellant admitted in his cross-examination while dealing with the fact that one out of the two properties was in his possession as the lessee of P.W.D. The appellant admitted in his cross-examination that except the site which is shown in plan Ex. A-13 was shown to be in occupation of Ali Brothers. No other site was shown to be in possession of Ali Brothers. This admission dealt a serious blow to the appellant's case that he was in possession of another site in the aforesaid area as the owner thereof. Subsequently, he voluntarily made a statement that Ex. A-13, plan was not correct. However, he did not say so in his examination-in-chief. In fact, he stated in clear terms in his examination-in-chief that Ex. A-13 was certified copy of the plan submitted by the defendant in Chief Judge's Court in CMA No. 126 of 1980. Therefore, the voluntary statement made by him in his cross-examination that plan Ex. A13 was not a correct plan cannot be accepted. Certain other admissions made by him in his cross-examination are also worth noting which are as follows:

(1) I did not file any documents of title evidencing that my paternal grand father had title to the suit property.

(2) I do not remember the date of gift deed. It is not a registered gift deed. The gift deed is not marked. I have filed only the memorandum of oral gift in respect of the suit land, and it is marked as Ex. A-16.

(3) The distance between the plot which I took on lease and the suit land is about 200 yards.

(4) It is a fact that all the government lands are transferred to the A.P. Housing Board and notification was issued to that effect.

(5) It is not true to say that I mentioned in the notice that I am a tenant of the suit land paying a rent to the Government. The land referred to by me in the said notice is not suit land, but some other land of the Government.

(6) It is not true to say that the land mentioned by me in Ex. B-3 is no other than the suit land.

(7) The plot which I surrendered was plot No. 8 Ex. A-33 in the plan Ex. A-13.

(8) The suit land is given plot No. 2, Ex.A-34 in plan Ex. A-13.

38. The above admissions to a great extent damage the appellant's claim of ownership to the disputed property. Admittedly the declaration of gift was not registered, and there was no other registered document or for that matter any other document evidencing the appellant's title of ownership to the disputed property, and therefore, it was incumbent upon the appellant to produce the extracts from the revenue records to show how this was an ancestral property which the appellant's ascendants inherited with the passage of time. The

appellant could ill-afford to spare this evidence from the suit proceedings. In fact, under the given facts and circumstances, when the appellant's title had assumed a doubtful proposition, it was necessary for the appellant to produce every mutation entry in respect of the disputed property together with the certified copy of the document on the basis of which each mutation entry was made so as to satisfy the Court regarding the manner in which the disputed property came to be inherited by the appellant's father, but the appellant has intriguingly maintained silence about the same, which as stated earlier, the appellant could ill-afford to do.

39. We can also not lose sight of the fact that under Sub-section (1) of Section 347 of Mohammedan Law, when a person governed by Muslim Law signifies his willingness to make to another, an immediate and unconditional transfer, without consideration, of the ownership of existing and specified property, he is said to make a declaration of hiba. Under Sub-section (3), the person making the declaration of gift is called the "donor", the person in whose favour the gift is declared is called the "donee", and the property or rights of which the gift is made is or are called the "subject of gift". Under Sub-section (4), when the donee signifies his assent to the declaration of gift, he is said to accept the gift. Under Sub-section (5), a declaration of gift is said to be valid when the transfer of property or rights purported to be made, is capable of being given effect to in accordance with law, so that after the completion of the gift, the donee is entitled to retain or to be placed in possession of the said property, or has the rights vested in him, which are so purported to be transferred.

40. It would thus appear that under Sub-section (1) of Section 347 of Mohammedan Law, the subject of gift has to be a specified property, which condition does not stand satisfied from the declaration of gift, Ex. A-16. Neither the survey number nor the municipal number of the property in question has been stated in the Declaration. The Boundaries only have been stated at the foot of the declaration, but these boundaries are also vague and unintelligible for lack of survey numbers or municipal numbers in respect of the property situated on the boundary lines of the disputed property.

41. u/s 348 of the Mohammedan Law, on the donor making a declaration of gift, the donee accepting the gift, and the donor transferring possession of the subject of the gift to the donee without any consideration, the gift is complete. In the instant case, the declaration of gift is totally silent about the fact that the donee accepted the gift, and therefore, the gift cannot be treated as complete u/s 348. u/s 349 of the Mohammedan Law, where there is no real and bona fide intention to transfer the ownership of the subject of gift, an alleged gift may be of no effect, and no property transferred from the donor to the donee.

42. u/s 350 of the Mohammedan Law, neither the declaration nor acceptance of gift governed by Muslim Law need be made in writing, whether the subject of the gift is movable or immovable. But registration is necessary, where (a) there is an instrument of gift, (b) of immovable property, (c) situate in a district in which

any of the Act relating to registration has come into force, if such document has been executed on or after the date on which such Act came into force in the said district. It is further provided that no such document, unless it has been registered, will affect any immovable property comprised therein, or be received as evidence of any transaction affecting such property.

43. Admittedly the property is situated in the city of Hyderabad. The Indian Registration Act came into force in the year 1908. The declaration, Ex. A-16 in the instant case was nothing short of an instrument of gift as stated in the concluding sentence of Ex. A-16. The oral gift was made on 14th Amardad 1345 fasli, and the declaration was made on Meher 1347 fasli, which is roughly 1936, before which the Registration Act had already come into force, and therefore, according to the requirement of Section 350 of the Mohammaden Law, the registration was compulsory. But no registration is done, and therefore, the declaration of gift, Ex. A16 cannot be received as evidence of any transaction affecting the suit property.

44. On legality of gift, the Calcutta High Court in the case of King-Emperor Vs. Monmotha Nath Mitter and Others, observed that the essentials of a gift under the Mohammaden Law were a declaration of hiba by the donor an acceptance, express or implied, of the gift by the donee, and delivery of possession of the property, the subject-matter of the gift, according to its nature. A simple gift can only be made by going through the above formalities and no written instrument was required. It is further observed that the position under the Mohammaden Law was that a gift, in order to be valid, must be made in accordance with the forms stated above; and even if it was evidenced by writing, unless all the essential forms were observed, it was not valid according to law. This being so, a deed of gift executed by a Mohammaden was not the instrument affecting, creating or making the gift, but a mere piece of evidence and did not require registration within the meaning of Section 17, Registration Act.

45. In our discussion on gift in this case we have observed that there was no acceptance of the corpus of the gift as required by law, and therefore, the gift was not complete. In the case before the Calcutta High Court, it was observed that the acceptance could be express or implied. Express acceptance, though not implied nor proved, the question arises whether by virtue of the fact that the appellant claimed to be in possession of the property was sufficient to indicate implied acceptance of the gift. In my opinion, such inference of implied acceptance was permissible in cases where the donee entered possession of the gift property after the property was gifted by the donor. In our case it appears that the donee (appellant) claimed to be continuously in possession of the property even prior to the date of the gift, and therefore, the overt act of acceptance was absent, which created an infirmity on treating the gift as complete according to the requirement of law.

46. In the above decision, the Calcutta High Court also observed that u/s 17 of the Registration Act, an instrument of gift was required to be compulsorily

registered. By the expression "instrument of gift of immovable property", it was understood that an instrument or deed which created, made or completed the gift thereby transferring the ownership of the property from the executant to the person in whose favour it was executed. If it was a document of transfer of immovable property it must be registered under the provisions of the Registration Act.

47. S.H. Sheth, J, of this High Court in the case of Subbamma v. Penchalaiah 1977 ALT 534, held as follows:

"Plaintiff cannot get declaration of his title merely because defendant has failed to prove his. Burden of proving title which the plaintiff claims lies on him and if he failed to discharge that burden his suit must fail irrespective of whether the defendant has proved his title to the land in question or not. The report of the Commissioner does not have any evidentiary value except to show that he saw on the site at the time when he inspected it. Except what he personally saw existing on the site at the time when he inspected the land no other fact with reference to the report can be proved. The Commissioner's report cannot be used only for the limited purpose of appreciating the evidence which the parties have led with reference to what he personally saw on the site when he inspected the land. It can never prove title or possession. Therefore, the appellate decree passed suffers from two vital infirmities which in the facts and circumstances of the case, cannot be cured."

48. In the instant case we have elaborately discussed how the appellant failed to prove his title in respect of the immovable property, and therefore, according to the settled principles of law, which is further strengthened by the above decision of this High Court, no declaration could be given as sought for by the appellant that he was the owner of the disputed property at any point of time.

49. It is also a settled principle of law that when a question raised depends upon an elucidation of further facts not disclosed in the statement already filed, the Court would be reluctant to allow a party to raise such a plea at the time of arguments. This principle was reiterated with greater force by the Supreme Court in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, , of course, the Supreme Court was concerned with a question whether in a petition under Article 32 of the Constitution of India, further facts could be elucidated, which were not disclosed in the statements already filed, and it was held that in a petition under Article 32 of the Constitution of India, no party could be allowed to raise such a plea at the time of arguments. However, in the case before us, it was not pointed out by the learned counsel for the respondent whether any plea was taken during the course of arguments, which was not taken at the first instance at the time of instituting the present suit, and therefore, we are not seriously concerned with any such proposition in the present case.

50. Recapitulating the discussion on the disputed aspects of this litigation, it

would be summed up that the appellant's case suffers from certain serious infirmities, such as the omission on the part of the appellant at the trial to satisfy the Court under what circumstances it became necessary for the appellant's father to transfer the property to the appellant by way of gift without disclosing the cause which motivated his father to gift away the property to the appellant in 1936. In the light of enormous possibility that even if the property was not gifted, the appellant would still have inherited the same from his father without any overt act on the part of the father; the failure on the part of the appellant to produce any evidence from the record of rights to show that his father was the absolute owner of that property, and the manner in which the appellant's father acquired the ownership rights in respect of that property; the absence of any survey number and the ambiguity with regard to the boundary description of the property contributed substantially to the weakness of the appellant's case at the trial. The incidental propositions to the effect that the business in the name of "Ali Brothers" for conducting auction sales was carried on from the disputed property and/or that the municipal taxes in respect of the disputed property were paid by the appellant could not be treated as germane to the ownership title or to be in the nature of a conclusive evidence to record a positive finding with regard to the ownership of the immovable property. This evidence was only in the nature of corroborative evidence and not a substantive evidence, such that on the strength of the same, the appellant could be invested with the title of immovable property without anything more in support of the ownership title, and in fact, not a single document could be picked up from the plethora of oral and documentary evidence which could be attributed the character of an unimpeachable evidence of title to the immovable property. Construction plans approved by the Municipal Corporation in the name of the appellant also do not go to the rescue of the appellant so as to treat as conclusively establishing the ownership title of the appellant. It could only serve as an indication of the fact that the appellant was in the use and occupation of the property in question, but it is not, and cannot be treated as evidence of ownership title to the property. Lastly, even if it is believed that the disputed property was gifted to the appellant by his father, the declaration of gift, Ex. A-16 was not complete in itself, and therefore, the version of gift also does not carry the appellant any further than the fact that he was merely an occupant of the property. It is pertinent to note that the appellant had not pleaded or urged the title on the basis of adverse possession extending over a period of more than 12 years, and in that view of the matter, if the gift is believed not to be legal and proper, and not capable of investing the appellant with the ownership title, the ownership claim of the appellant collapses and divests the appellant of any ownership claim of the disputed property. The learned trial judge in one form or the other has extensively dealt with all these infirmities confronting the appellant's title, and on the detailed scrutiny of the oral and documentary evidence, I am firmly of the opinion that no cause has come to surface, which could warrant any interference with the findings recorded by the learned trial Judge. Hence the appeal is dismissed. No costs.