

(2014) 07 AP CK 0164
In the Andhra Pradesh High Court
Case No : Second Appeal No. 393 of 2013

Peddiraju Venkata Subba Rao

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 10(b), 11, 11(a), 13, 13(a)

Citation : (2014) 07 AP CK 0164

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : P. Sridhar Reddy, Advocates for the Appellant

Judgement

B. Chandra Kumar, J.—This Second Appeal is directed against the judgment and decree dated 17.03.2012 passed in A.S. No. 13 of 2006 by the Principal District Judge, Nellore, confirming the judgment and decree dated 07.10.2005 passed in O.S. No. 11 of 2000 by the Principal Senior Civil Judge, Nellore.

2. The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

3. The case of the plaintiff, in brief, is as follows. Originally Vedayapalem village was an Inam Estate situated in Vedayapalem village, Nellore Taluk and Mandal. The said Inam Estate was taken over by the Government on 10.04.1961 under the Estates Abolition (Conversion into Ryotwari) Act (Act 26 of 1948). The village is practically adjacent to Nellore town and began developing from time to time. In the year 1949 the Shrotriumdars made an application to the District Collector, Nellore seeking permission under the Estates Abolition Act for conversion of dry land into category of village site. The then District Collector, Nellore, vide proceedings L. Dis. No. 15404 of 1949, dated 08.12.1949, accorded permission to the then Shrotriumdars for conversion of Sy. Nos. 60/1 to 12 of the village comprising about Ac. 42-00 into village site. However, in the revenue records the land in Sy. Nos. 60/1 to 12 was noted as cultivable dry land by the time of taking

over the Estate in the year 1961. The further case of the plaintiff is that the Shrotriumdars on permission being granted converted the said land into house plots and entered into a registered partition deed dated 10.02.1950 and each of the land holders were enjoying the same as house plots in their own. The further case of the plaintiff is that one Sarvepalli Subbaramaiah, the Shrotriumdar sold 62 Ankanams of suit schedule house site to Battaram Saradamba under a registered sale deed dated 21.09.1950 for valuable consideration. The said Battaram Saradamba sold the said house site to the plaintiff under a registered sale deed dated 11.04.1977 and since then the plaintiff has been in possession and enjoyment of the same.

4. The further case of the plaintiff is that during the pendency of settlement proceedings some of the ryots as well as the landholders including the plaintiff herein were misguided to approach the Settlement Authorities to secure Ryotwari pattas and that the Settlement Authorities, ignoring the proceedings of the District Collector, Nellore, refused to grant Ryotwari pattas despite the fact that the revenue records reflects the said survey number as house site. In the meanwhile, the second defendant, taking advantage of the pendency of the proceedings, encroached some area of the land in" Sy. No. 60/1 to 12 and constructed thatched Ashramam describing himself as a trustee by naming the premises as Sri Balayogeeswara Swamy Vari Ashramam, Vedayapalem, Nellore, and in course of this process the second defendant encroached the suit schedule property and enclosed the entire extent in his occupation by fencing the same. The further case of the plaintiff is that the second defendant filed Writ Petition No. 6170 of 1989 and this Court, by an order dated 26.04.1996 dismissed the said writ petition with a direction to establish the respective title of each occupants of the said survey number in a Civil Court and granted the order of status quo. The second defendant is a trespasser and he has no right or title to the land in his possession more so the schedule mentioned land. So far, the second defendant did not move the Civil Court as per the directions of this Court and the first defendant also has not taken any proceedings to evict the occupiers of Sy. No. 60/1 to 12. With the above pleadings, the plaintiff filed the suit for declaration of title and for recovery of possession and for perpetual injunction.

5. The first defendant filed written statement denying the averments of the plaintiff that the Shrotriumdar sold 62 ankanams of site to Battaram Saradamba and she in turn sold the same in favour of the plaintiff under a registered sale deed dated 11.04.1977 and that he owns absolute rights in the schedule mentioned property. The case of the first defendant is that Vedayapalem village of erstwhile Nellore Taluq is an Inam Estate taken over by the Government on 10.04.1961 under Estates Abolition Act, 1948 and that prior to taking over of the Estate by the Government the Shrotriumdar by name Sarvepalli Subba Ramaiah had obtained permission from the District Collector, Nellore in proceedings L. Dis. No. 15404/49, dated 08.12.1949 for formation of housing colony in an extent of Ac. 40-00 in Sy. No. 60 of Vedayapalem village of the Estate and that Shrotriumdar sold away house site plots to several individuals in the intervening

period between 1950 to 1957, but the full details of such sales are not available. In the year 1964 the Assistant Settlement Officer, Nellore, took up suo motu enquiry under Section 15(1) of the Estates Abolition Act, as rough pattas under Section 11(a) of the Act were wrongly confirmed by the Inam Deputy Tahsildar in his order dated 15.05.1964. The Assistant Settlement Officer issued notices to the persons concerned, heard the objections and passed final orders in Rc. H. 927/64, dated 30.09.1964 and cancelled all the rough pattas and held that the schedule land as village site poramboke. The further case of the first defendant is that on the application of the second defendant, the District Revenue Officer, Nellore, vide proceedings No. B5. 12739/76, dated 07.02.1978, sanctioned alienation of land measuring Ac. 5-00 in Sy. No. 46/2 (Old Survey No. 60). Accordingly, the said land was handed over to the second defendant on receipt of market value. Aggrieved by the orders of alienation in favour of the second defendant, one A. Sriramulu and others filed Writ Petition No. 2024 of 1978 and the said writ petition was allowed. However, the Writ Appeal filed by the defendants in W.A. Nos. 67 and 88 of 1979 were allowed, by an order dated 24.08.1979, and directed to maintain status quo. Therefore, the pattas said to have been issued in favour of Shrotriumdars are not in force. The further case of the first defendant is that subsequently D. Gupta Rao and others filed Revision Petition before the Commissioner of Land Revenue of AP, Hyderabad, and the Commissioner of Land Revenue in proceedings No. API. Bl. 1567/86, dated 01.04.1989, cancelled the alienation of the land to the second defendant. Pursuant to the said orders, the Mandal Revenue Officer, Nellore, has taken back possession of land on 24.04.1989 and necessary entries have also been made in the village records. Aggrieved by the said orders, the second defendant filed Writ Petition Nos. 6170 and 6352 of 1990 and this Court directed to maintain status quo till the dispute is settled before the Civil Court. The further case of the first defendant is that neither plaintiff nor his vendors had any title over the plaint schedule property and mere registered documents cannot establish the title of the plaintiff over the plaint schedule property as his vendors have no title or right to alienate the same. His further case is that the Civil Court has no jurisdiction to declare the title in relation to estate land and the civil suit is expressly barred by provisions of the Estates Abolition Act, hence the suit is not maintainable and the order of the Settlement Officer has become final. The first defendant case is that the second defendant has also no right or title over the plaint schedule property as the alienation was already cancelled by the competent authority and that his application dated 26.12.1998 to the revenue authorities for regularization as per G.O. Ms. No. 508, dated 20.11.1995 was rejected as the said GO is applicable in respect of dwelling houses only. The case of the first defendant is that neither the plaintiff nor the second defendant have any right over the suit schedule property and the Government is the only rightful owner of the same.

6. The second defendant filed written statement denying the material allegations made by the plaintiff in his plaint. The case of the second defendant is that the District Revenue Officer, Nellore, in his proceedings Rc. B. 5/12739/76, dated

08.02.1978 alienated an extent of Ac. 5-00 out of the land in R.S. No. 46/2 in favour of Sri Balayogeeswara Swamy Ashramam, Nellore, on payment of market value and possession of the said land was delivered to the Ashramam on 09.02.1978. Since then the Ashramam has been in exclusive and absolute possession and enjoyment of Ac. 5-00 including the suit site and perfected their title by adverse possession as well. His case is that the plaintiff is not in possession and enjoyment of the suit schedule property and is not entitled for any relief.

7. The trial Court framed necessary issues. On behalf of the plaintiff P.Ws. 1 and 2 were examined and Exs. A1 to A17 and Exs. X1 to X5 were marked. On behalf of the defendants D.Ws. 1 and 2 were examined and Exs. B1 to B6 were marked.

8. The trial Court, on appreciation of oral and documentary evidence, dismissed the suit. Aggrieved by the same, the plaintiff filed AS No. 13 of 2006 and the lower appellate Court also dismissed the said appeal. Aggrieved by the same, the plaintiff filed the present second appeal.

9. Sri Pottigari Sridhar Reddy, learned counsel for the appellant submits that the order passed by the Assistant Settlement Officer in Ex. A. 7 dated 30.07.1964 clarified the position that the land in dispute were treated as village site. Relying upon the judgment of the Madras High Court in the case between S. Rengaraja Iyengar and Another Vs. Achikannu Ammal and Another, learned counsel for the appellant submits that the village site do not vest with the Government. It is further submitted that the land was under cultivation by the Shrotriumdars and on their application, the District Collector has sanctioned permission as long as in the year 1949 and since the land is converted as house sites, so the question of sanctioning or rejecting the Ryotwari pattas has no effect. It is also his submission that the Board of Revenue issued B.P. Mis. No. 404/63 dated 24.06.1963 clarified the position that the house sites do not vest with the Government, though all other lands stand transferred to the Government after abolition of the Estates. It is also his submission that since Sarvepalli Subbaramaiah was paying the land revenue and assessments, the transfers made by him are valid. It is also his submission that though the Assistant Settlement Officer seems to have conducted some enquiry, but in fact, no notices were issued to the purchasers who were scattered all over the district and the documents filed by the appellants prove the same. It is also his submission that, the Assistant Settlement Officer would not have any right to deal with the house sites. It is also his submission that the appellants did not challenge the order of the Assistant Settlement Officer and, therefore, it became final and the observations of Assistant Settlement Officer, in fact, helps the appellants. It is also his submission that the appellants never challenged the orders of the Assistant Settlement Officer.

10. Per contra, Sri Subrahmanyam, learned counsel for the second respondent submitted that the persons who were cultivating the land as on 01.06.1945 were only eligible for Ryotwari pattas and this land was treated as vacant site and it

was Government waste land (Banjara) or grazing land. It is further submitted that there is nothing on record to show that these lands were cultivated by Sarvepalli Subbaramaiah at any time and there is nothing on record to show that he was paying the land revenue or that this land was assessed to land revenue and when the land was not cultivated by Sarvepalli Subbaramaiah, he had no right to apply to the District Collector to convert the Government waste land into house site. It is further argued that even if the District Collector granted permission to treat the land as house sites, it will not confer any title to Sarvepalli Subbaramaiah. It is also his submission that all waste lands, vacant sites, tank lands etc., vest with the Government on abolition of estates under Section 3(b) of the Act. It is also his submission that the claims were decided by the Assistant Settlement Officer and in this case, rough pattas which were issued earlier were cancelled after making thorough enquiry. Thus, the Assistant Settlement Officer rejected the claim of Sarvepalli Subbaramaiah and others. It is also his submission that the Assistant Settlement Officer is the only authority to decide the claims of the cultivators or the nature of the land. Learned counsel had relied on the judgments of the Apex Court in the case between Vankamamidi Venkata Subba Rao Vs. Chatlapalli Seetharamaratna Ranganayakamma, and the judgment of this Court in the case between Mandala Jaya Syalama Rao Vs. Sri Radhakanthaswami Varu of Madugula, a diety represented by the Executive Officer, Inspectors Hindu Religious and Charitable Endowments, Anakapalli 1984 (1) ALT 286 in support of his contention that Civil Court has no jurisdiction to decide the claims after abolition of estates in a estate village.

11. It is further argued that admittedly, the Government had taken over the possession of the Estate lands on 10.04.1961 and there is no evidence on record to show that Sarvepalli Subbaramaiah had been in possession of the land before the Government had taken over the possession of the land in the year 1961 and that P.W. 1 himself admitted that it is a vacant land. It is further argued that the contention of the plaintiff that one Battaram Sharadamba purchased the land will not confer any title to the plaintiff because there is no evidence to show that said Battaram Sharadamba cultivated the land at any time or paid any land revenue or was assessed to the land revenue in respect of the land in dispute. The main submission of the learned counsel for the respondent is that when the original vendor had no title, the subsequent purchasers do not get any right or title in the property. It is also argued that P.W. 1 worked as the Panchayat Secretary and he knows that the Estate was taken over by the Government in the year 1961 and that the Assistant Settlement Officer passed orders on 30.09.1964 rejecting the claim of the Shrotriumdars and knowing all the facts, he claims to have purchased the property in the year 1977 and thus, the purchase of land by P.W. 1 itself is not bona fide. It is further argued that when the orders of the Assistant Settlement Officer have become final, it cannot be enquired into whether notices have been served on all the interested persons or not in this second appeal.

12. Now let me deal with the preliminary points that are raised in this appeal. It is argued that notices were not issued to all the purchasers who purchased house

sites. Since there was no such pleading, the said contention cannot be considered in the second appeal at this stage.

13. It is argued by the learned counsel for the appellant that the appellant did not challenge the order of the Assistant Settlement Officer. Whether the order of the Assistant Settlement Officer has been challenged or not, but it is clear that the said order has become final. The legal position appears to be very clear that the claims of the cultivators have to be decided by the Assistant Settlement Officer and the civil Court has no jurisdiction to decide the disputes arising out of the Estates Abolition Act. Whether the cultivator was eligible for the patta or not has to be decided by the Assistant Settlement Officer. Similarly, the nature of land whether it is cultivable land or Gramakantam or Poramboke etc., has to be decided by the Settlement Officer. Anyhow, let us examine the matter in detail.

14. Before dealing with the rival contentions of both the parties, it is necessary to refer to certain provisions of A.P. (Andhra Area) Estates (Abolition and conversion into Ryotwari) Act, 1948. The object of the Act is to provide for the repeal of the permanent settlement, the acquisitions of the rights of landholders in permanently settled and certain other estates in the Andhra area of the State of Andhra Pradesh and the introduction of the ryotwari settlement in such estates.

15. The word "land holder" has been defined under Section 2(8) of the Act which reads as follows:-

"Land Holder" includes (i) a joint hindu family, where the rights to collect the rents of the whole or any portion of the estate vests in such family; and (ii) a darmila inamdar."

16. Thus, where a person had a right to collect the rents of the Estate including a joint family has to be treated as the land holder.

17. Section 2(16) deals with the "Zamindari Estate". The important provision of the Act is 3(b) which reads as follows:-

"The entire estate (including Minor imams post-settlement or pre-settlement included in the assets of the zamindari estate at the permanent settlement of that estate; all communal lands and porambokes; other non-ryoti lands; waste lands: pasture lands; lanka lands; forests; mines and minerals; quarries; rivers and streams; tanks and irrigation works; fisheries; and ferries) shall stand transferred to the Government and vest in them, free of all encumbrances; and the Andhra Pradesh (Andhra Area) Revenue Recovery Act, 1864, the Andhra Pradesh (Andhra Area) Irrigation Cess Act, 1865 and all other enactments applicable to Ryotwari areas shall apply to the state"

18. Thus, all "Communal lands and porambokes" other non-ryoti lands; waste lands; pasture lands vest with the Government. It is also clear that the entire estate included in the assets of the Zamindari estate at the permanent settlement of that estate shall stand transferred to the Government. The only exception is Ryoti lands, i.e., lands under the cultivation of Ryots. Their claims

will be settled and if eligible, they would be granted Ryotwari Pattas as per the procedure prescribed.

19. Thus a reading of the above provisions make it clear that under Section 3 of the Act, the entire estate, i.e., all interests in the estate stand transferred to the Government and no one can assert any right or interest as against the Government after the estate is notified except to claim Ryotwari Patta or compensation in the manner prescribed by the Act.

20. The next relevant provision is Section 9 of the Act. Section 9(1) of the Act reads as follows:-

As soon as may be after the passing of this Act (and subject to the provisions of Section 9-A), the Settlement Officer may suo motu and shall on application, inquire and determine whether any inam village or hamlet or khandriga granted as inam in his jurisdiction is an inam estate or not."

21. Section 9(2) of the Act is as follows:-

"Before holding the inquiry, the Settlement Officer shall cause to be published in the village (or hamlet or Khandriga granted as inam) in the prescribed manner, a notice requiring all persons claiming an interest in any land in the village (or hamlet or Khandriga granted as inam" to file before him statements bearing on the question whether the village or hamlet or khandriga granted as Inam is an inam estate or not."

22. Section 9(5) of the Act is as follows:-

"No decision of the Settlement Officer under Sub-Section (3) or of the Tribunal under sub-section (4) shall be invalid by reason of any defect in the form of notice referred to in sub-section (2) or sub-section (4), as the case may be, or the manner of its publication."

23. Section 9(6) of the Act is as follows:-

"Every decision of the Tribunal and subject to such decision, every decision of the settlement officer under this section shall be binding on all persons claiming an interest in any land in the village, or hamlets of khandriga granted as inam notwithstanding that any such person has not preferred any application or filed any statement or adduced any evidence or appeared or participated in the proceedings before the Settlement Officer the Tribunal as the case may be."

24. Section 11 of the Act deals with the lands in which Ryot is entitled to Ryotwari patta. Since the learned counsel or the appellant submitted that appellants are not claiming any Ryotwari patta, therefore, there is no need to refer to this provision. However, the expression "any land" appears to be wider and applies to both kinds of land - ryoti as well as non-ryoti.

25. Section 13 deals with the lands in the Inam estate in which the landholder is entitled to Ryotwari patta. Section 13(a) of the Act reads as follows:-

"13(a):- all lands (including) Lanka lands) which immediately before the notified date, (i) belonged to him as private land within the meaning of Section 3, clause 10(b) of the Estates land Act, or (ii) stood recorded as private land in a record prepared under the provisions of Chapter XI or Chapter XII of the said Act, not having been subsequent converted into ryoti land;"

26. Section 13(b)(i) of the Act reads as follows:-

"13(b)(i):- All lands which were properly included, or which ought to have been property included, in the holding landholder, by inheritance or succession under a Will, provided that the landholder has cultivated such lands himself, by his own servants or by the hired labour with his own or hired stock, in the ordinary course of husbandry, from the date of such acquisition or the 1st day of July, 1945 whichever is later and has been in direct and continuous possession of such lands from such later date;"

27. Thus, where the landholder was cultivating the land, he would be entitled to Ryotwari Patta. The reason for referring to this section is that a critical examination of the entire material on record shows that there is no evidence to show that these lands were under cultivation by Sarvepalli Subbaramaiah or any other Shrotriumdars at any time. Thus, it is clear that they could not have even claimed Ryotwari Patta for these lands. Anyhow, admittedly their claim for Ryotwari Patta has been dismissed by the Assistant Settlement Officer.

28. Section 18 and 19 of the Act seems to be relevant for the present case. Section 18 deals with the vesting of the buildings situated in the estate. It reads as follows:-

18. Vesting of buildings situated in estates:-

(1) Every building situated within the limits of an estate, which immediately before the notified date, belonged to any landholder thereof and was then being used by him as an office in connection with its administration and for no other purpose, shall vest with the Government, free of all encumbrances, with effect on and from the notified date.

(2) Every building so situated which, immediately before the notified date, belonged to any such landholder and the whole or principal part thereof was then in the occupation of any religions, educational or charitable institution, shall also vest in the Government, free of all encumbrances, with effect on and from the notified date;

Provided that when such institution ceases to exist, the building shall revert to such landholder, or if he is dead, to his heirs or legal representatives;

(3) Where any building so situated-

(a) which belonged to any such landholder or the 1st day of July, 1947; and

(b] (i) which on that date was being used by him as an office in connection with

the administration of the estate, and for no other purpose; or

(ii) the whole or principal part whereof was on that date in the occupation of any religious, educational or charitable institution has after the 1st day of July, 1947 and before the notified date, been sold or made a gift of, by the landholder, or ceased to be used by him as an office as aforesaid, or ceased to be in the occupation of such institution, the value of the building shall be assessed by the Tribunal in such manner as may be prescribed; and the Tribunal shall pay to the Government such value from out of the compensation deposited in its office under Section 41, sub-section (1).

(4) Every building other than a building referred in sub-section (1), (2) and (3) shall, with effect on and from the notified date, vest in the person who owned it immediately before that date; but the Government shall be entitled-

(1) in every case, to levy the appropriate assessment thereon; and

(2) in the case of a building which vests in a person other than a landholder also to the payments which such person was liable immediately before the notified date to make to any landholder in respect thereof, whether periodically or not and whether by way of rent or otherwise, in so far as such payments, may accrue the on or after the notified date.

(5) In such section, "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto.

(6) If any question arises whether any building or land falls or does not fall within the scope of subsection (1), (2), (3), (4) or (5), it shall be referred to the Government whose decision shall be final, and not be liable to be questioned in any Court of Law.

(7) Any person holding a mortgage or charge on any building referred to in sub-section (1) or sub-section (2) shall, for the purpose of section 42, be a secured creditor and be entitled to priority over any person holding a mortgage or charge subsequently created by the landholder over any part of the estate"

29. Thus, sub-section 5 makes it clear that, "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto. The important words in this section is the "building" situated within the limits of the estate and belong to the landholder there of before the notified date. Sub-section 4 also makes it clear that he must be the owner of the building.

30. The question whether the rule authorising the Government to delegate the power to decide the question whether any building falls within sub-sections 1 to 5 of section 18 of the Madras (Abolition and conversion into Ryotwari) Act, 1948, came up for consideration before this Court in the case between P.V.G. Raju Vs. State of A.P. 1961 (2) An.W.R. 92. A Division Bench of this Court, after elaborate discussion, came to the conclusion that there is nothing unconstitutional in delegation of power vested in the Government under Section 18(6) of the Madras

(Abolition and conversion into Ryotwari) Act, 1948.

31. Section 19 of the Act deals with the lands sold for non-agricultural purposes before 01.07.1945. It is not the case of the plaintiff that the lands were sold prior to 01.07.1945. Therefore, that provision is also not applicable.

32. Admittedly, the parties have not approached the Government to decide the question whether the house sites or the open lands falls within the scope section 18 of the Act, particularly, under Sub-section 6 of Section 18 of the Act. As discussed in the above paras, since the original record reveals that the land was the waste land and even if any person had been cultivating those lands, he had no right to alienate such waste land and even if the lands are converted as house sites, unless it is shown that the building belonged" to any landholder under sub-section 1 of Section 18 of the Act or that the person owned it before the notified date, he will not get any right or title. Thus, it has to be established that the person in occupation of building or house site had right to hold the same as on 01st July, 1947 under clause "a of sub-section 3 of Section 18. Mere possession over the waste land is not sufficient to claim any right in such property.

33. It is submitted that the order of the Assistant Settlement Officer is not against the interest of the appellants and in fact, it protects the interest of the appellants. The case of the appellants is that Sarvepalli Subbaramaiah was one of the land holders of Vedayapalem Inam Estates and that the scheduled lands were his holdings. It is also their case that Sarvepalli Subbaramaiah applied to the District Collector for permission to set apart 40 acres of land in the old Survey No. 60 for village site and got permission from the District Collector. A reading of relevant government orders and rules make it clear that the individual registered as owner of the Ryotwari holdings is responsible proprietor of the Ryotwari lands registered in his name in the land register in the District. The registered holder (Shrotriundars) of the Ryotwari land was authorised to alienate, sublet, mortgage, sell, give, bequeath or otherwise dispose of the whole or any portion of his holding. They were authorised to collect the rents from the tenants and they were responsible for payment of revenue to the Government. However, unless and until such transfer or disposal is registered in the land register of the district, the registered holder remains liable for assessment and all other legal charges due on the land, just as if no such transfer or disposal had I occurred. When the transfer is registered, the transferee takes the land subject to the payment of any arrears of assessment or other legal charges due on it, and to the same obligations and conditions, special or general, as the transferor held it on. When the land is not used for cultivation and the holder on Ryotwari tenure improving his holding by constructing a tank on it, digging a well, or erecting buildings on it, is not chargeable with any additional assessment for such improvements, but he is not entitled to claim, as of right, any reduction of assessment on account of the space occupied by such improvements. A registered owner of a Ryotwari holding is bound to pay the fixed assessment on it, whether cultivated, waste or fallow, in the prescribed installments, unless it be

remitted in accordance with the rules on the subject.

34. The above position is clear by reading of B.S.O. 28 issued by the Andhra Pradesh Board of Revenue Standing Orders and the same is supplied by the learned counsel for the appellant himself. Basing on the judgment of the Madras High Court, the Board of Revenue, Andhra Pradesh, Hyderabad has issued B.P. Mis. No. 404/63 dated 24.06.1963. It was held that house sites are no doubt communal porambores, but they are in certain ways different from other communal lands. It was also observed that the title to a house site within a Gramakantham belonging to a person other than the landholder when the estate in which the house site is situated is taken over by the Government and the title to a house site in a Gramakantham, therefore, belongs to a person other than a landholder of the estate in which the house site is situated. Basing on the observations of the Madras High Court and the above instructions of the Board of Revenue, A.P., Hyderabad, the learned counsel for the appellant submits that since the land was converted as a village site, it does not vest with the Government and belong to a person who is in possession of the same.

35. From a reading of the above referred judgment of the Madras High Court and the relevant provisions, it appears that the house site owned by a person do not vest with the Government. No it has to be seen whether Sarvepalli Subbaramaiah, the Shrotriumdar was the original owner of the property or whether he had any right to alienate the property. If at all Sarvepalli Subbaramaiah had any title to the property, then he would be justified in conveying the same to Battaram Sharadamba and the plaintiff would get title through her. No doubt, these lands were treated as the waste lands, but it has to be seen whether the Shrotriumdar had any title to convey the same. In this regard, the order of the Assistant Settlement Officer throws some light. It appears that Sarvepalli Subbaramaiah and others claimed these lands as Swantakamatam Metta", i.e., others lands. Certain documents were filed before the Assistant Settlement Officer including a copy of the agreement entered into by the land holders. The Assistant Settlement Officer observed as follows:-

"No doubt the documents filed namely Exhibits A2 A4 and A9 show that the lands under enquiry were always treated among themselves (i.e.) Shrotriumdars as private lands of the Shrotriumdars and described as "Swantnakamatham Metta" and as "Sagubadi Metta" in the proceedings for partition between themselves, but there is no evidence on record to show that they were actually cultivated by the landholders themselves for a continuous period of 12 years prior to 1st July 1908 or at least immediately prior to 1st July 1933 as required under sec. 3(10) of the Estates Land Act since only in the account Ex. A2 prepared for court purposes in 1927. Cultivation in the Banjaras was noted. The lands under enquiry were shown in Exhibit A2 and A4 clearly as "Banjarlu" that his waste lands or probably pasture lands, though a remark was made in the last col. of Ex. A2 as "Cultivation in waste lands (Banjaru Sagu)" to which great credence cannot be given as the classification itself was "Banjarlu" or wastes."

36. Thus, it is clear that these lands were noted as "Banjarlu". Of course, they were under the cultivation of the then Shrotriumdars. Therefore, it was noted as cultivation on waste lands. When there is a categorical finding of the Assistant Settlement Officer with regard to the nature of these lands and when the said order became final, these lands have to be treated as waste lands under cultivation. Even if any person cultivates the waste lands or pasture lands, such person do not get any title or right over such property. They have to be treated as Government lands. Even if such persons have paid the land revenue and their names have been shown in cultivation column, those entries do not confer any title. In case of landless poor cultivating such lands, they have to apply to the concerned authorities for sanction of pattas and if the revenue authorities consider that such lands can be assigned and there is no prohibition for assignment of such lands, then only such lands can be assigned to them, that too, following the rules in force.

37. Since those lands are noted as "Banjarlu" (waste lands), Sarvepalli Subbaramaiah do not get any title to the same and when he has no title to the property, he cannot confer any rights to the purchaser who claims to have purchased the lands from him. When he has no title to the property, even if he had applied to the District Collector seeking permission to convert the lands into the house sites and even if at all the District Collector had accorded permission, the granting of mere permission to convert these lands as house sites do not confer any right to either Sarvepalli Subbaramaiah or to any other purchasers from him or to any other person who are claiming right through them. Once this position with regard to the nature of the land is clear, any number of subsequent transactions will be of no use.

38. In any case, when the plaintiff is seeking declaration of title and recovery of possession, it is for the plaintiff to prove his case. There cannot be any doubt to say that the burden lies on the plaintiff. P.W. 1 himself admitted that Vedayapalem village was an Inam Estate. He further admitted that the lay out plan is not traceable. Of course, he says that due to long lapse of time and as the Estates have been taken over by the Government, he is unable to produce the lay-out plan. In the cross-examination, he admitted that he retired as Panchayat Secretary. The plaintiff is mainly relying on the partition deed under which Sarvepalli Subbaramaiah divided the properties into plots and created rights. He admitted that he had not filed any partition deed dated 10.02.1950. Of course, he denied the suggestion that there is no such partition deed in existence. He further admitted that he had not filed any documents to show that the permission was accorded by the Government or any other authority such as a local body to form the lay-out. He further admitted that he has not filed any proof to show that the plaint schedule property has been divided into house sites. Admittedly, the lands remained vacant till the plaintiff claims to have purchased the property and till the second defendant made some constructions in the part of the land. Thus, it is clear that there is no evidence to show that any lay-out was sanctioned. There is nothing on record to show that the plaintiff or

his predecessors through whom he is claiming any title had paid the land revenue to these lands. Even if it is waste land or a village site, if it is in possession of any person who had constructed a house and started living therein, or using it for the purpose of storing the hay or manure or using it as a smithy or a brick kiln or a place for living, then the situation would have been different. First of all, it is clear from the order of the Assistant Settlement Officer that the land does not belong to the private individuals. Second aspect is it was not in use by any person. No private individual can claim any title to a poramboke land, even if it is treated as a village site. The guidelines issued by the Board of Revenue would help only those persons who are actually residing in the village site having constructed houses or using it as house sites or for any other purpose. Even in such a case, they have to approach the Government under Section 18 of the Act or concerned revenue authorities for assignment or grant of house site patta and it is for the revenue authorities to assign the house site pattas if their claims are genuine or the Government may transfer ownership right on payment of cost of land or on some concessional rate. The observations made by the Madras High Court have to be considered in that background, i.e., when a person had constructed a dwelling house and started living in it or using it as owner, such a house site do not vest with the Government even after coming into force of the Estates Abolition Act under Section 3 of the Act. As admitted by the plaintiffs, there is no record to show that the plaintiff or his predecessors were using the land as house sites or for any other purpose. There is nothing on record to show that they were either cultivating the land or using it as grazing land or paid any land revenue or assessment was made with regard to such land. Open waste land (Banjarlu) which is Government land, even if treated as house site, that is in village Gramakantam, vest with the Government unless it is made use by person, i.e., unless a person is actually living on such site by constructing a dwelling house or open land adjacent to dwelling house under actual use.

39. As far as the injunction is concerned, P.W. 1 himself had admitted that the second defendant encroached upon the plaint schedule property and constructed a thatched Ashram called Bala Yogeaswara Swamy Ashram. Having mentioned so in the plaint itself and in the earlier part of his chief examination, subsequently he claimed that he is in possession and enjoyment of the plaint schedule property. The subsequently averment is contradictory to the earlier averment. P.W. 1 himself admitted that the Government, after cancelling the patta in favour of the second defendant, had taken possession of the suit land in the year 1989. Thus, according to the plaintiff, the second defendant had been in possession of the property and subsequently, the Government had taken over the possession in the year 1989. Admittedly, the present suit is filed in the year 2000. Even if there are any orders granting status quo, those orders do not help the plaintiff in view of his own admission that the Government had taken over the possession of the land in the year 1989. Therefore, it is clear that the plaintiffs are not in possession of the land and, therefore, they are not entitled for injunction order.

40. The following questions of law have been raised as substantial questions of law in this second appeal.

2(a):- The dismissal of the appeal by the lower appellate Court on the ground the order passed by the Assistant Settlement Officer (Ex. B. 1) under Section 15 of the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 rejecting the claim of the Shrotriumdars for grant of Ryotwari Patta became final, the same cannot be challenged before the civil Court whether sustainable when the same is relied on to establish that the land in question of which the plaint schedule is part is village site or a site set apart for being used as house sites as observed by the Assistant Settlement Officer while rejecting the claim of the Shrotriumdars for grant of ryotwari patta"

2(b):- Whether the 1st appellate court did not commit any error in holding against the appellant for not filing the proceedings of the District Collector dated 08.12.1949 according permission to the Shrotriumdars for conversion of an extent of 40 acres of land into housing colony and the title of the Shrotriumdars when the 1st defendant government admitted the same? Whether there is any burden on the plaintiff to prove an averment made in the plaint which has been admitted by the defendant in the written statement?

2(f):- Whether the observation of the 1st appellate Court that as per Ex. B. 1 order the disputed land was shown as dry land vests in the Government is not contrary to the said order which says that the disputed land was already converted into house sites, pursuant to the orders of the District Collector and therefore Ryotwari patta cannot be granted?

2(g):- The Courts below failed to render a finding as to whether the house sites which do not answer the definition of "Ryoti land" and also do not answer the definition of waste land under Section 3 of the Estates Abolitino Act vest in the Government".

41. As seen from the judgments passed by the Courts below, the trial Court observed as follows:-

"Nothing is there to indicate that the plaintiff constructed a house immediately after purchase of the plaint schedule property and residing therein. Mere filing of Exhibits A-1 and A-2 will not prove the possession of the plaintiff over the plaint schedule property and will not create a title or right over the same."

42. The lower appellate Court observed as follows:-

"So the trial Court rightly found that the Shrotriumdars and the vendors of the plaintiff have no right or title to the disputed land as the plaintiff failed to produce any satisfactory evidence that his vendors have got valid right, title and possession over the suit schedule property at present or even at the time when the Inam Estates Abolition Act came into force."

"It is very clear that the appellant-plaintiff failed to produce any satisfactory

evidence that he has right, title in respect of the plaint schedule property at any time and failed to discharge his burden."

43. In view of the above categorical findings, the appeal was dismissed mainly on the ground that the plaintiffs failed to adduce any evidence to prove his title. It has to be seen that even according to the plaint averments, plaintiff's case is that they were misguided to approach the settlement authorities to secure rythu pattas and pattas were rejected. Admittedly, the then Shrotriumdar approached the Settlement Officer. Admittedly, the orders of the Settlement Officer became final. When a claim is made for Ryotwari patta and it is rejected, the said finding cannot be challenged in a civil Court (Refer to Mandala Jay a Syalama Rao's case supra). It is true that the Assistant Settlement Officer rejected the case of the Shrotriumdars mainly on the ground that the land was not a cultivable land and it became a village site. In fact there was no plea by the plaintiffs that the village sites do not vest with the Government. Since the appeal was dismissed mainly on the ground that the plaintiff failed to prove his title, the observations of the Courts below that the order of the Assistant Settlement Officer became final cannot be said to be the sole ground for dismissing the appeal.

44. The second ground is that when the second defendant had admitted the proceedings of the District Collector dated 08.12.1949, the lower appellate Court committed an error in holding against the appellants for not filing the proceedings of the District Collector. It is a fact that the first defendant had admitted about the proceedings of the District Collector, but however, the second defendant had denied the same. Admittedly, the plaintiffs have not filed copy of the proceedings of the District Collector dated 08.12.1949. No error has been committed by both the Courts below in holding that the plaintiffs have not filed the proceedings of the District Collector. When one defendant had admitted and the another defendant had denied the same and when the proceedings of the District Collector were not filed before the Courts to enable the Court to know under what circumstance those proceedings were issued and how the nature of the land was described in such proceedings and whether any conditions were prescribed in those proceedings. It is obligatory on the part of the plaintiff to file a copy of such proceedings. Since those proceedings seems to be important piece of evidence to know the nature of the land prior to according permission to convert the land into the house site, the courts below have not committed any error in holding that the appellants failed to file those proceedings.

45. Referring to the other grounds, it is observed that the plaintiffs, having failed to adduce necessary evidence and take the specific plea as to whether the house sites vest in the Government or not, now cannot challenge the orders of the Courts below on certain observations which are not the main grounds for rejecting the case of the plaintiffs. Whether any building or land fall within the scope of sub-sections 1 to 4 or 5 of Section 18 of the Act have to be decided by Government. Similarly, whether a particular land vest in the Government or whether a person is entitled for Ryotwari patta or whether it is cultivable land,

waste land or house site or Government land, the settled legal position is that the civil Court has no jurisdiction to deal with such question and it is the authorities specified under the Act who have jurisdiction to deal with all such issues. Thus, all the disputes between any person claiming Ryotwari Patta or assignment of house site or with regard to the nature of land have to be decided by the concerned authorities under the Act or by the Government. Of course, when there is a civil dispute between the private parties with regard to the title, possession, seeking injunction, mesne profits etc., the civil Court will have jurisdiction. Thus, where a dispute cannot be dealt by the authorities under the Act, then the civil Court will have jurisdiction. It has to be determined by the Government under Section 18 of the Act as discussed in the above paras.

46. As far as the dispute between the second defendant and the Government is concerned or whether the second defendant has any right to alienate the properties or not or whether the Government is in possession of the property or the second defendant is in possession of the property, those questions need not be decided in this appeal since this is an appeal filed by the plaintiffs.

47. In the circumstances, the plaintiff cannot seek declaration of title and that the findings of the Courts below are based on proper appreciation of evidence and there is no need to disturb the same.

48. S.A.M.P. No. 1877 of 2013 has been filed by the petitioner seeking permission to file (1) Certified copy of the proceedings of the District Collector, Nellore in L. Dis. No. 15404/49 dated 08.12.1949; (2) True copy of the letter addressed by the MRO, Nellore to the District Collector, Nellore in Rc. E. No. 620/76 dated 24.04.1989 and the Adangal extract for the Fasti 1398 appended thereto; and (3) Copy of B.P. Misc. 404/63 O/o Board of Revenue, A.P., Hyderabad dated 24.06.1963; as additional evidence. This being a Second Appeal, the question of permitting the parties to file documents would not arise. In case if the matter is remanded to the lower appellate Court then only the appellants would get an opportunity to file the documents. Since the first defendant himself admitted that the District Collector, Nellore accorded permission to convert the land as village site and the documents filed by the appellants are only for the said purpose, there is no need to receive the documents sought to be received as additional evidence in the appeal. Accordingly, S.A.M.P. No. 1877 of 2013 is dismissed.

49. S.A.M.P. No. 247 of 2014 has been filed by the petitioner to amend the description of respondents 2 to 8 in the cause title of the second appeal. In the circumstances, S.A.M.P. No. 247 of 2014 is ordered as prayed for.

50. S.A.M.P. No. 1876 of 2013 has been filed by the petitioners seeking permission to amend the plaint filed by them. This being a second appeal, I am of the considered view that no such application can be entertained in the second appeal. Accordingly, S.A.M.P. No. 1876 of 2013 is dismissed.

51. S.A.M.P. No. 1875 of 2013 has been filed to restrain respondents 4 to 8 from

raising any constructions or changing the nature of the plaint schedule property in O.S. No. 11 of 2000 on the file of the Principal Senior Civil, Nellore. In view of the dismissal of the main appeal, this petition is also dismissed.

52. In view of the above discussion and for the foregoing reasons, I do not see any substantial questions of law arising in this appeal which requires a detailed discussion.

53. In the result, the appeal fails and is, accordingly, dismissed at the stage of admission itself. There shall be no order as to costs.