
(1981) 07 AP CK 0010
In the Andhra Pradesh High Court
Case No : Appeal No. 210 of 1975

Satyapramoda Thirthaswamulavaru	APPELLANT
Vs	
Mula Gunnayya (deceased) and Others	RESPONDENT

Date of Decision : 08-07-1981

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 17
Civil Procedure Code, 1908 (CPC) — Section 9
Evidence Act, 1872 — Section 114, 90
Limitation Act, 1963 — Article 64, 65
Registration Act, 1908 — Section 17(1)

Citation : AIR 1982 AP 24

Hon'ble Judges : Madhusudan Rao, J;Chennakesav Reddi, J

Bench : Division Bench

Advocate : B. Rama Rao, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Chennakesav Reddi, J.—The principal question, if not the only question, that requires consideration and determination in this appeal is "whether a compromise decree if it operates as a lease is invalid for want of registration u/s 17 of the Indian Registration Act" ?

2. The Plaintiff, Uttaradi Mutt, is a religious institution. Sri Satyapramoda Thirtha Swamulavaru is the Head of the Uttaradi Mutt. Sri M. V. Ramanacharya is the General Power of Attorney Holder and Agent of the said Head of the Uttaradi Mutt. Plaint A and B schedule properties situate in the village Ananthavaram in East Godavari District are inam lands and they were granted for the support of the Uttaradi Mutt. The lands are covered by title deed No. 5204. The grant covered both kudivaram and Melvaram interest in the lands. The Mutt has been enjoying the suit properties by leasing them to tenants.

3. The plaintiff Mutt through the then Power of Attorney Holder and Agent of the Head of the Mutt filed the suit O. S. No. 17 of 1908 in the Court of the District Judge, East Godavari at Rajahmundry for recovery of possession and for profits

against the first defendant and the grandfather of the second defendant and some others. The said suit was compromised on 5-3-1910 and Ex. A-1 is the certified copy of the compromise decree in O. S. No. 17 of 1908. In pursuance of the said compromise, the first defendant and the grand-father of the second defendant, and after the latter's death, the second defendant have been in possession of the plaint schedule properties paying the agreed rent Rs. 40-50 per year per acre. They were also paying the land revenue and water tax due to the Government. The defendants paid rents up to the end of Fasli 1365, corresponding to 1955-56, but they committed default in payment of rent due under the compromise decree since the fasli year 1366. Thereupon, the plaintiff got issued quit notice Ex. A-8, dated 31-12-1959 to the defendants stating that they have committed default in payment of rent due under the compromise decree Ex. A-1 and demanding the defendants to deliver possession of the suit schedule properties to the plaintiff by the end of the agricultural year 1959-60. It was also stated in the notice that the compromise decree was not valid and binding on the plaintiffs. The defendants received the notice, but the first defendant alone sent a reply notice Ex. A-9 dated 31-1-1960. It was also stated in the reply notice that the plaintiff-Mutt lost title to the suit lands by virtue of the notification issued under the Madras Inams Abolition and Conversion into Ryotwari Act, 1948, (Act XXVI of 1948), that the suit properties vested in the Government and that the Government made a demand and collected revenue of Rupees 181-08 from him on 20-3-1960 for Fasli years 1365, 1366 & 1367. It was further stated in the reply notice that the plaintiff's remedy was only against the Government and that he was not liable to deliver possession of the plaint schedule lands to the plaintiff.

4. The plaintiff pleads that the suit lands do not form part of the estate and that the suit properties are not attracted by the provisions of Madras Act XXVI of 1948. On the other hand, it is pleaded, that they (the suit lands) come under the Andhra Inams Abolition and Conversion into Ryotwari Act, 1956) and that a patta was granted in favour of plaintiff-Mutt in respect of the schedule properties on 21-11-1969 under Ex. A-7. Therefore, it is pleaded that the Mutt is the absolute owner of the plaint schedule properties and the defendants cannot resist the plaintiff's claim.

5. The plaintiff also pleads that the compromise decree Ex. A-1, under which the defendants claim rights of occupancy, has not been registered and is, therefore, invalid in law. It is also submitted that the compromise decree was entered into by the Agent and Power of Attorney Holder, who was not authorised to do so, that the compromise was not beneficial to the Mutt and, therefore, the compromise decree was not binding on the Mutt. So, it is asserted, that the defendants are to be treated as tenants from year to year paying rent at Rs. 40.50 and, therefore, the plaintiff rightly repudiated the tenancy created under the compromise decree by the notice Ex. A-8, issued on 31-12-1959. Therefore according to the plaintiff-mutt, the defendants have no right to continue in possession of the property as they committed default in payment of rent and

they are liable to pay damages for use and occupation in respect of the suit properties. Consequently, the plaintiff filed the suit for recovery of possession and for profits.

6. Defendants 1 and 2 filed a written statement denying the material allegations in the plaint and contending inter alia that they and their predecessors-in-title have been in possession and enjoyment of plaint schedule lands from times immemorial, that the plaintiff had only the melvaram right of receiving rents even under the original grant and that the kudivaram right always vested in the defendants. It was further averred that the defendants had occupancy rights even by the time of the grant and that the plaintiff was only given the right to collect the rents. It was also contended that the plaintiff was estopped from contending that it was the absolute owner of the lands, in view of the compromise decree Ex. A-1 lawfully entered into O. S. No. 17 of 1908, under which the permanent rights of occupancy of the defendants were recognised. It is the case of the defendants that the compromise decree was binding on both the parties and the suit was barred by res judicata. In any case, it was contended that even if the compromise was null and void, the defendants had prescribed their rights to suit property by adverse possession. It was also stated that the notification issued under the Madras Act XXVI of 1948 with respect to the suit lands was perfectly valid and it became final and that the plaintiff lost title to the suit land by virtue of the notification and the suit properties vested in the Government. According to the defendants, they paid the rent to the Government on pain of distraint at Rs. 40-50 per year for Faslies 1365 to 1367 and that the same was intimated to the plaintiff. It was also pleaded that no prerequisite notices, as required by Andhra Abolition of Inams and Conversion into Ryotwari Act of 1956, was ever served on the defendants before the grant of patta to the plaintiff and, therefore, the patta alleged to have been granted in favour of the plaintiff was null and void. It was further contended that the compromise decree in O. S. No. 17 of 1908 was not in any way vitiated for want of registration and the defendants have got very right to continue in possession of the suit lands being owners of Kudivaram interest.

7. First defendant died during the pendency of the suit and defendants 4 to 6 were impleaded as his legal representatives. They filed a written statement and their averments and contentions were substantially the same as those made on behalf of defendants 1 and 2. It was, however, pleaded that they got the properties under a registered partition deed with their father, the first defendant. It was contended that the Government was a necessary party to the suit and the suit was bad for non-joinder of necessary parties. It was further averred that in any event, the plaintiff had no title to and possession of the plaint schedule properties within the statutory period since the plaintiff gave away the lands as long back as in the year Tarana, corresponding to 1824 to one Sankaramanchi Srinivasachari. It was further pleaded that the Civil Court had no jurisdiction to pass a decree for possession of the plaint schedule properties since the defendants, as pleaded by the plaintiff itself, were tenants holding over and the

plaintiff's remedy was only to file an eviction petition u/s 13 of the Andhra Tenancy Act.

8. On the aforesaid pleading of the parties, following issues were framed by the trial Court:

1. Whether the suit land is an estate ?
2. If so, whether the plaintiff is entitled to possession ?
3. Whether the defendants are entitled to occupancy rights by adverse possession or otherwise ?
4. Whether the compromise decree in O. S. No. 17/1908, does not bind the plaintiff ?
5. Whether the plaintiff holds the patta for the suit lands ?
6. If so, whether the patta does not bind the defendants ?
7. To what damages is plaintiff entitled ?
8. Whether the plaintiff is estopped from claiming possession ?
9. To what relief ?

Additional Issue framed on 26-8-1972. Whether the suit is barred by res judicata ? Additional Issues framed on 18-11-1972.

1. Whether the plaintiff has title and possession within statutory period ?
2. Whether the Court-fee paid is correct ? Additional issue framed on 6-9-1973.

1. Whether the Government is a necessary party to the suit ?
2. Whether this Court has no jurisdiction ?

9. The learned subordinate Judge on a close scrutiny and careful appraisal of the entire evidence in the case, not form part of Zamindari estate, that Ananthavaram, which was a proprietary village, was taken over by the Government under Andhra Inams Abolition and Conversion into Ryotwari Act, (Act XXXVII of 1956) and that the suit lands are inams which fall within the purview of Andhra Inams Abolition and Conversion into Ryotwari Act of 1956. It was further held that patta was granted in respect of the inam lands under Ex. A-7 to the plaintiffs u/s 3 of the said Act. The learned Subordinate Judge also held that a Civil Court had no jurisdiction to order ejectment of the defendants and that the tenancy Court alone had jurisdiction to order eviction of the defendants. The trial Court also held that the compromise decree Ex. A-1 was validly entered into, that it merely recognises the rights of the defendants and it did not operate as a lease and therefore its non-registration did not render it invalid. It was further held that the compromise decree was also effective as an estopped between the parties and, therefore, the plaintiff cannot claim

possession of the suit lands. The learned Subordinate Judge also held that the defendants had acquired a permanent right of occupancy by virtue of adverse possession. Having recorded the aforesaid findings, the learned Subordinate Judge dismissed the suit. Hence this appeal by the plaintiff-Mutt.

10. The first and principal question that was debated in detail before us was whether the compromise decree Ex. A-1, operated as a lease and was invalid, therefore, for want of registration under Sec. 17 of the Indian Registration Act. In any case, it was contended that the compromise decree was not properly entered into, that it was entered into by a person not authorised to enter into a compromise and, therefore, it was not binding on the plaintiff. It was submitted that since, the compromise decree was invalid, the defendants could not claim permanent rights of occupancy by adverse possession.

11. On the other hand, the learned counsel for the respondents submits that the compromise decree, Ex. A-1 was validly entered into and that the said decree does not operate as a lease, but merely recognises the permanent occupancy rights which the defendants had. In any case, he submits that even if Ex. A-1 operates as a lease and is invalid for want of registration, it can be looked into for collateral purpose. He submits that since the defendants continued to be in possession as permanent lessees even though under an invalid document, Ex. A-1, for over the statutory period, the defendants must be held to have rights of perpetual lease by adverse possession.

12. Before we proceed to consider the soundness of the rival contentions, it would be necessary to look at S. 17 of the Indian Registration Act, which is as under.

17. (1) The following documents shall be registered if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act 1866 (XX of 1866) or the Registration Act 1871 (VII of 1871) or the Indian Registration Act 1877 (III of 1877) or this Act came or comes into force, namely;

(a) instruments of gift of immovable property.

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(d) leases of immovable property "from year to year, or for any terms exceeding one year or reserving a yearly rent; and

(e) non-testamentary instruments transferring or assigning any decree or order

of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upward to or in immovable property.

Provided that the (State Government) may, by order published in the (Official Gazette), exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which so not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in Cls. (B) and (c) of subsec. (1) applies to:

(i) any composition deed: or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of Immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning limiting or extinguishing any right, title or interest to or in Immovable property except in so far as it entitles the holders to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its Immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document not itself creating, declaring assigning, limiting or extinguishing any right, title or interest of the value of the hundred rupees and upwards to or in Immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right title or interest; or

(vi) any decree or order of a Court (except a decree or order expressed to be made on compromise and comprising Immovable property other than that which the subject-matter of the suit or proceeding) or;

(vii) any grant of Immovable property by the (Government) or

(viii) any instrument of partition made by a Revenue Office; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act 1871 (XXXVI of 1871) or the Land Improvement Loans Act 1883 (XIX of 1883); or

(x) any order granting a loan under the Agriculturists Loans Act (1884) (XII of 1884) or instrument for securing the repayment of a loan made under this Act; or

(x-a) any order made under the Charitable Endowments Act 1890 (VI of 1890) vesting any property in a treasurer of Charitable Endowments or divesting any

such treasurer of any property; or

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any other part of the mortgage money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

(Explanation: A document purporting or operating to effect a contract for the sale of Immovable property shall not be deemed to require or even to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money).

(3) Authorities to adopt a son, executed after the first day of Jan. 1872, and not conferred by a will, shall also be registered.

13. Sub-section (1) of S. 17 lays down that the instruments mentioned in Cls. (A) to (e) are compulsorily registrable. Cl. (D) which is relevant for the purpose of this case says that leases of Immovable property from year to year or for any term exceeding one year require registration. Sub-sec. (2) of S. 17 enacts exceptions to Cls. (B) and (c) of sub-sec. (1). Cl. (D) of sub-sec. (1) is excluded from the operation of sub-section (2). Clause (d) clearly provides that a lease of Immovable property for an year or more or a term exceeding one year is compulsorily registrable. Therefore, non-registration of a document which creates lease for more than one year renders the document inadmissible in evidence. But the learned counsel for the appellant submits that the compromise decree Ex. A-1 deals only with the properties in the suit and a decree passed in accordance therewith is exempt under Cl. (vi) of Sec. 17(2). Cl. (vi) of S. 17(2) provides that any decree or order of a Court which deals only with the properties in the suit is exempt from the operation of Cls. (B) and (c) of sub-sec. (1) of S. 17. So it specifically excludes cl. (D) of sub-section 91) from the sweep of sub-sec. (2). Therefore, sub-sec. (2) itself is inapplicable to documents falling under cl. (D) of sub-sec. (1) of S. 17. In other words, if a document operates as a lease, then it falls outside the ambit of the exceptions enunciated in sub-sec. (2) of s. 17 for compulsory registration under the Indian Registration Act.

14. A Full Bench of the Madras High Court had occasion to consider the scope and applicability of S. 17(2). After exhaustive consideration of all the relevant facts, the Courts held that the compromise decree which operates as a lease requires registration under s. 17(1) of the Act. The learned Judges held that sub-section (2) of Sec. 17 only exempts decrees and orders which fall within cls. (b) and (c) of sub-sec. (1) or Clause relates to lease does not fall within the exceptions engrafted in sub-sec. (2) of S. 17.

15. The Privy Council in Hemanta Kumari Debi v. Midnapur Zemindari Co., (1919)

37 Mad LJ 525) : (AIR 1919 PC 79) held that if the document in question is regarded as lease it could not be received in evidence. In that case, as in this case, the facts were these: The plaintiff instituted two suits in the year 1895 for recovery of possession of plots of land which have been diluviated owing to the encroachment of the river Padma and had then subsequently reappeared. One of the suits O. S. No. 72 of 1895 was against the Government and the other suit O. S. No. 73 of 1895 was against the firm of Watson and Company. The parties to the suits in O. S. No. 73 of 1895 entered into a compromise by which the defendants agreed to recognise the plaintiff's ownership of the land and in consideration of that recognition the plaintiff agreed to give the defendants a permanent lease of the land of which they were in occupation. It was further agreed that if the plaintiff succeeded in her suit against the Secretary of State she would grant to them a permanent lease of the land with which that suit was concerned. The suit against the Government succeeded and the defendants who were transferees of the rights of Watson and Company sued for specific performance of the agreement for a permanent lease of the land which the Government had held. The defendant contended that the suit was not maintainable by reason of the fact that the compromise decree in Suit O. S. No. 73 of 1895 had not been registered. The Privy Council held that if the document in question could be regarded as lease, it could not be received in evidence. But in that case, the Board held that the decree in that case did not fall within clause (d) of sub-section (1).

16. The Calcutta High Court in Jagdish Chandra Deo Dhabal Deb Vs. Biseswar Lal Agarwalla and Others, and the Lahore High Court in Attar Chand Kapur and Sons v. Chandulal (ILR (1929) 10 Lah 685) : (AIR 1929 Lah 291), expressed the same view.

17. That raises the conundrum whether the compromise decree in this case, Ex. A-1 operates as a lease ? The learned counsel for the appellant submits that it operates as a lease. The opposite counsel submits that Ex. A-1 merely affirms a pre-existing right of occupancy and does not create a new right. It is his submission that the documentary evidence in this case clearly establishes the possession of the defendants and their predecessor-in-interest from the year 1818. According to him, the defendants and their predecessors-in-interest were enjoying the Kudivaram rights and were only paying Kattubadi and were mortgaging the properties and also effecting alienations. The submission of the learned counsel, in our opinion, is a formidable one. It is clear from Ex. B-1, the plaint filed in O. S. No. 17 of 1908 that the defendants mortgaged the suit properties and also alienated them. The documentary evidence filed in the case shows that the defendants and their predecessors-in-interest were paying kudivaram of Rs. 12/- per year from the year Dhurmikhi. Subsequently, it was raised to Rs. 24/- commencing with Vilambi under Ex. B-243. The defendants had also filed registered leases, sale deeds and mortgages in respect of the schedule properties prior to the filing of O. S. No. 17 of 1908 (vide Exs. B-35, B-36, B-37, B-38, B-40, B-41, B-54, B-55 etc.). In the compromise decree it was

clearly stated that the suit lands were in possession and enjoyment of the family of defendants 1 to 4 from times immemorial subject to payment of cist of Rs. 24/- that they held permanent rights of occupancy and that defendants 6, 7 and 9 and their predecessors-in-interest were in possession and enjoyment of the suit lands with, permanent rights of occupancy. The compromise decree then recites that since both parties would be put to great trouble and expense if the litigation was pursued and it would be difficult to predict what the final decision of the Court would be, it was settled in accordance with the advice of the mediators, that for the properties in their possession defendants 6 and 7 (the first defendant in the suit and his brother) should pay Rs. 40-8-0 by Sivarathri as cist every year to the plaintiff or its employees and that the defendants 6 and 7 would have permanent rights of occupancy to be enjoyed from generation to generation. The decree similarly mentions that for the lands in possession of the 9th defendant, the grand-father of the 2nd defendant, he should pay Rs. 40-8-0 towards cists by Sivarathri every year to the plaintiff or his employees and that he will be entitled to enjoy the lands with permanent rights of occupancy from generation to generation. It is thus clear from the compromise petition that the defendants claimed rights of occupancy and the compromise merely recognised the permanent rights of occupancy of the defendants and did not create any permanent rights. Therefore Ex. A-1 did not operate as a fresh lease and so is not invalid for want of registration.

18. The learned counsel then contends that defendants are only tenants who are let into possession by the plaintiff under a terminable lease, and there is absolutely no proof of permanent rights of occupancy. He submits that there can be no presumption that the grant in favour of the plaintiff was only of Royal Revenue and not of both Kudivaram and melvaram interest. Admittedly, there is no evidence adduced by the plaintiff to establish the nature of the grant. The Privy Council in AIR 1934 84 (Privy Council) held that when grant was not produced and there was no evidence as to the terms of the grant, there can be no presumption as to the terms of the grant. The Privy Council in *Suryanarayana v. Patanna* (1918) 45 Ind App 209: (AIR 1918 PC 169) held that in the absence of evidence of the terms of inam grant made by a native ruler, there is no presumption that the grant was only of a Royal Revenue from the land and not of the soil. Again in *Nainapallai Marakayar v. Ramanathan Chettiar* (1924) 51 Ind App 83 : (AIR 1924 PC 65) the Privy Council held that the permanent right of occupancy can only be obtained by the tenant by custom or by grant from the owner of the land who happened to have power to grant such right or under an Act of the Legislature, but there can be no presumption of such a right. In that case, on the evidence, the Board held that the temple was granted patta of both Melavaram and Kudivaram interest in the land and that the defendants did not obtain any rights of permanent occupancy under Act I of 1908.

19. The Supreme Court in *Buddu Satyanarayana and Others Vs. Konduru Venkatapayya and Others*, ruled (at p. 197) :

"Where the question was whether the Inam comprised the land itself or only of the melvaram interest in the properties, inference that the Inam grant comprised only Melvaram rights cannot be inferred from the fact that under Col. 7 of the Inam Register only the amount of assessment was set out."

20. This Court in Singaraju Rama Rao v. Nellore Linga Reddi 1956 AnWR 89 : (AIR 1957 AP 632) laid down the requirements for establishing occupancy rights. The Division Bench laid down (at p. 641) :

"The requirements needed to establish occupancy rights and the circumstances which negative the existence of occupancy rights have been the subject-matter of decisions both of the judicial committee and of the Madras High Court. Long possession, fixed rent, assertion of title as occupancy ryots by tenants in mortgages and sales and partitions, and acting on the footing that for a long time the tenants owned the permanent rights of occupancy may point to the conclusion that they had acquired permanent rights of occupancy apart from the Act. In contrast with that, the frequent changes of tenants, the increase in rents, the pulling of a tenant from one land and putting in another, admissions by tenants, not illiterate or ignorant, of the rights of the land-holder not only in muchilikas or pattas but in another documents may all be taken into consideration in arriving at the conclusion whether the landholder or a tenant was the owner of occupancy rights. The circumstances which negative the existence of occupancy rights in the tenant may warrant the conclusion that the land-holder was the owner of that right. Similarly, circumstances which negative the existence of the kudivaram right in the landholder may establish the right in the other. The evidence, therefore, has to be considered in its entirety and the conduct of both sides extending over a long period must be considered in detail to come to the conclusion on the question, as between the two inamdar and the tenant, who was the owner of the kudivaram."

21. In this case, as already observed, the defendants have been in long possession and they asserted title with occupancy rights. They had mortgaged the lands; they had sold the lands, they had also partitioned the lands and the possession of the defendants and their predecessors-in-interest dates back to 1818. In these circumstances, we have no doubt in holding that the defendants alone had the Kudivaram right and they had acquired permanent right of occupancy.

22. It is next contended that the compromise decree Ex. A-1 is invalid and not binding on the plaintiff and that the General Power of Attorney, Ex. A-2, executed by the Head of the Mutt on 6-1-1907 did not empower Maremanda Subbarayacharlu and Kandala Ramamurti to enter into a compromise, and therefore, the compromise entered into by Subbarayacharulu is invalid. Under Ex. A-2, the above two persons were to act jointly and severally. They were empowered to grant pattas toryots and obtain muchilikas in respect of the schedule lands covered by T. D. No. 5204, they were also empowered to eject the tenants and to take action against the persons who were alleged to have

illegally occupied the lands of the Mutt in Ananthavaram. They were also empowered to execute Vakalats and conduct proceedings before Civil, Criminal and Revenue Courts. It is further recited that what ever the agents jointly or severally filed and whatever instructions were issued by them, they would be accepted as those done by the principal personally. It is the contention on behalf of the plaintiff that under Ex. A-2 no power was conferred on Subbrayacharlu to enter into any compromise. The learned counsel submits that the power of attorney must be construed strictly and since the power of attorney did not authorise the agent to enter into compromise, any compromise entered into by the power of attorney is invalid and inoperative. In support of his submission, he relied on the decisions of the Madras High Court in P.L.S.S. Ramanathan Chettiar and Others Vs. K.M.V.V. Kumarappa Chettiar, the lahore High Court in Mahomad Rashid v. Rahamatullah AIR 1914 lah 112, and the Calcutta High Court in Chatterjee Brahmin v. Durga Dutt Agarwala AIR 1916 Cal 507. These decisions need not detain us long in view of the Special Vakalat executed by the Head of the Mutt Sri Satyagrana Thirthaswamilavaru in favour of Sri N. Jaladurgaprasadarao who appeared for the plaintiff-Mutt in O. S. No. 17 of 1908. The Special Vakalat specifically authorised Sri N. Jaladurga Prasada Rao to enter into a compromise. The Special Vakalat indicated the terms of the compromise contained in Ex. B-46. It authorised the said jaladurga Prasada Rao to file the said compromise petition and to take necessary action for the execution of the decree for obtaining payment of the amounts etc.

23. It is, however, urged by the learned counsel for the plaintiff that there is no proof that the Head of the Mutt executed the said Special Vakalat, the original of Ex. B-47 and the prescription u/s 90 of the Evidence Act is unavailable in respect of Ex. B-47. It must be borne in mind that the compromise was recorded more than 60 years back in 1910 and none of the persons connected with the compromise was alive. Ex. B-47 is the certified copy of the Special Vakalat. The defendants also attempted to summon the original from the records of the District Court. It is clear from Ex. 268 which is a reply sent by the District Court that the documents were destroyed as per Rules. There is a presumption u/s 90 of the Evidence Act that in case a document purporting or proved to be thirty years old is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person's handwriting. The learned counsel, however, submits that the presumption u/s 90 of the Evidence Act is available only in respect of original documents. The sections worded in general terms and it is meant to meet situations varying in character, where the passage of time might have obliterated the genuineness of the document . The section confers wide powers on the Court. However, it must be established before the presumption could be raised that (1) the document has been produced from proper custody and (2) that the original document has been destroyed or lost. If these two conditions are satisfied, then the presumption u/s 90 is available in respect of ancient

documents. It is true that there was some difference of judicial opinion about the availability of the presumption enacted in Sec. 90 of the Evidence Act to the certified copies of the original documents.

24. The Supreme Court in *Sital Das Vs. Sant Ram and Others*, reiterating the principles enunciated by the judicial committee in AIR 1935 132 (Privy Council) observed (at p. 612) :

"If the document produced is a copy, admissible as secondary evidence u/s 65 of the Evidence Act and is produced from proper custody and is over 30 years old, then only the signatures authenticating the copy may be presumed to be genuine; but production of a copy is not sufficient to raise the presumption of the due execution of the original."

25. In this case, there is evidence for the reception of the secondary evidence provided by Ex. B-268 the reply of the District Court that the document was destroyed as per rules. It has been produced, admittedly from proper custody. Therefore, the presumption u/s 90 of the Evidence Act can be drawn in respect of the certified copy of the Special Vakalat Ex. B-47.

26. The learned counsel alternatively submits that even in case Ex. A-1 is invalid, the defendants have acquired the permanent occupancy rights by adverse possession. While it is the contention of the learned counsel for the plaintiff that there can be no acquisition of permanent occupancy rights by adverse possession, the learned counsel for the defendants, on the other hand, submits that the tenants could acquire occupancy rights by adverse possession. The learned counsel for the appellant-plaintiff placed reliance on the decision of the Privy Council in *Madhavarao Waman Saundalgekar v. Raghunath Venkatesh Deshpande* AIR 1923 PC 205 and *Atyam Veerraju and Others Vs. Pechetti Venkanna and Others*, . We are unable to see how these decisions are relevant for the decision of the present case. In the first case, it was urged that persons who are tenants holding over cannot acquire any title to a permanent tenancy by adverse possession as against the vatandars from whom they hold the lands. In the 2nd case, what was decided by the Supreme Court was that a tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. But in that case, the tenancy was an year to year tenancy.

27. Yet another case relied upon by the learned counsel was in AIR 1949 265 (Nagpur) , *Shevde, J.*, held that "a tenant from year to year can acquire by prescription no right of permanent occupancy to the knowledge of the landlord for upwards of 12 years."

28. The Madras High Court in *In Re: Vadasseri Tharawattil Karnavan and Manager Ittichathara Valia Mannadiar*, held:

"A party who takes possession as a permanent lessee under an invalid lease and continues to be in possession for over a statutory period must be held to acquire

rights as a perpetual lessee by adverse possession."

29. In this case, the defendants have been undisputedly in possession of the lands from 1910 till 1966 for over 55 years. So they must be found to have acquired rights as perpetual lessees by adverse possession.

30. Then there remains for consideration the question whether the Civil Court has jurisdiction to entertain the suit for ejection of a tenant. It is the positive case of the plaintiff that the defendants are all tenants, that they paid rents till the end of 1365 Fasli and that they are liable for eviction on the ground of wilful default in payment of rents. They prayed for decree for ejection and for damages and past profits for Faslis 1365 to 1367 at Rs. 200/- per acre. The learned counsel for the plaintiff submits that the relief claimed is not only for eviction but also for damages and since the relief for damages cannot be granted by the tenancy Court, a comprehensive suit in a Civil Court is maintainable and Section 17 of the Andhra Pradesh Tenancy Act is no bar for the maintainability of the suit. The learned counsel for the defendants, on the other hand, submits placing reliance on the decision of this court in *Sri Cheruvu Srinivasa Sastry v. Metta Appayya* (1964) 1 AnWR 37, that a tenant holding over is also a tenant and therefore the landlord can approach the tenancy court for eviction by a tenant or a tenant-holding over.

31. It is now well established by a catena of decisions of this court reported in *Chigurpati Venkatasubbaiah v. Ravi Punneya* (1957) 2 AnWR 204, *Mahendrafda Ramayya v. Mahendrada Govindu* (1966) 1 AnWR 352 and *Dontireddy Venkata Reddy Vs. Bhimavarapu Bhushireddy and Others*, that when only a part of the relief claimed can be granted by a tenancy court, the Civil Court had jurisdiction to entertain the suit. Indisputably in this case, the Tenancy Court cannot grant relief for damages and only a relief of eviction can be granted by the Revenue Court and, therefore, in our opinion, the civil court has undoubtedly, jurisdiction to entertain the suit, and the court below was in error in holding that the civil court had no jurisdiction to entertain the suit.

32. In the result, for the reasons aforesaid given, the appeal has to be dismissed and it is accordingly dismissed. There shall be no order as to costs.

33. The learned counsel makes an oral application for leave to appeal to the Supreme Court. In our opinion, no substantial question of law of general importance which requires to be decided by the Supreme Court is involved in this appeal. The oral application is, therefore, rejected.

34. Appeal dismissed.