
(2000) 04 AP CK 0082
In the Andhra Pradesh High Court
Case No : SA No. 688 of 1999

Mohd. Jeelani

APPELLANT

Vs

Syed. Jamrouddin and others

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952 — Section 2, 3
Andhra Pradesh (Telangana Area) Atiyat Enquiries Rules, 1952 — Rule 3
Constitution of India, 1950 — Article 14, 19(1)
Hyderabad Abolition of Inams and Cash Grants Act, 1954 — Section 2
Waqf Act, 1954 — Section 2

Citation : (2000) 3 ALD 752 : (2000) 3 ALT 766

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. Serla Pandari, for the Appellant; Mr. C.V. Ramulu, for the Respondent

Judgement

1. The short question involved in this second appeal relates to the jurisdiction of the civil Court to interfere with the decision of the Atiyat Court appointed under the A.P. (Telengana Area) Atiyat Enquiries Act, 1952. For proper appreciation of the question involved, it is necessary to state a few facts.

2. There is a Darga known as "Ahmad Khan Shaheed Shareef" situated at Bodhan, For rendering the services in the said Darga, an extent of Acs.1.14 guntas of land was originally granted in favour of three individuals jointly, namely, Anwar Shah, Ameena Bee and Ahmed Ali Shah, by Muntakhab Bearing No.18914 dated 5th Rajab 1300 Hijri (Ex.A1). As could be seen from the material on record, after the death of the original grantees succession was sanctioned in the name of Md. Ghansi alias Md Khaja son of Mohinuddin Shah in File No.7/58 of 1349 Fasli corresponding to 1939 AD. It may be mentioned that the said Md. Ghansi was the father of the first defendant, appellant herein. Subsequently succession was also granted in favour of Khairuddin, father of plaintiffs, respondents herein in Fasli 1351 corresponding to the year 1941 AD (vide

Ex.A2). On the death of Mohd. Ghansi on 24-12-1958, the first defendant-appellant applied to the Sub-Collector, Bodhan, the Atiyat Court and Competent Authority, under the provisions of A.P. (Telengana Area) Atiyat Enquiries Act, 1952, to grant succession in his favour. Khairuddin, father of plaintiffs-respondent, opposed the said claim of the first defendant-appellant. The Atiyat Court, after due enquiry, by its proceedings dated 24-10-1979 (Ex.A4) overruled the objections of Khairuddin and granted succession in favour of the first defendant-appellant. Questioning the said order, Khairuddin preferred an appeal before the Joint Collector, Nizamabad. During the pendency of the said appeal Khairuddin died on 9-1-1980 and the plaintiffs-respondents, who are his sons, came on record as his legal representatives. By order dated 9-3-1981 (Ex.A5), the Joint Collector dismissed the appeal and confirmed the order of the Sub-Collector granting succession to the first defendant-appellant. Thereafter the plaintiffs-respondents filed an independent application once again before the Deputy Collector, Bodhan who issued a memo dated 19-8-1981 thereon (Ex.A6) directing the plaintiffs-respondents to approach the civil Court. On the basis of the said memo, the plaintiffs-respondents filed the present suit claiming the following reliefs:

(1) For declaration that the plaintiffs are entitled for grant of succession being the legal heirs of late Khairuddin and to the management of Darga of Ahmed Khan Saheb Saheed (Ahmed Shareef) and its mash situated at Bodhan, and to render services attached to it by declaring that the succession granted by defendant No.2 in favour of defendant No.1 through Proceedings No.D/I501/79 dated 24-10-1979 as void pertaining to Muntaqab No.18914.

(2) Plaintiffs may be put in actual possession of the mash of Acs.0.27 guntas of land comprised in Sy.No.369/A of Chakki Tarfa of Bodhan by evicting defendant No.1 from the land described in the schedule.

(3) For grant of peretual injunction restraining defendant No.1 or his men or agents restraining them from interfering in the peaceful enjoyment and possession of the Darga and its premises and its mash i.e. agricultural land Bearing Sy.No.369/A and AA admeasuring in all Acs.1.14 guntas situated at Chakki Tarfa of Bodhan.

It may be mentioned that the suit was filed on 23-12-1981 against Mohd. Jeelani son of Md. Khaja alias Md. Ghani and the State of Andhra Pradesh represented by the District Collector, Nizamabad as defendants 1 and 2 without impleading either the Sub-Collector, Bodhan or the Joint Collector, Nizamabad as parties.

3. The suit was resisted by both the defendants inter alia on the grounds that the orders passed by the Atiyat Court as confirmed by the Appellate Authority are final and binding on the plaintiffs and they have no right to question the same and the civil Court has no jurisdiction to entertain the suit.

4. On the above pleadings, the trial Court framed the following issues:

(1) Whether the plaintiffs are entitled for declaration and perpetual injunction as prayed for?

(2) Whether the plaintiffs are entitled for recovery of possession of Acs.1.22 guntas of suit land in Sy.No.369 situated at Chakki Tarfa of Bodhan?

(3) Whether this Court has jurisdiction to try the suit?

(4) To what relief?

5. On issue Nos.1 and 2, the trial Court held that the plaintiffs are not entitled for declaration and perpetual injunction as prayed for inasmuch as succession was granted in favour of the father of defendant No.1 much earlier to the grant of succession to the father of the plaintiffs, and the first defendant alone has been rendering service in the Darga. On issue No.3, the trial Court, however, held that it has jurisdiction to entertain the suit. On the said findings, the trial Court dismissed the suit with costs.

6. The Appellate Court, while agreeing with the trial Court that the first defendant, who has been found to be actually rendering service in the Darga, cannot be restrained from rendering such service and the plaintiffs are not entitled to any injunction against him and that the first defendant is also not liable to be evicted from the suit land, however, came to the conclusion that the plaintiffs being the legal heirs of late Khairuddin are also entitled for grant of succession and to render services attached to the Darga along with the first defendant. Accordingly the Appellate Court partly allowed the appeal. Aggrieved thereby the first defendant has come up in second appeal.

7. The following substantial questions of law are formulated in the memorandum of grounds of second appeal on the basis of which the second appeal has been admitted:

(1) The First Appellate Court failed to see that the succession granted to the father of defendant No.1 in Fasli 1349 has become final and is binding on the plaintiffs as the same was neither set aside nor declared as void in any appeal.

(2) The First Appellate Court has also not considered about the concurrent finding of fact in the matter of succession of both the Atiyat Courts i.e., Sub-Collector, Bodhan and Joint Collector, Nizamabad.

(3) The First Appellate Court has failed to see that it has got only limited jurisdiction of declaring the legal heirs but not having any jurisdiction to grant the succession of the Muntaqab of Darga which is the exclusive jurisdiction of the Atiyat Court.

8. So the main question for consideration in the second appeal is whether the civil Court has got jurisdiction to go into the question of validity of the orders passed by the Atiyat Court and the Appellate Authority i.e., Exs.A4 and A5 whereby succession was granted in favour of the first defendant-appellant. For this purpose it is necessary to notice the relevant provisions of the A.P. (T.A.)

Atiyat Enquiries Act, 1952 (hereinafter referred to as the "Act").

9. The Act was enacted to amend and consolidate the law regarding the Atiyat grants in respect of Atiyat enquiries as to claims to succession to, or any right, title or interest in Atiyat grants and matters ancillary thereto. Section 2(a) defines "Atiyat Court" to mean a Court or Authority Competent to make Atiyat enquiries as to claims to succession to, and any right, title or interest in Atiyat grants and matters ancillary thereto. Section 2(b) defines the various kinds of Atiyat grants. It is, however, not necessary to set out the provision fully as it is not disputed that the grant in this case falls under clause (ii) of Section 2(b) to which Hyderabad Abolition of Inams Act, 1955 is not applicable. Section 3 provides that all Atiyat grants shall, subject to the provisions of the A.P. (T.A.) Abolition of Jagirs Regulation, 1358 Fasli, the Hyderabad Abolition of Cash Grants Act, 1952 and the Hyderabad Abolition of Inams Act, 1955, continue to be held by the holders thereof subject to the conditions laid down in the Muntakhabs or Vasikas, if any, relating thereto and to the provisions of this Act. Section 3-A deals with enquiries as to Atiyat grants. We are not concerned with sub-section (1) of Section 3-A which deals with Atiyat grants specified in sub-clause (i) of clause (b) of sub-section (1) of Section 2. For this reason the proviso to sub-section (1) of Section 3-A is also not applicable to the case on hand. It is subsection (2) of Section 3-A which is applicable to our case. It provides that in the case of Atiyat grants specified in sub-clauses (ii) to (vi) of clause (b) of sub-section (1) of Section 2, all Atiyat enquiries, enquiries as to claims to succession to, or any right, title or interest therein and matters ancillary thereto shall be held in Atiyat Courts in accordance with the provisions of this Act. Significantly there is no proviso to this subsection similar to sub-section (1) of Section 3-A which provides that claims to succession after the completion of Atiyat inquiry of any such grant shall not be entertained in any Atiyat Court and all such claims shall be filed in and decided by the competent civil Court. Section 5 deals with the consequences of breach of conditions of Muntakhab or Vasika. It provides that for the breach of the conditions contained in any Muntakhab or Vasika relating to an Atiyat grant or for other sufficient cause, the Government after giving an opportunity to the holder of the Atiyat grant to be heard, may by order resume the grant or modify the terms and conditions specified in any Muntakhab or Vasiqa relating thereto or pass such other orders in respect of the Atiyat grant as Government may think fit. Section 7, which deals with "succession" provides that subject to the provisions of this Act, succession to Atiyat grants shall, after the commencement of this Act, be regulated by the personal law applicable to the last holder. Section 8 enumerates the classes of Atiyat Courts. Section 10 deals with the jurisdiction and procedure of Atiyat Court. Section 11 deals with appeals. Sub-section (1) of the said section, inter alia, provides that from the original decision of an Atiyat Deputy Collector, an appeal shall lie to the Atiyat Collector. According to sub-section (2) of Section 11, before the date of the publication of the A.P. (T.A.) Atiyat Enquiries (Amendment) Act, 1956 in the Official Gazette, from the appellate decision of an Atiyat Collector, an appeal shall

He to the Nazim Atiyat and from an appellate decision of the Nazim Atiyat to the Board of Revenue whose decision shall be final. Sub-section (3) provides that as from the date referred to in sub-section (2), the appellate decision of an Atiyat Collector whether passed, before or after that date, shall be final and no further appeal or revision shall lie therefrom. It is clear from this provision that in the instant case no appeal lay against Ex.A5 order passed by the Atiyat Collector and the same is final. Sub-section (1) of Section 12 provides that insofar as questions of succession, legitimacy, divorce or other questions of personal law are concerned, the final decision of a civil Court shall be given effect to by the Atiyat Court established under this Act on the decision being brought to its notice by the party concerned or otherwise irrespective of whether the decision of the Atiyat Court was given before or after the decision of the civil Court. Sub-section (2) of the said section provides that if in the course of any enquiry as to claims to succession, any dispute arises involving questions of succession, legitimacy, divorce or other questions of personal law, the Atiyat Court shall direct the parties to get the dispute decided in the competent civil Court and on the production of the final decision of the civil Court, the Atiyat Court shall give effect to such decision. Sub-section (1) of Section 13 lays down that except as provided in this Act, the decision of an Atiyat Court shall be final and shall not be questioned in any Court of Law. Section 13-A deals with the powers of Atiyat Courts when holding enquiries under this Act. Sections 14 and 15 deal with repeal and savings. In exercise of the power conferred by sub-section (14) of the Act, the Government issued Andhra Pradesh (T.A.) Atiyat Enquiries Rules, 1952. Rule 3 prescribes that on the death of the holder, the claimant for succession shall, within three months from the date on which the holder died, submit an application accompanied by information in Form-A in the competent Court ("Court" meaning "Atiyat Court").

10. It is now appropriate to examine some of the decisions which have considered the scope and effect of the above statutory provisions.

In *Sikander Jehan Begum and Another Vs. Andhra Pradesh State Government*, the Apex Court had to consider the question of constitutional validity of Section 13(2) of the Act. It was held that in view of the special character of the property dealt with, the validity of Section 13(2) cannot be challenged on the ground that it contravenes Articles 14 and 19(1)(f). In the course of the said judgment the Supreme Court pointed out that succession to the Atiyat property does not come as a matter of right to the heirs of the last holder. It is also observed that while examining the question of validity of the impugned provision, it is necessary to consider the nature of the property in respect of which the petitioner seeks to make a claim by way of succession. After examining the nature and true legal character of the Jagir and the effect of all the firmans issued by the Nizam in regard to the enquiry of Atiyat estates and other related statutory provisions, the Supreme Court observed that the position appears to be clear that Jagirs were not heritable and on the death of Jagirdar, on principle and in theory, it was always a case of resumption and re-grant. It was further observed:

"If that be so, any person who claimed to be the successor of the deceased Jagirdar had no right to come to a civil Court for establishing that claim. In fact, there is no claim to succession at all, the question of re-grant being always in the absolute discretion of the Nizam. After the Rule of the Nizam came to an end, the only change that occurred was that on the death of the Jagirdar, the property vested in the State and could be re-granted to a successor in the discretion of the State".

In *Baqar Ali Khan v. Board of Revenue* 1960 ALT 1 a Division Bench of this Court, while dealing with a writ petition under Article 226 of the Constitution in which the vires of Section 3-A(2) was questioned, had an occasion to examine the scope and intendment of Sections 3-A and 12 of the Act. The Division Bench repealed the argument that Section 3-A of the Act is invalid as it is repugnant to Regulation 1359 Fasli and that it is also beyond the legislative competence of the State Legislature. After examining the scope of Sections 3-A and 12 of the Act, the Division Bench held that while the Atiyat Courts are empowered to enquire into claims to succession arising in respect of Atiyat grants, insofar as questions of succession, legitimacy, divorce or other questions of personal law are concerned, the power of civil Court is kept in tact.

In *Hasan Ali Khan v. Dawar Hussain* 1962 (1) ALT 210 Justice Jagan Mohana Reddy (as he then was) held that neither Section 13 of the Atiyat Enquiries Act nor anything contained in the Abolition of Jagirs Regulation bars the civil Court from entertaining a suit which claims only a share in the Atiyat grant. If the person without disputing the grant brings the suit in respect of his share in the Jagir income, the Court has jurisdiction to entertain the suit. The learned Judge referred to an earlier judgment of the Judicial Committee consisting of seven Judges in *Munwar Begum v. Nazim Mirza*, 35 Dec. LR 235, where a distinction has been made between a suit wherein the very basis of the grant was attacked and a suit wherein such a grant has been accepted but only a share therein has been demanded. If it is the former, the Courts cannot entertain the suit, but, if it is the latter, they have jurisdiction.

In *Syed Quadrathulla Hussaini v. Jalal Hussaini* 1988 (2) APLJ (SN) 70 a learned single Judge of this Court held as follows:

"Section 13 no doubt attaches finality of the Atiyat Court stating that the decision of an Atiyat Court shall be final and shall not be questioned in any Court of Law. A perusal of Section 12 clearly indicates that so far as the question of succession, legitimacy, divorce or other questions of personal law are concerned, the decision of the civil Court shall be given effect to by the Atiyat Court established under this Act. No doubt initially the jurisdiction to determine the succession in respect of Atiyat grant is specifically conferred on the Atiyat Court, but the jurisdiction of the civil Court is not ousted in respect of the questions enumerated in Section 12. The question of succession involves determination of the right to property and also office. The office of Mutawalli is defined by Section 2(f) of Wakf Act, 29 of 1954, which shows that a person appointed to perform the duties of a

Mutawalli irrespective of the nomenclature used in respect of a particular institution. Hence the Atiyat Court is competent to decide the claim of rival claims in respect of a particular grant and also the emoluments attached to such grant. The succession in respect of a particular office is based upon personal law which includes customary law which has become part of personal law. Hence any decision of the Atiyat Court determining the rule succession in respect of Atiyat grant touching the question of rule of succession is made subject to the decision of the civil Court."

11. It is manifest from the above statutory provisions and the decided cases that the Atiyat Court is the Competent Authority to decide all questions relating to Atiyat grants including claims relating to succession arising in respect of such grants. However, on questions involving personal law, the Atiyat Court is obligated to follow the judgment of the civil Court. To that extent only the jurisdiction of the civil Court is preserved. In all other respects the decision of the Atiyat Court is final and conclusive and the same cannot be questioned in any Court of law. In the instant case, after the death of the original grantees at some point of time two separate succession statements appear to have been issued one in favour of Md. Ghansi, father of the first defendant-appellant in the year 1939 and the other in favour of Khairuddin, father of plaintiffs in the year 1941. However, subsequently on the death of Md. Ghansi, succession was granted in favour of the first defendant only overruling the objections of Khairuddin as per the order of the Atiyat Court dated 24-10-1979 (Ex.A4). In the said order the Atiyat Court considered the two succession statements issued earlier. On consideration of the material available on record, the Atiyat Court found that Md. Jeelani, the appellant herein only was rendering service in the Darga regularly and performing annual functions i.e., Urs for about thirty years. In view of the evidence on record, the Atiyat Court finally declared the first defendant-appellant as successor and Inamdar of Darga "Ahmed Shareef at Bodhan and ordered to implement Sulsulsan in the entire service inam granted for rendering service to Darga. The said order was also confirmed on appeal by the Atiyat Collector vide Ex.A5. The said orders have become final. It is not disputed by the respondents-plaintiffs that the appellant alone has been rendering service in the Darga. In fact, in the plaint itself it is stated that Khairuddin himself allowed the appellant to render service in the Darga as he (Khairuddin) was attending to other matters. Rendition of service in the Darga is one of the conditions for the grant under the Muntakhab. Under these circumstances the Atiyat Court was fully justified in granting the succession in favour of the first defendant-appellant. Merely because previously succession was also granted in favour of the father of the plaintiffs under Ex.A2, it does not follow that the plaintiffs are automatically entitled for the grant of succession as it is not the personal property of their father. I am, therefore, satisfied that the lower Appellate Court erred in concluding that the plaintiffs are also entitled to succession and they are also entitled to render service jointly along with the first defendant-appellant by reason of their being legal heirs of Khairuddin. From the nature of the reliefs

claimed in the suit, it is apparent that the plaintiffs are questioning the decision of the Atiyat Court which is not permissible in view of Section 13 of the Act.

12. For the foregoing reasons the second appeal is allowed. The judgment and decree of the lower Appellate Court are set aside and the judgment and decree of the trial Court are affirmed.

13. The learned Counsel for the appellant, however, fairly conceded that the plaintiffs will, however, be entitled to an equal share along with the appellant in one-third out of the total income from the mash. It is stated that according to the concept of Sulsesulsan out of the total income from the mash, one-third goes to the state, one-third to the Muttavalli rendering service i.e., the appellant and the remaining one-third will be shared by all heirs of the original grantee/s. With this clarification, the second appeal is allowed as stated above.

14. There will be no order as to costs.