

(2000) 06 AP CK 0013

In the Andhra Pradesh High Court

Case No : A No. 1283 of 1982 and Batch

Ploavarapu Parasuramudu

APPELLANT

Vs

Chintalapudi Lakshmi and others

RESPONDENT

Date of Decision : 14-06-2000

Acts Referred:

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

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9

Citation : (2000) 5 ALD 383 : (2000) 5 ALT 450

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Government Pleader, M/s. M.S. Ramachander Rao, C. Poornaiah, A. Krishan Koudinya, K. Rama Krishna Reddi, M. Venkateswarlu and M. Krishna Mohana Rao, for the Appellant;

Judgement

1. This appeal arises out of a common judgment and decree rendered by the Subordinate Judge, Amalapuram in OS No.96 of 1981 and 97 of 1981 dated 26-6-1982.

2. One Chintalapudi Lakshmi (hereinafter referred to as Lakshmi) and another filed a suit OS No.92 of 1977 on the file of Sub-Court, Kakinada seeking a permanent injunction restraining defendant No.1, the village Munsiff of Alavilli Venkatanagaram (hereinafter referred to as A.V. Nagaram), defendant No.2 a resident of Havaladarupadu, defendants 3 to 6, fishermen of Kothachodipallipet, hamlet of A.V. Nagaram, defendants 7 and 8 residents of A.V. Nagaram, who does business in casurina tope from interfering with the enjoyment of casurina garden standing in an extent of Ac.16.00 or so in S.No.1 of Kona village, as she being the owner of the said land.

3. Her case is that her father Kodidasu Appalaswamy purchased an extent of 59 acres of sea-shore land from one Makineedu Veeraraju in whose favour the erstwhile Zamindar of Pithapuram issued a patta for 109 acres of land on

25-7-1946 on payment of Nazarana to the Zamindar under a registered sale deed dated 18-7-1947 and since then her father the predecessor in interest and herself are in possession and enjoyment of the said land.

4. Further it is her case that in 1971 she raised a casurina garden in an extent of 16 acres and getting it tendered by Mummidi Appa Rao. After the garden became ripe for cutting, she sold away the same to the second plaintiff for a sum of Rs.27,500/- on 14-12-1976 and put him in possession of the same. Mummidi Appa Rao continued to be the watchman under the second plaintiff also. The first defendant with the help of other defendants including defendants 7 and 8 who deal in casurina garden and who failed to purchase the said casurina garden for a lesser value from her wanted to knock off the said garden. When the defendants threatened to dispossess the second plaintiff from the suit garden, he gave a police report on 10-4-1977. Thereafter when the second plaintiff went to the garden on 12-11-1977 for making preparations to cut the garden, defendants 1, 2, 7 and 8 caused obstruction. Hence the suit for permanent injunction.

5. Along with the suit she filed IA No.3620 of 1977 and obtained temporary injunction against the defendants. On an appeal preferred by the defendants, the High Court permitted her to cut and take the casurina tope by furnishing bank guarantee for a sum of Rs.13,000/-.

6. The first defendant filed his written statement stating that the first plaintiff Lakshmi was neither in possession of the land in question nor she raised the casurina tope therein.

7. Defendant Nos.2 and 6 raised the suit casurina tope and sold the same to one P. Parasuramudu and the said sale was recognised by the Tahsildar, Tuni. He has nothing to do with the said garden and he is unnecessarily impleaded as a party, as he did not oblige Lakshmi to support her false case. He was added as a party defendant with an ulterior motive preventing him from coming as a witness on behalf of the defendants, and contended that the suits should be dismissed with costs against him.

8. The 5th defendant filed his written statement stating that neither Lakshmi nor her father had any right, title or possession in any part of the land covered by S.No.1 of Kona village. Lakshmi never raised casurina tope in the said land. The second plaintiff is only a henchman of Lakshmi's husband, who is working in Postal Department.

9. Pithapuram Zamindar's Estate was taken over by the Government under the Estates Abolition Act (hereinafter referred to as the "Act"). On 7-9-1950 vide G.O. Ms. No.2216, Revenue dated 11-8-1950 and the settlement operations were introduced in the village on 1-7-1959. The land in question was classified as "Assessed Waste" rejecting the claim of her father for ryotwari patta and the settlement operations have become final about 18 years back. Hence Lakshmi cannot institute this suit, and the civil Court has no jurisdiction to entertain the suit.

10. Defendants 3 to 6 who belong to "Vada Baliya" community were in possession of 30 acres of seashore land in S.No.1 of Kona village, since more than 40 years. They along with second defendant raised the suit casurina tope and after the tope became ripe for cutting, it was sold to one Parasuramulu for Rs.29,000/- as per the agreement dated 5-9-1977. The said Parasuramulu having paid an advance of Rs.5,000/- took possession of the casurina tope. On an application filed by him, seeking permission to cut and carry casurina, the Tahsildar in his letter dated 31-10-1977 gave transport permit. On the basis of a sale dated 18-7-1947 in her father's favour, she is making a false and speculative claim. The very description of the plaint schedule land shows that she has no knowledge about the boundaries of the tope. In fact, her claim for patta was rejected by the settlement officer in Ex.A85 order dated 19-2-1975. Hence the suit is liable to be dismissed with costs.

11. On the above pleadings the sub-Court settled the following issues for trial on 12-4-1978 :

- (1) Whether the plaintiffs are entitled to the permanent injunction as prayed for;
- (2) Whether the second plaintiff is the lessee of the first plaintiff;
- (3) To what relief;

12. On 27-6-1978 Parasuramuda filed OS No.126 of 1978 on the file of Sub-Court, Kakinada for declaration of his title to the casurina tope in question and for a consequential injunction restraining the plaintiffs in OS No. 192 of 1977 from interfering with the suit tope. His case is as reflected in the written statement filed on behalf of defendants 2 to 6 in OS No.192 of 1977.

13. The new facts that were mentioned in the plaint were that Lakshmi obtained temporary injunction order in her suit and when the matter was carried in appeal to the High Court, the High Court was pleased to permit her to cut and take the tope on furnishing a bank guarantee for a sum of Rs.13,000/-. As Lakshmi is not entitled to the tope in question, he was constrained to file the suit for declaration of his title to the casurina tope and consequential injunction restraining the defendants (plaintiffs in OS No.192 of 1977) from interfering with the said tope. The written statement filed by Lakshmi is on the same lines as the plaint allegations in the suit filed by her.

14. On 1-8-1978 the Court settled the following issues for trial;

- (1) Whether the plaintiff has title to the casurina tope described in the schedule ?
- (2) Whether the plaintiff is in possession of the suit schedule property;
- (3) Whether the suit is bad for non-joinder of necessary parties, that is, vendors of the plaintiff;
- (4) Whether the suit is barred by res judicata and estoppel by virtue of the decision in IA No.3620 of 1977 in OS No.192 of 1977;

(5) Whether the plaintiff is entitled to the injunction prayed for;

(6) To what relief;

15. Both the parties seemed to have filed a joint Memo dated 21-8-1980 requesting the Court to try the suits jointly and to record the evidence in both the suits. The Court started recording evidence in OS No.126 of 1978 filed by Parasuramudu and in the judgment parties were referred as arrayed in the above suit.

16. The trial commenced on 3-11 -1980 and continued till 10-9-1981 during, which period PWs.1 to 8 were examined.

17. Parasuramudu got himself examined as PW1. One Chintapalli Butchi Reddy, scribe of Ex.A1 agreement dated 5-9-1977 entered into between PW1 and defendants 3 to 6 in OS No. 192 of 1977 was examined as PW2. The Advocate Commissioner was examined as PW3. One Koya Appa Rao, defendant No.2 in OS No.192 of 1977 was examined as PW4 to the effect that he purchased the casurina tope at the instance of D3 to 6 in OS No.192 of 1977. Yeddala Venkateswamy of Kedarpeta was examined as PW5 to show that he has supplied the casurina seedlings to PW4. One Kalina Veeraiah was examined as PW6 to show that himself and some others were engaged by PW4 to water the casurina garden for about one year and received wages from PW7 through PW4. B. Dhana Raju defendant No.5 in OS No. 192 of 1977 was examined as PW7 to prove that he financed PW4 at the instance of fisherman (D3 to 6) in OS No. 192 of 1977 for raising casurina garden and got marked Ex.A1 to Ex.A42 on his side.

18. The Court Commissioner's warrant, his report and objections were marked as Ex.C1 to Ex.C3.

19. Lakshmi got herself examined as DW1 and Yanamandri Sriramulu the attesor of Ex.B1 safe deed dated 18-7-1947 as PW2 and got marked Ex.B1 to Ex.B24 on her side.

20. When the suit was posted for rebuttal evidence of the plaintiff, the suits were transferred to Sub-Court Amalapuram from Kakinada and they were re-numbered as OS No.96 of 1981 (OS No.192 of 1977 filed by Lakshmi) and OS No.97 of 1981 (OS No. 126 of 1978 filed by Parasuramudu).

21. Further trial in these cases was taken up on 6-3-1982 and PW9 Yenamadra Appa Rao, Panchayalh Board clerk and one V. V. Satyanarayana Raju L.D. clerk in Taluk office were examined as PW9 and PW10 and got marked as Ex.A43 to Ex.A85.

22. After completion of the trial the Sub-Court vide its common judgment dated 26-6-1982 recorded the findings as under :

OS No.97 of 1981 :

Issue No. 1 :--Parasuramudu has no title to the suit schedule casurina tope.

Issue No.2 :--The plaintiff is not in lawful possession of the suit schedule property;

Issue No.3 :--OS No.97 of 1981 is bad for non-joinder of necessary parties i.e., Vendors of the plaintiff.

Issue No.4 :--By virtue of the orders of the Sub-Court in IA No.3620 of 1977 : OS No.192 of 1977 the suit is not barred by res judicaia and the same does not operate as estoppel;

Issue No.5 :--The plaintiff is not entitled to the suit casurina tope and the plaintiff is not entitled to the injunction as prayed for;

Issue No.6 :--The plaintiff is not entitled to the relief for declaration of title and injunction sought for by him.

OS No.96 of 1981 :--

Issue No.1 :--By virtue of the orders of the Board of Revenue in Ex.B 18 dated 31-7-1979 Lakshmi is prima facie entitled for ryotwari patta to the suit schedule land. Hence even though she did not raise the suit casurina tope in the said land, she would be entitled to the relief of permanent injunction sought for by her against the defendants therein as they have no right at all to the suit schedule land;

Issue No.2 :--The second plaintiff is the Vendee of the plaintiff (Lakshmi in OS No.96 of 1981).

23. In the result, the Sub-Court decreed OS No.96 of 1981 as prayed for and dismissed OS No.97 of 1981 with costs.

24. Against the above judgment and decree of the Sub-Court, Parasuramudu plaintiff in OS No.97 of 1981 preferred these appeals.

25. After hearing the arguments, I reserved these two appeals for judgment on. Before pronouncement of the judgment in the above appeals, Writ Petition No.30292 of 1997 is filed by Koyya Appa Rao, 2nd defendant in OS No.96 of 1981 along with 28 others seeking issuance of a writ of certiorari and quash G.O. Ms. No.697, Revenue (JA) Department, dated 19-8-1997 wherein the orders of the Commissioner, Survey, Settlement and Land Records, Hyderabad passed in PVC No.P2/2114/77, dated 31-7-1979 directing issuance of ryotwari patta to Smt. Lakshmi was confirmed by the Government after the matter was remanded by this Court for fresh consideration in Writ Petition No.823 of 1980 and WP No.20252 of 1993 dated 12th July, 1994 came up for hearing before me. As the subject matter of the writ petition and these appeals being one and the same, I am inclined to dispose of the appeals as well as the writ petition by way of a common order.

26. Sri M.S. Ramachander Rao representing the appellant and Sri C. Pumaiah representing respondent No.1 Lakshmi and Sri A. Krishna Koundanya

representing respondent No.2 advanced arguments extensively on different dates and in fact they have given written arguments also in support of their contentions.

27. I have gone through the judgment of the Court below and at the outset, I have to observe that the learned Judge concentrated more on the title to property forgetting the real controversy involved in this suit, with the result the reasons given by the learned Judge in support of his findings referred to supra are not sound in law.

28. According to me, the only question that arises for consideration in these two suits is;

Whether Lakshmi is entitled to cut the casurina tope standing in an extent of Ac.16.00 land in S.No.1 of Kona village;

or

Paraswamudu the Vendee of the casurina tope from D2 to D6 in OS No.96 of 1981 is entitled to cut and carry away the casurina tope;

29. The other issues framed by the Court below and the findings recorded therein are not germane to the issue.

30. A look at the judgment clearly establishes that the learned Judge was simply carried away by the orders of the Board of Revenue in Ex.B 18 dated 31-7-1979 and the two judgments of this Court in arriving at the above findings.

31. As far as the order passed by the Board of Revenue Ex.B 18 is concerned, the same is set aside by this Court in WP No.823 of 1980 filed by the Vendors of the appellant on 10-8-1992 and the matter was remitted back to the Government for fresh consideration. In fact the order passed by the Government was again questioned by them in WP No.30292 of 1999 on the ground that the said order was passed behind their back i.e., without giving any notice to them and the same is being disposed of along with these appeals.

32. Coming to the cases relied on by the learned Judge in Penumatcha Neelakanteswaraju and Others Vs. Jaddu Mangamma and Others, , a Full Bench of this Court held that "after the estate is vested in the Government, the Government has to take proceedings under the provisions of the Act for issuance of patta in favour of the persons entitled to such pattas and in all other cases to assign the land to whomsoever, the Government desires, as the owner of the property after vacating the persons in occupation who trespassed into the land and it is not open to any person to trespass upon the land or to the actual possession of the land Holder or a ryot and to plead that in view of the vesting of the property in Government, he is entitled to trespass on the land and that the only remedy of the erstwhile landholder or ryot is to obtain a patta under the provisions of the Act. The rights of persons in actual possession or those having a right to possession on the date of the notification are in tact and specifically

preserved by Section 64 of the Act".

33. Their Lordships further observed that "It is a common knowledge that after the notified date, it is not possible in the nature of things for the Government to conduct survey and settlement operations and issue pattas to the various persons within a short time; and in many cases it has taken more than 10 to 15 years. If before the issue of such a patta, a person wrongfully ousted from possession by a trespasser or his peaceful possession is illegally threatened by another if a person commits or threaten to commit other wrongful acts by way of cutting trees or otherwise causing damage to the property, the owner of the property is certainly entitled under general law to protect his own possession either by suing in ejectment or for an injunction on the basis of his prior possession or possessory title. Such a person can always say that his possession cannot be disturbed except by the real owner who is the Government or any other person claiming from the Government. It is not open to the Government to disturb the possession and enjoyment of the previous pattadars unless the Government holds that the person is not *prima facie* entitled to a ryotwari patta"

34. I feel that the ratio decidendi laid down in this judgment have no bearing on the issue before the Court and the Court below misread the judgment and held against the appellant. A reading of the above judgment makes it very clear that after the abolition of Estates, the Government alone is competent to dispossess the persons who are in actual possession of the land or those having a right to possession and those having a right to Ryotwari patta on the date of notification, but not by third parties on the ground that the Estate was taken over by the Government and that he is not entitled to a ryotwari patta. If any third party wrongfully dispossess those persons, the owners of the property, are entitled under the general law either by filing a suit for ejectment or injunction.

35. In this case, it is on record that the Government at the time of settlement operation did not recognise the patta held by Lakshmi or her predecessor in title and assessed the land as "Assessed Waste",

36. It is the case of the appellant that in 1961 itself, the Board of Revenue rejected the claim of the father of Lakshmi and as such the order of Board of Revenue in Ex.B18 dated 31-7-1979 cannot be sustained in law, and the petition filed by the appellant to reopen the suits for marking the order of the Board of Revenue in 1961 as exhibit, was not allowed by the Court by observing that these are the matters for decision in the writ petition which is pending before the High Court, and it is not proper for that Court to express any opinion on those points. But unfortunately, the learned Judge extracted the order of the Board of Revenue in Ex.B18 *extenso* and relied on the same in coming to the conclusion that Lakshmi is *prima facie* entitled for ryotwari patta under the proviso to Section 11 of the Act.

37. In my view, the learned Judge having observed that it is for the High Court to decide the issue would not have relied on the order Ex.B18 of the Board of

Revenue seemed to have been passed on an application filed by Lakshmi in 1969 suppressing the fact that the application of her father for grant of ryotwari patta was rejected by Board of Revenue in 1961 itself.

38. Further it is seen that the order of the Board of Revenue that the said order was passed placing reliance on the interim injunction passed by the Court in OS No.96 of 1981.

39. From the material available on record it is seen that during 1969 the Revenue Authorities initiated proposals for assignment of these lands to the landless poor and at that stage one Ramanuja Swamy Advocate, Tuni gave a notice to the Revenue Divisional Officer, Poddaparnam not to proceed with the assignment as the application of his client Lakshmi for grant of ryotwari patta u/s 11 of the Act is pending before the S.O. On that the RDO called for the remarks of the Deputy Tahsildar, Tuni, who in turn submitted his remarks in Ex.A81 dated 22-9-1969.

40. In this report, the Deputy Tahsildar while admitting that Kodidasu Appalaswamy father of Lakshmi was in possession and enjoyment of 59 acres of land in S.No.1 of Kona village till settlement operations were introduced, stated that during survey and settlement operations the authorities made suo motu enquiries and having rejected the claim of the father of Lakshmi for ryotwari patta correlated the old pattas 240 and 241 of A. V. Nagaram to S. No.1 of Kona village and classified them as "assessed" in the fair Adangal of Kona. He also brought to the notice of the RDO that from No.2 Adangal of Kona village for the year 1372 Fasli, i.e., 1961, the extent of land in S. No.1 of Kona village is 170 acres and the Revenue Inspector has taken possession of the land from Makineedu Veeraraju in whose name pattas were refused by the Board of Revenue and the entire land of 170 acres can be assigned to landless poor.

41. It is the specific case of Lakshmi that the erstwhile Zamindar of Pithapuram granted patta for an extent of 109 acres i.e., under old patta No.240 admeasuring 59 acres and under patta No.241 measuring 50 acres of A. V. Nagaram, now correlated to RS No.1 of Kona village was purchased by her father and he was in possession and enjoyment of the said property. But from the remarks of the Deputy Tahsildar, it is seen that Makimedu Veeraraju, the vendor claimed title for the entire extent of S. No.1 of Kona village and the same was rejected by the Board of Revenue in the year 1961 and thereafter the Revenue Inspector has taken possession of the land on 20-9-1961. Further it is seen that while it is the case of Lakshmi that the extent of land covered by S. No.1 is 109 acres, in survey operations, the land that was correlated to old patta Nos.240 and 241 is about 170 acres, but not 109 acres as contended by her. Be that as it may, whether it is Makineedu Veeraraju or Kodidasu Appalaswamy, the predecessor in title to the property was dispossessed by the Government over an extent of 59 acres covered by old patta No.240 through its Revenue Inspector way back on 20-9-1961. Thereafter neither Kodidasu Appalaswamy nor Lakshmi were ever inducted into possession of the land by the Government. In fact, in

1975, the settlement officer perhaps for second time rejected her claim for patta in Ex.A85 dated 19-2-1975. The said order was reversed by the Board of Revenue only on 30-1-1979 in Ex.B18 subsequent to the filing of this suit. When it is proved beyond doubt that the Government dispossessed Smt. Lakshmi, and her predecessor in interest way back on 29-6-1961, the question of her continuing in possession of the property does not arise. In fact no material whatsoever was placed before the Court below to show that she had even questioned the orders of the Settlement Officer, either classifying the land as "Assessed Waste" or the action of the Revenue Inspector taking possession of the land in 1961 itself. It is for the first time, if it is true in the light of the contention of the appellant, that the Board of Revenue rejected her claim in 1961, she moved the Settlement Officer for grant of patta in 1969, but not earlier. When once the Government has taken possession of the land, unless the same is restored to her in a manner known to law, she cannot claim that she is in possession of the property even if she is agitating for her right to get ryotwari patta under the Act. When once the land is assessed as "Waste" and the same is lying as Poramboke, there is every possibility of the landless poor persons occupying the same. Hence the above judgment cannot be made applicable to the facts of the case on hand.

42. The next judgment relied on by the learned Judge in A.K. Shastrulu v. Uaddandi Metta Swamulavaru reported in 1964 (1) ALT 292, wherein this Court considered the effect of Section 64 of the Act i.e., whether the parties shall be deemed to be in possession of the lands notwithstanding the temporary dispossession. The ratio decidendi laid down in this case relates to the rights of the party vis-a-vis the Government in which the property vested after the estate was abolished to claim ryotwari patta u/s 11 of the Act. But the said principle cannot be made applicable in case of conflict of interest between the parties allegedly claiming the ryotwari patta under the provisions of the Act and the stranger more so, when the said party was evicted by the Government by following the procedure contemplated under the Act. At the most the above two judgments may come to the rescue of the persons claiming ryotwari patta under the provisions of the Act to claim patta for the land, even after their dispossession from the land in question by the Government, but not against the stranger. Hence this judgment also has no application to the facts of this case.

43. Coming to the merits of the case, it is well-settled law that enquiry u/s 11 of the Act is only a summary enquiry and the authorities discharging the duties under the Act have no jurisdiction to declare the title to the property. In other words, no finality can be attached to any order passed by the authorities concerned under the Act and at best the said order has to be confined for the purposes of the Act and it cannot be stated that the judgment is in Rem. When a dispute arises between the contesting parties, the civil Court alone is competent to adjudicate the dispute irrespective of the decision of the authorities u/s 11 of the Act. Vide State of Tamil Nadu Vs. Ramalinga Samigal Madam, .

44. The learned Judge has taken note of the judgment reported in R. Velumalai Chetty v. R. Ratnavelu Chetty 1971 (II) AWR 193 and K. Rangareddy v. M. Venkatarami Reddy 1980 (II) AWR 332, wherein this Court held that "in case of grant of patta under proviso to Section 11 of the Act, there is no such declaration of finality nor is the jurisdiction of the civil Court is expressly excluded and observed that in view of the above decision, it is better to consider the civil rights of the parties in these suits independently on the basis of oral and documentary evidence adduced by both the parties. In this case, having examined the oral evidence adduced on both the sides, the Court below recorded a categorical finding in para 40 of the judgment that the vendors of the appellant herein raised the suit casurina garden having disbelieved the version of Smt. Lakshmi that she raised casurina tope and, held that as the Government never recognised the occupation of the appellant's vendors or other fishermen of the village in the land in question at anytime, merely because the Revenue Officer granted permission to the plaintiff in 1977 to cut and carry away the casurina tope, it cannot be said that the plaintiffs vendors were permitted to raise that garden. The Revenue Officer gave the orders in 1977, because Lakshmi 's claim was negatived by the Settlement Officer in 1975. On the basis of those orders, the plaintiffs vendors cannot claim title to the suit casurina garden. In reaching the above conclusion the learned Judge rejected the Adangal entries and tax receipts produced by the appellant to prove their possession as they related to the period subsequent to the dispute that has arisen between the parties. Here again the learned Judge missed the crucial point, i.e., way back in 1961 during the settlement operations, the land in question was classified as "Assessed Waste". In oilier words the government Poramboke land. A look at the Board's standing orders will make it abundantly clear that sevaizama cultivation i.e., Cultivation of the Government land by encroachers is recognised and as long as the Government won't raise any objection to the occupation of the land by encroachers, the encroachers are entitled to bring the land left fallow to cultivation. In such an event, the Government is entitled to levy and collect penalty. Viewed from that angle, even if the occupation of the fishermen is not shown by the Village Officers in the Revenue Account for over a number of years, it does not take away the rights of the encroachers from enjoying the fruits of their hard labour in bringing the land to cultivation. In fact, even now the Government has not set-up any claim for the casurina tope standing on the land in question and in fact when the appellant applied for permit for cutting and transport the casurina logs, the Deputy Tahsildar recommended to the District Forest Officer for issuance of transport permit to the appellant. Like wise when Smt. Lakshmi applied for a transport permit, the same was rejected by the Deputy Tahsildar vide his endorsement dated 20-10-1977 Ex.A12. In the said order the Deputy Tahsildar clearly observed that in the discrete and dispassionate enquiry conducted by him on 6-9-1977 in the presence of petitioner's husband. Harinath and villagers of Kothachodipalli peta of Kona that she has not raised the casurina tope in the land in question. As stated supra, the land in S. No.1 was taken in possession by the Revenue Inspector on 23-9-1961

as per entry No.2 Adangal for Fasli 1372, which is marked as Ex.A73. Hence the real owner of the property thereafter is the Government, but not Smt. Lakshmi and it is well settled principle that the possession of a trespasser is good against everybody, except the real owner. Thus the possession of Koya Appa Rao and others assuming that they are trespassers is good against every person including Smt. Lakshmi, except the Government which is the real owner. Further during 1969, when the Collector was taking steps to get the land sub-divided by deputing special surveyor for assignment of the land to the landless persons, Smt. Lakshmi initially got a legal notice issued on 2-8-1969, wherein it is stated that his client preferred a petition before the Settlement Officer Visakhapatnam for grant of ryotwari patta and the same is pending before him, such, further proceedings for assignment of the lands to landless poor may be stayed until the petition filed by his client was disposed off.

45. From the record it is seen that the appellant filed a petition before the Settlement Officer only on 29-8-1969, as seen from the order of the Settlement Officer Ex.A77 dated 19-2-1975. She further admitted in the cross-examination in the witness box that his father tried to get apatta i.e., prior to his dispossession on 23-9-1961. The documentary evidence produced by Smt. Lakshmi to prove her possession over the land cannot be given any credence for the reason that all the tax receipts produced by her i.e., Ex.B4, Ex.B3 and Ex.B9 are only white paper receipts and they relate to the period prior to 1961. The last white paper tax receipt produced by her Ex.B9 dated 19-9-1960. Thereafter absolutely no evidence whatsoever to prove her possession over the land is produced before the Court.

46. From the above, it can be concluded that she was neither having a patta u/s 11 of the Act or possession over the property from 1961 and the Board of Revenue for the first time granted ryotvvari patta to her in Ex.B18 dated 31-7-1979, which has not become final till this date as stated supra. Even if Lakshmi is entitled to get ryotwari patta, it will be a case of re-grant of patta by the Government and she has to be reinducted into possession of the property. Ghulam Rasool and Another Vs. State of Jammu and Kashmir and Another, As such she cannot claim any right over the casurina tope that was raised between 1971 to 1977 by the vendors of the appellant. Further the Supreme Court has taken the view that though the trespasser has not perfected his title, he was entitled to remove the crop raised by him on the land in question. In Ghulam Rasool v. State of J and K, the trespasser filed a suit for injunction against the State alleging that Block Development Officer was interfering with the plaintiffs possession and the plaintiff who raised certain plantations in the land was found to be a trespasser. The Supreme Court at Page 1189 in Para 5 observed as under :

"We have already indicated that the clear finding in the trial and also the appellate Court is that the plaintiff have grown the trees being in possession from 1946, the plaintiffs would, therefore, be entitled to appropriate the trees

after removal and the state would not be entitled to raise any claim to the plantations. We are of the view that six months time should be allowed to the plaintiffs to cut and remove the standing trees from the six Kanals of land"

47. From this it is seen that even if the Government did not recognise the occupation of the appellant's vendors, they are entitled to lay a suit seeking a direction to the Government to permit them to remove and appropriate the trees that were raised by them in the land belonging to the Government. At any rate in this case Government did not raise any dispute over the casurina tope.

48. From all this it is seen that the finding of the Sub-Judge that the appellant's vendor cannot claim title to the suit casurina garden on the ground that the Government did not recognise their occupation is bad in law and is accordingly set aside and consequently it is held that the appellant's vendors are entitled to claim title to the suit casurina garden, even if the Government raises any objection for their occupation, which was not the case herein.

49. Coming to the evidence adduced by Lakshmi that she raised the casurina garden, she examined herself as DW1 and examined Yenamandri Sreeramulu as DW2 who is alleged to be an attestor of the original sale deed Ex.B1 under which her father Appala Swamy purchased 59 acres of land. He categorically stated that he did not go the suit land after 1947. Hence his evidence is of no help to Lakshmi to prove that she raised casurina tope. It is her specific case that she raised casurina tope with the help of Mummidi Appa Rao and he worked as a watchman under her and the second respondent herein after he purchased the casurina tope from Lakshmi on 14-12-1976. But she did not examine the said Mummidi Appa Rao as a witness to prove her case. There remains the solitary evidence of Smt. Lakshmi. A look at her deposition will bring out several inconsistencies and no reliance can be placed on such an evidence. It is her specific case that her father purchased an extent of 59 acres land under patta No.240 in his name and another extent of 50 acres under patta No.241 in the name of Chutturi Atchuta Ramaiah and these two pattas were correlated to S.No.1 of Kona village in the settlement operations that had taken place in 1959. But in the settlement operations it came to light that the land covered by S. No. 1, of Kona village is 170 acres. But she claims patta only for an extent of 59 acres.

50. It is her case that her father died in the year 1959 and she was married in 1963. At that time, the land was proposed to be given to her and since then she was looking after the land. She also admitted that her father died leaving behind his wife, three daughters and one son. She tries to explain for filing the application for grant of ryotwari patta stating that the land was proposed to be given to her as pasapu kurnkuma. But from the order of the Settlement Officer Ex.A77 dated 19-2-1975, it is seen that she stated in her application that she was looking after the property of her late father, as her brother is of unsound mind. But in the evidence she admitted that after the death of her father her brother ran the Rice Mill for sometime. She also admitted that her mother filed a

declaration under the A.P. Lands Ceilings Act after the Act came into force. At another place she stated that her brother and sisters are not co-operating with her in prosecuting the case. In fact her brothers and sisters filed CMP Nos.12870 of 1987 seeking permission of the Court to come on record as respondents 3 to 6 in AS No. 1283 of 1982 and the same was ordered by this Court on 28-8-1987. In the affidavit filed in support of the petition, they stated that they trusted Lakshmi and permitted her to file the suit on behalf of them when disputes arose with the third parties after paying the necessary expenses and signing their vakalath and other papers. But she only filed the suit for injunction in her own name. After the suit filed by her was decreed, they came to know that fraud was played against them, and they are apprehending that their sister may compromise with the appellant and as the property belong to their father they are interested in the out come of the above proceedings.

51. From the above it is seen that Lakshmi is not only speaking falsehood, but tries to set up title to the property allegedly belonging to her father on her own to the exclusion of the legal heirs of Appalaswamy. This fact itself will prove that she could go to any extent in speaking falsehood.

52. Nextly it is seen that prior to survey and settlement operations of the estate, the Kona forest village in which the suit schedule land is included belongs to four different villages i.e., A.V. Nagaram, Thondangi; Krishnapuram and V. Ramavaram villages, and they were known as Kona Bhoomulu. In the course of survey and settlement operations, these Kona Bhoomulu were formed into new revenue village known as Kona village and the old patta Nos.240 and 241 of A.V. Nagaram village were correlated to Sy. No. 1. By the time of these operations, some fishermen and Yadavas including the vendors of the appellant occupied the landing question and built houses in an extent of 15 acres of land and the area started to be called as Kothachodipalli peta. This fact was referred to by the Tahsildar, Tuni in his inspection report dated 15-5-1969 in the Adangal for Fasli 1378 (1969) Ex.A4, as under:

"I inspected the land along with the R.I and village officers of Kona. The entire extent of this S. No.1 is about 170 acres of land. There is a village called Chodipalli peta a hamlet of Kona forest. The population of this forest is about 350. Most of them are fishermen and Yadavas. This 15 acres of land should converted as village site and in the remaining extent there are trees of various kinds and there is no account for it. The entire land is full of sand."

53. From the record it is seen that this village has come-up in the land, for which Lakshmi is claiming ryotwari patta by the time of settlement operations in the village in 1959. Had she or her father were in possession of the property as contended by her, they would not have allowed the village to come up in midst of their land. In the witness box, she stated that her father was using the land for grazing purpose. Me was utilising the Palmyra leaves and selling the trees for tapping toddy. After the death of her father herself and her mother was going to the land to sell Palmyra leaves. At the same time she admitted that she cannot

give the names of the persons who purchased the leaves. She also tried to explain her failure in payment of taxes since 1961 by stating that the Village Officer refused to receive the taxes. But when she was confronted in the witness box, she stated that she did not issue any notice either to the VM or Tahsildar complaining against the action of the Munsif in refusing to receive the tax. Likewise she stated at another place that neither herself nor her mother and brother have cultivated the land before the suit garden was raised, as they were residing in Tuni. She also admitted that in any of the letters addressed by her, either to the Tahsildar or the Settlement officer, between 1971 and 1975, she did not mention that she raised casurina plantations, in the suit schedule land. Likewise she did not give any explanation, as to why she raised casurina tope only in an extent of 13 acres while she was claiming patta for Ac.59.00. In the application filed by her seeking Ryotwari patta, she admits the fact that the entire extent was classified as "Assessed Waste" in the fair a dangal. Out of that the occupied extent in about 10 to 15 acres by patches of cultivation with dry crops and Ragi etc. and the rest of the land is waste and the land is sandy. From the very statement made by her in the application, she is aware of the fact that the land is classified as Government poramboke way back in 1961. If she is really in possession of the property, she would have certainly taken steps to get the order of the settlement officer set aside by the appellate authority. In fact the appellant filed CMP No.1804 of 1984 to receive the order of the Board of Revenue in Endorsement No.RC.P.12179 of 1960 dated 18-1-1961 passed by the Board of Revenue rejecting the claim of her father for grant of ryotwari patta u/s 11 of the Act as additional evidence by marking the same as Ex.X1 in the appeal. Justice Waghre, as he then was, directed that the application be posted along with the appeal on 25-6-1985. Suppressing the fact of rejection of the request of her father for grant of ryotwari patta, she filed the application for the second time in 1969. From this it can be conclusively established that she was never in possession of the suit schedule property and she did not raise the casurina tope as contended by her in these proceedings. In fact the Court below also held that she was not in possession of the suit schedule land, but decreed the suit filed by her on the ground that the Board of Revenue granted patta under Ex.B18.

54. With regard to the raising of casurina tope also she has taken inconsistent stands in the witness box from time to time and rightly the lower Court held that she did not raise the casurina tope.

55. In the light of the above discussion, I hold that Smt. Lakshmi is not entitled for the casurina tope that was raised by the vendors of the appellant on the ground that she is deemed to be in possession "of the land at the relevant point of time by virtue of the orders of Board of Revenue under Ex.B18 dated 31-7-1979, that Lakshmi was entitled for ryotwari patta for the first time which was set aside by this Court and the matter was remanded back for fresh consideration. As already stated supra, even if Lakshmi is ultimately granted ryotwari patta by the authorities under the Act, it will amount to regrant by the Government and unless she is inducted into possession of the land pursuant to

the above orders, the question of applying the principle of deemed possession does not arise in this case. Accordingly the finding of the Court below is set aside.

56. Sri C. Poornaiah appearing on behalf of Lakshmi contended that on 1-9-1962 Lakshmi's father was granted rough patta by the Board of Revenue u/s 11 of the Act and the claim of Makineedu Veeraraju was rejected. It is also his case that the Board of Revenue has no power at that point of time, as the Government did not delegate the powers. But from the proceedings of the Board of Revenue dated 18-1-1961, which was now marked as Ex.X1, it is seen that the claim of Appala Swamy for grant of ryotwari patta was rejected. It is also seen that the boundaries of the suit schedule lands given by her are not tallying with the boundaries of the land as noted by the Revenue officials.

57. Sri C. Poornaiah next contended that the Deputy Tahsildar while offering remarks on the petitioner filed by Lakshmi before the Settlement Officer recommended for eviction. From this it is seen that the claim of Lakshmi was not rejected. It is to be noted that the Deputy Tahsildar referred to the earlier proceedings where under the claim of her father was rejected. In the light of the findings given by me the contention of Sri C. Poornaiah that an agreement entered into by a person without title does not confer any title, holds no water.

58. The Court below held that OS No.97 of 1981 is bad for non-joinder of necessary parties i.e., the vendors of the plaintiff. I have no hesitation to hold that this finding also can not be sustained in law for the simple reason that Lakshmi impleaded them as party defendants in the suit filed by her i.e., OS No.96 of 1981 and in fact in the written statement filed on behalf of D3 to D6, they have categorically stated that they have sold the tope to the appellant under an agreement of sale dated 5-9-1977 and D2 and D5 in the said suit were examined as PW4 and PW7. In fact considering the evidence of these witnesses, the lower Court, recorded a finding that Chokka Ammorayya raised the suit casurina garden and there are no material discrepancies in their evidence.

59. Further it is to be seen that the vendors of the appellant did not set up any claim adverse to the interest of the appellant. At the most they may be proper parties, but not necessary parties. On this aspect in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , the Supreme Court held that

"The only reason which makes it necessary to make a person a party to an action is so that he should bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party..... It is therefore, necessary that the person must be directly or legally interested in the action in the answer i.e., he can say that the litigation may had to result which wilt affect him legally that is by curtailing his legal rights"

60. As the vendors of the appellant, they have no direct interest or personal interest in the suit garden, as they have already sold it to the appellant and

hence, they cannot be said to be necessary parties. As far as non-joinder of proper parties are concerned, Order 1, Rule 9 CPC says.

"No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interest of the parties actually before it; provided that nothing in this rules shall apply to nonjoinder of a necessary party."

61. In *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, , the Supreme Court held that if the non-joinder of proper parties (as contrasted with necessary) it can never be fatal to the suit.

62. Following the above principle, I hold that the suit OS No.97 of 1981 is not bad for non-joinder of proper parties, and the appellant is entitled to the sale proceeds of the casurina tope that were deposited in the trial Court to the credit of the suit.

63. For the foregoing reasons I hold that the common judgment and decree of Sub-Court Amalapuram in OS Nos.96 of 1981 and 97 of 1981 dated 26-6-1982 is vitiated both on facts and law and is accordingly set aside and consequently both the appeals AS No.1283 of 1982 and Transfer AS No.204 of 1989 are allowed and OS No.97 of 1981 filed by the appellant herein is allowed and OS No.96 of 1981 filed by Smt. Lakshmi is dismissed. In both the appeals, the appellant shall have his costs through out.

WP No. 30292 of 1997

The brief facts leading to the filing of this writ petition are that the 2nd respondent viz., Smt. Ch. Lakshmi, the respondent in the appeals filed an application for grant of ryotwari patta under proviso to Section 11 of A.P. (Andhra Area) Estates Abolition Act (hereinafter called "the Act") before the Settlement Officer, Visakhapatnam on suppressing the fact that the Board of Revenue rejected the claim of her father for grant of a ryotwari patta in 1961. The Settlement Officer, Visakhapatnam by a reasoned order rejected the claim of the respondent by his order dated 19-2-1975 and the respondent seemed to have filed an appeal before the Board of Revenue. Later on bifurcation of the Board of Revenue, the appeal stood transferred to Commissioner of Settlement and Land Records, Hyderabad. In the mean time disputes have arisen between Smt. Lakshmi on one side and six fishermen represented by Sri Koyya Apparao and the purchaser of casurina tope from them on the other side for the casurina tope raised in an extent of Ac. 16.00 of land in Survey No.1 of Kona village and both the parties filed suits in the civil Court from which the appeals that were disposed of above have arisen. While these suits are pending, the Commissioner, Survey, Settlement and Land Records by his order dated 31-7-1979 directed issuance of ryotwari patta to Smt. Lakshmi without considering the objections raised by the fishermen and without considering the documentary evidence, solely on the ground that the civil Court found that the 2nd respondent, herein was in

possession of the land on the basis of the interim orders passed by the civil Court during the pendency of the suits. The errors committed by the Commissioner while allowing the appeals were already discussed in the judgment while disposing of the appeals filed by the purchaser of the casurina tope form the petitioners herein. Questioning the orders of the Commissioner, the petitioner filed Writ Petition No.823 of 1980 on the file of this Court and the same was allowed by Justice Subhashan Reddy by his order dated 14-8-1992 on the ground that the objections raised by the petitioners are not properly considered by the Commissioner and the matter was remitted back for fresh consideration. After disposal of the writ petition, Smt. Lakshmi filed an application to set aside the order in the writ petition on the ground that the order was passed behind her back. In the mean time, the Government having dismissed the revision filed by the Tahsildar against the orders of the Commissioner on the ground that the revision is not maintainable in exercise of suo motu revisional powers vested in it, confirmed the orders of the Commissioner. Questioning the orders of the Government, the Writ Petition No.20250 of 1993 is filed by the fishermen who are agitating through out for assignment of the lands, as the order was passed by the Government behind their back.

64. The application filed by Smt. Lakshmi to set aside the order in WP No.823 of 1980 and the WP No.20250 of 1993 filed by the fishermen were disposed by Justice Subhashan Reddy by Order dated 12-7-1994 wherein the learned Judge held that the fishermen are entitled for a hearing by the Government and as the appellate order dated 31-7-1979 passed by the Commissioner merged with the order passed by the Government and to avoid multiplicity of proceedings, the matter was remitted to the Government to dispose of the revision petition after issuing notices to the Counsel for the petitioners and the 2nd respondent and after hearing both parties, within four months by passing a reasoned order considering all the objections raised by both the parties. After receipt of the judgment, the Government served notices on both the parties that hearing will take place on 29-10-1994. On that day the petitioner's Counsel filed written arguments along with a number of material papers setting-out in detail why Lakshmi cannot be granted patta and requested for assignment of the land in question to them. The matter was adjourned without hearing on that day. Thereafter, the matter underwent several adjournments and ultimately on 17-8-1996, the first respondent i.e., the Government heard Counsel for both the parties. On that day, the petitioners' Counsel once again filed a chronology of events and copies of the documents and material papers filed earlier and orders were reserved. But surprisingly the impugned order was passed confirming the order of the Commissioner by stating that no documentary evidence to prove their claim was filed by the petitioners. Along with the writ petition, the petitioners filed endorsement of the first respondent to the effect that the written arguments and material papers filed by the petitioners' Counsel were received on 29-10-1994. This very fact itself shows that the impugned order emanated from the Government due to non-application of mind to the documentary

evidence and the written arguments filed on behalf of the petitioners by their Counsel and the same is vitiated. Accordingly, the impugned G.O. is quashed and the matter is remitted back to the Government for passing a reasoned order afresh adverting to the various contentions raised by the respective parties after giving a personal hearing to them duly keeping in mind the observations made by this Court in the judgment rendered in AS No. 1283 of 1983 and Tr. AS No.204 of 1989 and also on the following aspects :

(1) It is the case of Smt. Lakshmi respondent No.2 in the writ petition that one Makineedu Veerraju purchased an extent of 109 acres from the then Maharaja of Pithapuram before abolition of the Estates and the sale deed said to have been executed by the erstwhile Maharaja in favour of Veerraju was not marked as a document in the proceedings under the Estates Abolition Act. Further, the Settlement Officer while rejecting the claim of Smt. Lakshmi for grant of ryotwari patta categorically held that the lands being forest lands, they cannot be converted into ryotwari lands by the then Maharaja of Pithapuram as he was prohibited from doing so as per Act 14 of 1947 i.e., The Madras Estates Communal Forests and Private Lands (Prohibition of Alienations) Act. Both the appellate and revisional authority did not advert to this aspect.

(2) The Settlement Officer while rejecting the claim of Smt. Lakshmi for the grant of ryotwari patta referred to the judgment of the District Judge, Rajahmundry dated 20-7-1953 dismissing the OP No.123 of 1952 filed by the father of Smt. Lakshmi i.e., Kodidasu Appalaswamy to declare that the grant made by Maharaja of Pithapuram to Makiveedu Veerraju in respect of 59 acres of land in Patta No.24G of Alavelli Venkatanagaram is valid and binding on the first respondent therein and he cannot be evicted, was dismissed by the Court. This aspect was not at all considered by the Commissioner.

(3) To claim ryotwari patta under proviso to Section 11 of the Estates Abolition Act one must prove that he is in possession of the land after 1-7-1945 and there is cultivation at least for two years and that the lands do not serve any communal purpose. Smt. Lakshmi in her evidence categorically admitted that her father used the lands for grazing purposes after purchasing the said land. In the light of the admissions made by Smt. Lakshmi, can a ryotwari patta be granted to her?

(4) While it is the case of Smt. Lakshmi that the extent of land covered by patta Nos.240 and 241 is about 109 acres during the settlement operations, these two survey numbers were correlated to Survey No.1 of Kona village and the extent of land covered by Survey No.1 is shown as 170 acres. This discrepancy was also not properly explained by Smt. Lakshmi.

(5) In Ex.A54 the certified copy of the Adangal for Fasli 1378 (1969) in respect of Survey No.1 of Kona village, on 15-5-1969 the Deputy Tahsildar, Tuni made the following remarks : "I inspected the land along with RI and Village Officer, Kona and the entire extent of S. No.1 is about 170 acres. In about 15 acres of land,

there is a village called Chodipallipeta, h/o Kona village. The population of the peta is about 350. Most of them are fishermen and yadavas. This extent of 15 acres should be converted as village site. In the remaining extent of land, there are trees at various points and there is no account for it. The entire land is full of sand and plain. The land is fit for any dry cultivation like casurina. It is not in dispute that the 15 acres of land where the hamlet Chodipallipeta of Kona village came up is within 59 acres of land for which Smt. Lakshmi is claiming patta. Had she or her father was really in possession of the lands in question, how the hamlet has come up in the land has to be explained in the light of the report of Deputy Tahsildar that there is no account in the village records about the cultivation.

(6) On 18-1-1961, the Board of Revenue rejected the claim of Appalaswamy for grant of ryotwari patta and suppressing the said fact, Smt. Lakshmi filed a fresh application for grant of ryotwari patta in 1969. Now it is on record K. Appalaswamy died in 1959 or 1960 leaving behind him his widow, one son and three daughters including Smt. Lakshmi. But application for grant of ryotwari patta was filed by Smt. Lakshmi in her individual capacity by taking different stands at different points of time. At one point of time, she contends that her father promised to give land as pasupu - kunkuma. At another point of time, she contended that as her brother was of unsound mind, and she was looking after the properties of her late father and she filed the application. Now in the appeals, the other legal heirs of Kodidasu Appalaswamy filed a petition seeking permission of the Court to get themselves impleaded as respondents in the appeals contending that Smt. Lakshmi having obtained their signatures for filing case on behalf of all of them, has chosen to file the case on her behalf only to their detriment. Smt. Lakshmi has admitted in her evidence that after the death of her father, her brother did rice mill business for some time and her mother filed declaration under A.P. Land Ceiling Act. In the light of the above facts, whether Smt. Lakshmi alone can file an application for grant of ryotwari patta to the exclusion of all other co-owners ?

(7) In the application filed on 29-8-1969 seeking grant of ryotwari patta she categorically stated that the extent of land was assessed waste dry in the fair adangal for Fasli 1372. From this it is established that she is fully aware of the fact that the Revenue Inspector has taken possession of the land on 23-9-1961. But she filed the application in 1969 as if she was in possession of the property. It also came to light in the trial that all the cist receipts filed by her are of white paper cist receipts and they relate to the years prior to 1961. From this, can it be said that Smt. Lakshmi is entitled for a ryotwari patta without getting the orders passed during settlement operations in 1959 or the orders passed by the Board of Revenue on 18-1-1961, which is now marked as Ex.X1, in this appeal by allowing the application filed for that purpose are set aside.

65. The Government is given four months time from the date of receipt of the orders to pass a reasoned order not only on the aspects referred above but also

on the observations made in the judgment in AS No. 1283 of 1983 and Tr.A.S. No.204 of 1989 and other contentions that are going to be raised by the parties. It is made clear that any haphazard disposal of the matter will be viewed seriously, as the matter is pending for nearly thirty years.

66. Writ Petition No.30292 of 1997 filed by Koyya Appa Rao and other fishermen is allowed by quashing the order of the Government in G.O. Ms. No.697, Revenue (JA) Department dated 19-8-1997 and the matter is remitted back to the Government for fresh disposal within four months on merits. No order as to costs.