

(2014) 04 AP CK 0178

In the Andhra Pradesh High Court

Case No : Original Side Appeal 47 of 2013

Nawab Mir Jafar Ali Khan

APPELLANT

Vs

Syed Khaja Hussaini and Others

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, Order 23 Rule 3, 151

Citation : (2015) 2 ALD 497 : (2015) 3 ALT 787

Hon'ble Judges : R. Subhash Reddy, J; A. Shankar Narayana, J

Bench : Division Bench

Advocate : J. Rama Mohan Rao, Advocates for the Appellant; K. Rama Krishna Reddy for T. Sudhakar Reddy, Advocates for the Respondent

Judgement

R. Subhash Reddy, J.—This Original Side Appeal is filed under clause 15 of the Letters Patent, by Defendant No. 111 in the suit in C.S. No. 13 of 1958, pending before this Court, aggrieved by the order dated 25.09.2013 passed by the learned single Judge in Application No. 1054 of 2010 in C.S. No. 13 of 1958.

2. The aforesaid application is filed by respondents 1 to 4 herein (hereinafter referred as "applicants") under Order XXIII Rule 3, Order XX Rule 18 read with Section 151 CPC, to record compromise dated 01.10.2010 and pass final decree in respect of the lands admeasuring Ac. 30.00 guntas in Sy. No. 201 of Saheb Nagar Kalan village, Hayathnagar Revenue Mandal, Ranga Reddy District, as per the sale deed document No. 11581/1980 dated 22.10.1980 on the file of the District Registrar, Hyderabad, in favour of Applicant No. 1 and to pass final decree in favour of Applicant No. 2 in terms of Memorandum of Compromise dated 01.10.2010 in respect of the lands admeasuring Ac. 30.00 guntas in Sy. No. 201 of Saheb Nagar Kalan village, Hayathnagar Revenue Mandal, Ranga Reddy District, as per the sale deed document No. 11618 of 1980 dated 23.10.1980 on the file of the District Registrar, Hyderabad and to pass a final decree in favour of Applicant No. 3 in terms of Memorandum of Compromise dated 01.10.2010 in respect of land admeasuring Ac. 10.00 guntas in Sy. No.

201 of Sahebnagar Kalan village, Hayathnagar Revenue Mandal, Ranga Reddy District, as per the sale deed document No. 11630/1980 dated 24.10.1980 on the file of District Registrar, Hyderabad and to pass a final decree in favour of Applicant No. 4 in terms of Memorandum of Compromise dated 01.10.2010 in respect of land admeasuring Ac. 30.00 guntas in Sy. No. 201 of Sahebnagar Kalan village, Hayathnagar Revenue Mandal, Ranga Reddy District as per sale deed document No. 11580/1980 dated 22.10.1980 on the file of the District Registrar, Hyderabad.

3. The aforesaid application is filed, supported by an affidavit filed by Applicant No. 1, with the following averments:

i) Mir Yousuf Ali Khan, popularly known as Nawab Salar Jung-III, died intestate on 02.03.1949 at Hyderabad, leaving behind vast extents of movable and immovable properties in the form of Royal Grants, Jagirs, Seriat lands, Jaat Jagirs and self-purchased landed properties. After the demise of Salar Jung-III, by Regulation No. 34/1949, a committee by name Salar Jung Estate Committee was formed, headed by a Chairman and four members to deal with all matters pertaining to the Estate properties. A civil suit, C.S. No. 13 of 1958, was filed in this Court by one of the heirs by name Syed Hasan against Syed Kazim Hussein and 115 others for partition of all movable and immovable properties of the Salar Jung Estate and a preliminary decree was passed on 05.03.1959 and thereafter a warrant appointing a Receiver-cum-Commissioner was issued on 05.05.1959 for effecting the partition of all the properties which were held to be available for partition amongst the heirs and successors.

ii) Pursuant to the orders of this Court, the Receiver-cum-Commissioner took possession of the movable and immovable properties. In Application No. 417 of 1961 dated 09.02.1962, final decree was passed holding that, in special circumstances, the Court may direct passing of more than one final decree.

iii) The properties known as Nuzul lands were not dealt with under the final decree and subsequently specific orders were passed in Application No. 82 of 1962 dated 22.03.1962, directing the Receiver-cum-Commissioner to prepare a scheme of partition of Nuzul lands.

iv) Pursuant to such orders passed by this Court, the Receiver-cum-Commissioner filed an affidavit and report dated 20.06.1963 confirming allotment and handing over of constructive possession of the shares of respective parties of Nuzul lands and defendant No. 2 by name Syed Ahmed was allotted land admeasuring Ac. 100.00 guntas in Sy. No. 201 of Sahebnagar Kalan village.

v) Applicant Nos. 1 to 4 claim to have purchased Ac.30.00 guntas, Ac. 30.00 guntas, Ac. 10.00 guntas and Ac. 30.00 guntas respectively vide registered sale deeds dated 22.10.1980, 23.10.1980, 24.10.1980 and 22.10.1980 on the file of the District Registrar, Hyderabad. They claim that they have become the absolute owners and possessors of the lands totally admeasuring Ac. 100.00 guntas in Sy. No. 201 of Sahebnagar Kalan village, by virtue of such purchase. They have

purchased the said lands from defendant No. 2 in the suit. The respondents in the aforesaid application, i.e., legal heirs and successors of defendant No. 2, started interfering, in ignorance of the sale deed executed by defendant No. 2; as such, after detailed deliberations and negotiations, they have entered into compromise and reduced into writing by way of Memorandum of Compromise dated 01.10.2010.

4. Based on such Memorandum of Compromise dated 01.10.2010 stated to have entered into by the applicants and respondents, they sought recording of the compromise and also to pass final decree in their favour with regard to Ac. 100.00 guntas of land in their favour. Application No. 1054 of 2010 was filed only by impleading respondent Nos. 5 to 16 herein who are shown as respondents 1 to 12 in the application. Subsequently, respondent No. 17 herein was impleaded as respondent No. 13 in the application. All other defendants in the suit, more than 200, were shown as pro forma parties and not necessary parties to the application. In view of the submissions made before the learned single Judge, by the learned counsel appearing for the applicants and respondents 5 to 16 herein, who were holding special Vakalat, that the matter has been compromised, and on the ground that respondent No. 17 herein, who was figured as respondent No. 13 in the application has expressed no-objection for recording the compromise, the application was disposed of by the learned single Judge, by passing the impugned order, recording the compromise and ordering" for passing of final decree to the extent of the claim of the applicants.

5. This appeal is filed by defendant No. 111 in C.S. No. 13 of 1958, who is not made party to Application No. 1054 of 2010, by obtaining leave, challenging the validity of the order dated 25.09.2013 passed in the said application. In this appeal, it is his case that as per the preliminary decree passed in C.S. No. 13 of 1958, all the legal heirs are entitled to their respective shares, whether movable and immovable properties and all the lands covered by 12 Maqtas, including the lands at Saheb Nagar Kalan village were under Inam enquiry of Nazim-E-Atiyat (Board of Revenue) and not covered by partition; the very claim of allotment of such lands, by the Receiver-cum-Commissioner is a manipulated one and the Receiver-cum-Commissioner had no power to allot any item in favour of a particular person and the application for recording compromise and for passing of final decree is filed by playing fraud on this Court and on the ground that such decree is without notice to him, the appellant seeks to set aside the order dated 25.09.2013 passed in Application No. 1054 of 2010.

6. Defendant Nos. 4 and 5 in the suit are impleaded as party respondent Nos. 18 and 19 herein. It is their case that entire agricultural and non-agricultural lands were subject matter of Inam enquiry of Nazim-E-Atiyat (Board of Revenue) and the lands under 12 Maqtas, including that of Saheb Nagar Kalan village, Saheb Nagar Kurd, Lingujiguda, Yerrakunta, Ismailkhanguda and Babbuguda, etc., are shown in list-C of Inam enquiry and such lands are private lands belonging to the Salar Jung Estate. It is stated that the subject matter of the suit properties

were already divided and no further properties were left for division or compromise. It is stated that, some of the legal heirs of some defendants have colluded with third parties by playing fraud and started claiming properties, including the lands in Saheb Nagar Kalan village, which are outside the scope of the suit in C.S. No. 13 of 1958. It is further stated that the sale deeds claimed by the applicants, which are allegedly executed in the year 1980, are fraudulent transactions, and based on the same, now the present application is filed to grab the properties covered by Sy. No. 201 of Saheb Nagar Kalan village. It is further stated that, out of the total extent of lands admeasuring Ac. 770.27 guntas covered by Sy. No. 201 of Saheb Nagar Kalan village, the Board of Revenue has transferred an extent of Ac. 570.00 guntas to the Forest Department, and about Ac. 200.00 guntas was allotted in favour of Harijans. Subsequently, an extent of Ac. 367.00 guntas was allotted to Hyderabad Urban Development Authority and remaining land is in possession of Forest Department. It is further stated that they have also filed claim petition before the Forest Settlement Officer with regard to the very same land covered by Sy. No. 201 and when their claim was rejected vide proceedings No. B/1428/71 dated 03.09.2010, they filed C.M.A. No. 142 of 2010 on the file of the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-Additional District and Sessions Judge, Ranga Reddy District and the same was allowed and remanded by order dated 14.03.2012, for fresh enquiry and the same is pending. It is further stated that out of the leftover land, Ac. 102.00 guntas situated in Saheb Nagar Kalan village is notified as Reserve Forest and notification was published in District Gazette vide LR No. 1428/B dated 10.01.1971 and also recorded as Kancha Poramboke Sarkari in all the revenue records. It is further stated that, under the guise of fabricated documents, applicants filed the application to grab the land, which is classified as Forest land and all the applicants are fictitious persons and they do not have any capacity to purchase lands. It is pleaded that applicants, by suppressing the facts, played fraud and obtained orders for recording compromise and for passing of final decree. It is further pleaded that though they have share in the properties, they were shown as pro forma respondents in the application and by suppressing the proceedings pending before the Forest Settlement Officer, applicants have filed the application and obtained orders.

7. In the additional affidavit filed by impleaded respondents 18 and 19, it is stated that some of the legal heirs of defendant No. 2, along with them, have also filed suit in O.S. No. 111 of 1985 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad to declare that they are entitled for compensation in view acquisition of some immovable properties including the lands covered by Sy. No. 201 of Saheb Nagar Kalan village, in which it is stated that the said lands were managed by the Committee of Salar Jung and were not included in the suit in C.S. No. 13 of 1958. It is further pleaded that the legal heirs of defendant No. 2 have filed W.P. No. 19942 of 2005 before this Court, admitting that Forest Department is in possession and enjoyment of the land. It is further pleaded that, claiming rights and possession over the very same lands in Saheb Nagar

Kalan village, applicants obtained orders from this Court by playing fraud and without making them as parties.

8. We have heard Sri J. Rama Mohan Rao, learned counsel for the appellant, Sri K. Ramakrishna Reddy and Sri D. Prakash Reddy learned senior counsel for the respondents/applicants, Sri D. Krishna Reddy, learned counsel for respondent Nos. 6 to 16, Sri K.V. Satyanarayana, learned counsel for respondent No. 17 and Sri K.B. Ramanna Dora, learned counsel for impleaded respondents 18 and 19.

9. In this appeal, it is contended by the learned counsel for the appellant that respondents 1 to 16 have obtained the impugned order by playing fraud and by suppressing the material facts; though the appellant is defendant No. 111 in C.S. No. 13 of 1958 and the said suit is for partition and possession and though he is having share in all the properties, movable and immovable, covered by the said suit, without showing him as party and without notice to him, order is obtained for final decree; as the suit is for partition and possession, all the parties to the suit are entitled for their share, as such, final decree in partition suit can be passed only in the presence of all the parties to the suit and no party can claim absolute or exclusive right in respect of any item or part of the suit to the exclusion of others. It is further submitted that the lands covered by Sy. No. 102 of Saheb Nagar Kalan village are subject matter of Inam enquiry before Nizam-E-Atiyat and the claim of the applicants with regard to their purchase from the legal heirs of defendant No. 2 is a fraudulent one and the lands which are subject matter of the application are not covered by C.S. No. 13 of 1958 and Application No. 82 of 1962. In support of his submissions, learned counsel for the appellant placed reliance on a judgment of a learned single Judge of this Court in Goutham Chand Jain and Others Vs. Baqtawar Begum and Others, .

10. On the other hand, it is submitted by Sri K. Ramakrishna Reddy and Sri D. Prakash Reddy, learned senior counsel appearing for the respondents/applicants, that though there was final decree in C.S. No. 13 of 1958, the properties known as Nuzul lands were not " dealt with under the final decree and subsequently specific orders were passed in Application No. 82 of 1962, in which directions were issued to the Receiver-cum-Commissioner to prepare the scheme of partition of Nuzul lands. It is submitted that, pursuant to such orders passed by this Court, defendant No. 2 was given constructive possession of the land admeasuring Ac. 100.00 guntas covered by Sy. No. 201 of Saheb Nagar Kalan village, who, in turn, sold the same to the applicants by registered sale deeds dated 22.10.1980, 23.10.1980, 24.10.1980 and 22.10.1980. It is further submitted that, respondents 6 to 16, who are the legal heirs of defendant No. 2, being unaware of the sale made by defendant No. 2, started interfering and negotiating for the sale of the lands with the third parties and after detailed deliberations and negotiations they have reached an agreement and the same was reduced into Memorandum of Understanding dated 01.10.2010 and based on the same, they approached this Court to record such compromise and to pass final decree in their favour. It is further submitted that as much the lands

admeasuring Ac. 100.00 guntas covered by Sy. No. 201 of Saheb Nagar Kalan village are given constructive possession to defendant No. 2, who, in turn, sold the same to the applicants, other defendants were shown as not necessary parties in Application No. 1054 of 2010. It is further submitted that various orders passed in the year 1962-63, which have become final, have not been challenged at all, as such, the appellant cannot claim any right at this point of time with regard to the lands which are subject matter of Application No. 1054 of 2010. In support of his submissions, learned senior counsel Sri D. Prakash Reddy has relied upon a judgment of the Division Bench of this Court in O.S.A. No. 4 of 2010 dated 18.02.2010 and also order dated 19.10.2009 passed by the Hon'ble Supreme Court in I.A. No. 1 in S.L.P. (Civil) No. 13644 of 2009.

11. Sri K. Ramakrishna Reddy, learned senior counsel, submits that the allegations of fraud made by the appellant are general and vague, as such, based on such allegations, no findings can be recorded. In support of his submission, he relied on a judgment of the Hon'ble Supreme Court in Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna and Others, .

12. It is submitted by Sri K.B. Ramanna Dora, learned counsel for the impleaded respondents 18 and 19 that the impugned order was obtained by the applicants by suppressing material facts and by playing fraud. It is further submitted that the subject matter of the lands covered by Application No. 1054 of 2010 were in possession of the Forest Department and notifications were issued to that effect under the A.P. Forest Act, 1967; in spite of the same, Forest Department is not impleaded as party-respondent in the application. It is further submitted that defendant No. 2 was not in possession of the lands in question and the transactions of purchase are fraudulent transactions on the part of the applicants; respondent Nos. 6 to 16 have filed W.P. No. 19942 of 2005 claiming release of very same land admeasuring Ac. 100.00 guntas and the same is pending before this Court and contrary to the same, relief is sought for in Application No. 1054 of 2010, based on the Memorandum of Compromise dated 01.10.2010 entered into by the applicants/respondents 1 to 4 on one hand and respondents 6 to 16 on the other hand, who claim to be the legal heirs and successors of defendant No. 2. It is further submitted that some of the legal heirs of defendant No. 2 also filed suit in O.S. No. 111 of 1985 on the file of the learned II Additional Chief Judge, City Civil Court, Hyderabad, by impleading the State of Andhra Pradesh, through its Secretary, Revenue Department and also Forest Department, claiming compensation with regard to the land at Saheb Nagar Kalan village, which was dismissed for default and the same is also not disclosed in the application filed before this Court. Further, it is submitted that the lands admeasuring Ac. 100.00 guntas covered by Sy. No. 201 of Saheb Nagar Kalan village was not the subject matter of suit in C.S. No. 13 of 1958 at all, and the same was not shown as suit schedule property, so as to claim partition by way of final decree in the said suit. In any event, it is further submitted that impleaded respondents 18 and 19 are defendants 4 and 5 in the suit and as the suit is for partition and possession, all the parties will have due

share in every item of the property and the applicants are not entitled for passing of final decree, without impleading them as party-respondents. In support of the allegations of fraud, learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in N. Khosla Vs. Rajlakshmi (dead) and Others, , S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and also a Division Bench judgment of this Court in Durga Matha House Buildings Constructions Cooperative Housing Society Ltd. and Another Vs. Sada Yellaiah and Others, .

13. In view of the submissions made by the learned counsel for the parties, the following points arise for consideration in this O.S.A.:

1. Whether the appellant and respondents 18 and 19 are necessary parties in Application No. 1054 of 2010 filed by respondents 1 to 4 and 6 to 16, which is filed to record compromise and for passing final decree?

2. Whether respondents 1 to 4/applicants have derived any rights with regard to the land in question, pursuant to their claim of purchase of the said lands from defendant No. 2, even before final decree is passed in the suit in C.S. No. 13 of 1958?

3. Whether the land admeasuring Ac. 100.00 guntas situated in Sy. No. 201 of Saheb Nagar Kalan village, Hayathnagar Revenue Mandal, Ranga Reddy District, is covered in the suit in C.S. No. 13 of 1958, so as to claim relief for recording of compromise and for grant of final decree for such land by the respondents/applicants?

4. Whether the State of Andhra Pradesh, through its Secretary, Forest Department, is proper and necessary party in Application No. 1054 of 2010?

5. Whether respondents 1 to 4 and 6 to 16 have suppressed the material facts and played fraud on this Court, in seeking relief for recording of compromise and for grant of final decree, in Application No. 1054 of 2010?

14. With regard to point No. 1, whether the appellant and respondents 18 and 19 are necessary parties in Application No. 1054 of 2010 filed by respondents 1 to 4 and 6 to 16, it is to be seen that C.S. No. 13 of 1958 is filed by one of the legal heirs of Mir Yousuf Ali Khan, popularly known as Nawab Salar Jung-III, by name Syed Hasan against Syed Kazim Hussein and 115 others for partition of all movable and immovable properties of the Salar Jung Estate. It is stated that a preliminary decree was passed on 05.03.1959. It is not in dispute that the appellant herein is defendant No. 111 in the said suit, whereas the impleaded respondents 18 and 19 are defendants 4 and 5 in the suit. The applicants/respondents 1 to 4 claim that they have purchased the lands, which are subject matter of Application No. 1054 of 2010, from defendant No. 2 vide registered sale deeds dated 22.10.1980, 23.10.1980, 24.10.1980 and 22.10.1980 for a consideration of Rs. 9.00 lakhs, Rs. 9.00 lakhs, Rs. 3.00 lakhs and Rs. 9.00 lakhs respectively. It is stated that the consideration amount is paid in cash at the time

of registration of sale deeds.

15. The source of title of defendant No. 2 is referred to, as an allotment made by the Receiver-cum-Commissioner of various extents of lands, including the land admeasuring Ac. 100.00 guntas covered by Sy. No. 201 of Saheb Nagar Kalah village. It is well settled that in a suit for partition, apportionment of shares and properties available for partition are determined in the preliminary decree and final allotment will be made when the respective shares are divided by metes and bounds, and such process will be taken at the stage of final decree. Unless final decree is passed, no party to the suit can claim absolute or exclusive right in respect of any item or part of the suit schedule property, in exclusion to the others. It is not in dispute that, pursuant to preliminary decree, the appellant and impleaded respondents 18 and 19 are also entitled for shares in the suit schedule properties. In that view of the matter, unless all the shareholders are made parties to the application, no application can be maintained for passing of the final decree. In this regard, the judgment of the learned single Judge in Goutham Chand Jain (1st cited) supports the case of the appellant. In the said judgment, the learned single Judge has held that final decree in a suit for partition can be passed only in the presence of all the parties to the suit and no party to the suit can claim absolute or exclusive right with respect to any item of the suit schedule properties, in exclusion of others. Further, the Division Bench of this Court in Durga Matha House Buildings Constructions Cooperative Housing Society Ltd. (5th cited) held as under:

"It is well settled principle of law that notwithstanding passing of preliminary decree in a suit for partition, the suit is supposed to be pending till a final decree is passed allotting specific item of the property to the parties to the suit inasmuch as even during the stage of passing final decree parties and properties can be added. The parties to the suit will not accrue any rights over specific items of property until allotment is made and the principle that each shareholder will have right over every inch of property will continue till the passing of a final decree. Inasmuch as no final decree is admittedly passed in C.S. No. 14 of 1958, the assignors under Exs. A-2 and A-48 did not have rights over the property covered by the said assignment deeds so as to transfer their rights in the said property."

16. We too are of the same view as that of the learned single Judge and the Division Bench as referred above. Thus, we hold that the appellant and respondents 18 and 19 are necessary parties to Application No. 1054 of 2010; in spite of the same, they were not made parties.

17. Though Sri D. Prakash Reddy, learned senior counsel, has placed reliance on a Division Bench Judgment of this Court in O.S.A. No. 4 of 2010 dated 18.02.2010, it is to be noted that, in the aforesaid case, an application was filed recording of compromise by the appellant, who purchased decretal rights and respondents 2 and 3 were also claiming the said land under un-registered assignment deed. The question therein, was only with regard to recording of

compromise. In the said judgment, there was no contest from any quarter or party to the proceedings, including the Receiver-cum-Commissioner. As such, it was held that compromise can be recorded. Thus, we are of the view that the said judgment would not render any assistance in support of the case of the respondents/applicants. Learned senior counsel has also placed reliance on an order of the Hon''ble Supreme Court, dismissing the Special Leave to Appeal (Civil)..... 2009 in C.C.I. 3644-13651/2009. In the aforesaid order, the Hon''ble Supreme Court has dismissed the SLP, by holding that if a person is not made party, his rights would not be affected. We are of the view that the said order also would not render any support to the case of the respondents/applicants.

18. Learned senior counsel Sri K. Ramakrishna Reddy placed reliance on the judgment of the Hon''ble Supreme Court in Shub Karan Bubna alias Shub Karan Prasad Bubna (2nd cited). In the said judgment, the Hon''ble Supreme Court has drawn difference between possession in a partition suit and possession in a mortgage suit. In fact, in the same case, it is held that, after passing of preliminary decree in a partition suit, unless there is an agreement between the parties as to the manner of division, it is the duty of the Court to ensure that the matter is referred to the Collector or Commissioner for consequential division, by metes and bounds, which would be subject matter of final decree. In that context, we are of the view that, in fact, the said judgment supports the case of the appellant herein, rather than that of the respondents/applicants.

19. With regard to point No. 2, whether the respondents-applicants have derived any rights to the lands in question, based on the sale deeds executed by defendant No. 2, to seek passing of the final decree in their favour for such portion of land, it is to be seen, it is not in dispute that except passing of the preliminary decree, no final decree was passed in favour of defendant No. 2 before sale deeds were executed by defendant No. 2 in favour of the respondents/applicants. It is the case of respondents 1 to 16 that, with regard to Nuzul lands, pursuant to the order dated 22.03.1962, the Receiver-cum-Commissioner has allotted this piece of land to defendant No. 2 and gave constructive possession. To that effect, the respondents are relying on affidavit stated to have been filed by the Receiver-cum-Commissioner, which document is disputed by the appellant and respondents 18 and 19. Even assuming that such allotment is made by the Receiver-cum-Commissioner, it will not confer any exclusive right on defendant No. 2 to claim exclusive title and possession for such property, unless there is final decree to that effect. Defendant No. 2 himself did not derive any title in exclusion to others with regard to the land in question, as such, no rights are derived by respondents/applicants 1 to 4, based on sale deeds which are stated to have been obtained from defendant No. 2 in the year 1980. Applicants claim that defendant No. 2 has executed sale deeds on 22.10.1980, 23.10.1980, 24.10.1980 and 22.10.1980 respectively, in their favour, but for the last more than three decades, no steps have been taken by them to obtain final decree. It is also the case of the appellant and respondents 18 and 19 that such sales are fictitious and purchasers under such sale

transactions, did not have any capacity to purchase the lands. For the aforesaid reasons, we are of the view that defendant No. 2 did not derive any valid title or possession over the land in question covered by Sy. No. 201 of Saheb Nagar Kalan village admeasuring Ac. 100.00 guntas, to transfer the same in favour of the respondents/applicants.

20. With regard to point No. 3, viz., whether the land admeasuring Ac. 100.00 guntas situated in Sy. No. 201 of Saheb Nagar Kalan village, Hayath Nagar Revenue Mandal, Ranga Reddy District, is outside the scope of the suit in C.S. No. 13 of 1958, so as to claim relief of recording of compromise and grant of final decree, by respondents 1 to 16. It is to be noticed that the suit in C.S. No. 13 of 1958 is filed by one of the legal heirs of Mir Yousuf Ali Khan (popularly known as Nawab Salar Jung-III) by name Syed Hasan against Syed Kazim Hussein and 115 others, seeking the following relief:

"Plaintiff prays for judgment and preliminary decree:

(a) declaring that in view of the said compromise and family arrangement plaintiff is entitled to a 1/16th share in all the properties of Nawab Salar Jung and to a 3/64th share in the commutation sum paid and payable in respect of the Jagir;

(b) alternatively and in the event of any difficulty arising in regard to the enforcement of the said compromise for any reason, declaring that plaintiff is entitled to a 1/8th share in the said properties and commutation sum;

(c) directing that an account be taken of all the properties of Nawab Salar Jung wherever situate including those in the possession of Defendant 16, and that the same be partitioned and divided by metes and bounds or otherwise and that the plaintiff be placed in possession of his share thereof; and alternatively that the said properties be administered under the decree of this Honourable Court;

(d) directing Defendants 14 to 17, or whichever of them is liable to render a full, true and complete account of all the properties including outstandings, monies and documents which came into their hands and accretions thereto and of the expenditure incurred and all their dealings and transactions in connection therewith;

(e) directing defendants 14 to 17 to pay plaintiff his share of such monies and the value of such properties as they may fail to duly account for and deliver and of the loss caused to the estate by their unauthorized acts or wrongful omission or negligence;

(f) declaring that plaintiff is entitled to receive his share in the commutation sum from defendant 17 or such other defendant as may be liable therefor;

(g) directing defendants 14 to 17 to deposit in the Court all the monies now in their hands, pending submission and investigation of their accounts;

(h) appointing a commissioner Receiver or Administrator for taking possession of

the suit properties and dividing, or administering them;

(i) directing defendants 14 to 17 and any other contesting defendants to pay the plaintiffs costs of this suit; and

(j) granting such further or other relief as plaintiff may be entitled to.

Sd/- PLAINTIFF

Hyderabad Deccan. Dated: 2nd March 1955.

21. A perusal of the plaint makes it clear that the suit is for partition and separate possession of the suit schedule properties, movable and immovable. The shares in various Public Limited companies are shown in Schedule-I and immovable properties are shown in Schedule-II(A). Schedule II(A) reads as under:

- " 1. Mulgees Nos. 503 to 506, both inclusive, situate at Pathergatti, Hyderabad;
2. Mulgees Nos. 281 to 285, both inclusive, situate at Pathergatti, Hyderabad;
3. Mulgees Nos. 383 to 411, both inclusive, situate at Pathergatti, Hyderabad;
4. Mulgees Nos. 424 to 431/34, both inclusive, situate at Pathergatti, Hyderabad;
5. Mulgees Nos. 436 to 494, both inclusive, 496, 497, 499, 500, 502, 568 to 572, both inclusive, 574 and 575, situate at Pathergatti, Hyderabad;
6. Mulgees Nos. 674 to 682, both inclusive, situate at pathergatti, Hyderabad;
7. Houses or Mulgees Nos. 1135, both inclusive situate at Chatta Bazar, Hyderabad;
8. Tai Bazar of various lands in the occupancy of various tenants.
9. Houses or mulgies Nos. 1178 to 1187, both inclusive, situate at Chatta Bazar, Hyderabad.
10. Houses in the occupation of Civil and Criminal Courts, Schools, Hospitals and Police Departments, etc., as tenants.
11. Houses or Mulgees Nos. 577 to 671, both inclusive, situate in Yousuf Bazar, Hyderabad.
12. Houses or Mulgees Nos. 495, 501, 573, 675 and 59 to 57, both inclusive, 127, situate in Jilo Khana, Pathergatti, Hyderabad.
13. Houses or Mulgees Nos. 1214 to 1231, both inclusive and 972 to 977, both inclusive, 4539, 4540 and 993 to 1009, both inclusive situate in Jilo Khana, Hyderabad;
14. Houses or Mulgees Nos. 978, 984 to 991, both inclusive 1062 to 1072, both inclusive, 4438, 924 to 929, both inclusive, also situate in Hyderabad City.

15. "Woodcock" Hall Ootacamund, Nilgiris.

16. Bungalow at Poona known as "Gladhurst"

17. About 50 items of houses, lands, gardens and Asurkhanas at Aurangabad.

18. All other immovable properties of Nawab Salar Jung not herein specifically mentioned."

22. From a perusal of the aforesaid plaint and schedules, it is clear that the property covered by Sy. No. 201 of Saheb Nagar Kalan village is not included in Schedule-II(A) of the suit or in any other schedule, for partition of the same. The claim of the respondents/applicants is that such property was allotted and constructive possession was given to defendant No. 2, pursuant to the scheme of partition prepared by the Receiver-cum-Commissioner, in compliance of the directions of this Court dated 22.03.1962. A copy of the order dated 22.03.1962 is placed on record, which reads as under:

"Under the final decree, it was directed that the Receiver should file a list of all the nuzuldars who have not yet obtained certificates. As would appear from the report of the receiver, out of the total number of 205 nuzuldars in Aurangabad, only 89 have obtained certificates and 116 remain still nuzuldars. Similarly in Hyderabad, out of 117 nuzuldars, only seventeen have obtained certificates and 100 nuzuldars have not yet come forward. So it is no use waiting any further. The right to collect nuzul from the nuzuldars in Hyderabad and Aurangabad who are 100+116] 216 in number must be partitioned amongst the parties. They will be divided into sixteen groups and the allotment shall be made to various group holders. A scheme on these lines be prepared and filed in two weeks. Post after two weeks."

23. From a reading of the aforesaid order, it is clear that there was no order at all for division of Nuzul lands covered by Sy. No. 201 of Saheb Nagar Kalan village. The order passed is only with regard to the partition of right to collect Nuzul (rent) from Nuzuldars in Hyderabad and Aurangabad. It is not known, pursuant to such order passed by this Court, how the Receiver-cum-Commissioner has prepared the scheme for allotment and to handover possession constructively. The applicants are relying on affidavit stated to have been filed by the Receiver-cum-Commissioner pursuant to the order dated 22.03.1962, but such document is disputed by the appellant and respondents 18 and 19. In any event, it is clear that steps taken by the Receiver-cum-Commissioner are not in conformity with the order passed in Application No. 82 of 1962. In absence of showing the property covered by Sy. No. 201, admeasuring Ac. 100.00 guntas, situated at Saheb Nagar Kalan village, as one of the properties for division in the suit schedule, it is not open to pass any order either for recording of compromise or for grant of final decree for such portion of the land. It is true, that in Schedule-II, at item No. 18, it is also mentioned as other immovable properties of Nawab Salar Jung, not herein specifically mentioned, but based on such statement, the properties which are not covered expressly, cannot be ordered to be divided by

passing any order either for recording of compromise or for passing of final decree. For the aforesaid reasons, we are of the view that the land covered by Sy. No. 201, admeasuring Ac. 100.00 guntas of Saheb Nagar Kalan village is not the subject matter of suit schedule property in the suit in C.S. No. 13 of 1958 for claiming partition by any of the parties.

24. With regard to point No. 4, viz., whether the State of Andhra Pradesh, through its Secretary, Forest Department, is proper and necessary party in Application No. 1054 of 2010, it is to be seen that, it is the case of respondents 1 to 4 and 16 to 19 the lands covered by Sy. No. 201 admeasuring Ac. 100.00 guntas situated at Saheb Nagar Kalan village, Hayathnagar Revenue Mandal, Ranga Reddy District, were allotted to defendant No. 2 and constructive possession, was also given by the Receiver-cum-Commissioner appointed in the suit. Whereas, it is the case of the appellant and impleaded respondents 18 and 19 that, with regard to 12 Maqthas, including the Maqtha, i.e., the land covered by Sy. No. 201 of Saheb Nagar Kalan village, as they were subject matter of Inam enquiry, they were not partitioned and not allotted to any of the parties in the suit, at any time. It is specifically pleaded by respondents 18 and 19, that out of total extent of Ac. 770.27 guntas covered by Sy. No. 201 of Saheb Nagar Kalan village, Ac. 570.00 guntas was already transferred to Forest Department and Ac. 200.00 guntas was allotted to third parties. It is stated that, subsequently, out of Ac. 570.00 guntas, Ac. 367.00 guntas was allotted to Hyderabad Urban Development Authority and the remaining land is in possession of the Forest Department. It is also stated in the affidavit that, when they have filed a claim for such land before the Forest Settlement Officer, their claim was rejected vide proceedings No. B/1428/71 dated 03.09.2010, holding that the entire land covered by Sy. No. 201 is a Government land. As against the same, C.M.A. No. 142 of 2010 was filed on the file of the Special Sessions Judge for SC & ST (POA) Act, 1989-cum-Additional District and Sessions Judge, Ranga Reddy District and the same was allowed by order dated 14.03.2012 and remanded for fresh enquiry and the same is pending consideration.

25. In the additional affidavit filed by the impleaded respondents 18 and 19, a reference is made to W.P. No. 19942 of 2005 filed by the legal heirs of defendant No. 2, which is pending before this Court. A copy of the Writ Petition and affidavit filed in support thereof, which is pending before this Court, is also placed on record. We have carefully perused the affidavit and relief sought for in the said Writ Petition. The said Writ Petition is filed by all the legal heirs of defendant No. 2, who are respondents 6 to 16 herein. In their affidavit, in clear terms, they have stated that the land covered by Sy. No. 201 of Saheb Nagar Kalan village, Hayathnagar Mandal, Ranga Reddy District, was notified under the provisions of the A.P. Forest Act, 1967, published in the A.P. Gazette dated 18.06.1971, to constitute a Reserve Forest in respect of the said land. It is also evident from the said affidavit, that their claim for release of such lands was rejected. The prayer in the Writ Petition reads as under:

"to issue a writ of mandamus or any other appropriate writ declaring:

(a) that the action of the respondents in not releasing the land of the petitioners admeasuring Acres 100-00 acres in Sy. No. 201, of Saheb Nagar Kalan College, Hayathnagar Mandal, Ranga Reddy District from the notification of constitution a reserve forest as published in Gazette No. 142 dated 23-11-1981 Ranga Reddy District U/S. 6 of the Act and in G.O.Ms. No. 778 F & A " (Forest-III) dated 18-6-1971, by applying the judgment in CCCA. No. 84/1982 against the petitioners is arbitrary and illegal,

(b) that section 3 of the A.P. Forest Act, 1967 (State Act. No. 1/1967) is unconstitutional and void and therefore the Notifications issued U/S. 4 and 6 of the said Act in Gazette No. 42, dated 23-11-1981 of Ranga Reddy District and published in A.P. Gazette are non-est in the eye of law and consequently direct the respondents to permit the petitioners to exercise their proprietary right over the said land admeasuring Acres 100-00 situated in Sy. No. 201 of Saheb Nagar Kalam Village, Hayathnagar Mandal, Ranga Reddy District without any hindrance of interfere with the possession and enjoyment of the petitioners and grant such other relief as it deems fit in the circumstances of the case.

26. It is clear from the material on record that the lands which are subject matter of Application No. 1054 of 2010 are already covered by notification issued under the A.P. Forest Act, 1967 and the legal heirs of defendant No. 2 and the impleaded respondents 18 and 19 who are defendants 4 and 5 are claiming release of lands from the reserve forest. On one hand, they filed Writ Petition for release of lands from the Forest Department admitting that such lands are already covered by notification issued under the provisions of the A.P. Forest Act, 1967 and on the other hand, without disclosing the same, they sought relief in Application No. 1054 of 2010 based on Memorandum of Compromise and for passing of final decree, without even impleading the authorities of the Forest Department. As the subject matter of the lands, covered by Application No. 1054 of 2010, is already covered by notification, for reserve forest, issued under the A.P. Forest Act, 1967, we are of the considered view that the State of Andhra Pradesh, through Secretary, Forest Department, is a necessary party. In spite of the same, without impleading such party, application is filed and orders are obtained.

27. Lastly, coming to point No. 5, viz., whether respondents 1 to 4 and 6 to 16 have suppressed the material facts and played fraud on this Court in seeking relief for recording compromise and for grant of final decree, in Application No. 1054 of 2010, we have perused the records in Application No. 1054 of 2010. The Memorandum of Compromise is between respondents 1 to 4/applicants on one hand and respondents 6 to 16 on the other. Respondents 1 to 4 claimed the relief, pursuant to the Memorandum of Compromise entered by them with respondents 6 to 16. It is the case of the respondents 1 to 4/applicants that the lands covered by Sy. No. 201 admeasuring Ac. 100.00 guntas in Saheb Nagar Kalan village were allotted and possession was given to defendant No. 2, in C.S.

No. 13 of 1958 and they claim that they have purchased the same from defendant No. 2. It is the case of the appellant and the impleaded respondents 18 and 19 that sale deeds said to have been executed in favour of the applicants are fictitious and purchasers have no capacity to purchase the lands. Applicants claim to have purchased Ac. 30.00 guntas, Ac. 30.00 guntas, Ac. 10.00 guntas and Ac. 30.00 guntas respectively vide registered sale deeds dated 22.10.1980, 23.10.1980, 24.10.1980 and 22.10.1980 on the file of the District Registrar, Hyderabad. They claim that they have become the absolute owners and possessors of the lands totally admeasuring Ac. 100.00 guntas in Sy. No. 201 of Saheb Nagar Kalan village, by virtue of such purchase. However, from the last more than thirty years, no steps have been taken for claiming the rights, for passing of the final decree. All the aforesaid sale deeds are alleged to have been executed by defendant No. 2 and it is stated that entire consideration is paid by way of cash. Further, it is also to be noticed that, the very respondents 6 to 16 have filed W.P. No. 19942 of 2005, which is pending before this Court. In the affidavit filed in support of the said Writ Petition, it is categorically stated that the lands covered by Sy. No. 201 admeasuring Ac. 100.00 guntas in Saheb Nagar Kalan village, Hayathnagar Mandal, Ranga Reddy District, are already notified under the provisions of the A.P. Forest Act, 1967, constituting reserve forest and they have filed Writ Petition seeking to set aside the notification and also seeking further relief to allow them to exercise proprietary right over the same land and the said Writ Petition is pending. In the Writ Petition, they have made State of Andhra Pradesh as party through Secretary, Forest Department and other officers. When such Writ Petition is pending consideration, even without disclosing the notification issued by the Forest Department, notifying the very same land as reserve forest under the provisions of the A.P. Forest Act, 1967, they have entered into Memorandum of Compromise with respondents 1 to 4/ applicants and simply filed application to record such compromise and to pass appropriate orders for final decree, without impleading other shareholders and defendants in the suit. Yet another suit was filed by about 13 plaintiffs in O.S. No. 111 of 1985 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad. The same is filed by respondents 5, 7, 18 and 19 and some others, claiming declaration of their entitlement for compensation, for the lands at Saheb Nagar Kalan village. Even in the said suit, it is pleaded that the Government has taken possession of the lands at Saheb Nagar Kalan village, illegally. It is stated that such suit is subsequently dismissed for default. The material, i.e., affidavit and petition filed by respondents 5, 7, 18 and 19, makes it clear that all the respondents were fully aware that the lands covered by Sy. No. 201 admeasuring Ac. 100.00 guntas in Saheb Nagar Kalan village, Hayathnagar Mandal, Ranga Reddy District, are already notified under the provisions of the A.P. Forest Act, 1967. In spite of the fact that the Writ Petition filed by respondents 6 to 16 is pending consideration before this Court, suppressing the said material fact, based on a Memorandum of Compromise, application is filed before this Court for recording of compromise and for grant of final decree. It is clear from the said averments that it is a fraud played by

respondents 1 to 4, on one hand and respondents 6 to 16 on the other hand, before this Court to obtain orders with regard to valuable land, by suppressing the material facts.

28. Learned senior counsel Sri K. Ramakrishna Reddy, appearing for respondents 1 to 3, has defended the allegations of fraud on the ground that such allegations are not sufficient to record a finding of fraud and in support thereof, he relied on a judgment of the Hon"ble Supreme Court in Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, . In the said judgment, it is held that general allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. However, the said judgment will not render any support to the case of the respondents, because, in this case, we are convinced that allegations of fraud are specific and not vague and general, and sufficient material is placed before this Court in support thereof. On the other hand, in the judgment in N. Khosla Vs. Rajlakshmi (3rd cited) as relied on by the learned counsel Sri K.B. Ramanna Dora, appearing for the impleaded respondents, the Hon"ble Supreme Court, at para-30 of the judgment held as under:

"It is clear from the record that Dewan Niranjana Prasad died on 15.01.1975 and Smt. Saraswati also in 1966. The respondents fraudulently obtained mutation on 22.01.1977 showing Dewan Niranjana Prasad and Smt. Saraswati as present. Fraud clouds everything. Fraud avoids all judicial acts. A decree obtained by playing fraud is a nullity and it can be challenged in any court, even in collateral proceedings."

29. Further, in S.P. Chengalvaraya Naidu (4th cited) as relied on by the learned counsel for the respondents 18 and 19, the Hon"ble Supreme Court has held that withholding of vital document relevant to litigation amounts to fraud on the Court and the guilty party is liable to be thrown out at any stage and he would be guilty of playing fraud on the Court. We are of the considered view that the said judgments would wholly support the case of the impleaded respondents 18 and 19. In that view of the matter, we hold that respondents 1 to 4/applicants and respondents 6 to 16 have played fraud on the Court, by obtaining orders in Application No. 1054 of 2010, in a fraudulent manner, by suppressing material facts.

30. In view of the foregoing reasons, we are of the view that this appeal is fit to be allowed. Accordingly, this appeal is allowed and the order dated 25.09.2013 passed by the learned single Judge in Application No. 1054 of 2010 in C.S. No. 13 of 1985 is set aside. Miscellaneous petitions if any pending in this OSA, stand disposed of. No order as to costs.

31. While parting with the case, we make the following observations and issue necessary directions:

With regard to vast extents of lands belonging to the Government, claims are

being made by way of filing applications in the suit in C.S. No. 13 of 1958, without impleading the State or its officers as party-respondents. In this case, though it is manifest that the lands which are subject matter of Application No. 1054 of 2010 are covered by notification issued under the provisions of the A.P. Forest Act, 1967, reserving the same as Forest Lands, without disclosing such crucial information, based on the alleged compromise entered between the respondents 1 to 4 and respondents 6 to 16, they sought recording of compromise and for grant of final decree. It is stated that, though, earlier State was a party, it was deleted from the array of the defendants and it is not known why the State was withdrawn as a party-defendant from the suit. As we are of the view that vast extent of valuable Government lands are included in various applications filed in the suit and orders are obtained, even without impleading Government as party-respondent, we deem it appropriate, for effective adjudication of the claims in the suit, the State of Andhra Pradesh, through its Secretary, Revenue Department and the State of Andhra Pradesh, through its Secretary, Environment and Forests Department, are necessary and proper parties. Accordingly, we order to implead the State of Andhra Pradesh, through its Secretary, Revenue Department and the State of Andhra Pradesh, through its Secretary, Environment and Forests Department as party-defendants in the suit in C.S. No. 13 of 1958. Hereafter, if any application is filed in the aforesaid suit, Registry is directed to ensure that the State of Andhra Pradesh is impleaded as party-respondent in such application.