
(2006) 11 AP CK 0088

In the Andhra Pradesh High Court

Case No : CCCA No. 107 of 2001 and Cross-Objections in CCCA No. 107 of 2001

State Military Estates Officer and Another APPELLANT

Vs

Sultan Hussain (died) by LR.s. and Others RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 80
Constitution of India, 1950 — Article 295, 295(1)
Contract Act, 1872 — Section 7
Evidence Act, 1872 — Section 101, 103
Limitation Act, 1963 — Article 64

Citation : (2007) 3 ALD 538

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Deepak Bhattacharjee, Additional SC for CG,s in CCCA and for Respondent Nos. 1 and 2 in Cross-Objections, for the appearing parties; M. Rama Rao, for Respondent Nos. 2 to 6 in CCCA and for the Cross-Objectors in Cross-Objections, M. Sivanand Kumar, for Respondent Nos. 8 and 9 in CCCA, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—The defendants in the suit filed this appeal against the judgment and decree dated 8-3-2001 passed in OS No. 1450 of 1984 by the IV Senior Civil Judge, City Civil Court, Hyderabad. The plaintiffs-respondents herein filed Cross-Objections in the appeal aggrieved by the impugned judgment to the extent of rejecting the claim for granting an amount of Rs. 6,000/- per annum for past mesne profits and Rs. 15,000/- per annum for future mesne profits in respect of the suit property.

2. For convenience, the parties hereinafter shall be referred to as arrayed in the suit. The facts stated are thus :

3. The 1st plaintiff (since deceased) filed the suit represented by his GPA holder and now by his LR.s. plaintiffs 2 to 6, stating that he is the pattadar and title

holder of the property to the extent of Ac. 1-08 guntas situated in Sy. No. 33/1, Guddimalkapur, Golkonda Tahsil, for short, "the suit property" paying land revenue till the year 1970. That later the State Military Estates Officer, Government of India, at Secunderabad-2nd defendant, in the suit, has encroached the suit property, protesting the same he has submitted a representation in that behalf. That the plaintiff had lands in two other survey numbers which was acquired and compensation paid.

4. It was also stated that when the defendants tried to put up a fence, the plaintiff questioned their action, to which the 1st defendant without disputing the plaintiff's right and title stated that they would take the suit property on lease. Since no lease agreement was executed and the matter sought to be dragged, the plaintiff filed WP No. 5430 of 1989 before this Court wherein, for the first time, the defendants 1 and 2 disputed the plaintiff's right and title to the suit property and as disputed questions of fact involved, the said writ petition was dismissed by this Court observing that the plaintiff has to approach the civil Court for appropriate remedies. Thereafter, after issuing statutory notice u/s 80 CPC, the plaintiff filed the present suit for declaration of title and recovery of possession, mesne profits and other reliefs.

5. The suit was contested by the State Military Estates Officer, Government of India, at Secunderabad-2nd defendant by filing the written statement stating that the plaintiff is not the owner and pattadar of the suit property, but the Government of India, Ministry of Defence is the absolute owner. That originally the suit property belonged to Nizam Government stationed its own armed forces in the suit property and was used by the armed forces of erstwhile Nizam Government. That after the integration of State of Hyderabad with Indian Union, all lands held by the armed forces under the Nizam Government including the suit property was taken over by the Indian Army, Ministry of Defence, vide their letter dated 11-3-1957. That mutation was not affected in spite of repeated requests by the defence authorities and taking advantage of the same, the plaintiff made a false claim. It was further stated that the land in Survey Nos. 33/2 and 33/3 belongs to the plaintiff and it was acquired and compensation paid. That due to mistake, a letter was addressed requesting the plaintiff to lease out the suit property, though the plaintiff has no right over the suit property. That the defendant is in rightful possession of the property and there are no merits in the plaintiffs suit.

6. The Secretary, Department of Defence, Government of India, South Block, New Delhi-1st defendant filed memo adopting the written statement filed by the 2nd defendant.

7. The District Collector, Hyderabad-3rd defendant filed written statement denying all the allegations made by the plaintiff in the plaint. It was also stated that the suit property has not been requisitioned by the Defence Authorities and hence no acquisition proceedings were initiated by the Land Acquisition Officer. That 3rd defendant is not a necessary party to the suit and the suit is liable to be

dismissed.

8. It is to be noted that initially the present suit was dismissed, as against which the plaintiff carried the matter in appeal being CCCA No. 106 of 1988 before this Court. In appeal, the plaintiff by way of a petition being CMP No. 25458 of 1999 filed under Order 41 Rule 27 CPC, sought to file certain documents, which are khasra pahanis of the year 1954-55 as additional evidence and in the light of those documents and other evidence, this Court by judgment dated 18-1-2000 allowed the appeal and remanded the matter to the Court below for fresh disposal. It was also pointed out by this Court that the written statement of 3rd defendant was not comprehensive and therefore directed to file a detailed written statement.

9. Pursuant to remand, the 3rd defendant-District Collector, Hyderabad, filed additional written statement stating that the land in Sy.Nos. 33/2, 33/3 was acquired and compensation paid. That the suit property originally belonged to Nizam of Hyderabad and the land was handed over to Hyderabad State Army along with other lands in 1949 itself. That later a fence was put by Defence Authorities about 40 years back and since 1949 military authorities are in possession of the suit property. That the plaintiff never made any claim when an auditorium was constructed by the Defence Authorities. That a town survey was done subsequently and its correctness was not challenged. That the suit is barred by limitation and the plaintiff is relying on the forged documents and has not filed any document to show that he has paid land revenue. That there are no merits in the suit and the suit is liable to be dismissed.

10. During the pendency of the appeal before this Court, in first round of litigation, the plaintiff died and therefore his legal representatives are added as plaintiffs 2 to 6, as per order dated 18-1-2000 passed in CMP No. 14971 of 1999.

11. On remand, the trial Court taking into consideration the rival pleadings, including the additional written statement filed by the 3rd defendant, settled the following issues for trial:

1. Whether the plaintiff is pattadar, owner and title holder of the suit land?
2. Whether the taking over of the suit land in 1958 and the letter dated 4-5-1957 conferred any ownership on defendant No. 1 in the eye of law?
3. Whether the defendant No. 3 lawfully delivered possession of the suit land to defendant No. 1 in 1958 and whether defendant No. 1 has not encroached thereon?
4. Whether the suit land was in possession of the armed forces of Hyderabad State until 1958 as pleaded by the defendant No. 1?
5. Whether the notice according sanction to hire on 10-7-1972 suit land by defendant No. 1 was based on mistake, if so to what effect?
6. Whether the area of Sy. No. 33/1 forms part of conclave and is as Government

and private property as stated by defendant No. 1, if so to what consequence?

7. Whether the defendant Nos. 1 and 2 through defendant No. 3 acquired Sy. No. 33/2 of the plaintiff adjoining the suit property and paid compensation, if so to what effect?

8. Whether defendant No. 2 made encroachment on the suit land and whether on plaintiff's representation defendant No. 2 assured him of lease and acquisition thereof and whether it acts as estoppel?

9. Whether the Letter P2/9904/72, dated 1-9-1976 addressed to defendant Nos. 1 and 3 divest the plaintiff to his title to the suit land?

10. Whether defendant No. 3 is not a proper party?

11. Whether the suit valuation is correct and Court fee paid is sufficient?

12. To what relief?

13. Whether the suit is barred by limitation? (additional issue framed on 25-6-1987)

12. To substantiate the case of the plaintiffs, PWs. 1 to 3 were examined and Exs. A-1 to A-18 marked. On behalf of the defendants, DWs. 1 and 2 were examined and Exs. B-1 to B-13 marked.

13. The Court below after considering the oral and documentary evidence adduced by the respective parties, decreed the suit property declaring the plaintiffs as the title holders and pattadars of the suit property in Sy. No. 33/1 and the defendants 1 and 2 were directed to vacate the suit property and deliver vacant possession to the plaintiffs within three months thereof. However, as regards claim for mesne profits, Rs. 2,000/- per annum was granted for the past three years and future mesne profits from the date of decree till handing over possession of the suit property. The Court below also granted mandatory injunction directing the defendants 1 and 2 to remove the encroachment and demolish the structures on the suit property and handover vacant possession within the prescribed time, in default, the plaintiffs were permitted to get it done under due process of law and recover costs from the defendants. Against this judgment and decree, the present appeal is filed by the defendants 1 and 2 in the suit.

14. Shri Deepak Bhattacharjee, learned Additional Central Government Standing Counsel appearing for the appellants-defendants 1 and 2 strenuously contended that the Court below did not appreciate the question of law that in a suit for declaration of title, the burden of proof is on the plaintiffs to prove their title to the suit property, and inasmuch as the plaintiffs have not filed any title deed or document through which they are said to derive title, the trial Court grossly erred in holding that the plaintiffs have title basing only on the entries in the revenue records, which cannot confer any title. Learned Counsel further submitted that by virtue of Article 295(1) of the Constitution of India, the Government of India

became the rightful owner of all assets which originally belonged to the erstwhile Hyderabad State and the Court below failed to appreciate these aspects of the matter and pursuant thereto, the entire Asifnagar Lines admeasuring Ac. 378-16 guntas which includes the suit property was in physical possession of the erstwhile Nizam Army and after Police Action, the said extent of land was taken over by the Indian Army, Government of India, and the defendants are in possession of the suit property for more than 49 years after handing over of possession of lands in Asifnagar Lines to the Government of India, Ministry of Defence by the State Government vide Board proceedings dated 19-3-1958.

15. Learned Counsel also submitted that the suit is barred by limitation under Article 64 of the Limitation Act, as the plaintiffs failed to plead and establish that they have been dispossessed before the expiry of the period of 12 years from the date of filing the suit. In support of his contentions, learned Counsel relied on the decisions in Corporation of the City of Bangalore Vs. M. Papaiah and Another, , Nagar Palika, Jind Vs. Jagat Singh, Advocate, and Sajana Granites, Madras and Another Vs. Manduva Srinivasa Rao and Others, .

16. Shri Mantri Rama Rao, learned Counsel for the respondents-plaintiffs, on the other hand, contended that the plaintiffs have proved their case that they are the owners of the suit property by adducing legally acceptable evidence i.e., setwar, kasara pahani Ex. A-14, letter dated 10-7-1972 issued by the 1st defendant in proposing to take the suit property on hire under Ex. A-12 and also pahanies Exs. A-1 to A-8. Learned Counsel further submitted that admittedly the defendants have acquired the lands of the plaintiffs situate in the same Sy.Nos. 33/ 2 and 33/3 and paid compensation and the suit property situate in Sy. No. 33/1 is part of Sy.Nos. 33/2 and 33/3, belonging to the plaintiffs and considering all these aspects of the matter, the trial Court rightly decreed the suit. Learned Counsel, however, contended that inasmuch as the defendants have been in use and occupation of the suit property and the plaintiffs have been deprived of the same, the plaintiffs are entitled to mesne profits past and future as prayed for in the suit.

17. Having noted the facts of the case and having heard the learned Counsel for the parties, the points that arise for consideration in this appeal are :

1. Whether the plaintiffs have proved their title to the suit property?
2. Whether the letter Ex.A-12 addressed by defendants seeking to take the suit property on hire operate as estoppel as against the defendants 1 and 2 from denying the ownership of the plaintiffs? or Whether it is a mistake on the part of the 2nd defendant, as contended by them?
3. Whether the State Government represented by 3rd defendant-District Collector delivered the suit property to the defendants 1 and 2 in 1958? or Whether the 1st defendant has encroached upon the suit property, as alleged by the plaintiffs?

4. Whether the suit property is not part of Nizam Army until 1958 prior to its taking over by Government of India, after Police Action?

5. Whether the suit is barred by limitation?

6. To what relief?

18. As stated above, to substantiate the case of the plaintiffs, PWs. 1 to 3 were examined and Exs.A-1 to A-18 were marked. On behalf of the defendants, DWs. 1 and 2 were examined and marked Exs. B-1 to B-13. Apart from this, the appellants-defendants, in this appeal filed CMP No. 11651 of 2004 to receive the letter dated 7-7-1977 issued by the Collector, Hyderabad District; extract of Military Land Register and extract of Survey of India Map (1972) of Asifnagar Lines and to mark them as Exs. B-14 to B-16. For the reasons stated in the accompanying affidavit filed in support of the said petition, those documents are taken on file and marked as Exs.B-14 to B-16. The C.M.P. No. 11651 of 2004 is allowed.

Point No. 1:

19. The case of the plaintiffs is that they are owners of the entire land situate in Sy. No. 33 which was sub-divided into Sy.Nos. 33/1 (suit property) 33/2 and 33/3 and lands in Sy.Nos. 33/2 and 33/3 have been acquired by the defendants and compensation paid in respect of those lands. Whereas the land in Sy. No. 33/1 (suit property) is adjacent to the land situate in Sy.Nos. 33/2 and 33/3. Admittedly, the plaintiffs are not in possession of the suit property from the year 1968 i.e., land in Survey No. 33/1., which is evident from Ex. A-11 legal notice dated 8-4-1978 issued on behalf of the 1st plaintiff by one Mr. DM. Deshmukh, Advocate. In the said notice itself it was stated that in or about 1968, the 1st defendant occupied the suit property for military purposes of Union Government of India. In the said legal notice the defendants 1 and 2 were asked to acquire the suit property and pay compensation along with hire charges from the date of the occupation of the suit property.

20. The plaintiffs to prove their title filed certified copies of pahanies for the period from 1970 to 1979 marked as Exs.A-1 to A-7, certified copy of chowfasla for the year 1965-66 Ex.A-8, certified copy of the order of this Court in WP No. 5430 of 1979 Ex.A-9, sketch plan showing the land in Sy. Nos. 33/1 and 33/2 of Guddimalkapur Village, Golconda Taluqa, Hyderabad District Ex. A-10, Office copy of legal notice issued to the defendants u/s 80 CPC Ex. A-11, letter dated 10-7-1972 addressed by the 1st defendant-Government of India, Department of Defence, to Sri Kashinath, Advocate, regarding acquisition of suit property Ex. A-12 and irrevocable GPA executed by 1st plaintiff in favour of Niazuddin Ahmed Ex. A-13. Documents marked pursuant to remand are Khasra pahani pertaining to the year 1954-55 Ex A-14, Sethwar pertaining to 1355 Fasli Ex. A-15, certified copy of Village Map of Guddimalkapur Village Ex. A-16, Sketch plan showing the suit property Ex. A-17 and the letter dated 5-11-2000 addressed by the Special Deputy Collector (LA) to the District Collector, Hyderabad. The 1st plaintiff (since

deceased) was examined as PW-1, Mr. Yadagiri Rao, the then Patwari of Gudimalkapur Village as PW-2 and Meeran Begum as PW-3.

21. The case of the 1st plaintiff who was examined as PW-1 was that the suit property situate in Sy. No. 33/1 belongs to him and he is the owner and pattadar and the same is reflected in the revenue records and in the pahanies Exs. A-1 to A-7. The name of the 1st plaintiff is noted as pattadar and owner since 1970-79 and he exchanged correspondence with defendants 1 and 2 either to take the suit property on lease and pay lease amount or acquire the land. It was further the case of PW-1 that under letter dated 10-7-1972, Ex. A. 12, the 1st defendant admitted him as the owner of the suit property and that the Government of India had given sanction for hiring the suit property and required PW-I-1st plaintiff to contact defendant No. 2-State Military Estate Officer at Secunderabad, for signing the agreement and for receiving the lease amount.

22. The evidence of PW-2 who claims to be the ex-Patwari is to the effect that during the period from March 1958 to 1984 the suit property was in the name of the 1st plaintiff as pattadar and he has been paying land revenue for the said period. But it is to be seen that the 1st plaintiff's name was shown as pattadar in the pahanies only for the years 1970 to 1979 under Exs.A-1 to A-7 and in the remarks column, the name of the defendants 1 and 2 was shown to be in possession of the suit property. PW-3 is the daughter of PW-1 and her evidence is on the same lines as that of her father PW-1.

23. For the moment, without going into the correctness or otherwise of the physical possession over the suit property by defendants 1 and 2, there is no evidence on record to indicate as to how the 1st plaintiff became the pattadar of the suit property. Though in his cross-examination PW-1 stated that he became pattadar and owner of the suit property, after the death of his father in 1953, there is no document showing the father of 1st plaintiff as pattadar of the suit property. The title of the 1st plaintiff could not be traced prior to 1970. The documents marked pursuant to remand by this Court i.e. khasra pahani pertaining to the year 1954-55 and sethwar pertaining to 1355 Fasli are solitary documents, which cannot by itself prove the title of the plaintiffs and it is well settled proposition of law that entries in the revenue records do not confer title to a property. I am fortified in my view in the light of the following decisions.

24. The Apex Court in Corporation of Bangalore City's case (supra) at Para 5 of the judgment held thus :

... The High Court has reversed the finding saying that the interpretation of the first appellate Court was erroneous. It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law. These errors have seriously vitiated the impugned judgment of the High Court which must be set aside.

25. In Nagar Palika Jind's case (supra), the Apex Court in Para 11 of the

judgment held thus:

... In a suit for ejectment based on title it was incumbent on part of the Court of Appeal first to record a finding on the claim of title to the suit land made on behalf of the respondent. The Court of Appeal never inquired or investigated that question which was at issue saying that the title of the plaintiff-respondent was admitted by the appellant. This was a serious error of record. The title and possession of the respondent had always been disputed by the appellant from the stage of the written statement. In this background, suit of the respondent could not have been decreed merely on basis of entries in the revenue records during the pendency of the earlier suit filed in the year 1971. As such the cases relied upon on behalf of the respondent have no bearing on the facts of the present appeal. A substantial question of law was involved in the second appeal presented before the High Court against the judgment of the Court of Appeal and the High Court ought to have interfered and set aside the judgment of the Court of Appeal.

26. In *Sajana Granites's case* (supra), the Division Bench of this Court, relying on the decision of the Apex Court referred in *Corporation of Bangalore City's case* (supra) and *Nagar Palika Jind's case* (supra), at Para 12 held thus :

12. Therefore, the question as to who is the owner of the suit property has to be gone into independently, irrespective of the allegation that a patta was granted in respect of the suit property under the Estates Abolition Act. Since Ex. A-11 is not the patta, which is the primary evidence, and is only an extract from the revenue register, it is secondary evidence on the issue relating to grant of patta. Since no record from the Office of the Settlement Officer was summoned to show that the Settlement Officer examined the history of the suit property, and since Supreme Court in *Keshavram's case* (supra), *Jagtsingh's case* (supra) and *M. Papaiah's case* (supra), held that entries in revenue records do not confer title, nor are conclusive of title, relying merely on Ex. A-11 and Ex. A-12 appellants cannot seek a declaration of their title to the suit property.

27. The fact that the 1st plaintiff was paid compensation for the adjacent lands situate in Sy.Nos. 33/2 and 33/3 having acquired them, would not ipso facto establish the title of the plaintiffs to the suit property situate in Sy. No. 33/1. Even according to Ex. A-11, the defendants are in possession of the suit property for more than three decades.

28. Section 101 of the Evidence Act, 1872, obligates a person who desires the Court to give judgment as to any legal right, the existence of such rights, which he asserts, the burden of proof lies on that person who asserts the existence of such a right. Section 103 of the Act further obligates that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is otherwise provided by any law. Thus the plaintiffs filing suit for declaration of title and other consequential reliefs must succeed only on the strength of their own title and not on the mistakes committed or shortcomings in

the case of the defendants. Even if the defendants fail to establish their own title, the plaintiffs are not entitled to declaration of their title to the suit property, if they fail to establish the title to the suit property on their own case. Admittedly, the plaintiffs are not in possession of the suit property since 1968 and the pahanies Exs.A-1 to A-7 filed are for the years 1970-79 and the possession of the suit property in Exs.A-1 to A-7 is shown to be with the defendants. Inasmuch as the evidence adduced by the plaintiffs do not prove the title to the suit property, it is held that the plaintiffs failed to prove their title, this point is held against the plaintiffs and in favour of the defendants.

Point No. 2:

29. Much stress is laid on Ex. A-12 which is a letter dated 10-7-1972 addressed by the 1st defendant-Secretary, Department of Defence, Government of India, South Block, New Delhi, to the advocate of the 1st plaintiff in response to the notice issued by him u/s 80 CPC, informing the said advocate, that the competent authority had accorded sanction, to take the suit property on hire and for that purpose advised the 1st plaintiff to contact the 2nd defendant-State Military Estate Officer at Secunderabad for signing the agreement and for receiving the lease amount. It is sought to be urged by the learned Counsel for the plaintiffs that it is only because the defendants 1 and 2 recognized the 1st plaintiff as owner of the suit property, the 2nd defendant had addressed the said letter dated 10-7-1972, Ex. A-12 willing to take the suit property on hire and thus they are estopped now from denying the title of the plaintiffs.

30. The defendants are not denying the addressing of the letter dated 10-7-1972, Ex.A-12, but their case is that it was issued by mistake. Even if it is admitted that the defendant No. 1 sought to take the suit property on hire under letter dated 10-7-1972, Ex.A-12, it was only an offer and there is no concluded contract. u/s 7 of the Indian Contract Act, 1872, in order to convert a proposal into a promise, acceptance must be absolute. Hence, Ex.A-12 letter dated 10-7-1972 addressed by defendant No. 1, can only be said to be an offer and it was not acted upon and there is no concluded contract between the parties, to plead estoppel. It is not that the defendants entered into contract with the 1st plaintiff and later denied the title of the 1st plaintiff. Under those circumstances, the question of estoppel does not arise.

31. The consistent case of the defendants 1 and 2 is that the said letter dated 10-7-1972, Ex. A-12 was issued due to mistake and due to the confusion created in the light of the entries in the revenue records showing the name of the 1st plaintiff as pattadar in the pahanies for the period 1970 to 1979, Exs.A-1 to A-7. DW-1 who was examined on behalf of 1st defendant deposed that suit property in S. No. 33/1 and various other lands in Asifnagar Lines were handed over to the defendants by virtue of Ex.B-4, proceedings of the Military Board dated 19-3-1958, Ex.B-1 the State Government letter dated 10-10-1956, Ex. B-2, Government of India, Ministry of Defence letter dated 11-3-1957 and since then they are in possession of the suit property. DW-1 also deposed that when 1st

plaintiff claimed that he is the owner of the suit property, they requested the Special Dy. Collector, under letter Ex.B-6 to enquire and the same was referred to the District Collector and thereafter the District Collector, Hyderabad, convened a joint survey consisting of defence Estate Officers and civil authorities in May, 1977 and under Ex. B-9. DW-1 further deposed that as per Ex.B-1, dated 10-10-1956 there was an agreement between erstwhile Hyderabad Government and the Government of India and under the said agreement, various lands including the suit property was delivered to defendant No. 1 in the year 1958. In view of this, defendant No. 2 did not execute lease deed in favour of the 1st plaintiff nor paid any lease amount. From this correspondence, it appears that the letter dated 10-7-1972, Ex. A-12 was issued under a mistaken impression by defendant No. 1 and the subsequent events indicate that they tried to rectify the mistake. Hence, this point is held against the plaintiffs and in favour of the defendants.

Point Nos. 3 and 4 :

32. Under Ex.B-1, letter dated 10-10-1956, addressed by the Chief Secretary to the Government, General Administration (Mily. Department), Hyderabad-Deccan, to the Secretary to Government of India, Ministry of Defence, New Delhi, it was stated that the question of allocating the Hyderabad Cantonment Lands between the two Governments (State and the Central Government) has been engaging the attention of the State Government and thus the Government reached a conclusion to share the various lands between the Center and the State mentioned therein including the lands in Asifnagar Lines, in which, the suit property is situate. In reply to Ex.B-1, the 1st defendant, under Ex.B-2 letter dated 11-3-1957 expressed that the Defence Ministry has no objection to takeover Ac. 1650-32 guntas of land, which include the land in Asifnagar Lines in an extent of Ac. 378-16 guntas. Under Ex.B-3 dated 24-8-1957, the Deputy Secretary to Government of Andhra Pradesh, instructed the Collector, Hyderabad, to make early arrangement for handing over of Ac. 1500-24 guntas of land to the local Military Authorities after deducting Ac. 150-08 guntas of land from out of Ac. 1650-32 guntas, as it was found to be attached to the Chandrayangutta Lines and in occupation of HSRP Battalion. Thereafter, under Ex.B-4, dated 19-3-1958, as per the proceedings of the Board of Officers, consisting of representatives of the defendants and the State Government, lands to an extent Ac. 1500-24 guntas was taken over by the Military Authorities including the suit property, which is situate in Asifnagar Lines.

33. Further on the merger of State forces with the Indian Union, the ex-State forces properties are de jure, the properties of Government of India, under Article 295(1) of the Constitution of India. Admittedly, under Board Proceedings Ex.B-4, the lands held by the ex-State force were identified and after reaching the agreement between the State and the Central Governments, allocation of lands was made between both the Governments, which include the land in Asifnagar Lines, in which the suit property is situate, as evident from the

proceedings noted above, and under those circumstances, the suit property along with various other lands was delivered by the 3rd defendant -Collector, Hyderabad, to the local Military Authorities and, therefore, it cannot be said that defendants had encroached upon the suit property, as alleged by the plaintiffs.

34. Under Ex.B-4, Board Proceedings dated 19-3-1958, the following lands are sought to be taken over by the Military Authorities :

1. Mohammadi Lines 361 acres 20 guntas 2. Ibrahimbagh Lines 482 acres 20 guntas 3. Makkai Darwaza Lines 244 acres 8 guntas 4. Banjara Darwaza Lines 32 acres 18 guntas 5. Asifnagar Lines 378 acres 16 guntas

(in which the suit property is situate) totalling to Ac. 1500 acres 24 guntas. Obviously, there is no material to hold that the suit property was not part of the lands held by the ex-State Forces prior to its taking over by the Government of India, after Police Action. Hence, these points are also held against the plaintiffs and in favour of the defendants.

Point No. 5 :

35. It was contended by learned Counsel for the defendants-appellants herein that the plaintiffs failed to prove that they filed the suit within 12 years from the date of dispossession from the suit property, thus the suit is barred under Article 64 of the Limitation Act. The case of the plaintiffs is that they have been claiming right and title over the suit property since 1978, when the legal notice was issued under Ex. A-11. But the defendants, for the first time, denied the title and ownership of the plaintiffs in the counter filed by them in the writ petition in the year 1979. This is a suit for declaration of title and recovery of possession based on title and not based on previous possession of the suit property. The title of the plaintiffs is denied by the defendants in the year 1979 and the suit is filed in the year 1984. Thus the suit is in time and not barred by limitation, as contended by the defendants. Hence, this point is held accordingly.

Point No. 6:

36. In the light of the above discussion, I am of the considered view that the entire approach and reasoning adopted by the Court below to the subject-matter in issue is not proper and under those circumstances the same is liable to be set aside. In the result, the appeal is allowed and the impugned judgment and decree passed in OS No. 1450 of 1984 by the Court below is hereby set aside. In view of the findings recorded on Points 1 to 4, the Cross-Objections filed by the plaintiffs are dismissed. No order as to costs.