

---

**(1993) 06 AP CK 0024**

**In the Andhra Pradesh High Court**

**Case No :** Letters Patent Appeal No. 92 of 1987 and CMP 9188 of 1987

Sanjeevayya Nagar Co-operative House Building Society Ltd. APPELLANT  
Vs  
S. Malareddy alias Parvathalu and others RESPONDENT

---

**Date of Decision :** 18-06-1993

**Acts Referred:**

Andhra Pradesh (Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Act, 1973 — Section 40  
Andhra Pradesh (Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 — Rule 4(1), 4(3)  
Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 102, 19, 19(1), 32, 38(7)  
Evidence Act, 1872 — Section 115

**Citation :** AIR 1994 AP 57

**Hon'ble Judges :** Parvatha Rao, J; Lakshmana Rao, J

**Bench :** Division Bench

**Advocate :** M/s. P.R. Prasad and B. Muthyalu, for the Appellant; Mr. M.S. Narayanacharyulu and Mr. N.V.B. Shankar Rao, for the Respondent

---

## **Judgement**

S. Parvatharao, J.—The appellant before us is the plaintiff, a co-operative house building society. It filed a suit represented by its President, out of which the present Letters Patent Appeal arises, for perpetual injunction against respondents 1 to 4 herein (defendants 1 to 4 respectively) restraining them, their representatives, servants, agents or any person or persons claiming any interest whatsoever from interfering with the peaceful possession and enjoyment of the plaint schedule property. The suit was decreed by the trial Court. The defendants preferred appeals against the said judgment and decree of the trial Court and the learned single Judge of this Court allowed the appeals and dismissed the suit. The plaintiff questions the correctness of the learned single Judge's judgment in this Letters Patent Appeal. We are also inclined to dismiss the suit but for reasons different from those of the learned single Judge.

2. The plaintiff rests its case on 4 registered sale deeds marked in the suit as Exs. A-1 to A-4 dated 17-12-1980, 22-12-1980, 26-12-1980 and 30-12-1980

respectively where-under one B. V. Prakash Reddy claiming to be the sole and absolute owner and pettadar in possession of agricultural land measuring 2 acres and 5 guntas forming part of Survey No. 18 of Thokatta village in Secunderabad Cantonment area, sold and conveyed under each of the said sale deeds an extent of 2,422 square yards of the said land in the said Survey No. 18. The total extent covered by Exs. A-1 to A-4 thus comes to about 2 acres which is the plaint schedule property in respect of which injunction is sought by the plaintiff. It is not in dispute that Maigam Reddy the father of the 1st defendant was the protected tenant of the said land covered by Exs. A-1 to A-4. According to the plaintiff, after his death on 5-1-1974 his protected tenancy rights devolved on his widow Nara-samma and his three sons i.e., the 1st defendant herein, Yadi Reddy and Chandra Reddy. It is the case of the plaintiff that physical possession of the plaint schedule land was delivered to it and that on the date of the suit it was in possession of the said land. According to the plaintiff, the protected tenants i.e., Narasamma, 1st defendant, Yadi Reddy and Chandra Reddy agreed for the sale of the plaint schedule property and received their respective shares of sale consideration; and further, B. V. Prakash Reddy the pattadar of the land obtained a "confirmation deed" on 20-12-1980 from the 1st defendant which was marked as Ex. A-11 in the suit, and also two receipts dated 20-12-1980 and 25-12-1980 marked as Exs. A-5 and A-6 respectively from the 1st defendant establishing that he received his portion of the consideration. Exs. A-1 to A-4 also bear the signatures of Yadi Reddy and Chandra Reddy and thumb impressions of Narasamma as witnesses from which it is sought to be established by the plaintiff that they were willing parties to the sale.

3. The defendants denied that they agreed for the sale of the plaint schedule property to the plaintiff. The 1st defendant also denied that Exs. A-5, A-6 and A-11 bear his signature and contends that they were fabricated and further denied that he received any consideration for the alleged sales of the plaint schedule property. According to the defendants, the plaint schedule property had been in the possession of the 1st defendant's father Maigam Reddy as protected tenant till he died on 5-3-1974 and subsequent to his death in the joint possession of the 1st defendant and his brothers and mother who were entitled to be continued as protected tenants. According to the defendants, the pattadar B. V. Prakash Reddy was never in possession of the plaint schedule property and he could not have delivered possession to the plaintiff. The defendants also contend that B. V. Prakash Reddy had no right or authority to convey plaint schedule property to the plaintiff as he had no title in that property. The defendants rely on the tenancy certificate under the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Act") dated 27-11-1951 marked as Ex. B-1 wherein Maigam Reddy is shown as protected tenant over an extent of 1 acre 37 guntas in Survey No. 18 of Thokatta village. The defendants also rely on Ex. B-13 which is the provisional list in Form-I of protected tenants to whom the ownership is (to be transferred) u/s 38-E of the Act prepared in Form-I under sub-rule (1) of Rule 4 of the Andhra Pradesh

(Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 (hereinafter referred to as "the Rules"). In Ex. B-13 under serial No. 5 Maigam Reddy is shown as such protected tenant in respect of an extent of 1 acre 35 guntas in Survey No. 18 of Thokatta village in Hyderabad Urban Taluk, the total extent of which is shown as 2 acres 5 guntas. According to the 1st defendant, the pattadar B. V. Prakash Reddy objected to the provisional list denying the existence of protected tenants. But the Tribunal u/s 38-E of the Act after hearing the arguments on behalf of the pattadar as well as the protected tenants, declared the provisional list published under Rule 4(1) as final under Rule 4(3) of the Rules. The certified copy of the order of the said Tribunal dated 31-5-1975 was marked as Ex. B-12. In the said order, the Tribunal observed that S. Malla Reddy (the 1st defendant herein) among others filed a petition through his advocate for grant of ownership certificate u/s 38-E. It is the case of the defendants that the pattadar B. V. Prakash Reddy preferred an appeal against Ex. B-12 order of the Tribunal before the Collector and that the said appeal was numbered as Appeal B2/418/75 and that the same was pending during the pendency of the present suit.

4. When the President of the plaintiff-society was examined as P.W. 1, it was put to him in his cross-examination on 22-1-1983 that the Government issued notification declaring all protected tenants as full owners with effect from 1-1-1973 and he replied that he did not know "whether the Government declared all the protected tenants as full owners with effect from 1-1-1973 and whether the Act prohibited a protected tenant from alienating or transferring the land for 8 years from 1-1-1973 i.e., up to 31-12-1980. He also stated that he did not know that B. V. Prakash Reddy appealed to the Collector and that Appeal B2/418/75 was still pending before the Collector. It is now stated before us that the said appeal preferred by the pattadar B. V. Prakash Reddy was dismissed by the Joint Collector, Hyderabad on 5-4-1988. The 1st defendant has in fact stated the same in para 6 of his counter-affidavit dated 31-3-1989 in C.M.P. No. 4186 of 1989 preferred by the plaintiff-society in the present L.P.A. under Order 39, Rule 1 for grant of an injunction restraining the 1st defendant from interfering with the passage of the members of the society through the plaint schedule land. Ground No. 8 in the present Letters Patent Appeal filed by the plaintiff-society is as follows:--

"8. The learned Judge should have seen that Ex. B-12 which was filed on behalf of the defendants clearly establish that an order was passed under Sec. 38-E of the A. P. (Telan-gana Area) Agricultural Lands Act, 1950 to establish that Meghamreddy was given ownership rights. However, the consequent certificate in Form No. 2 under Rule 5(1) of the said Act was not filed as an Exhibit and that is being filed now as additional evidence, which clearly establish that tenancy rights were no longer there in Meghamreddy. They fructified into a proprietary right to the extent of Ac. 1-35 guntas and which is now sold by the original pattedar under Exs. A-1 to A-4 for which 4 of the heirs consented and received their share of the consideration and therefore it is a clear case of sale and they are estopped

from contending otherwise."

A typed copy of the certificate of ownership u/s 38-E of the Act dated 31-5-1975 issued in Form-II pursuant to Rule 5(1) of the Rules declaring Maigam Reddy the father of the 1st defendant as the owner is filed along with the memorandum of Letters Patent Appeal. It states as follows:--

"Whereas Shri Maigan Reddy, is the protected tenant of the land specified below belonging to the land holder Sri Prakash Reddy.

And whereas by virtue of Govt. Notification No. G.O. Ms. No. 3, Revenue (G) dated 1st January, 1973 issued u/s 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, the ownership of the said land stands transferred to the said Sri Maigan Reddy.

It is hereby declared that the said tenant Sri Maigan Reddy shall be deemed to be the owner of the said land with effect from 1st January, 1973 as against the land holder and all other persons having any interest therein.

#### DESCRIPTION OF THE LAND

Dist. Tq. Village Sy. No. Pot-Hissa Dry or Wet. Area Ac. Gts. Assessment Rs. P. Boundaries.

Hyderabad. Urban Tokatta 18 ? S.C.W. 1?35

The plaintiff-society also filed C.M.P. No. 9188 of 1987 for receiving the certificate as additional evidence and marking the same as Ex. A-13. In the affidavit dated 25-3-1987 filed by the President of the plaintiff-society in support of C.M.P. No. 9188 of 1987 and other connected C.M.Ps.Nos. 9189, 9186 and 9187 of 1987 he states as follows:--

"The certificate of ownership was granted under Sec. 38-E to Meghani Reddy in respect of Ac. 1-35 guntas alone in Survey No. 18. This was in the possession of the defendants and they ought to have filed in this Hon"ble Court. On enquiry, the petitioner came to know that the ownership certificate was issued to late Megham Reddy only to the extent of Ac. 1-35 guntas out of Ac. 2-05 guntas in Survey No. 18. Therefore, in any event, even assuming that the petitioner has not purchased the interest of Megham Reddy to the extent of the other land, the Suit ought to have been decreed. This document also clinchingly establishes that Megham Reddy was no longer the protected tenant but he became the owner of the land of the extent of Ac. 1435 guntas in Survey No. 18 which is part of the plaint schedule property."

He also states in the said affidavit that the certificate sought to be marked as Ex. A-13 would do justice between the parties and would enable this Court to decide the case in a just manner and that it could not be filed earlier as it was not in the custody of the society and that the same was obtained recently. But in C.M.P. No. 9188 of 1987, the document that has been filed for being received and marked is a certified true copy of final list of protected tenants to whom ownership of land

is to be transferred u/s 38-E of the Act issued under Rule 4(3) of the Rules showing Maigam Reddy in serial No. 5 as the protected tenant entitled to purchase 1 acre 35 guntas of land in Survey No. 18 of Thokatta village in Hyderabad Urban Taluk which is of a total extent of 2 acres 5 guntas. The respondents in C.M.P. No. 9188 of 1987 i.e., the defendants did not file any counter objecting to the same. This petition is therefore allowed. The certified copy of the final list of protected tenants now received in evidence and marked is in terms of and supports Ex. B-13 and is consequential to Ex. B-12 order dated 31-5-1975. It is also to be noticed in this connection that in Ex. B-12 order the Tribunal allowed the petition filed by the 1st defendant for grant of ownership certificate u/s 38-E while declaring the provisional list Ex. B-13 as final.

5. Before proceeding further, it is necessary to notice the provisions of Section 38-E of the Act and certain other sections of the Act. Section 38-E in so far as it is relevant for the present case is as follows:--

"38-E. Ownership of lands held by protected tenants to stand transferred to them from a notified date:-- (1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment, decree, contract or grant to the contrary, the Government may, by notification in the Andhra Pradesh Gazette declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their land-holders in such area under any provisions of this Chapter shall, subject to the conditions laid down in sub-section (7) of Section 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands:

Provided that where in respect of any such land, any proceeding u/s 19 or Section 32 or Section 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceedings is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceedings.

Explanation:-- If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in Section 32, is not in possession of the land on the date of the notification issued hereunder, then for the purposes of this sub-section, such protected tenant shall, notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal or other authority, be deemed to have been holding the land on the date of the notification; and accordingly, the Tahsildar shall notwithstanding anything contained in the said Section 32, either suo motu or on the application of the protected tenant hold a summary enquiry, and direct that such land in possession of the landholder or any person claiming through or under him in that area, shall be taken from the possession of the landholder or such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the

protected tenant had held the land on the date of such notification.

(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal after holding such enquiry as may be prescribed, to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein;

Provided that where the land, the ownership of which has been transferred to the protected tenant under sub-section (1), is in the occupation of a person other than the protected tenant or holder of the certificate issued under this sub-section, it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant thereof in the prescribed manner.

xxx xxx xxx xxx"

Rule 4 of the Rules provides for the inquiry by the Tribunal under sub-section (2) of Section 38-E. Sub-rule (1) of Rule 4 provides for the preparation of the provisional list in Form I showing the names of all protected tenants to whom the ownership is deemed to have been transferred u/s 38-E, and the extent and description of the land so transferred and vested in the protected tenants. Sub-rule (2) of Rule 4 provides for publication of the said provisional list and notice inviting objections thereto and that the same shall be communicated to the landholders and the protected tenants concerned and that a date shall be fixed for hearing objections. Sub-rule (3) of Rule 4 provides that after hearing of objections received from any landholder, protected tenant or any other interested person and after making such further enquiry as may be necessary, the Tribunal may declare the provisional list with or without modifications as a final list and cause it to be published in the manner provided in that sub-rule. Rule 5 of the Rules provides for the issuance of the certificate contemplated by sub-section (2) of Section 38-E and is as follows:--

"5. Issue of certificate:-- (1) After the declaration of the final list under sub-rule (3) of Rule 4, the Tribunal shall issue a certificate under sub-section (2) of Sec. 38-E in Form II to every protected tenant included in the final list, declaring him to be the owner of the land specified against him in the final list and shall cause the necessary entries to be made in the relevant or other revenue accounts of the village.

(2) Simultaneously with the issue of certificate under sub-rule (1), a notice in Form III together with a copy of the said certificate shall be issued to every landholder whose land stands transferred to the protected tenant u/s 38-E."

Section 48-A imposes restrictions on permanent alienation or transfer of land acquired by the protected tenant and in so far as it is relevant, is as follows:--

"48-A. Restriction on permanent alienation or transfer of land acquired by

protected tenants:-- (1) In case of a permanent alienation or transfer by a protected tenant of any land in respect of which he has acquired the right of ownership u/s 38 or Section 38-D or Section 38-E at the reasonable price determined by the Tribunal and more than 5 years have not elapsed since the date of such acquisition, the Tahsildar may take over the land on payment to the protected tenant as compensation a sum equivalent to the reasonable price so determined.

Where any portion of the reasonable price still remains to be paid to the landholder whose interests were acquired by the protected tenant, such portion shall be paid to the landholder from the compensation payable under this section and the balance shall be paid to the protected tenant.

(2) The land taken over shall vest in the Government free from all encumbrances and shall be under their management until it is disposed of in accordance with the rules made under this Act."

Section 40 provides that rights of protected tenants are heritable and is as follows:--

"40. Rights of protected tenant heritable:-- (1) All rights of a protected tenant shall be heritable.

(2) If a protected tenant dies, his heir or heirs shall be entitled to hold the tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death and such heirs may, notwithstanding anything contained in this Act, sub-divide inter se according to their shares the land comprised in the tenancy to which they have succeeded.

(3) If a protected tenant dies without leaving any heirs, all his rights shall be extinguished.

Explanation:-- The following persons only shall be deemed to be the heirs of a protected tenant for the purposes of this section:--

(a) his legitimate lineal descendants by blood or adoption;

(b) in the absence of any such descendants, his widow for so long as she does not remarry.

(4) The interest of a protected tenant in the land held by him as a protected tenant shall from sixty per cent of the market value of all the interests in the land and that of the landholder and of persons claiming under him shall be limited to the remaining forty per cent.

6. A reading of Section 38-E already extracted above, makes it clear that on the facts and circumstances of the present case it is not possible to avoid the conclusion that Maigam Reddy the father of the 1st defendant should be deemed to have become the full owner of an extent of 1 acre 35 guntas of the land in Survey No. 18 which he had become entitled to purchase and that the same

stood transferred to him with effect from the date specified u/s 38-E(1) i.e., 1-1-1973 and that after Maigam Reddy's demise, the 1st defendant, his two brothers and mother acquired absolute title to the same. Which means, the original landholder B. V. Prakash Reddy ceased to be the owner from 1-1-1973 and thereafter was not the owner having any title in the said land of an extent of 1 acre 35 guntas in Survey No. 18 and therefore could not have conveyed any title in that land to the plaintiff-society under Exs. A-1 to A-4 sale deeds executed by him. The plaintiff therefore cannot deny that the 1st defendant and through him defendants 2 to 4 have right, title and interest in the said extent of 1 acre 35 guntas in Survey No. 18 along with the brothers and mother of the 1st defendant.

7. On behalf of the plaintiff, it is contended that inasmuch as the brothers and mother of the 1st defendant signed the sale deeds Exs. A-1 to A-4 as witnesses, they must be taken to have acquiesced in the sale of the plaint schedule land by the original landholder B. V. Prakash Reddy to the plaintiff and they must be taken to have conveyed their title in the same to the plaintiff. We cannot countenance such an argument in the face of the facts and circumstances of this case. As already pointed out by us, as on the dates when Exs. A-1 to A-4 were executed B.V. Prakash Reddy did not have any title in an extent of 1 acre 35 guntas in Survey No. 18 and therefore he could not have conveyed any right, title and interest in the said extent of land to the plaintiff under Exs. A-1 to A-4. The contention that the brothers and mother of the 1st defendant acquiesced in the sales under Exs. A-1 to A-4 might be available, if at all, on the premise that they continued as protected tenants of B. V. Prakash Reddy on the dates when Exs. A-1 to A-4 were executed and registered; but when they had already become absolute owners along with the 1st defendant before the said dates, the plaintiff can acquire title in their land only by having a proper deed of conveyance executed by them in its favour. In this connection it has to be noticed that it is not the case of the plaintiff that it entered into any agreement of sale with them in respect of the plaint schedule property.

8. We are also not satisfied that the genuineness of Exs. A-5, A-6 and A-11 has been satisfactorily proved and established by the plaintiff. The execution of the said documents has been denied by the 1st defendant and his case is that they were fabricated. P.W. 1 admits that he was not present when they were executed and that they were handed over to him by B.V. Prakash Reddy. In his cross-examination, he states that he did not receive Ex. A-5 on 20-12-1980 and that he received it 2 or 3 days thereafter and that Prakash Reddy gave it to him and that he had no personal knowledge of execution of Exs. A-5 and A-6. He also admits that he was not present when Ex. A-11 was executed. P.W. 1 did not mention anything about Ex. A-11 in his original chief examination on 9-12-1982. He was recalled on petition for further examination and in the chief examination on 23-1-1985 he got Ex. A-11 marked stating that it was the confirmation letter executed by the 1st defendant identifying his signature. He also stated that Mohd. Burhaniddin and A. Shankar Rao were the attestors in Ex. A-11 and that

the former died more than a year back and that the latter was alive then -- the latter was not examined. It is surprising that B. V. Prakash Reddy was also not examined even though on 22-1-1983 P.W. 1 stated in his cross-examination that he would, be examining him as a witness. No explanation is given for not examining A. Shankar Rao and B. V. Prakash Reddy. In his cross-examination on 23-1-1985, P.W. 1 stated that he was not present when Ex. A-11 was written and he denied the suggestion that he was not having Ex. A-11 on the date when the suit was filed. He stated that he did not file the document (Ex. A-11) at the time of filing of the suit as it was original and that he filed only duplicates then and that on instructions of his counsel he filed it in December, 1984. He also admitted that no copy of Ex. A-11 was filed at any time before December, 1984. He also stated that he did not show Ex. A-11 to his counsel at the time of drafting the plaint and that he showed it to him subsequently. There is no other evidence whatsoever so far as Ex. A-11 is concerned. However, P.W. 2, one of the brothers of the 1st defendant, spoke about Exs. A-5 and A-6. But his evidence is inconsistent and unreliable. In his examination in chief, he merely identified the signatures in Exs. A-5 and A-6 as of his brother, the 1st defendant. In his cross-examination as regards payment under Ex. A-1 sale deed, he states as follows:--

"Four of us and Mallareddy (1st defendant) were present, when the first payment was made. He also received the amount. It was on the date of the registration of the first sale deed. ... .. I was present when Mallareddy was paid amount on the first occasion. I was not present on the II to IV occasion when the amount was paid to Mallareddy. Rs. 4,000/- and odd were paid to Mallareddy on the 1st occasion. As I was paid that much of amount, I thought he was also paid that amount. I did not count the money in the hands of Mallareddy. In the house of Prakash Reddy, the amount was paid by Prakashreddy himself. Jayaprakasareddy and Yadiri were not present when Mallareddy was paid the amount on the first occasion.

I do not know who executed Ex. A-1 and in whose favour Yadireddy, myself and my mother signed Ex. A-1 as witnesses. Mallareddy was not present then in the Sub-Registrar's Office. ... ..

xxx xxx xxx xxx ... .. I cannot say the date, month and year when Mallareddy gave receipt. He gave the receipts in Dec." 80. I cannot say the amounts paid under each of the receipts. I did not count it. Mallareddy signed in my presence in the first receipt. It was not present when he signed in the second receipt. Mallareddy signed once in the first receipt. No one signed it as witness. It is not true that Ex. A-5 does not bear the signature of Mallareddy. The two attestors to Ex. A-5 did not sign in my presence. Pattedar Pra-kashreddy took Ex. A-5. It is not true to state Ex. A-6 does not contain the signature of Mallareddy. I do not remember whether I saw Exs. A-5 and A-6 in the Court previously. I did not see Ex. A-5 and Ex. A-6 when they were filed in the Court. I saw Ex. A-5, when it was signed. I saw A-5 and A-6 previously when they were executed."

Now, Ex. A-1 sale deed was executed on 17-12-1980. Ex. A-5 is dated

20-12-1980. P.W. 2 did not state that Ex. A-5 was executed a few days after Ex. A-1 was executed. According to his evidence, the amount was paid on the date when Ex. A-1 was executed and registered. Ex. A-5 states that the amount was paid on the date when it was signed. It contains two signatures purporting to be of S. Mallareddy alias Parvathalu. It is interesting to note that Ex. A-11 is also dated 20-12-1980 and there are several signatures purporting to be of S. Malla Reddy with date 20-12-1980 on it. P.W. 2 did not speak anything about Ex. A-11. If Exs. A-5 and A-11 are genuine documents and they were executed by the 1st defendant on 20-12-1980, there is no explanation whatsoever for non-mention of Ex. A-11 by P.W. 2. The same witnesses who signed Ex. A-5 seem to have signed on the last page of Ex. A-11. P.W. 2 states that Ex. A-5 contains only one signature of the 1st defendant and that no witness signed in his presence. Therefore, the evidence adduced for establishing the genuineness of Exs. A-5, A-6 and A-11 is unreliable and wholly unsatisfactory. The non-examination of B. V. Prakash Reddy and of the witnesses clinches the issue against the plaintiff.

9. Without discussing the evidence adduced on behalf of the plaintiff, the trial Court in a perfunctory manner accepts the genuineness of Exs. A-5, A-6 and A-11 as follows:--

"Exs. A-1 to A-4 sale deeds clearly show that two sons and widow of late Megham Reddy attested the sale deeds and the object cannot be anything more than to show and establish that they were willing to put their consent for the sale, in favour of the plaintiff society. As stated P.W. 2 they have received a portion of the consideration. ... The defendant No. 1 no doubt did not sign as a witness in any of the sale deeds, but he has executed two receipts Exs. A-5 and A-6 and also a confirmation deed Ex. A-11. The receipts show that D1 received an amount of about Rs. 7500/-. The confirmation deed recites that D1 was not present when the sale deeds were executed in favour of the plaintiff society by the absolute owner Sri B.V. Prakash Reddy and that so, he was executing this confirmation deed. Ex. A-11 further recites that D1 has received his share under the sale deed dt. 18-12-1980 and passed a receipt and that he has no longer any right or title over a portion of the suit property.

When confronted with these documents, the only comment of the learned counsel for D1 is that they are not true. The very circumstance that except D1 other sons and their mother consented to the sale by Sri B.V. Prakash Reddy in favour of plaintiff shows that D1 also in all probability executed the confirmation deed. Moreover, D1 is not an illiterate person as such and he signs mostly in English, as is evident from the written statement filed by him, the signatures in the written statement of D1 and in the disputed documents are alike, and the signature in the disputed documents appear to be of a free hand. I do not find any substance in the contention that Ex. A-11 is a document fabricated for the purpose of this suit. The signatures on Exs. A-5 and A-6 also are natural and possess the intrinsic merits of a true signature. Thus the defendant No. 1 having executed these documents is estopped u/s 115 of the Evidence Act, to question

the title of Sri B.V. Prakash Reddy and retract from what is evidenced by Exs. A-5, A-6 and All."

But on question whether Ex. A-11 is true, the learned single Judge, observing that "the Court below compared the signatures on the written statement and the vakalat and found them to be identical with the signature of the 1st defendant and it also accepted the evidence of P.W. 2, the brother of the 1st defendant", held that he was "not persuaded to accept the finding in an unqualified manner" and that when he compared the signatures he found them to be materially different. However, the learned single Judge proceeded on the basis that even assuming that Ex. A-11 was true, it was not efficacious against the 1st defendant as the provisions of Section 19 of the Act were not attracted because it was not permissible for any one to rely upon the surrender of rights of the protected tenants except as provided in the first proviso according to which the surrender should be in writing and admitted by the Tahsildar who was the statutory authority, and that therefore he was not persuaded to accept that even assuming that Ex. A-11 was true, it operated as surrender of rights of the 1st defendant. The learned single Judge however, hastened to add "I must however make it clear that I am not adjudicating the question in favour of the plaintiff that Ex. A-11 is true but I am only proceeding on the basis that Ex. A-11 is true and held that even assuming that Ex. A-11 is true it does not operate as surrender of rights". What the learned single Judge held assuming that Ex. A-11 was true is supported by the decision of a Division Bench of this Court in *Ven-kanna v. P. Puchamma*, 1971 (2) APLJ 266, wherein it has been held as follows:--

"Section 19(1) of the Hyderabad Tenancy and Agricultural Lands Act provides that notwithstanding any agreement or usage or any decree or order of a Court of law no tenancy shall be terminated before the expiration of the period for which the land is leased or deemed to be leased otherwise than (a) by the tenant by surrender of his right to the landlord or (b) by the landholder on one of the grounds mentioned in sub-section (2) of Section 19. By an amendment a proviso was introduced in 1954 and it provides, that a surrender made by the tenant must be in writing and must be admitted by him before the Tahsildar, who must be satisfied that the surrender is made in good faith. The proviso is obviously meant to protect the tenant against himself that is to say against succumbing to the wiles of a clever and persuasive landholder and surrendering his rights to him. Thus, Section 19 while prescribing how a tenancy may be terminated also prescribes that the landholder and tenant cannot contract themselves out of the provisions of Section 19. Again Section 19 while providing that a tenant may terminate the tenancy by surrendering his rights to the landlord, safeguards the tenant by insisting that the surrender must be in writing and that it must be admitted before the Tahsildar, who must be satisfied that it is bona fide. A tenancy cannot, therefore, be terminated by the tenant merely surrendering and the landlord obtaining possession of the land. A tenant who has merely surrendered possession without following the procedure prescribed by the proviso does not cease to be a tenant under the Hyderabad Tenancy and

Agricultural Lands Act, his tenancy not having been terminated in accordance with Section 19.

We have extracted the above passage because it clearly brings out the evil sought to be remedied and the object sought to be achieved by Section 19 of the Act; the evil being the gullible tenants succumbing to the manipulations of the landholders and surrendering their rights to them, and the object being to protect and safeguard the tenants from the snares and temptations set up by the landholders. If that is so, even assuming that Ex. A-11 is true and genuine, it cannot have the effect of depriving the 1st defendant of his rights in the plaint schedule property in view of Section 19 of the Act.

10. The learned counsel appearing for the plaintiff-appellant contends that in view of Section 102 of the Act, Section 19 cannot be of any assistance to the defendants. Section 102 of the Act in so far as it is relevant is as follows:--

"102. Act not to apply to certain land and areas:-- Nothing in this Act shall apply-

(a) to lands leased, granted, alienated or acquired in favour of or by the Central Government or the State Government a local authority or a Co-operative Society;

Provided that nothing in this clause shall apply to Inams, lands dealt with under Chapter VI and to such other lands as may be prescribed."

The learned single Judge before whom also a similar contention was advanced, rejected the same. He held that the words occurring in Section 102(a) "acquired in favour of or by... .. a co-operative society" would mean compulsory acquisition by the co-operative society but not a mere purchase from a protected tenant and that a purchase from a protected tenant should comply with the requirements of Section 19 and that therefore sale in favour of the plaintiff-society by the protected tenant must comply with the provisions of Section 19 of the Act and that if Section 19 was disregarded and not complied with Ex. A-11 would not operate as surrender in favour of the plaintiff-society. We are not inclined to agree with the interpretation of the expression "acquired" Section 102(a) by the learned single Judge because not only the expression "acquired" is used in Sec. 102(a) but also "leased, granted and alienated", the emphasis being on lands. Therefore, the intention of the Legislature has to be gathered by reading all these expressions together i.e., "lands leased, granted, alienated or acquired in favour of or by ... .. a co-operative society". Therefore, under Sec. 102(a), the Act does not apply not merely to lands acquired by a co-operative society but also to lands alienated in favour of a co-operative society. A sale by a landholder to a cooperative society is an alienation in favour of a co-operative society. Therefore restricting the meaning of the expression "acquired" to compulsory acquisition will not be of any assistance in the present case because it can still be contended by the plaintiff that the plaint schedule land was alienated in its favour by the landholder B. V. Prakash Reddy. But we are of the view that the alienation and acquisition contemplated under S. 102(a) should be valid and in conformity with law. That is to say that under S. 102(a) the Act does

not apply to lands validly alienated in favour of or validly acquired by a co-operative society and after they are so alienated or acquired in accordance with the law for the time being in force, a co-operative society can claim that the Act does not apply to the said lands. This is so because as we have already observed the emphasis in S. 102(a) is on lands and what is provided thereunder is that the Act shall not apply to lands; the provision does not say that the Act shall not apply to alienations or acquisitions in favour of or by a co-operative society etc. It therefore follows that a landholder cannot validly alienate his land which is in the possession of protected tenants unless he complies with the requirements of S. 38-D of the Act. An alienation in contravention of S. 38-D of the Act by the landholder has no legal effect. Therefore, S. 102(a) is not of any avail to the plaintiff.

11. The Supreme Court considered the various provisions of the Act in Kotaiah and Another Vs. Property Association of the Baptist Churches (Pvt.) Ltd., and formulated as follows:--

"In sum....,

(i) The protected tenant has a right to become full owner of the lands in his possession. He becomes the owner when the government issues a notification u/s 38-E. We are told that the government had issued such a notification on October 1, 1973, relating to the district where the lands in question are situated. It was about three years earlier to termination of the appellants' tenancy by the Association. If the appellants had a right to become owners of the tenanted lands, the question of terminating their tenancy would not arise.

(ii) The protected tenant cannot be dispossessed illegally by the landlord or anybody else. If so dispossessed, the Tahsildar either suo motu or on application must hold a summary inquiry, and direct that the land be restored to the protected tenant. That is the mandate of Section 38-E and the Explanation thereof.

(iii) The landholder by himself cannot dispossess the protected tenant even if the tenancy is terminated in accordance with the law. The landlord will have to take recourse to Section 32. He must approach the Tehsildar to hold an enquiry and pass such order as he deems fit.

(iv) Section 38-D prohibits the landholder from alienating the tenanted land to third parties. If the landholder intends to sell the land, he must give notice in writing of his intention to the protected tenant. The first offer must be given to the protected tenant. It is only when the protected tenant does not exercise the right to purchase, the landholder could sell the land to third parties. The alienation made in contravention of these provisions has no legal effect."

It is seen that the Supreme Court observed categorically that if the appellants (before the Supreme Court) had a right to become owners of the tenanted lands the question of terminating their tenancy would not arise and that the landholder

himself cannot dispossess the protected tenant even if the tenancy is terminated in accordance with the law and that the alienation made in contravention of Section 38-D has no legal effect. In view of this pronouncement of the Supreme Court, the contention on behalf of the plaintiff-appellant before us that Ex. A-11 will have the effect of not merely terminating the tenancy but also alienation of the defendants' right, title and interest in the plaint schedule property has no legs to stand. In this connection it has also to be noticed that the plaintiff is not a party to Ex. A-11 and that it purports to be by the 1st defendant in favour of B. V. Prakash Reddy. One of the recitals therein is "whereas the Second Party herein (B.V. Prakash Reddy) is the absolute owner and pattadar of Agricultural land admeasuring 2 acres and 5 guntas covered by Survey No. 18. It is difficult to believe that after the hard fought out decision of the Tribunal in Ex.B-12 order in 1975 and when an appeal preferred against the said order by B. V. Prakash Reddy was pending, the 1st defendant would execute Ex. A-11 and agree for Exs. A-1 to A-4 sales. It is not necessary for us to further enquire into this aspect of the matter in view of our disinclination to accept the genuineness of Exs. A-5, A-6 and A-11 on the basis of the evidence before us. As the Supreme Court held in Kotaiah's case in view of the fact that the brothers and mother of the 1st defendant had a right to become owners of an extent of 1 acre 35 guntas in Survey No. 18, the question of terminating their tenancy would not arise. The mere devise of obtaining their signatures as witnesses in Exs. A-1 to A-4 cannot have the effect of transferring by sale or otherwise their right, title and interest in the plaint schedule property. On the facts and circumstances of the present case and on the evidence | before us, we have to hold that the plaintiff has not succeeded in establishing that it acquired any land in Survey No. 18 of Thekatta village from the 1st defendant and his brothers and mother or that they alienated the same to it.

12. We have also to point out that there is no reliable evidence in support of the case of the plaintiff that the possession of the plaint schedule land was delivered to it and that it was in possession of the same on the date of the suit. P.W. 1 in his evidence in examination in chief states that possession of the land was delivered to the society as per the sale deeds. In his cross-examination, he states that possession of the land purchased under Ex.A-1 was given after registration of the pattadar and four protected tenants. But in Ex.A-1 there is no recital as regards handing over of possession. In Exs. A-2 to A-4 it is recited that "the vendor herein today delivered vacant physical possession of the said agricultural land to the vendee". The vendor of all these sale deeds was B. V. Prakash Reddy. Admittedly, he was not in possession of the plaint schedule land. There is no recital in any of the sale deeds that the land sold was in the possession of protected tenants. P.W. 1 in his evidence states that property under each of the sale deeds was delivered after the sale deeds were executed. He states that the suit land is wet land and that it is agricultural land. He also states that there is a well in the plaint schedule land on the eastern side and that there was also engine and an electric connection. He states that he does not

know in whose name the electric connection of the meter was issued. He further states as follows:--

"It is true that D1 and others in his family used to do agricultural operators in the land under Ex.A1 (The question put to him was Mallareddy was raising crops in the suit land just before the agreement. The witness stated it was so. Then he stated the above answer that D1 and others in his family raised crops on the interference of the advocate). Ex.A-1 does not show that there are protected tenants in the land....."

... .. XXX XXX XXX XXX On the date of Ex.A1, the land was in the possession of Mallareddy and his family membes. Prakash Reddy was not in possession of the land on the date of Ex. A. 1. It is not true to state the land was not delivered under Ex.A.1. Narasamma, Yadireddy and Chan-dra Reddy delivered possession of it under Ex.A.1. I did not give any receipt for possession of the land. It is not true to state that Narasamma, Yadireddy and Chandra Reddy were not in possession of the land on the date of Ex.A.1. Mallareddy was also in possession of it. All of them had possession of it jointly. I thought they had joint possession of it as all of them were in the land. Mallareddy and his brother were in separate houses. They had separate mess. I do not know in whose name the electricity connection for the meter of the engine was issued. I do not know who was paying land revenue for the Sand in question before 1980. I do not know correctly what amount was to be paid towards land revenue. Roughly it was Rs. 25/- for 2 acres. I do not know whether there were any arrears of land revenue. The Karnam told me there were no arrears. Prakash Reddy told me that tenants were paying land revenue".

The only other witness on the plaintiffs side P.W. 2, the brother of the 1st defendant, states that B. V. Prakash Reddy did not have possession of the plaint schedule property at any time. He states that he and the 1st defendant are not on talking terms from the time of his father"s death in 1974 and they were hot on talking terms in 1979 also. He states that he did not agree to sell the land to the plaintiff-society and that he does not know who executed Ex.A-1 and in whose favour. He then adds:

"The contents of it were read over to us in English. S. No. 18 was in our possession before Ex.A.1 was executed. It was not in possession of Mall a Reddy. He is also entitled to a share in the property. 2 Acres of land was sold under Ex.A-1 to Ex.A-4. Possession of the entire land of 2 acres was handed over to the plaintiff society after all the sale deeds were registered. It was done 2 or 3 days after the date of the registration of the IV sale deed.

We handed over possession to Jayaprakash Reddy and Yadagiri. They did not give any receipts for delivery of the possession of the land. Ex.A-1 was executed for 1/2 an acre. It was not delivered to him on the date of the execution or registration of Ex.A.1 (1/2) an acre was sold under Ex.A.2. It was not handed over on the date of the registration of Ex.A.2. Under Ex.A-3 and Ex.A-4 (1/2) an

acre land sold. On the dates of registration of Ex.A-3 and Ex.A-4 possession of land was not delivered. There was no crop in the land when possession was delivered. We did not raise any crop as we had no money for raising crops."

P.W. 2 denies that "in view of the enmity between us and Malla Reddy, I signed Ex. A. 1 to Ex.A.4 at the instance of the Pattadar Prakash reddy to create false evidence" but admits "I was in poor circumstances before Ex.A. 1 to Ex.A.4 were executed". He further states:

"The suit land is the joint family property. It is not true to state that Malla reddy was doing agricultural operation in the suit land and he was enjoying major share. We were divided during the lifetime of my father and again joined together after my father's death".

The evidence of P.W. 2 shows that it is doubtful that he and his brother Yadireddy and mother were in actual physical possession of the plaint schedule land and cultivating the same. He in fact states that they were not raising any crop as they had no money for raising crops. On the other hand, P.W. I states that crops were raised in the suit land just before the agreement. It is therefore extremely doubtful that they were in possession of the plaint schedule properly at the time when Exs.A-1 to A-4 were executed by B. V. Prakash Reddy. It is also highly doubtful that the 1st defendant handed over possession of the plaint schedule land to the plaintiff. In this connection it has to be noted that Ex.A-4 was executed on 30-12-1980 and the plaint in the suit was presented before the VIth Additional Judge, City Civil Court, Hyderabad on 16-1-1981 and the suit itself was originally numbered as O.S. No. 17 of 1981; subsequently it was transferred to the Court of the Additional Chief Judge, City Civil Court, Hyderabad and renumbered as O.S. No. 214 of 1982. Thus the suit was filed just about a fortnight after the execution of Ex.A-4, the last of the four sale deeds. The 1st defendant as D.W. 1 states that in the month of December, 1980 and also on the date of the suit, the suit land was in his possession. His cross-examination did not break any ground and he states "it is not true to say that plaintiff has been in possession of the suit land and that I am not in possession". On the basis of this evidence, it is not possible for us to hold that possession of the plaint schedule property was handed over to the plaintiff and that it was in possession of the same at the time when the suit was instituted by it.

13. We are therefore satisfied that the plaintiff before us has not made out a case for grant of an injunction as prayed for against the defendants. The learned counsel for the plaintiff-appellant before us contends that inasmuch as the 1st defendant, his brothers and his mother can claim title only to the extent of 1 acre 35 guntas in Survey No. 18 of Thokatta village, the relief of the injunction of the extent of the remaining land in the plaint schedule property should be granted. We do not see how that can be done in the frame of the present suit. The Letters Patent Appeal is therefore dismissed.

No costs.

14. Appeal dismissed.