
(1999) 11 AP CK 0109

In the Andhra Pradesh High Court

Case No : C.C.C. Appeal No's. 63 and 92 of 1994

Nehrunagar Co-operative Housing Society and Others

APPELLANT

Vs

E. Bhagwandass and Others

RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2000) 2 ALT 160

Hon'ble Judges : S.V. Maruthi, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : N.V. Suryanarayana Murthy, for M.S. Narayanacharlu, for the Appellant; M.V.S. Suresh Kumar and Vedula Venkataramana for Respondent Nos. 1 and 2 and Ganta Rama Rao, S.C. for MCH, for the Respondent

Final Decision : Allowed

Judgement

S.V. Maruthi, J.—These two appeals are disposed of by this common Judgment as the I Additional Judge, City Civil Court, Hyderabad disposed of the two suits O.S.No. 356/87 and O.S.No. 1486/82 by a common Judgment, against which the present appeals are filed. In both the appeals, the defendants are the appellants.

2. C.C.C.A.No. 63/94 is filed against the Judgment in O.S.No. 356/87 whereas C.C.C.A.No. 92/94 is filed against the Judgment in O.S.No. 1486/82.

3. O.S.No. 356/87 was filed by the plaintiffs therein for a declaration that they are the absolute owners of the suit land forming part of S.No. 74/10 as per the boundaries detailed in the schedule and the plan annexed, for directing delivery of possession and for injunction restraining the defendants from carrying on further construction and direct demolition of the constructions already carried out and for costs of the suit, while O.S.No. 1486/82 was filed for a declaration that the action of the first defendant/Municipal corporation of Hyderabad represented by the Special Officer, Secunderabad Division in sanctioning lay out in favour of the 2nd defendant vide its No. 28/33/E of 1982-83 dated 30-6-1982 as arbitrary,

illegal and mala fide and for a consequential mandatory injunction directing the defendants to remove the construction and structures made on the suit land and for costs.

4. Both the suits are filed by Mr. E. Bhagwandas and Mr. E. Chittaranjan Das

5. The brief averments in the plaint in O.S.No. 356/87 are as follows:-

The plaintiffs' father late Mr. E.N. Das purchased the land bearing S.No. 74/10 admeasuring Ac. 33-31 guntas situate at East Marredpalli, Secunderabad from Mr. Mir Dildar Ali Khan under a registered sale deed No. 1256/60 dated 1-9-1960. The plaint schedule land admeasuring Ac. 4.00 forms part of S.No. 74/10. The father of the plaintiff sold certain portions of land in S.No. 74/10 to various other persons and under the family settlement dated 2-3-1968, he distributed certain land among the family members. The suit land was settled on the two plaintiffs under the settlement deed No. 829/68 dated 2-3-1968. One Mr. Ghousiddin filed suit O.S.No. 16/65 against late Mr. E.N. Das before the IV Addl. Judge, City Civil Court, Hyderabad claiming the land to form part of S.No. 74/11 and not S.No. 74/10. The said suit was dismissed holding that the suit land forms part of S.No. 74/10 and not S.No. 74/11 which was confirmed on appeal in C.C.C.A.No. 31/68 by the High Court by Judgment dated 2-9-1971. The suit land in the said proceedings was shown as situated to the north-east of the Pillar 98 and to be in the possession of the plaintiffs and their predecessors-in-title. The plaintiffs also obtained permission and layout plan per permit No. 138/E/1955-56 dated 11-6-1956 and laid a metal road. The plaintiffs also filed O.S.No. 344/89 before the III Asst. Judge, City Civil Court, Hyderabad against the illegal occupation and encroachment of a portion of the land and the said suit was decreed and the plaintiffs were held to be the absolute owners of the suit land. Pahanis from 1960 to 1983 show the name of the father of the plaintiffs and their predecessors-in-title as the owners and possessors of the suit schedule property. In 1981 the plaintiffs applied for lay out sanction and on 17-11-1981 the HUDA collected lay out charges amounting to Rs. 7887.27ps.

6. Late E.N. Das also filed a suit in O.S.No. 55/63 before the III Addl. Judge, City Civil Court, Hyderabad in respect of an extent of 5555 Sq. yards which is to the south of the suit land and north of boundary pillar No. 98 but the said suit was dismissed and the appeal was also dismissed confirming the Judgment of the Lower Court and the said portion of the land situate to the north and beyond the pillar No. 98 did not form part of S.No.74/10. The defendants claiming themselves to be the members of the Nehrunagar Co-op. Housing Society, alleged to have purchased neighbouring land in S.No. 74/10 and 74/8 from one P. Bhaskara Murthy unauthorisedly attempted to occupy and trespass into the suit land under the plea of having obtained a lay out from the Municipal Corporation and started construction on the suit land. They have filed a suit in O.S.No. 340/91 before the III Addl. Judge, City Civil Court, Hyderabad for permanent injunction. Along with the suit they also filed I.A. No. 320/81 for temporary injunction restraining the plaintiffs from interfering with their

possession. They also filed I.A.No. 315/81 restraining the defendants therein from selling the suit land. Both the I.As., were dismissed.

7. In the said suit, a Commissioner was appointed who reported that the plaintiffs herein are in possession of the suit land. The defendants encroached on the suit land on or about 1-12-1981 and committed acts of trespass, removed the portion of barbed wire fencing and filed a caveat on 2-12-1981 contending that they occupied the suit land on 1-12-1981. Thereafter they did not pursue the matter and got the suit O.S. No. 340/81 dismissed on 3-8-1984.

8. The plaintiffs filed O.S.No." 304/83 against the 1st defendant u/s 6 of the Specific Relief Act and for delivery of possession of the land, but the said suit was dismissed for default. Another suit O.S. No. 1483/82 was filed before the I Addl. Judge, City Civil Court, Hyderabad against the Municipal Corporation of Hyderabad and the 1st defendant Society for cancellation of the lay out sanctioned by the Corporation and also for demolition of the structures on the site. The present suit is filed being more comprehensive, the defendants having obtained a lay out sanctioned in respect of neighbouring land for trespass and for unauthorised construction of structures in the suit land belonging to the plaintiffs, for declaration of their right and title to the suit property, for possession and consequential injunction and for costs. The land claimed and the lay out sanctioned pertain to the land bearing S.No. 74/8 and 74/10 as evidenced in the lay out sanctioned on 30-6-1982. The cause of action for the suit arose on 1-12-1981 when some of the defendants attempted to take possession of the suit land with the help of police and thereafter when the defendants started encroaching and constructing on the suit land.

9. In the written statement, the defence set up by the defendants is denial of the averments in the plaint. It is submitted that the suit land is not in S.No. 74/10 as alleged in the plaint but the suit land is in S.No. 74/8 and S.No. 74/12. It is stated that Dr. E.N. Das throughout claimed till his death in March 1976 that he is the absolute owner and possessor of S.Nos. 74/10 and 74/6 and that the defendants are not parties to the suit O.S.No. 16/65 and C.C.C.A. No. 31/68 and therefore the Judgments in the suit and the appeal are not binding on them. It is further stated that the plaintiffs and their father filed several suits claiming S.No. 74/8 as the land covered by S.No. 74/10 since 1960 and all the suits were dismissed. Late Dr. E.N. Das filed O.S.No. 165/60 on 23-11-1960 on the file of the 1st Asst. Judge, City Civil Court, Hyderabad at Secunderabad for permanent injunction restraining the defendants therein viz., Nawab Mansab Jung, Bhaskara Murthy, Govinda Rao and Waliulla Hussaini, defendants 1 to 4 respectively, from trespassing into the land. The subject matter of the said suit was in respect of Ac. 9-19 guntas said to have been purchased under a registered sale deed dated 1-9-1960. The plaint in the said suit was returned in 1961 for presentation to proper Court on the ground that it has no pecuniary jurisdiction. Thereafter, it was presented before the II Addl. Judge, City Civil Court, Hyderabad and the suit was renumbered as O.S.No. 53/61 and the prayer in the suit was for declaration

of plaintiffs" title and for possession of 5555 Sq. yards of land allegedly forming part of S.No. 74/10 and for a mandatory injunction restraining the respondents to remove certain buildings constructed thereon. In O.S.No. 53/61, the parties are defendants 2 to 4 in O.S.No. 165/60 as defendant No. 5, D.S. Naidu as defendant No. 6, and M.J.J. Rao as defendant No. 7. The said suit was subsequently transferred to III Addl. Judge, City Civil Court, Hyderabad and renumbered as O.S. No. 55/63. In the said suit, the 6th defendant therein was the President of the 1st defendant society herein. The main issue in that suit was whether the suit land forms part of S.No. 74/10 or 74/8. O.S.No. 55/63 was dismissed on 16-2-1971 holding that Dr. E.N. Das has no title or possession of any land to the north of cantonment boundary pillar No. 98 at the north western corner of S.No. 74/2, which Dr. E.N. Das claimed to have purchased from previous owner of S.No. 74/2, Dr. Fazurullah. The Appeal filed in C.C.C.A.No. 152/72 against the said Judgment was also dismissed on 2-3-1976 and a further appeal to the Supreme Court in Civil Appeal No. 829/76 was also dismissed on 11-4-1978.

10. After the dismissal of the Civil Appeal No. 829/76 by the Supreme Court, on 11-4-1979 the plaintiffs filed an application No. B/45/1979 on 7-5-1979 u/s 145 of the Cr.P.C, against the 1st defendant/Society and others before the Special Executive Magistrate contending that the 1st defendant society and others tried to interfere with their possession of 5555 Sq. yards situate in S.No. 74/10 of East Marredpalli village, Secunderabad taluk and obtained a preliminary order on 10-5-1979. On 30-3-1981, Magistrate held that the plaintiffs are in possession of the said land against which the 1st defendant/ Society filed Cr.R.C.No. 205/81 and also O.S.No. 340/81 on the file of the III Addl. Judge, City Civil Court, Hyderabad, for declaration of their title to and possession and for permanent injunction against the plaintiffs and along with the suit they also filed an application for temporary injunction which was dismissed on 23-7-1981. On 13-7-1981, the High Court of Andhra Pradesh allowed Cr.R.C. No. 205/81 holding that the 1st defendant/ Society is in possession of the land in S.No. 74/8 and 74/12 and set aside the order of the Special Executive Magistrate dated 30-3-1981. As against the order of the High Court in Cr.R.C.No. 205/81, the 1st plaintiff filed SLP in the Supreme Court in Crl.No. 2828/81 which was dismissed on 30-10-1981. Thereafter, the plaintiffs again tried to trespass into the land belonging to the members of the 1st defendant/society covered by S.No. 74/8 and 74/12. However, the 1st defendant/Society did not permit the plaintiffs to enter into the land. After the High Court allowed the Cr.R.C.No. 205/81 on 13-7-1981 holding that the disputed land is covered by S.No. 74/8 and 74/12, the defendants did not pursue the suit O.S. No. 340/81.

11. The plaintiffs also filed W.P. No. 9097/81 in the High Court of Judicature of Andhra Pradesh, Hyderabad on 2-12-1981. However, the said writ petition was dismissed on 28-1-1982. Thereafter, the plaintiffs again filed O.S.No. 27/82 on 9-7-1981 for recovery of possession of land admeasuring Ac. 8-35 guntas or 40425 Sq.yards in S.No. 74/10. The said suit was dismissed as the plaintiffs did

not pursue the same. The petition to restore the suit was also dismissed.

12. The northern boundary of S.No. 74/10 as well as S.No. 74/11 is a straight line running from West to East from cantonment boundary pillar No. 98 which is the southern boundary of S.No. 74/8 and 74/12. The plaint plain and the boundaries given in the plaint are not correct.

13. The defendants also raised the following additional pleas:

S.No. 74 situate in East Marredpalli village consists of 12 divisions. S.No. 74/1 belongs to Government, S.No. 74/2 belongs to one Dr. Fazrullah, S.No. 74/3 to 74/12 measuring an extent of 300 acres belong to different pattadars. The pattadar of S.No. 74/12 is one Mohd. Waliullah and pattadar of S.No. 74/8 is one Nawab Mohd. Munasab Jung Bahadur. The original pattadars of all these S.Nos., obtained lay out sanction from the Municipal Corporation of Hyderabad, Secunderabad Division, under permit No. 403-M of 1959-60 dated 6-1-1960. Sales were effected in 1958, 1959 and 1960 in the names of defendants 2 to 22 and their predecessors in interest and ever since the members of the society are in possession and enjoyment of the land. The southern boundary of the land purchased by the members of the society covered by part of S.No. 74/8 and part of S.No. 74/12 is a straight line proceeding from West to East from cantonment boundary pillar No. 98 which is the northern boundary of S.No. 74/11 and 74/10. The Society was formed in the year 1960 consisting of 70 members and these members purchased various plots in S.No, 74/8 and 74/12. The sale deeds are dated 28-8-1958 and 25-4-1959 in respect of the land covered by part of S.No. 74/8 and dated 13-3-1959 in respect of Ac. 2.00 of land covered by S.No. 74/12. S.No. 74/8 and S.No. 74/12 do not constitute northern boundary for S.No. 74/9 and 74/10 in cantonment boundary pillar No. 98. There is no cantonment boundary pillar No. 98 as mentioned in the schedule. S.No. 74/6 is no-where in the eastern boundary of S.No. 74/10. S.No. 74/6 is to the far north of the suit land in S.No. 74/10 and S.No. 74/9 intervenes in between. The suit is barred by res judicata. The defendants 2 to 4, 9 to 12, 14 and 22 through their predecessors-in-title have perfected their title to the land by adverse possession. The suit is also barred by limitation. The suit is liable to be dismissed with costs.

14. The averments in the plaint in O.S.No. 1486/82 and the defence set up by the defendants are more or less similar to the averments made in O.S.No. 356/87 except stating that the plaintiffs in the month of May, 1982 came to know that the 2nd defendant applied to the 1st defendant for sanction of lay out for the land in which the suit land is included and thereupon the plaintiffs made a complaint on 26-5-82 to the 1st defendant stating that the proposed layout submitted by the second defendant includes the suit land which was not considered and brushing aside the objections raised by the plaintiffs, the first defendant sanctioned the lay out in favour of the 2nd defendant vide layout No. 28/33/E/82-83 dated 30-6-1982 and the land in respect of which lay out was sanctioned forms part of S.No. 74/10 and therefore the layout should be cancelled. The defendants denied the allegations in the written statement and

other averments are more or less similar to the averments made in the written statement in O.S.No. 1356/87.

15. On the basis of the above pleadings, the trial Court framed the following issues in O.S.No. 356/87 and O.S.No. 1486/82.

16. Issues in O.S.No. 356/87:

- (1) Whether the plaintiff is entitled for the declaration prayed?
- (2) Whether the plaintiff is entitled for the injunction prayed for?
- (3) To what relief ?

17. Issues in O.S.No. 1486/82:

- (1) Whether the plaintiff has title to the suit property?
- (2) Whether the suit is barred by res judicata?
- (3) Whether the plaintiffs have possession of the suit property at any time within the statutory period?
- (4) Whether the suit is barred by time?
- (5) Whether the suit is bad for non joinder of necessary parties?
- (6) Whether the plaintiff is entitled to permanent injunction prayed for?
- (7) To what relief?

18. In the trial Court, both the parties have filed a joint memo agreeing for a joint trial of O.S.No. 356/87 and O.S.No.1486/82.

19. The first plaintiff examined himself as P.W. 1 and marked Exs.A-1 to A. 45 while the 1st defendant examined himself as D.W. 1 and Exs.B-1 to B. 14 were marked on behalf of the defendants. On the basis of the evidence, both oral and documentary, adduced by the parties, the trial Judge viz., I Addl. Judge, City Civil Court, Hyderabad, decreed both the suits. Aggrieved by the same, the defendants are in appea before us.

20. The parties will be referred to as appellants and respondents for the sake of convenience in these Appeals.

21. Sri N.V. Suryanarayana Murthy the learned Counsel for the Appellants mainly contended that the plaintiffs have filed O.S.No. 55/63 claiming that the appellants have trespassed into an extent of 5555 Sq.yards of site situated north of cantonment boundary pillar No. 98 forming part of S.No. 74/10 and the said suit was dismissed on the ground that the respondents have no land towards the north of cantonment boundary pillar No. 98 and that S.No. 74/11 and 74/10 are separated by a straight line from West to East. He therefore contended that in view of the finding that the respondents have no land towards north of cantonment boundary pillar No. 98 which operates as res judicata, the present

suit is liable to be dismissed. The learned Counsel also contended that the suit is not only barred under Order 2 Rule 2 of C.P.C., but also barred by limitation. The learned Counsel in support of his contention referred to the documentary evidence in extenso. The learned Counsel also relied upon a number of decisions in support of his contention that the present suit is barred by the principles of res judicata in view Of the Judgment in O.S.No. 55/63.

22. The learned Counsel for the respondents contended that the Judgment in O.S.No. 55/63 does not operate as res judicata and the cause of action for the present suit arose on 1-12-1981 on which date they were sought to be dispossessed and therefore the suit is within time. He further contended that in so far as O.S. No. 1486/82 is concerned, the limitation starts running from the date on which the lay out was sanctioned on 30-6-1982 and therefore it is not barred by limitation. It is further contended by him that sub-division of S.No. 74 is correctly mentioned in the plan Ex.A-37 and not in Exs. B-5 to B-7. Exs.B-5 to B-7 are not signed by any competent authority and therefore they cannot be looked into for making subdivision of S.No. 74. It is further contended that Ex.B-7 was disbelieved in C.C.C.A. No. 31/68 marked as Ex.A-26 in the suit and in C.C.C.A.No. 31/68, Ex.A-37 is found to be genuine and therefore the respondents claim should be upheld. Therefore, there is no ground to interfere with the judgment of the trial Court. He further contended that the respondents have filed documents in support of their contention in respect of S.No. 74/10 whereas the appellants/ defendants have not filed any title deeds or evidence anterior to 1-12-1981. He further contended that the appellants claimed to have purchased S.No. 74/8 and S.No. 74/12 under sale deeds, have not filed any of the sale deeds, though they have enclosed list of documents to the written statement. Therefore, it is a case where the appeals are liable to be dismissed and the judgments in appeals are to be confirmed.

23. On the basis of the respective arguments advanced by the learned Counsel, the following points arise for consideration in these appeals:

(1) Whether the suits O.S.No. 356/87 and O.S.No. 1486/82 are barred by the principles of res judicata by virtue of the judgment in O.S. No. 55/63?

(2) Whether the suits O.S.No. 356/87 and O.S.No. 1486/82 are barred by limitation?

24. Issue No. 1:- To consider this issue, it is necessary to refer to the documents and the basis for the suit O.S.No. 55/63 and the present suits. S.No. 74 is situate in Marredpalli village. The said Survey Number was sub-divided into 12 sub divisions. The respondents claim that they have purchased S.No. 74/10 from one Mr. Mir Dildar Ali Khan admeasuring Ac. 33-31 guntas situate in East Marredpalli village under a sale deed dated 1-9-1960. The respondents claim that the suit land forms part of S.No. 74/10. While the appellants claim that plaint schedule land forms part of S.Nos. 74/8 and 74/12 and that S.Nos. 74/10 and 74/11 were originally owned by Nawab Mohd. Munsab Jung Bahadur and Mohd. Wahiullah

respectively who sold the same to one Bhaskara Murthy from whom the Society members purchased after making them into plots and the southern boundary of these lands namely lands covered by S.No. 74/8 and 74/12 is a straight line proceeding from west to east from cantonment boundary pillar 98 which is the northern boundary of S.No. 74/11 and 74/10. Prior to the filing of the present suits, the respondents filed O.S.No. 55/63 for a declaration that they are entitled for possession of 5555 Sq.yards situated towards north of cantonment boundary pillar No. 98 and that the appellants have trespassed into the same, while the appellants denied that they have trespassed into the said land and that the 5555 Sq.yards of land forms part of S.Nos. 74/8 and 74/12 and not S.No. 74/10. It is the case of the appellants that the respondents do not have any land towards north of the cantonment boundary pillar No. 98. This issue was extensively considered by the III Addl. Judge, City Civil Courts, Hyderabad, at Secunderabad in O.S.No. 55/63. The learned Judge dismissed the suit holding that 5555 Sq.yards of land did not form part of S.No. 74/10 and is situate to the north and beyond cantonment boundary pillar No. 98 and the said judgment operates as res judicata.

25. Before considering whether the judgment in O.S.No. 55/63 operates as res judicata, it is necessary to refer to the reasoning and the findings of the learned Judge in the present suits. The relevant issues framed by the learned Judge in the present suits are issue Nos. 1 and 2. The case of the respondents is that they purchased Ac. 39.31 guntas in Sy.No.74/10 under different agreements of sale in 1951 and the plaint schedule property forms part of Sy.No. 74/10 and it is situated to the North East of cantonment boundary1 pillar of No. 98. The respondents relied on Ex.A-1 dated 1-9-1960 executed by Nawb Dildar Ali Khan and the extent of land covered is Ac. 9-19 guntas and the survey number mentioned is 74/10. The learned Judge relied on Ex.A-1 sale deed and held that it shows the portion existing to the North East of cantonment boundary Pillar No. 98 is part of Sy.No. 74/10 which is an extent of Ac. 9-19 guntas. He also referred to the deposition of Sri Bhaskar Murthy who was a party in O.S.No. 55/63 marked as Ex.A-28 wherein he has said that he purchased Ac. 5-00 of land in Sy.Nos. 74/8 and 74/12 but sold Acs. 71/2 , that the said Bhaskara Murthy has no right to Ac. 21/2 of land and that it is the said 21/2 acres of land which is the plaint schedule land belonging to the respondents. The learned Judge also relied on Paigah Plan Ex. A-37 which shows that to the north east of pillar 98, Sy. No. 74/10 extends and to the further north there is the land in Sy.No. 74/8 and 74/12 belonging to Waliullah Hussain and Mansab Jung Bahadur. He further held that the judgment in O.S.No. 55/63 does not operate as res judicata as in the present suits the appellants who are defendants in the said suit has not disputed the title of the respondents in respect of Sy.No. 74/10. He further held that the suit O.S.No. 55/63 is a suit for injunction and the title of the respondents was not in dispute. According to the learned Judge, the limited question that arose and decided was whether 5555 Sq.yards claimed by Dr. E.N. Das was part of Sy.No. 74/10 or not. In fact in C.C.C.A.No. 31/68 in which the dispute relating to

the identity of the location of Sy.No. 74/10 was involved, the High Court upheld the title of the respondents to Sy.No. 74/10 and declined to accept Exs. B-5 to B-7 which are only blue print copies of plans which have no probative value. Ex.A-37 a certified copy of the paigah plan was held to be valid and correct in which the plaint schedule property is shown as part of Sy.No. 74/10 situated at North East of cantonment boundary Pillar of 98. In view of the above, the plaint schedule property in the present suit is situated on the North East of Cantonment Boundary Pillar No. 98, while the subject matter of O.S.No. 55/63 is that 5555 Sq.yards of land is claimed to be to the North of Boundary Pillar No. 98. The learned Judge rejected the contention of the appellants that Exs. B-5 to B-7 were held to be genuine documents and the subdivisions shown clearly establish actual location and boundaries of Sy.No. 74/10 and Sy.No. 74/10 lies in south eastern corner on the ground that the High Court in C.C.C.A.No. 31/68 held that Exs. B-5 to B-7 plans are only copies prepared by some private persons and they are not authenticated plans. The argument of the appellants that Ex.A-1 sale deed which was marked as Ex. A-7 in O.S.No. 55/63 held to be bogus and, therefore, the respondents' father E.N. Das has no title to suit property in O.S.No. 55/63 was also rejected on the ground that the subject matter in O.S. No. 55/63 relates to the extent of 5555 Sq.yards which is stated to be situated towards north of Cantonment Boundary Pillar No. 98 and the present suit schedule property in O.S.No. 356/97 is situated towards North East direction of Cantonment Boundary Pillar No. 98. He also relied on the Commissioner's report in support of the finding that the plaint schedule property forms part of Sy.No. 74/10 lying towards the North East of Cantonment Boundary Pillar No. 98.

26. Before examining the reasoning given by the learned Judge in detail, we would like to point out that the respondents in support of their claim relied on Ex.A-1 sale deed dated 1-9-1960 and the judgment in C.C.CA.No. 31/68. C.C.C.A.No. 31/68 was filed against the judgment in O.S. No. 16 of 1965 dated 28-7-1967. At this stage it is necessary to refer briefly to the judgment in C.C.C.A.No. 31/68. O.S. No. 16/65 was filed by Syed Ghousuddin Ahmed and Syed Shamsuddin against Dr. E.N. Dass, the father of the present respondents for a declaration of their right to the suit schedule property namely S.No. 74/11 and for an injunction restraining the defendant from interfering with the possession. The suit was dismissed upholding the title of Dr. E.N. Dass in respect of S.No. 74/11 against which C.C.C.A.No. 31/68 was filed which was also dismissed. In the suit Ex.B-5, a plan prepared by Paigah Estate and Exs. A-6 and A-9 were filed and Exs. A-6 and A-9 were held to be not genuine, while Ex.B-5 was held to be a genuine document which identifies the existence of Sy.No. 74/10.

27. We will now examine each reason given by the learned Judge. The learned Judge in the present suit relies on the judgment in C.C.C.A.No. 31/68 and holds that the plaint schedule property is situated to the North-East of Cantonment Boundary Pillar No. 98 on the ground that the respondents' title to Sy.No. 74/10 was upheld in the said suit. We are of the view that the reliance placed by the

learned Judge on the judgment in C.C.C.A. No. 31/68 is misplaced. It is pointed out that the appellants are not parties to O.S. No. 16/65 out of which C.C.C.A.No. 31/68 arose. Secondly the dispute in the said suit relates to Sy.No. 74/11 whereas the dispute in the present suit relates to Sy.No. 74/10. Therefore, the judgment in C.C.C.A. No. 31/68 is not relevant to the facts of the present case. Further, the judgment in C.C.C.A.No. 31/68 is dated 2-9-1971, whereas the judgment in O.S.No. 55/63 is dated 16-2-1971 against which C.C.C.A. No. 152/72 was filed in the High Court which was dismissed on 18-3-1976. A SLP filed in the Supreme Court was numbered as C.A.No. 828/76 and the same was dismissed on 11-4-1979. We will deal with the judgment in O.S. No. 55/63 at a later stage in detail. For the present, it is suffice if we point out that the judgment in C.C.C.A.No. 31/68 on which the learned Judge relied on to hold that the respondents have land to the North-East of Cantonment Boundary Pillar No. 98 in Sy.No. 74/10 is misplaced and the said judgment is not relevant. Therefore, any reasoning and findings given in C.C.C.A.No. 31/68 is of no relevance as the judgment dismissing the claim of the respondents to 5555 Sq. yards to the North-East of Cantonment Boundary Pillar No. 98 is subsequent to the judgment in C.C.C.A.No. 31/68, apart from the fact that it relates to Sy.No. 74/11 which is not the subject matter of the present suits. If really the respondents considered that the judgment in C.C.C.A.No. 31/68 is relevant and operates as binding, they would have referred to it in C.C.C.A.No. 152/72 filed against the judgment O.S. 55/63. The respondents have not relied upon this judgment in C.CCA.No. 152/72. That itself indicates that the judgment in C.C.C.A. No. 31/68 is not relevant and conclusive. Therefore, the reasoning given by the learned Judge that in view of the judgment in C.C.C.A.No. 31/68 the respondents have land to the North-East of Cantonment Boundary Pillar No. 98 is held to be not valid.

28. The second reasoning given by the learned Judge that since Bhaskar Murthy from whom the appellants purchased Survey Nos. 74/12 and 74/8 stated in his deposition under Ex.A-28 in O.S.No. 55/63 that he purchased Ac. 5-00 of land in Sy.No. 74/8 and Sy.No. 74/12, but sold Ac. 71/2 of land and, therefore, the extent of Ac. 21/2, over and above Ac. 5-00 is the plaint schedule property in the present suits cannot also be countenanced for the simple reason that it is neither the case of the appellants nor the respondents that Bhaskar Murthy sold Ac. 21/2 of land over and above Ac. 5-00 of land which he purchased and, therefore, Ac. 21/2 of land is the plaint schedule property situated to the North-East of Cantonment Boundary Pillar No. 98. Therefore, this reasoning of the learned Judge is also incorrect and wrong as it is not based on any plea or evidence.

29. The next question is whether O.S.No. 55/63 operates as res judicata. The judgment is O.S.No. 55/63 was marked as Ex. B-8. The said suit was filed by E.N. Dass, the father of the present respondents against Bhaskar Murthy, the vendor of the members of the appellant society, Govind Rao, Waliullah Hussaini, Hyderabad Municipal Corporation, Secunderabad Division, Hyderabad Housing Board, D.S. Naidu and Dr. M.J.J. Rao, for a permanent injunction to restrain the defendants therein from trespassing into 5555 Sq.yards of land situated in Sy.No.

74/10 to the North of the Cantonment Boundary Pillar No. 98, in Maredpalli village. The plaintiff in the said suit and the father of the respondents in the present appeals relied on Ex.A-1 dated 17-1-1951 (Original Sale Deed executed by Shahzada Mir Dildar Ali Khan in favour of plaintiff), Ex.A-7 dated 1-9-1960 (Original Sale Deed) executed by Mir Dildar Ali Khan in favour of the father of the respondents and Ex.A-30 (Blue Print Copy of Pattedar of Patta No. 74/10). Ex.A-7 dated 1-9-1960 corresponds to Ex.A-1 in the present appeals. While the defendants relied on Ex.B-1 (Blue Print Plan of Marredpally village), Ex.B-3 (Certified copy of the Blue Print Plan revised layout of land), Ex.B-5 (Certified copy of Blue Print Plan), Ex.B-6 (Original sale deed executed by Mansab Jung Bahadur in favour of defendant No. 1), Ex.B-7 (Plan attached to Ex.B-6) and Ex. B-8 (Original Sale Deed executed by Mansab Jung Bahadur in favour of D-1). The allegation against the defendants is that they have trespassed into 5555 Sq.yards of land in Sy.No. 74/10 situated in the North to the Cantonment Boundary Pillar No. 98. The defendants contended that 5555 Sq.yards of land is situated in Sy.Nos. 74/8 and 74/12 and does not form part of Sy.No. 74/10 and that to the North of Cantonment Boundary Pillar No. 98, Sy.No. 74/10 does not extend and the plaintiff namely the father of the respondents did not have any land to the North of Cantonment Boundary Pillar No. 98, that Sy.Nos. 74/10 and 74/11 are separated from Sy.Nos. 74/12 and 74/8 by straight line running from East to West starting from Cantonment Boundary Pillar No. 98. The issues framed during the trial which are relevant for deciding the present appeals are that (1) whether the portion marked red in the suit plan annexed to the Plaint measures 5555 Sq.yards and is included in S.No. 74/10? (2) whether the plaintiff is the absolute owner of the portion marked red and included in S.No. 74/10? and (3) whether the defendants have trespassed into the portion marked red and if so, to what extent of the land have each defendant trespassed?

30. In support of the contention that the plaintiff is the owner of Sy.No. 74/10, the Counsel relied on Ex.A. 2, which he claims to be the original plan prepared by the Paigah Office showing the correct subdivision of Sy.No. 74, according to which Sy.No. 74/10 extends to the North of Cantonment Boundary Pillar No. 98, which is the plaint schedule property in the said suit. He also relied on the judgment of the II Addl. Chief Judge in O.S. 16/65 dated 28-9-1967 marked as Ex. A-36 and Ex.A-7 sale deed dated 1-9-1960. It is pointed out that Ex.A-2 was also filed in O.S.No. 16/65. The learned Judge in O.S. 55/63 observed that Ex.A-2 is not a genuine plan. He also commented that the finding of the II Addl. Chief Judge in O.S.No. 16/65 that Ex.A-2 is a genuine plan is without examining the contents of the file. He observed that the file that was produced was fabricated. He also found that Ex.A-2 was not in the custody of the Government as soon as the Jagirs were abolished and it came into the custody of the Government long after 1956. Therefore, the reasoning given in Ex.A-36 viz., the judgment in O.S.No. 16/65 that Ex.A-2 plain is a genuine document is not correct and, it cannot be relied upon. He also took into account the admission made by the plaintiff in the said suit in his cross-examination admitting that the

Cantonment Boundary Pillar No. 98 is to the North of Sy.No. 74/2 purchased by him. In view of that the plaintiff cannot have any land to the North of Sy.No. 74/2. The defendants who are predecessors-in-title of the present appellants, filed Ex.X-1 plan. The learned Judge found that Ex.X-1 is the correct plan. According to this plan, Sy.No. 74 is subdivided into 12 sub-divisions, while Ex.A-2 mentioned only 10 sub-divisions. He found that Ex.A-2 has been superseded by Ex.X-1 in 1958 by dividing Sy.No. 74 into 12 subdivisions. He also found that Ex.X-1 is possessed by all the pattadars and subdivision of Survey No. 74 is based on Ex.X-1. Ex.X-1 corresponds to Ex.B-6 in the present appeals. Exs.B-30 to B-35 were also relied upon by the defendants. Ex.B-30 is a report of the Land Record Assistant who dealt with the matter. According to this report, Ex.A-2 is not a correct plan. Ex.B-30 indicates that the plaintiff Dr.Dass under the guise of purchasing Sy.No. 74/10 occupied Sy.No. 74/11 actually belonging to Namdarunnisa Begum. It also indicates that the common blue print plan for which copies were obtained by parties in 1954 tallies with the village records and Ex.A-2 produced by the plaintiff does not tally with the village record. In this report viz., Ex.B-30, Ex.B-31 plain is attached which is same as Ex.X-1, Ex.B-32 is the order of the Collector on the basis of Exs.B-30 and B-31. The Collector found that "the case of Dr. Dass is most preposterous to say the least", and that "so long as the common blue print is the very basis on which he purchased certain plots and when it tallies with the village records in the Pahani Patrick and so long as Dr. Dass's print does not agree with the village record, the plan filed by Dr.Dass has to be ignored. It is a scrap of worthless paper. It is not a genuine document. Dr. Dass's contentions are absolutely baseless and worthless". Coming to Ex.A-7, the learned Judge found that Dildar Ali Khan, the vendor of the plaintiff owns only Ac.30-12 guntas purchased by the plaintiff under Exs.A-1, A-5 and A-6. Later on he came to know that Dildar Ali Khan is the owner of Sy.No. 74/10 whose recorded extent is Ac. 39-31 guntas in revenue records and then he made an effort to claim rights for Ac. 39-31 gts., and in this process he even ignored the recital in Ex.A-6 sale deed which clearly show that Dildar Ali Khan has already sold two acres in Sy. No. 74/10 to others. When he was unable to get possession of Ac. 9-19 guntas to the North of Cantonment Boundary Pillar No. 98, he obtained Ex.A-7. Having made purchases on the basis of Ex.X-1, he tried to set up rights on the basis of Ex.A-2 because in Ex.A-2, Sy.No. 74/10 is shown as extending beyond Cantonment Boundary Pillar No. 98. The learned Judge further found that the plaintiff failed to produce Ex.A-1 sale deed and had he produced the same and various other plans, they would have indicated that Cantonment Boundary Pillar No. 98 is to the North-West Corner of 74/2 and there is no land to the North of Cantonment Boundary Pillar No. 98 for either Sy.Nos. 74/10 or 74/11 and that the Northern boundary for Sy.No. 74/10 as well as Sy.No. 74/11 is a straight line from East to West from Pillar No. 98. He also found that the revenue records of the Paigah and the Government proceeded on the basis of Ex.X-1 and the Municipality acted upon this and sanctioned layouts and the position of the parties is based on Ex.X-1 and the common blueprint plan. He also expressed a doubt whether the plaintiff has acquired any valid title

to the land claimed by him under Exs.A-1, A-5 and A-6 but he did not examine the issue further. In view of the above, he held that S.No. 74/10 does not extend beyond the straight line running from East to West from the Cantonment Boundary Pillar No. 98. Against the judgment in O.S. No. 55/63 the plaintiff Dr.Dass filed CC.CA.No. 152/72 in the High Court. In the appeal, the only issue argued was that the lower Court has found it had no jurisdiction to entertain the suit and on that finding it was the duty of the Court to have returned the plaint to the plaintiff for proper presentation. The said argument was rejected holding that the Court of the Addl. Judge had jurisdiction to entertain the suit. It was also held that the plaintiff having himself invoked the jurisdiction of the Addl. Judge it is not open for him to contend now that the plaint should have been returned for proper presentation. Holding as above, the C.C.C.A. was dismissed against which a SLP C.A.No. 828/1976 was filed which was also dismissed confirming the judgment of the High Court in C.C.C.A. No. 152/72. During the pendency of the appeal the father of the respondents in the present appeals died and the respondents were brought on record. Neither in C.C.C.A.No. 152/72 nor in C.A.No. 828/76 any argument was advanced on merits. The only argument advanced was about jurisdiction. Therefore, the finding on merits in the suit O.S.No. 55/63 has become final.

31. Let us now refer to the findings in O.S.No. 55/63, viz., (1) Ex.X-1 corresponding to Ex.B-6 in O.S.No. 1486/82 and O.S.No. 356/87 is correct and authenticated plan; (2) Ex.A-2 corresponding to Ex.A-37 in O.S. No.1486/82 and O.S.No. 356/87 is not genuine and has been superseded by Ex.X-1; (3) Ex.A-7 dated 1-9-1960 corresponding to Ex.A-1 in O.S.No. 1486/82 and O.S.No. 356/87 is not genuine; (4) The plaintiff in O.S.No. 55/1963 i.e., the father of the respondents in the present appeals has not title and possession to the land to the North of Cantonment Boundary Pillar No. 98; and (5) S.No. 74/12 and S.No. 74/8 are separated by a straight line running from West to East from the Cantonment Boundary Pillar No. 98.

32. From the above, it is clear that the parties to O.S.No. 55/63 and the present appeals are one and the same except that O.S.No. 55/63 was filed by the father of the present respondents and the respondents were brought on record after the death of the father during the pendency of the proceedings.

33. The issue in O.S.No. 55/1963 is whether the father of the respondents has any title and possession to the land to the North of Cantonment Boundary Pillar No. 98. The issue in the present appeals is whether the respondents have any land to the North-East of the Cantonment Boundary Pillar No. 98. When once the finding that the plaintiff namely the father of the respondents in the present appeals has no title or possession to the land to the north of Cantonment Boundary Pillar No. 98 and S.Nos. 74/8 and 74/12 belonging to the defendants in O.S. No. 55/63 and the appellants in the present appeals are separated by a straight line running from East to West from Cantonment Boundary Pillar No. 98 from S.Nos. 74/11 and 74/10, the question of the respondents having possession

and title to the land to the North-East of the Cantonment Boundary Pillar No. 98 does not arise. Further the issue whether the respondents are having title and possession to the land to North-East of Cantonment Boundary Pillar No. 98 was directly and substantially in issue. Therefore, he cannot be permitted to reagitate the issue once again on the principle of not only of res judicata but also under Order II Rule 2 of C.P.C. We have also perused Ex.B-6 and we find that S.No. 74/12 is to the North-West of the Cantonment Boundary Pillar No. 98 and S.No. 74/8 is to the North of Cantonment Boundary Pillar No. 98. Further S.No. 74/12 and S.No. 74/8 are separated by a straight line running from West to East from S.No. 74/11 and S.No. 74/10.

34. Therefore, the judgment in O.S. No. 55/63 operates as res judicata and the respondents cannot be permitted to raise the same issue once again as it was heard and decided finally between the same parties by a competent Court. The learned Judge committed an error while holding that the dispute in the present suits is different from the dispute in the earlier suit namely O.S.No. 55 /1963.

35. The next point is whether the suit is barred by limitation. In the cause of action paragraph in the plaint in O.S.No. 356/87, respondents have stated that the cause of action arose on 1-12-81 when the defendants attempted to take possession with the help of police and thereafter when the defendants started encroaching and constructing on the suit land. Whereas the suit O.S.No. 1486/82 is not barred by limitation as it is filed within six months from 8-9-82 when the lay out was sanctioned by the Municipality.

36. In view of the above, the appeals are allowed and the judgments and decrees are set aside. The suits O.S.No. 356/87 and 1486/82 are dismissed with costs. No costs.

37. The matter is posted for being mentioned. The learned Counsel for the appellant submitted when the suits were dismissed, the appellants were directed to pay costs in the trial Court, therefore they should be awarded costs through out. The learned Counsel for the respondents opposed the contention.

38. Having regard to the facts and circumstances and since the suits were dismissed with costs, we direct that the costs should be borne by the respondents throughout.