

(2004) 08 AP CK 0119
In the Andhra Pradesh High Court
Case No : SA No. 1012 of 1998

State of A.P.

APPELLANT

Vs

B. Venkatamma and Others

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11
Andhra Pradesh Land Encroachment Act, 1905 — Section 14, 6, 7
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2004) 5 ALD 605 : (2004) 6 ALT 189

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : A.G, for the Appellant; B. Mahender Reddy, Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—The Appellant-State of Andhra Pradesh, represented by its District Collector, Hyderabad is the defendant in the suit filed by the respondents herein in O.S. No. 1486 of 1985 on the file of the II-Additional Judge, City Civil Court, Hyderabad. The suit was filed for a declaration, declaring that the Plaintiffs 1 to 8 are absolute owners of the plaint schedule property and for consequential decree in their favour and against the defendant for a perpetual injunction, restraining the defendant and its subordinates from interfering with the possession and enjoyment of the Plaintiffs 1 to 8 over the plaint schedule property. The Trial Court dismissed the said suit by the judgment and decree dated 23-2-1994. Against which, the plaintiffs filed A.S. No. 44 of 1994 on the file of the II-Additional Chief Judge, City Civil Court, Hyderabad. The Lower Appellate Court by the judgment and decree dated 21-3-1998 allowed the appeal and decreed the suit in favour of the Plaintiffs 1 to 8. Aggrieved by the said judgment of the Lower Appellate Court, the defendant-State filed the present second appeal. The parties herein are referred to as they are arrayed in the

Original Suit.

2. While admitting the second appeal, the substantial question of law that arises for consideration in the second appeal is formulated as follows:

"Whether the declaratory decree granted is contrary to the provisions of A.P. Survey and Boundaries Act, 1923, and whether the suit is maintainable."

3. Except the aforesaid substantial question of law that was formulated while admitting the second appeal, no other substantial question of law has been raised or formulated.

4. The case of the plaintiffs as averred in the plaint is that the first plaintiff is the widow, Plaintiffs 2 to 5 are sons and Plaintiffs 6 to 8 are daughters of late B. Muthyalu and they are his legal heirs. Plaintiffs 9 to 13 are the grandsons and Plaintiff No. 14 is the grand-daughter of late Raja Shivaraj Bahadur, the then Jagirdar of Ameerpet Village in Hyderabad District. The plaint schedule property is an agricultural land, admeasuring 0-23 guntas in Sy.No. 151, comprised of Door Nos. 7-1-210 and 7-1-211, situated at Ameerpet, Hyderabad, bounded by North: 12" lane and compound and house of late Tara Bai and Door No. 7-1-211/1A, South: 40" wide road, East: neighbours house i.e., H.No. 7-1-209 and West: Nala (open drain). Public Road from Ameerpet to Balkampet.

5. The plaint schedule property is an agricultural land, forming part of Jagir property of Ameerpet Village, which originally belonged to said Raja Shivaraj Bahadur and it is surrounded by a compound wall with farm houses to which after formation of the municipality, Municipal Nos.7-1-210 and 7-1-211 are assigned. Plaintiffs 1 to 8 are heirs and legal representatives of late B. Muthyalu and Plaintiffs 9 to 14 are the heirs and legal representatives of late Raja Shivaraj Bahadur in whose name the said Jagir was held.

6. The plaint schedule property was held, occupied and in personal occupation of late B. Muthyalu and he was paying land revenue to the Jagir till the abolition of Jagir and thereafter to the defendant. Late Muthyalu died on 21-11-1960 in the plaint schedule property. Subsequent to his death, the plaint schedule property has been in the exclusive possession and enjoyment of Plaintiffs 1 to 8. Plaintiffs 1 to 8 alone are the heirs and legal representatives and they are entitled to the patta rights over the plaint schedule property as per the Notification No. 2 of 1949 of the defendant. Late Muthyalu, during his life time and after his death Defendants 1 to 8 have been in continuous possession and enjoyment of the plaint schedule property for over 65 years and they have been continuously paying land revenue to the Jagir till its abolition and thereafter to the defendant. There are pucca farming houses of the members of plaintiffs, who are cultivating the appurtenant land and they are residing in the plaint schedule property. In the revenue records, the patwari has been erroneously making entries describing the plaint schedule property as Bandikana Sarkari and later Poramboke. The defendant through his subordinates initiated eviction proceedings against the first plaintiff under the provisions of Andhra Pradesh Land Encroachment Act,

1905 and the Tahsildar passed orders dated 13-3-1981 u/s 6 of the said Land Encroachment Act, directing eviction of the first plaintiff from the plaint schedule property. The plaintiff carried the matter in appeal u/s 10 of the said Act and the Revenue Divisional Officer (RDO), Hyderabad District by order dated 15-10-1981 set aside the order of the Tahsildar, holding that there is a bona fide claim of the first plaintiff in respect of rights and ownership under the statutory law namely grant of pattadari rights in Non-Khalsa Village, which deserves proper adjudication as per the decision of the Supreme Court reported in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, and accordingly, the matter was remitted to the Tahsildar, Secunderabad Taluq (now Mandal). The Mandal Revenue Officer (MRO) passed a perfunctory order dated 14-8-1985 and again directed eviction of the first plaintiff u/s 6 of the Land Encroachment Act. Insofar as the Plaintiffs 2 to 14 are concerned, no action has been initiated against them.

7. The first plaintiff preferred an appeal to the R.D.O., against the order of the M.R.O., dated 14-8-1985 and the R.D.O., Hyderabad vide proceedings dated 6-9-1985, granted stay of operation of the said order of the M.R.O., pending further orders and the appeal is pending. Earlier to it, the first plaintiff filed an application before the defendant for grant of patta in favour of the plaintiffs and the Collector, Hyderabad vide his letter dated 8-7-1976 addressed to the Secretary, Board of Revenue, Hyderabad, stating that the first plaintiff has been in occupation of the plaint schedule property since 40 years and she is having seven family members and that she has no other property except the plaint schedule property worth about Rs. 15/- to 20/- per sq. yard and that it is a Government land as per records and as such, as per the Notification No. 2 of 1949 she is not entitled to patta certificate. It is the case of the plaintiffs that the said view is erroneous.

8. While so, the Plaintiffs 9 to 14 initiated eviction proceedings against the second plaintiff in R.C. No. 218 of 1975 on the file of the Additional Rent Controller, Hyderabad and the Rent Controller by his order dated 4-2-1981, directed the eviction of second plaintiff, holding that the plaint schedule property is not a Government land and that Plaintiffs 9 to 14 are the landlords. Against which, the second plaintiff filed Rent Control Appeal No. 117 of 1981 on the file of the Chief Judge, City Small Causes Court, City Civil Court, Hyderabad and the same is pending.

9. The first plaintiff herself and on behalf of Plaintiffs 2 to 8 filed an application dated 9-1-1985, requesting the Director of Survey and Land Records pursuant to the order of the Collector, Hyderabad District dated 12-10-1984 for correction of Town Survey Records in respect of the plaint schedule property. The Director of Town Survey and Land Records, Hyderabad vide his proceedings dated 18-8-1985 advised the first plaintiff to approach either the Commissioner, Survey Settlements, Land Records or approach the Civil Court to establish her right over the land which is in possession of the first plaintiff. It is the case of the plaintiffs

that the Director is bound to rectify the errors regarding tenure in the survey records.

10. It is the further case of the plaintiffs that late Muthyalu and thereafter the Plaintiffs 1 to 8 are in continuous possession of the plaint schedule property for over 65 years and they have perfected their right as deemed pattedars of the plaint schedule property as per Notification No. 2 of 1949 and by virtue of Jagir Abolition Act. Even in the revenue records, the name of first plaintiff is shown as occupant and pattedar of the plaint schedule property having originally acquired the same from the Jagirdar. In any view, the Plaintiffs 1 to 8 have perfected their title as they are in continuous possession and enjoyment of the same with uninterrupted and exclusive possession and enjoyment of the plaint schedule property as absolute owners, adverse to all interests including the defendant-State over a statutory period.

11. It is stated that the summary remedy for eviction initiated by the defendant when there is a bona fide dispute with regard to the question of title of the Government is illegal and the same cannot be decided under the Land Encroachment Act, but only it has to be decided in a properly constituted civil suit and until the Government succeeds in establishing its subsisting title to the plaint schedule property, the Plaintiffs 1 to 8 cannot be evicted summarily by restoring to the summary procedure laid down in A.P. Land Encroachment Act, 1905. The Plaintiffs 9 to 14 have joined as co-plaintiffs in the suit for effective adjudication of the matter in controversy between the parties. While the appeal filed by the first plaintiff is pending before the R.D.O., the defendant through its Collector filed a Caveat in the Civil Court, asserting that the plaint schedule land is a Government land and that in the event of the first plaintiff filing a suit, no injunction should be granted. The said assertion of the District Collector, while the appeal is pending before his subordinate, has the effect of prejudicing the interest of the plaintiffs in the pending appeal without leaving any option to the R.D.O., Hyderabad to dispose of the appeal on merits. In the circumstances, no useful purpose will be served in the first plaintiff pursuing the appeal before the R.D.O., and therefore, the plaintiffs have left with no other option except to approach the Civil Court to file the said suit for declaration of title and for grant of mandatory injunction. As the defendant was asserting that the land belongs to the Government and there was an emergent need to obtain immediate relief of injunction against the defendant by seeking the leave of the Court to file the suit without serving any notice as required by Sub-section (1) of Section 80 of the Code of Civil Procedure, an application was filed to dispense with the issuance of notice to the defendant u/s 80(1) of the Code of Civil Procedure.

12. It is the case of the defendant-State in the Written Statement that the suit is bad for want of notice u/s 80 of Civil Procedure Code. It is admitted that as per the records of the defendant, the plaint schedule property is a Jagir over 100 years. It is incorrect that the plaint schedule property is surrounded by compound wall with farm houses, to which after formation of the Municipality,

Municipal Numbers 7-1-210 and 7-1-211 were assigned. Even if the plaintiff made any unauthorized and illegal construction by encroaching upon the Government land and any assignment of municipal numbers by the Municipality, they do not create any right, title or interest in favour of the plaintiffs. The occupation of the plaint schedule property by the plaintiffs and personal cultivation of the land by late B. Muthyalu and payment of land revenue to the Jagirdar till the abolition of Jagir and thereafter by the plaintiffs is disputed. The exclusive possession of the plaintiffs over the plaint schedule property is also disputed. The assertion of the plaintiffs that as per Notification No. 2 of 1949 issued by the Government that the plaintiffs are deemed pattedars is also disputed.

13. It is stated that after the abolition of Jagir, the entire land vested in the Government and the Government is the real, true and lawful owner of the plaint schedule property. No patta was granted in favour of late B. Muthyalu by the Government or after his death, in favour of the Plaintiffs 1 to 8. The assertion of the plaintiffs that they are in continuous possession over 65 years is also disputed. It is stated that the plaint schedule property was rightly described as Bandikana Sarkari and later as Poramboke. The entries made by the Patwari are true, genuine and correct. The Ameerpet Village of Secunderabad Taluk of Hyderabad District is ex-jagir village. The land bearing Sy.No. 151 admeasuring 0-23 guntas is classified as Government Poramboke known as Bandikana (garage of carts). After abolition of Jagir, the said village was transferred to the Government in the year 1949. The first plaintiff made several representations before the Government authorities and admitted that the suit land is Government land and requested to assign the said property to her and therefore, the notices issued for eviction of the plaintiffs u/s 7 of the Land Encroachment Act is valid and legal and the eviction orders passed u/s 6 of the said Act is also valid. The appeal filed by the plaintiffs before the R.D.O., against the order passed u/s 7 of Land Encroachment Act was rejected, against which, the plaintiffs preferred a revision before the District Revenue Officer (DRO), which was also rejected by order dated 30-11-1973 and subsequently, the first plaintiff preferred a revision before the Board of Revenue, Hyderabad, which was also rejected, against which, another revision was also filed before the Government, which was also rejected. In the said proceedings, it was categorically held that the suit land is a Government land and the occupation of the plaint schedule property by the plaintiffs is illegal, unauthorized and they are only encroachers. The orders passed by the Tahsildar have become final. The jurisdiction of the Civil Court is ousted u/s 14 of the Land Encroachment Act as the matter was finally adjudicated under the provisions of the Land Encroachment Act holding that the suit schedule property is Government Poramboke land and the plaintiffs are encroachers.

14. It is admitted that against the order passed by the Tahsildar on 13-3-1981 u/s 6 of the A.P. Land Encroachment Act, 1905, directing eviction of the first plaintiff, an appeal was filed before the R.D.O., and the R.D.O., by his order

dated 15-10-1981 remanded the matter to the then Tahsildar, Secundereabad (presently Mandal Revenue-Officer). On remand, the M.R.O., by his order dated 14-8-1985 directed eviction of the first plaintiff u/s 6 of A.P., Land Encroachment Act. Against the said order, the plaintiffs preferred an appeal before the R.D.O., on 6-9-1985. It is stated that the plaintiffs are not entitled for patta certificate as per the Notification No. 2 of 1949 and the suit schedule property is a Government land. The order in R.C.No. 218 of 1975 initiated by the Plaintiffs 9 to 14, in which it was held that it was not a Government land, but it is the land of the Plaintiffs 9 to 14 is not binding on the Government, since the Government is not a party to the said proceedings. The Director, Town Survey and Land Records, Hyderabad, rightly advised the first plaintiff to approach the Commissioner, Survey Settlement and Land Records or approach the Civil Court to establish the plaintiffs right over the suit schedule land as the suit schedule land was recorded as Government land in the Town Survey Records. The said order of the Director has not been questioned. It is further stated that payment of land revenue in the absence of any valid right or title to be in possession does not ipso facto confer any right of ownership or lawful possession over the suit land. Mere payment of Municipal tax in respect of the suit land and also payment of non-agricultural land tax do not advance the case of the plaintiffs. The plaintiffs have no title and they are not the pattedars and they are not in lawful possession of the suit land. It is stated that the Civil Courts are barred from entertaining the suit u/s 14 of the Land Encroachment Act and there is nothing improper in filing a caveat by the defendant before the III Additional Judge, City Civil Court, Hyderabad as the Government rightly apprehended and contemplated that the plaintiffs would file a suit and seek interim order against the Government with regard to the suit property. u/s 6 of the Andhra Pradesh Records of Rights and Land Act, 1971, every entry in the Record of Rights shall be presumed to be true until contrary is proved. As per the Record of Rights and other revenue records, the suit land is recorded as Government land as Bandikana and Poramboke, therefore, the entries are genuine and true u/s 6 of the Andhra Pradesh Records of Land Act, 1971. The plaintiffs are estopped from questioning the entries made in the revenue records. Hence, the present suit does not lie and untenable.

15. It is further stated that the plaintiffs are the trespassers over the Government property and therefore, the possession of the plaintiffs cannot be styled as hostile possession against the defendant and the plaintiffs are not entitled to declare as owners by virtue of their adverse possession over the plaint schedule property. The plaintiffs are not entitled to claim any adverse possession also by virtue of their alleged possession within the statutory period prescribed under law. The plaintiffs have not perfected their title by adverse possession. The plaintiffs are neither entitled for the relief of declaration nor perpetual injunction, restraining the defendants from interfering with the alleged possession and enjoyment of the plaintiffs over the plaint schedule property.

16. On the aforesaid pleadings, the Trial Court framed several issues and the

relevant issue as to whether the suit as framed is not maintainable, was held against the defendant and in favour of the plaintiffs, holding that the suit as framed is maintainable. But on appreciation of the oral and documentary evidence, the Trial Court held that the plaintiffs are not entitled for declaration and they have not perfected their title by adverse possession. Insofar as the issue as to whether the suit is bad for want of notice u/s 80 of CPC is concerned, the Trial Court held that the plaintiffs have sought leave of the Court u/s 80 of CPC to file the suit after dispensing with the notice and the Trial Court granted leave by allowing the application filed by the plaintiffs. In view of the nature of the proceedings and urgency of the matter, the plaintiffs are justified in seeking leave in dispensing with the notice u/s 80 of CPC and accordingly, held that the suit is not bad for want of notice u/s 80 of CPC and the said issue was held against the defendant.

17. Insofar as the issue as to whether the suit has not been properly valued for the purpose of Court Fee, the Trial Court held the said issue in favour of the plaintiffs, holding that the suit is correctly valued. But, on merits of the case, the Trial Court held that the plaintiffs are not entitled for declaration and also consequential relief of injunction.

18. In the appeal filed by the plaintiffs against the judgment of the trial Court, the Lower Appellate Court considered the following points for determination:

1. Whether the plaintiffs are entitled for declaration of their ownership in the plaint schedule property and for consequential relief of permanent, injunction restraining the defendant from evicting them from the suit schedule property ?

2. To what relief ?

19. On appreciation of the oral and documentary evidence, the Lower Appellate Court held that the Plaintiffs 1 to 8 convincingly established that they are deemed to be the pattedars and owners of the suit schedule property and accordingly they are entitled for declaration of title and the consequential relief of permanent injunction.

20. The only substantial question of law that was framed at the time of admission of second appeal is as to "whether the declaratory decree granted is contrary to the provisions of Andhra Pradesh Survey and Boundaries Act, 1923 and whether the suit is maintainable". To decide the said question, it is just and necessary to go through the oral and documentary evidence adduced by both parties.

21. The undisputed facts are that the suit schedule property bearing Sy.No. 151, old Sy.No. 48 in the pre-survey records in Block-B, Ward No. 5 is situated in Ameerpet Village and admittedly, it was a former Jagir village i.e., Non-Khalsa Village in old Hyderabad District of old Hyderabad State, including the said survey number. The extent of the said property is 0-23 guntas. There is no dispute with regard to the boundaries and identity of the property. Late B.

Muthyalu was holder, occupant and cultivator of the said land and as per Ex.A4 pahani patirka for the year 1351 Fasli i.e., 1941-42, the name of late B. Muthyalu is shown as cultivator of the land in question. Late Muthyalu also paid land revenue and the same was recorded in Pauthi Bhahi i.e., land revenue book-cum-pattedar pass book, which is filed as Ex.A49 from the years 1940-41 onwards.

22. With regard to the land revenue, the only Act that governed in the old Hyderabad Government was "Hyderabad Land Revenue Act, 1317 Fasli, which was re-named as Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli". The then Hyderabad Government framed the rules in exercise of the powers conferred by Clause (d) and (m) of Sub-section (2) of Section 172 of the Hyderabad Land Revenue Act regarding grant of pattadari rights in Non-Khalsa Villages. The said rules were published in Jarida (Gazette) No. 32, dated 19th Thir, 1356 Fasli. The previous rules and orders in force before the commencement of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli shall also remain in force until the rules relating to such matters are made under the Act. The Jagirdars used to pay land revenue to the Government in respect of the concerned Jagir Village. Wherever the Jagir lands were occupied by persons other than the Jagirdar, those persons used to pay the land revenue to the Jagirdar and the Jagirdar in turn used to pay the land revenue in respect of the holder of the land payable by him under the relevant rules. Rule 2 of the said rules regarding grant of pattadari rights in Non-Khalsa village (Jagir Village) provides that "from the date of coming into force of the said rules, all persons who hold Jagir land and paying revenue directly to the Jagirdars whether settled or un-settled Jagirs for all purposes be deemed to be the pattedars of the land held by them not with standing any oral or written agreement with the Jagirdar and such persons shall be deemed to be the pattedars of Khalsa lands. It is the duty of the concerned authorities to record the names of such persons who occupied the lands in the Jagir Village as pattedars in the concerned village records". As Late B. Muthyalu was in occupation and paying revenue to the Jagirdar, it is stated that he became the deemed pattedar by operation of law in 1947 itself in view of his occupation, cultivation and holding of the suit schedule property and was also paying land revenue to the Jagirdar.

23. The Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli came into force with effect from 15-8-1948. Under the said regulation, Jagir was abolished and in the place of Jagirdar, Jagir Administrator was appointed. Instead of Jagirdar, Jagir Administrator was empowered to collect the land revenue. The Government of Hyderabad issued Circular No. 2 dated 18-10-1949 communicating to all the Civil Administrators of the Districts, Jagir Administrators, Tahsildars to effect rights to deemed pattedars under Rule 2 of the Rules regarding grant of pattadari rights in Jagir villages in favour of the ryots.

24. It is the specific case of the plaintiffs in their plaint also that late Muthyalu became the deemed pattedar under the said rules, coupled with Circular No. 2, which was extracted in the judgment of the Lower Appellate Court. The whole

object of issuing the circular is to implement the rules regarding the grant of pattedari rights in Non-Khalsa villages by entering the names of the cultivators, occupants as pattedars without adopting any technicalities. The authorities were expected to take action for recognizing the deemed pattedari rights of the persons who were holding and cultivating the lands under Jagir Villages. The said rules are enforceable even after the abolition of Jagirs vide Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli.

25. As per the rules, the concerned authorities are bound to give effect to the deemed pattedari rights to the persons who are in occupation. The rules are nothing to do with the abolition of Jagirs or enactment of Hyderabad (Abolition of Jagirs) Regulation 1358 Fasli. The power to issue the rules regarding grant of pattedari rights in Non-Khalsa Villages and the circular were traceable to the rule making authority in exercise of the powers u/s 172 of the Land Revenue Act. There is no dispute that B. Muthyalu died on 21-11-1960 and after his death, his legal representatives (Plaintiffs 1 to 8) are in continuous occupation and possession of the said land. They are also regularly paying land revenue to the Government after abolition of the Jagirs and also paying Municipal Taxes to the Municipal Corporation. Though the Plaintiffs 1 to 8 and their predecessor late B. Muthyalu was in possession of the said land continuously from 1940 onwards, the State initiated proceedings under the provisions of the Andhra Pradesh Land Encroachment Act. The proceedings initiated by the State to evict the plaintiffs summarily who are in long possession of the said land, is illegal. They have resisted the same by resorting to statutory remedy of filing a civil suit for declaration of title and injunction.

26. The Supreme Court in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, , held that:

"The Government cannot evict the persons in occupation of the Government land un-authorisedly in exercise of its powers under Sections 6 and 7 of the Andhra Pradesh Land Encroachment Act, where the complicated questions of title arise for decision. The summary remedy, for eviction which is provided for Section 6 of the Act can be resorted to by any Government only against persons who are in un-authorised occupation of any land, which is "the property of the Government", but not in respect of the persons who have bona fide claim to litigate and they cannot be evicted saved by due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title".

In the instant case, the plaintiffs' predecessor late B. Muthyalu was holder and cultivator of the land of a non-Khalsa Village under Ameerpet Jagir and under the relevant rules and notifications. It is the case of the plaintiffs that late B. Muthyalu became the deemed pattedar and thereafter, his legal heirs the Plaintiffs 1 to 8. It is their further case that the Government never taken over the land from late B. Muthyalu or from the Jagirdar and admittedly, the said land is in their continuous possession till the initiation of proceedings under the Land

Encroachment Act.

27. The 4th plaintiff who is the son of late B. Muthyalu and first plaintiff examined as PW. 1. He stated that Ex.A4 is the certified copy of the pahany for the year 1942, showing the suit schedule property as Bandikana in the pattedar column and in the cultivator column, the name of his father late Muthyalu is shown. Ex.A5 is the certified copy of Kasra pahani for the year 1954-55 and the survey number is shown as 151, describing the said land as Sarkari Bandikana and the extent of the said land is 0-23 guntas. In Column No. 16, the name of Kaza Mahabub Karan-the Jagirdar is shown. Ex.A6 is the certified copy of Shivai Jama Bandi showing the possession of his father. In all subsequent pahanies, their possession is shown, in the pahanies. They are paying land revenue and also non-agricultural land tax from 1963 onwards and also paying the property tax to the Municipality. He further stated that in the revenue records namely Vasool baki Sethwar for the years 1942 onwards, the name of his father was shown as occupier. The land situated in Ameerpet Village is a Jagir Village and after abolition of Jagirs in 1949 by virtue of Notification No. 2 of 1949, his father became the deemed pattedar. The authorities wrongly described the suit land as Bandikana Poramboke though it was in occupation and cultivation of his father and after his death, the Plaintiffs 1 to 8.

28. PW.2, a retired I.A.S., Officer who is having properties at a distance of about 400 metres away from the suit schedule property on the same road, stated that he knows late Muthyallu-husband of the first plaintiff and father of Plaintiffs 2 to 8 from his childhood i.e., since 1942 and ever since he knows the place, Muthyalu and his family members the Plaintiffs 1 to 8 are in occupation of the suit schedule property. Muthyalu constructed a house in the suit property, dug an irrigating well and constructed a compound wall around the suit property. He knows all the plaintiffs i.e., late Muthyalu, his wife and their children-Plaintiffs 1 to 8 and Plaintiffs 9 to 14-the heirs of Jagirdar and Ameerpet Village was a Jagir Village belonging to Raja Shivaraj Bahadur and the Jagir was granted by Nizam. Muthyalu was cultivating the suit land and lived in the farmhouse with his cattle. After his death in 1960, his wife and children are in continuous possession and enjoyment of the suit property. The property was assessed to the land revenue and the plaintiffs are paying the land revenue, property tax and non-agricultural assessment tax. Electricity and water connections are also there to the suit property. Consequent upon the abolition of Jagirs, the ryots are cultivating the lands and those who occupied the lands are entitled to be treated as deemed land holders and pattedars and therefore, they are directly paying the revenue to the Government irrespective of the fact whether they were earlier paying or not any rent to the Jagirdar. Under the Act, no patta by way of certificate was required to be issued to the cultivating ryots in erstwhile Jagir Villages and there are standing instructions, circulars and notifications to this effect. Notification No. 2 of 1357 Fasli was issued conferring pattedari rights on the cultivation of Jagir villages. An assessed land cannot be called as Poramboke. There cannot be any land revenue for Government land. If it is an

unobjectionable encroachment of Government land, then, Sivaighamabandi will be levied. If it is objectionable encroachment, penalty will be levied. Sarkari denotes land which is not Enam. All patta lands are recorded as Sarikari, because they can collect land revenue. If they are not Enam lands, all erstwhile Jagir lands abolished under the Jagir Abolition Regulation, and the lands in respect of the Jagir villages cultivated by the tenants, in the pattedar column it was recorded as Sarkari instead of the name of Jagirdar. Ex.A.10 is the certified copy of pahani patrika for the year 1955-56 and 1957-58. In Column No. 23 of the said pahani, the crops raised, existence of compound wall, dwelling house and names of occupants were shown. Bandikana means a place where bullock carts are kept in an enclosed place. During 1955-56, 0-10 guntas of land was cultivated and rest of the land was covered by houses and compound wall and kept fallow. Padava means fallow. During 1956-57, 1957-58 and 1958-59 also some entries were there. Ex.A9 is the faisal patti i.e., Jamabandi Account Nos. 5 to 7 and the name of first plaintiff was shown as Kathadar i.e., land holder for the year 1975-76. In Ex.A7, the name of the pattedar i.e., first plaintiff was liable to pay the assessment and she paid the land revenue. Ex.A5 is the Kasra pahani, in which, the suit property was classified as dry land and not wet land and the name of cultivator late B. Muthyalu and the name of original Jagirdar were mentioned. Ex. A50 is the Land Revenue Pass Book issued to the land holder, such pass books are not issued to the encroachers occupying the Government land. Land revenue was collected by the Malipatel and village accounts were maintained and receipts were issued by the Patwari who is now designated as Village Assistant combining both the functions. Pauthi Bahi was nomenclature used for land revenue pass book. Ex.A49 Pass Book relates to old Sy.No. 48/3, corresponding to the present Sy.No. 151. Ex.A49 starts from 1350 Fasli, corresponding to 1940-41 and it shows the land revenue paid by late B.Muthyalu, Ex.A49 is continued up to 1358 Fasli equivalent to 1949-50. After abolition of Jagirs, the assets of Jagirs were taken over by the Government and the rights of occupants of the lands are protected and treated them as deemed pattedars and therefore, the land holders are paying land revenue to the Government without any intermediary. The rights were conferred irrespective of whether such occupant paid rents to the Jagirdar or not. Government paid Compensation to the Jagirdar for abolition of Jagir by way of commutation and they were ceased to be owners of land occupied by the ryots. Every alternative day, he used to see the suit property and occupation of suit land by the plaintiffs. He further stated that he examined the records pertaining to the suit land when they were put up before him by the plaintiffs. He is acquainted with the suit property as well as the owners from his childhood.

29. Insofar as the maintainability of the suit is concerned, both the Courts below concurrently held that the suit is maintainable. The issue raised in the suit as regards to the pattedari rights in Jagir Village is decided by a Division Bench of this Court in the case of Taker Hussain and Ors. v. Mohd. Abdul Waheed and Ors., iLR 1976 AP 1095 . In the said judgment, the Division Bench of this Court considered the rules regarding grant of pattedari rights in Non-Khalsa Villages

published in Jarida (Gazette) No. 32 dated 19th Thir, 1356 Fasli (1946). Rule 2 which confers pattadari rights of persons who held the Jagir lands reads as under:

"2. From the date of the coming into force of these rules all persons who hold Jagir land and pay revenue direct to the Jagirdar shall, in all Jagirs whether settled or unsettled, for all purposes be deemed to be pattadars of the land held by them notwithstanding any oral or written agreement between the Jagirdar and such persons or any entry in the concerned village records to the contrary, and their rights and liabilities shall be the same as those of the pattadars of Khalsa lands.

Rule 4 reads as under:

"The name of the Jagirdar or his hissadar or relation shall not be recorded in the concerned village records as pattadar of any jagir land except land personally cultivated by him. Any pattas existing in the concerned village records in contravention of these rules shall be cancelled and recorded in the name of the person who has actually held the land."

Under the said rules, from 1356 Fasli (1946) onwards, the persons who were cultivating the lands as tenants or otherwise, except the lands personally cultivated by the Jagirdars, were deemed to be pattadars for the said lands. There is no dispute in this case that the lands were under the cultivation of late B. Muthyalu and thereafter, the Plaintiffs 1 to 8 even before the abolition of Jagirs by the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli. u/s 6 of the Hyderabad (Abolition of Jagirs) Regulation, the jagirs were included in the Diwani and thus the Jagirs stood abolished and the Jagirdars could not exercise any powers thereafter in respect of their jagir lands to collect the land revenue. When the said rules were not implemented and the names of the cultivators were not entered in the village records as pattadars, the Government issued Circular No. 2, dated 18-10-1949 (18th Azur, 1359 Fasli) to the Civil Administrators of all Districts under the Government of Hyderabad for implementation of the rules regarding grant of pattadari rights in jagir areas. Though, the circular has no statutory force, but as the rights of the cultivators in the Jagirs were being ignored before the abolition of the Jagirs, this circular was issued immediately after the abolition to enforce the provisions of the law. The said circular on which the plaintiffs have heavily relied on, which throws light on this aspect is extracted below:

"GOVERNMENT OF HYDERABAD REVENUE DEPARTMENT

Circle No. 2. Dated 18th October, 1949

18th Azur, 1359F.

To

The Civil Administrators of All Districts.

Sir,

As a result of the coming into force of the Hyderabad (Abolition of Jagirs) Regulation, 1358F, the administration of all Jagir areas has been taken over by Government. This change has placed the Jagir ryots on an equal footing with the diwani ryots in all respects and it is the duty of the District Officers to see that the jagir ryots enjoy all the rights to which they are entitled. The most important of these rights is the right to hold land. In many jagirs the practice has existed of treating even hereditary holders of land as mere tenants at will and denying permanent patta rights to them. This has been a grave injustice to the ryots in Jagirs and all efforts made by Government in the past to secure their rights met with little success as revenue administration of these areas was entirely in the hands of Jagirdars. To mention one such effort which was made in the recent past, by the Land Revenue (Amendment) Act No. III of 1355 Fasli, the following important amendments were made in the Land Revenue Act:

1. The definition of "pattedar" in Clause (II) of Section 2 was amended to the effect that in the case of non-Khalsa lands "pattedar" means the person who is directly responsible to the jagirdar for payment of land revenue whether his name has or has not been entered as such in jagir records and it includes a person who was directly responsible to the jagirdar of payment of land revenue but was evicted by the jagirdar on the 1st Azur, 1349F.
2. The definition of "revenue" in Clause (17) of Section 2 was amended to the effect that in non-khalsa areas "revenue" means the amount payable by the holder to the jagirdar at fixed periods for use of or entry into the land.
3. Sub-sections (2) and (3) were newly added in Section 86 which provide that in non-khalsa area the name of the jagirdar shall not be shown as pattedar against any land which is not cultivated by him personally and the expression "to cultivate personally" has been defined as cultivation on one's own account, by one's own labour, or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family. As the revenue administration of jagirs was then in the hands of Taluqdar (some portion missing) shall be final provided they are in accord for determining pattedar rights in non-khalsa Villages, the orders of a jagirdar or Jagir Officer authorized by Government in this behalf and in their cases the orders of a Taluqdar shall be final provided they are in accordance with the rules made by Government. In order to implement these provisions, Government framed rules which have been published in the Jarida No. 32, on 19th Thir, 1356F. These rules provide inter alia that all persons who hold jagir land and pay revenue direct to the Jagirdar shall, in all jagirs whether settled or unsettled, for all purposes be deemed to be pattedars of the land held by them notwithstanding any oral or written agreement between the Jagirdar and such persons or any entry in the concerned village record to the contrary and their rights and liabilities shall be the same as those of the pattedars of khalsa lands. Another important provision of those rules is that the name of the jagirdar or his hissadar or relation shall not be recorded in the concerned village records as

pattedar of any jagir land except land personally cultivated by him and that any pattas existing in the concerned village records in contravention of these rules shall be cancelled and recorded in the name of the person who actually held the land. There are further provisions in these rules regarding succession of patta, transfer of patta, laoni of unoccupied lands and survey settlement. These rules must be carefully studied by the Revenue Officers. As the revenue Administration of jagirs was then in the hands of jagirdars, Government had reluctantly provided in these rules that in jagirs which employ officers having the qualifications and pay prescribed by the Jagirs Revenue Regulation of 1355F (published in Jarida No. 39, dated the 9th Shehrewar, 1355F) will be competent to decide all questions of patta rights subject to the conditions laid down in Rule 10. From the experience of the administration of jagirdars it is difficult to believe either that the jagirs had appointed officers having the qualifications and drawing the pay prescribed by the Jagirs Revenue Recovery Regulation of 1355 F., or that they complied with the rules regarding grant of pattedar rights in non-khalsa villages referred to above, All these legal provisions have remained mostly on paper and the duty of implementing them now devolves of the Government Revenue Officers in the Districts. Even under the Hyderabad (Abolition of Jagirs) Regulation of 1358F, the Jagir Administrator is competent to exercise all the powers and duties of Jagir Officers and jagirdars and by rules framed under the said Regulation, Assistant Jagir Administrators, i.e., the Civil Administrators have been authorized to exercise and perform the powers and duties of Diwani Taluqdars in all revenue matters. The abolition of Jagirs Regulation recognizes the rights of jagirdars to seri lands, but in the rules framed under the Regulation it has been provided that the extent and boundaries of the seri lands will be determined in accordance with the provisions of the rules framed u/s 86 of the Land Revenue Act referred to above. According to these rules a jagirdar or a hissadar or his relation is entitled only to the patta of the land personally cultivated by him and the expression "to cultivate personally" has been defined in Section 86 of the Land Revenue Act, from which it will be clear that cultivation through a tenant is not personal cultivation.

It is hoped that the Civil Administrators and Taluqdars will devote special attention to this important matter and implement the above mentioned measures to the lasting benefit of the jagir ryots. It is of utmost importance that wide publicity should be given to these measures in the jagir villages so that the ryots may know what their rights are and the local Revenue Officers should help them in securing those rights.

Copies of this letter are being forwarded to all Second Taluqdars and Tahsildars for information and necessary action.

The receipt of the letter may kindly be acknowledged".

30. Insofar as the cultivators of the jagir lands are concerned, there is no procedure contemplated to issue a certificate or any proceedings, but, it is the duty of the concerned administrators to enter the names of cultivator in the

pattedar column. It is the case of the plaintiffs that the revenue authorities though showed the name of late Muthyalu in the cultivator column, but they have wrongly shown the land as Badikana Sarkari. In view of the said rules regarding grant of pattedari rights in non-khalsa (jagir) villages, coupled with the circular dated 18-10-1949, late Muthyalu became the deemed pattedar and thereafter his legal heirs the Plaintiffs 1 to 8. The un-interrupted possession of late B. Muthyalu and thereafter his legal heirs from 1942 onwards is not disputed by the State.

31. It is pertinent to note that as evident from Ex.A26, the Collector and District Magistrate, Hyderabad in his letter addressed to the Secretary to the Board of Revenue, A.P., Hyderabad admitted that late B. Muthyalu was in possession of the suit land admeasuring 0-23 guntas in Sy.No. 151 of Ameerpet Village since 1941 by paying rent amounting to Rs. 300/- to the then Jagirdar. The husband of the first plaintiff used to pay land revenue to the Government and the said land is classified as poramboke. The enquiry made by the Tahsildar revealed that the first plaintiff is in possession of the land since 40 years as per the original receipts of the land revenue and she is in possession of the land since 1358 Fasli. She is having 7 family members i.e., Plaintiffs 2 to 8 and she is getting Rs. 10/- per day by selling milk. She has no other property except one pucca house in the land in Sy.No. 151 of Ameerpet Village. The appropriate market value of the land in the vicinity is about 15 to 20 rupees per sq.yard. The appeal filed against the order passed u/s 6 of the Land Encroachment Act was rejected on the ground that the said land is the Government land and as per the Notification No. 2 of 1940, she is not entitled for patta rights.

32. It is also pertinent to note that in Ex.A1 order, the Revenue Divisional Officer on appeal filed by the first plaintiff in Case No. B/3441/1981 held as follows:

"I have gone through the arguments and record produced (copies of pahanies, pauthi bahi and L.R. receipts). No doubt Ameerpet village is an Ex-Jagir Village and Old Sy.No. 47/2 measuring 0-22 guntas was poramboke land. The husband of the appellant (first plaintiff) has been in possession by paying Sivaajama to jagir Government and thereafter to the Government. Thus, the possession of the appellant on the suit land is right from 1351 Fasli to this day (13-10-1982). As per the judgment of the Supreme Court, the persons who are in long standing possession claiming the title, cannot be evicted, and as the appellant claims the right of ownership under a statutory law being an occupant of jagir land. Therefore, the bona fide claim of the appellant as held by the Supreme Court is to be decided necessarily."

Accordingly, he set aside the order of the Tahsildar, remanding the matter.

33. Under the Andhra Pradesh (Telangana Area) Abolition of Jagirs Regulation, 1358 Fasli, the Jagir Administration was taken from the Jagirdar and entrusted on the Jagir Administrator as regards to all his rights, powers in respect of Jagir Administration and land revenue, but u/s 18 of the Regulation, the personal

property of the Jagirdar held by him was not effected. But insofar as all other properties, wherever the Jagirdar was not personally cultivating by virtue of the said rule, the cultivators are entitled for patta rights, Similarly under the Andhra Pradesh (Telanga Area) Tenancy and Agricultural Lands Act, the interest of the cultivators who were cultivating the lands of the pattedars was also protected.

34. The learned Government Pleader appearing for the State submits that the first plaintiff herself admitted that the suit land is a Government land and requested to assign the said land in their favour. On the other hand, the learned Senior Counsel appearing for the plaintiffs submits that she never admitted that the suit land belongs to the Government and it is her consistent plea that they are in continuous possession of the land from 1940 onwards and they become deemed pattedars, but the revenue authorities have wrongly made entries in the pattedar column as Bandikana and Poramboke, therefore, the said entries may be corrected and the land may be assigned in favour of the plaintiffs. It is further stated that as per the judgment in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, , the Supreme Court held that:

"Any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission."

In the instant case, though the first plaintiff and her husband were in continuous possession from 1940 onwards and have been paying the land revenue continuously and after Municipal Act came into force, paying the Municipal Tax and non-agricultural land tax, land encroachment proceedings have been initiated in 1972 which were continued up to 1981 and therefore, while making a requisition to correct the records, she has only filed representations to assign the land, but by reason of the said representations, it cannot be assumed and presumed that she has admitted the ownership of the Government in respect of the land in question. However, as held by the Apex Court, the admission made in ignorance of the legal rights cannot bind the first plaintiff on her so called admission.

35. The learned Counsel also drawn the attention of this Court on a judgment of the Apex Court in the case of State of Himachal Pradesh Vs. Keshav Ram and others, , that an entry in revenue record, cannot form basis for declaration of title. In the instant case, the basis for the Government to claim title over the suit property is merely because in the revenue records, in pattedari column, it was mentioned as Bandikana Sarkari or Poramboke.

36. The learned Government Pleader appearing for the State further submits that when the proceedings under the Land Encroachment Act have become final, it is not open for the plaintiffs to agitate the same question and file a Civil Suit and therefore, the Suit is not maintainable u/s 14 of the Land Encroachment Act.

37. The Land Encroachment Act provides the measures, seeking un-authorised occupation of lands, which are the property of the Government. Though the Government made a claim that it is the Government land and the plaintiffs have

illegally encroached into the said land, but they could not substantiate their claim by adducing any evidence to show that the said land is the Government land. On the other hand, the plaintiffs are able to produce oral and documentary evidence to show their continuous possession from 1940 onwards and admittedly, the land in question is in a jagir village and the said survey number also covered within the jagir village and if that be the case, whoever is in cultivation as on the date of Jagir abolition, they are deemed to be the pattedars and their names shall be entered in the pattedar column. Therefore, I am of the opinion that the Government failed to establish that it is a Government property. Merely because a notice u/s 7 of the Act issued by the Government has become final and admittedly the consequential order made u/s 6 of the said Act was challenged before the Appellate Authority, in which stay was also granted and pending the stay order, the Government itself filed a caveat petition and there is every justification on the part of the plaintiffs to apprehend that the subordinate officer cannot decide the issue impartially and however the same is not barred as held by the Supreme Court as the Government cannot evict the persons summarily who are having long standing possession and disputing the ownership of the Government and therefore, the suit is maintainable and Section 14 of the Andhra Pradesh Land Encroachment Act has no application in respect of the proceedings effecting the title to the land of a person. The issue decided by the authorities in respect of the notice issued u/s 7 or the order u/s 6 is not directly or substantially the same and the nature of the present suit is for the declaration of title and injunction and whereas, the nature of the proceedings under the Land Encroachment Act were only under the presumption that it was a Government land, merely because there is an entry in the pattedar column as Bandikana Sarkari or Poramboke.

38. The Division Bench of this Court in the case of Sajana Granites, Madras and Another Vs. Manduva Srinivasa Rao and Others, , held that Civil Court has got jurisdiction to decide the issue of title in spite of the earlier decision of Settlement Officer granting patta u/s 11 of Estes Abolition Act. If that be so, there is no patta granted in the instant case to any other person and there is no evidence to show that it is a Government land. Even in respect of the Government lands, whoever was in continuous possession from 1940 onwards, they are entitled for grant of ryotwari patta. Insofar as the non-khalsa villages i.e., Jagir villages is concerned, there is no dispute that the cultivators are entitled for the pattedari rights and therefore, I am of the opinion that the suit filed by the plaintiffs is maintainable.

39. Insofar as the other questions as to whether the declaratory decree granted is contrary to the provisions of Andhra Pradesh Survey and Boundaries Act, 1923 is concerned, the Andhra Pradesh Survey and Boundaries Act, 1923 relates to the survey of lands and settlement of boundary disputes. There is no dispute as regards to the boundary or with regard to the survey of lands. Under the aforesaid rules and circulars as extracted above, it is the duty of the Settlement Officer to enter the name of the relevant person, and the main object of the Act

is to survey the lands and settle the boundary disputes. Merely because in the survey records, it is shown as Poramboke or Bandikana, it does not mean that it is a Government land as explained by PW.2 in his oral evidence. Therefore, I am of the opinion that the declaratory decree granted by the Lower Appellate Court is not contrary to the Andhra Pradesh Survey and Boundaries Act, 1923 and the suit is maintainable. The Lower Appellate Court rightly granted the decree as prayed for.

40. The Lower Appellate Court on appreciation of oral and documentary evidence and the un-disputed facts set out in Exs.A1, A4, A10, A26, A49, A50 and other documents, rightly came to the conclusion that the plaintiffs are in possession since 1940 as holders and occupants and they have got deemed pattedari rights under the rules and accordingly decreed the suit. The appellant/defendant filed the second appeal without formulating any substantial question of law within the meaning of Section 100 of Civil Procedure Code. Therefore, I do not find any perversity or illegality in the findings recorded by the Lower Appellate Court as regards to the continuous possession, occupation and cultivation of the suit schedule land since 1940-41 onwards. As per the evidence available on record, admittedly, the suit schedule land falls under the Jagir Village i.e., non-khalsa village and covered by the rules regarding grant of pattedari rights in non-khalsa village and as per Rule 2 of the said rules, the predecessor of the plaintiffs was conferred with the right of deemed patta and after Hyderabad (Abolition of Jagirs) Regulation, 1358F, came into force, the Government of Hyderabad issued Circular No. 2 of 1949 clarifying the conferment and enforcement of beneficial provision of the rules, particularly conferring the rights of deemed patta to the ryots as a welfare measure and pursuant to the said rules and circular, late B. Muthyalu who was cultivator at the relevant point of time is entitled for conferring deemed patta. Therefore, I am of the opinion that the Lower Appellate Court on the basis of un-disputed facts and after scrutinising the documentary evidence, decreed the suit mainly on the ground that the plaintiffs and their predecessor in title got deemed pattadari rights over the land. The appellant/defendant failed to make out any substantial question of law, questioning the judgment and decree of the Lower Appellate Court and accordingly, the Second appeal is liable to be dismissed.

41. For the aforesaid reasons, the second appeal is dismissed. No order as to costs.