

(2001) 07 AP CK 0095

In the Andhra Pradesh High Court

Case No : SA No's. 450, 451 and 452 of 1990

S.V. Narasaiah and others

APPELLANT

Vs

P. Dharma Reddy and others

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 107
Specific Relief Act, 1963 — Section 38

Citation : AIR 2002 AP 95 : (2001) 5 ALD 378 : (2001) 2 AnWR 147 : (2001) 2 APLJ 117

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : Mr. A. Anantha Reddy, for the Appellant; Mr. Nimalikanty Ramachandra Rao and Mr. E. Ajay Reddy, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J. 1. These three second appeals are filed against common judgment and decrees dated 26-3-1990 made in AS Nos. 173/1989, 174/1989 and 175/1989 on the file of the Additional Chief Judge-Cum-II Metropolitan Sessions Judge, Hyderabad, which arose against a common judgment and decrees in OS Nos. 2326/1979, 2493/ 1979 and 2492/1979 respectively on the file of the VII Assistant Judge, City Civil Court, Hyderabad.

2. The original suits and also the first appeals were disposed by a common judgment and the contentions in all the suits are common and similar, and therefore, these appeals are also disposed of by a common judgment.

3. The appellants in SA No. 450/1990 are the defendants in OS No. 2326/1979 and the respondents in AS No. 173/1989. The appellants in SA No. 451/1990 namely; V. Nagabhushanam is the plaintiff in OS No. 2493/1979 and the respondent in AS No. 174/1989. The appellant in SA No. 452/ 1990 namely Atluri Ashok, is the plaintiff in OS No. 2493/1979 and the respondent in AS No. 175/1989. Suit OS No. 2326/1979 is filed by Sri P. Dharma Reddy, Ayeshavali,

Dr. M.A. Moiz and Laxman Rao against Sri. S.V. Narsaiah, S.V.K. Prasad Rao, Atluri Ashok and V. Nagabhushanam. V. Nagabhushanam filed suit OS No. 2493/1979 against P. Dharma Reddy, Smt. Ayeshavali and Usha Rani. Atluri Ashok filed OS No. 2492/1979 against Smt. Ayeshavali, Dr. M.A. Moiz, Laxman Rao and Padmavathi. All the suits were filed for grant of perpetual injunctions restraining the respondents from interfering with the peaceful possession and enjoyment of the respective suit schedule properties.

4. The appellants as well as the respondents are tracing their title in respect of their individual suit schedule properties from the common original owners who are the legal heirs of late Nawab Fakar Jung.

5. The case of the appellants is that the legal heirs of late Fakar Jung were declared as entitled to Hilly Plot No.2, admeasuring 22, 862 Sq.yds in OS No. 9/91 of 1951 by the High Court and the said legal heirs of late Nawab Fakar Jung executed Power of Attorney dated 30-10-1961 authorising one of the said legal heirs namely; Mir Mushraf Hussain S/o. late Nawab Fakar Jung as their sole attorney to sell away the said plot with discretion of fixation of sale price and execution of the sale deeds in favour of the intending purchasers. Under the powers so vested, the said General Power of Attorney entered into an agreement of sale with S.V. Narsaiah on 14-6-1962 agreeing to sell the entire Hilly Plot No.2 and the said G.P.A. made an application No. 464/1962 in OS No. 9/1 of 1951 before the Hon"ble High Court for delivery of the possession of the same and accordingly the High Court passed an order on 14-12-1962 for delivery of the possession. Before delivering of the possession to the G.P.A., three heirs of late Nawab Fakar Jung, namely; Taher Unnisa Begum, Kefatunnisa Begum, Dilawar Unnisa Begum, made application No. 62/63 to restrain the Receiver from delivery of the possession of the said property of Plot No. 2 to the G.P.A. holder-Mir Mushraf Hussain and also directed the Receiver to divide into plots and to allot the shares to the individuals as per the decree and to delivery to them.

6. Another application No. 76/63 was filed by 10 legal heirs including Mir Aijaz Hussain, Mir Jahangir Hussain, Mir Mumtaz Hussain and Zahoornisa Begum requesting the High Court to expedite the delivery of the possession of the said Plot No. 2 to Mushraff Hussain (General Power of Attorney holder). Sri S. V. Narsaiah also made an application to implead him as a party in Application Nos.62 and 63/1963. The High Court by a common order dated 6-3-1963 passed orders dismissing Applications 62 and 63/1963 and confirmed the order already passed on 14-12-1962 in Application No. 464/62 directing the delivery of the possession of the properties in Plot No. 2 to the Power of Attorney holder. In compliance of the said order, when the Receiver wanted to deliver the entire Plot No. 2 to the said General Power of Attorney, he found actual extent of 17,000 Sq.yds only in Plot No. 2 as per the boundaries fixed. At the request of the said General Power of Attorney, the Receiver delivered 17,000 Sq.yds to the said General Power of Attorney on 8-4-1963. Out of 17,000 Sq.yds, the said General Power of Attorney set apart 14,000 Sq.yds to Mir Muzaffar Hussain, who did not

authorise the GPA to sell his land and the GPA holder accordingly sold away the remaining land of 15,600 Sq.yds to S.V. Narsaiah on 8-1-1964 through a registered sale deed (Ex.B3). Thus the said S.V. Narsaiah acquired the title to the land of 15,600 Sq.yds forming part of Plot No. 2, Errum Manzil, Colony, Somajiguda, Hyderabad, and thus, all the heirs of late Fakar Jung transferred their right, title and interest and delivered the possession to the extent of 15,600 Sq.yds through General Power of Attorney holder in favour of S.V, Narsaiah. None of the heirs of late Fakar Jung questioned the title of S. V. Narsaiah in any manner in respect of the said 15,600 Sq.yds so far. S.V. Narsaiah and 12 others have contributed the sale price and jointly acquired the title to the said land and the said entire land of 15,600 Sq.yds was divided into various house-sites providing roads. On the application made to the Municipality in the year 1973 for the sanction of lay out as per the said division and pending the said sanction lay out, some of the heirs of late Fakar Jung raised their objections on the basis of the sale deed (Ex.B3), but still the Municipality sanctioned lay out plan on 1-11-1973 and finally on 19-4-1976. It is further stated after obtaining prior permission from the Government in G.O. Rt. No. 2513 dated 26-8-1975 for partition of 15,600 Sq.yds as per the sanctioned layout of 1-11-1973 Sri S.V. Narsaiah and other purchasers effected the partition dividing the said land and the said partition deed was also registered on 29-10-1975 (Ex.B4). In the said partition and division, Sri Atluri, Ashok - appellant in SA No. 452/1990 (plaintiff in OS No. 2492/1979 and defendant No. 3 in OS No. 2326/1979) was allotted Plot No.9 admeasuring 600 Sq.yds of the sanctioned lay out forming part of Hilly Plot No. 2. Similarly, Sri V. Nagabhushanam - appellant in SA No. 451/1990 (plaintiff in OS No. 2493/1979 and defendant No. 4 in OS No. 2326/1979) allotted Plot No. 10 admeasuring 800 Sq.yds of the said sanctioned lay out forming part of the Hilly Plot No. 2. Atluri Ashok and V, Nagabhushanam filed OS No. 2492/1979 and OS No. 2493 of 1979 against the respondents herein and obtained interim injunctions not to interfere with their possession over the suit schedule properties.

7. It is the case of the respondents herein, who are the plaintiffs in OS No. 2326/1979 that Sri P. Dharma Reddy-1st plaintiff purchased room and open land admeasuring 220 Sq.yds forming part of plot No. 2 bearing Municipal No. 6-3-602/5 Errum Manzil Colony, Hyderabad, vide registered sale deed dated 31-8-1974 (Ex.A15) from Mir Aijaz Hussain, Mir Jahangir Hussain, Mir Mumtaz Hussain sons of late Nawab Fakar Jung. Smt. Ayesha vali - 2nd plaintiff purchased hut with open land admeasuring 350 Sq.yds part of Plot No. 2 bearing Municipal No. 6-3-602 from Mir Jahangir Hussain S/o. Late Nawab Fakar Jung as per the registered sale deed dated 29-6-1972 (Ex.A2). The 3rd plaintiff-Dr. MA. Moiz purchased room and open land admeasuring 350 Sq.yds bearing Municipal No. 6-3-602/7 from Aijaz Hussain S/o. late Nawab Fakar Jung as per the registered sale deed dated 19-5-1972 (Ex.A8). The 4th plaintiff - Sri Laxman Rao purchased room and open-land admeasuring 325 Sq.yds bearing Municipal No. 6-3-600/1 part of Plot No. 2 from Smt. Zahoorunnisa Begum D/o. late Nawab Fakar Jung as

per the sale deed dated 7-7-1973 (the area has been reduced to 300 Sq.yds). All the respondents herein i.e., plaintiffs in OS No. 2326/1979 are also tracing their title through late Nawab Fakar Jung Bahadur and submitted that after his death his heirs instituted a suit for partition of Matruka on the original side of the High Court of Andhra Pradesh bearing OS No. 9/1 of 1951 and as per the partition of Matruka properties of late Nawab Fakar Jung the hilly portion of Errum Manzil divided into 5 plots by the Commissioner -Engineer appointed by the High Court in the year 1958 and Plot No. 2 of Hilly portion admeasuring 22,862 Sq.yds had fallen to the share of 18 share holders who are the heirs of late Nawab Fakar Jung and out of the said area of 22,862 Sq.yds, 17,000 Sq.yds. are sold through their General Power of Attorney holder - Mir Mushraf Hussain. For the redelivery of the remaining area, the High Court appointed Sri Md. Ibrahim, Engineer-cum-Commissioner to survey entire Plot No. 2, who had resurveyed and found that deficit area of 5,862 Sq.yds and the same has been handed over to the heirs of late Nawab Fakar Jung on 29-5-1970 through their advocate-Syed Hanif Ali. The said land of 5,862 Sq.yds has been divided mutually and the legal heirs concerned to whom the area was allotted have sold to the respective purchasers and thus they came into possession of the suit schedule properties. It is further stated by them that they have constructed compound wall and also paid property taxes but the defendants, who are the appellants herein, without any right or title over the land, with the help of some unsocial elements, tried to interfere with their possession and enjoyment of the property on 30-7-1979 to erect the boundary stone on the portion of their land and accordingly they have constrained to file the suit for perpetual injunction restraining the appellants herein from digging, raising, construction and erecting boundary stones, interfering with the possession and enjoyment of the properties of the respondents herein bearing Municipal No. 6-3-602/5, 6-3-602, 6-3-602/7 and 6-3-600/1 situated at Errum Manzil, Hyderabad.

8. On the rival contentions, the trial Court framed the following issues in OS No. 2326/1979:

1. Whether the plaintiffs have got any interest and have right to file the suit for property?
2. Whether the plaintiffs have cause of action to file the suit?
3. Whether the plaintiffs are entitled to injunction as prayed for?
4. To what relief?

9. In OS No. 2493/1979 and 2492/79 the following issues are framed:

1. Whether the plaintiff is entitled for perpetual injunction as prayed for?
2. To what relief?

10. On behalf of the respondents herein PW1 to PW6 are examined and got marked Ex.A1 to A.26. On behalf of the appellants herein, DW1 to DW4 were

examined and Ex.B1 to B8 and X1 to X3 were marked. The trial Court clubbed all the suits together and recorded common evidence and held that the respondents herein, who are the plaintiffs in OS No. 2326/1979, have got no common interest and right to file the suit jointly and the respondents have no cause of action to file the suit and they are not entitled for the injunction as prayed for. The appellants i.e., plaintiffs in OS No. 2492/ 1979 and 2493/1979 are entitled for the perpetual injunction as prayed for and thus all the issues were answered in favour of the plaintiffs -appellants herein and against the respondents and the suit filed by the respondents has been dismissed and the suits filed by the appellants have been decreed by judgment and decrees dated 24-4-1989. Aggrieved by the same, the respondents herein have filed three appeal Suit Nos. 173, 174 and 175 of 1989 on the file of the Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad. The lower appellate Court considered the following points for consideration.

1. Whether the appellants (therein) are entitled for grant of perpetual injunction against the respondents in respect of the suit properties?
2. Whether the respondents (appellants herein) are entitled for injunction against the applicants (respondents herein)?

11. The lower appellate Court in addition to oral and documentary evidence available on record observed that Sri S.V. Narsaiah obtained registered sale deed (Ex.B3) from the General Power of Attorney-Mushraf Hussain and the sale deed was attacked by the respondents herein as invalid and it will not convey any right or title to S. V. Narsaiah on the ground that as on the date of the execution of sale deed (Ex.B3), the legal heirs by name Dilawarunnisa Begum, who executed GPA in the year 1962 and 10 other legal heirs, cancelled the GPA executed in favour of the said GPA holder by executing a registered document No. 84/63 on 28-2-1963. The respondents herein filed IA No. 33/1989 under Order 41, Rule 27 CPC to receive the registered cancellation deed of the GPA dated 28-2-1963. It is mentioned in the said application that it is an important document to prove their case and that they could get the said document only on 18-8-1989. The respondents (appellants herein) have not filed their counter. As it is important document to come to a just decision of the case, the petition is allowed and the document is marked as Ex.A21. Ex.A21 clearly proved that the GPA executed by 10 of the legal heirs was cancelled. Even after the said cancellation, the GPA holder executed a registered sale deed in favour of S.V. Narsaiah on 8-1-1964 and further certified copy of the registered partition deed (Ex.B4) between Narsaiah and 12 others is also illegal as the sale deed in favour of S. V, Narsaiah itself is illegal and the said partition deed was brought into existence with a view to overcome Act 12/1972 which prohibits alienation of the urban land. Thus, Ex.B3 and Ex.B4 are illegal. The lower appellate Court mainly based on Ex.A21 (or A.27) said to have been marked pursuant to the order made in IA No. 33/1989 under Order 41, Rule 27 CPC held that the sate deed (Ex.B3) is executed after the death of one of the legal heirs and after cancellation of GPA by

10 legal heirs, and therefore, the sale deed (Ex.B3) does not convey any right in favour of S.V. Narsaiah. There is absolutely no whisper in the order of the High Court (Ex.B5) about the legal heirs raising the plea that the GPA cannot execute the sale deed because of one of the legal heirs died and 10 of them cancelled the GPA in favour of Mushraf Hussain, except saying that the property was directed to be delivered but it does not show that the property was actually delivered to S.V. Narsaiah. The lower appellate Court further held that the remaining land of 5,862 Sq.yds was traced and it was handed over to the legal heirs of late Nawab Fakar Jung and they in turn sold the same in favour of the respondents and the respondents are in possession and enjoyment of the said property and there are certain constructions and they have paid property tax and there is clear evidence of PW1 to PW6 to the effect that there are facilities like; drainage, water, electricity, road in the Hill Top Colony which were provided by the Municipal Corporation of Hyderabad and there is pucca road for the said land and so in the said circumstances it should be held that the respondents herein established their prima facie title and also along standing possession of their respective properties and they have purchased the sites much prior to the purchase of the sites by RWs.1 and 2. As such, the possession of the respondents cannot be disturbed in any way and they are entitled for grant of perpetual injunction against the appellants herein. The points are answered in favour of the respondents herein and the appeals filed by them are allowed with costs and suits OS Nos. 2493/1979 and 2492/1979 filed by the appellants herein i.e., namely; Atluri Ashok and V. Nagabhushanam were dismissed with costs by a common judgment and decrees dated 26-3-1990. The suit OS No. 2326/ 1979 filed by the respondents herein is decreed.

12. Aggrieved by the same, the appellants filed these three second appeals contending that the respondents are tracing their title from the same legal heirs of late Nawab Fakar Jung from out of the area of 5,860 Sq.yds forming part of the western part of Hilly Plot No. 2 of Errum Manzil Colony and the GPA of all the legal heirs of late Nawab Fakar Jung have sold 15,600 Sq.yds of the land forming central and eastern portion of the Hill Top Colony, Errum Manzil, Hyderabad, under a registered sale deed dated 8-1-1964 and delivered the possession to S.V. Narsaiah and the said S.V. Narsaiah purchased the suit land on behalf of 12 others who have contributed their respective sale consideration for the purchase of the land of 15,600 Sq.yds and after obtaining lay out sanction of the said land, the joint owners of the said land partitioned among themselves under the partition deed (Bx.B4) in October, 1975 after obtaining prior permission of Government as required under the Urban Vacant Land Act. The respondents who are said to have purchased different plots from the different legal heirs of late Nawab Fakar Jung during the year 1972-73, are not entitled to file the suit jointly for one injunction against the appellants herein, and therefore, the suit filed by them is not maintainable, but whereas a separate suit filed by Atluri Ashok and V. Nagabhushanam for grant of injunction is maintainable and rightly decreed by the trial Court. It is further submitted that the lower appellate Court without

reading registered sale under (Ex.B1) executed by all the heirs of late Nawab Fakar Jung erroneously observed that there was no delivery of possession in favour of S.V. Narsaiah. It is further stated that it is impossible to trace out the different plots of the land said to have been purchased by the respondents and there is no lay out and there was no partition among the legal heirs of late Nawab Fakar Jung and when it is impossible to identify the property of the respondents, the respondents are neither entitled to file a joint suit nor entitled for any injunction against all of them. It is further stated that the appellate Court illegally observed that Ex.B1 is not a legal document as it was executed in the name of some persons who died or cancelled the Power of Attorney.

13. I have considered rival contentions of the learned Counsel appearing for the respective parties. From the pleadings the oral and documentary evidence available on record and on the reversing judgment of the lower appellate Court, the following substantial questions of law that arise for consideration.

1. Whether the lower appellate Court is justified in holding that the purchasers of some other land of the vendors of Ex.B3 are entitled to question the documents of Ex.B3 and Ex.B4?
2. Whether the lower appellate Court is justified in deciding the validity of the title deeds of the appellants of Ex.B3 and B4 in an injunction suit filed by the respondents?
3. Whether the lower appellate Court is justified in receiving document (Ex.A21) or (Ex.A27) under Order 41, Rule 27 of CPC without there being any order in 1A No. 33/89 filed to receive a document No. 84/63 dated 28-2-1963 which is the revocation of Power of Attorney dated 30-10-1961 by six vendors of Ex.B3 and deciding the appeals mainly based on the said document said to have been marked Ex.A21?
4. Whether the lower appellate Court is justified in observing that the property under Ex.B3 and Ex.B5 is not at all delivered to the purchasers under the said document?

14. The subject-matter of these three appeals relate to part of extent of 22,862 Sq.yds of land which was the subject-matter of CS No. 9/1 of 1959 on the file of this Court. The suit is for distribution of Matruka property of one late Nawab Fakar Jung Bahadur. One of the items in the said decree was Plot No. 2 admeasuring 22,862, Sq.yds situated at Errum Manzil, Hyderabad. In the said decree, Plot No. 2 was directed to be delivered to the heirs of late Fakar Jung. The Receiver-cum-Commissioner was appointed by the High Court to deliver the possession of the properties to the respective decree holders including the said extent of Plot No. 2 comprising of 22,862 Sq.yds to the heirs of late Fakar Jung. The heirs of late Fakar Jung to whom the said Plot No. 2 was allotted, except one person namely Muzer Hussain, executed Power of Attorney on 3-10-1961 in favour of one of the heirs namely; Mushraf Hussain as their Power of Attorney. The Receiver-cum-Commissioner after inspection measured Plot No. 2 and found

that only 17,000 Sq.yds is available for handing over to the decree holders and the remaining 5,682 Sq.yds is not available in Plot No. 2. Out of 17,000 Sq.yds, 1,400 Sq.yds was handed over to one of the heirs i.e., Muzer Hussain and the remaining land of 15,600 Sq.yds was handed over to GPA holder on behalf of the rest of the claimants. The GPA holder of the heirs of late Nawab Fakar Jung Bahadur entered into an agreement of sale of the land of 15,600 Sq.yds in favour of S.V. Narsaiah - D1 in OS No. 2326/1979 on 1-4-1962. The agreement was concluded by the Power of Attorney holder in favour of S.V. Narsaiah on 14-6-1962. Before the execution of the sale deed, 3 heirs of late Nawab Fakar Jung, who are the vendor Nos.3, 6 and 14 of Ex.B3 disputed the agreement of sale dated 1-4-1962 in favour of S.V. Narsaiah by filing application 62 and 63 of 1963 before the High Court in OS No. 9/1 of 1959 and the High Court by order dated 8-3-1963 (Ex.B5) rejected the objections and held that the agreement of sale dated 1-4-1962 by the GPA in favour of D1 is binding on all the heirs - executants of GPA and they cannot dispute the agreement of sale. The objectors may if they so chose, join the execution of the sale deed as principles themselves in favour of S.V. Narsaiah. Accordingly, the GPA executed regular sale deeds on 8-1-1964 (Ex.B3) in favour of S.V. Narsaiah transferring the land of 15,600 Sq.yds of Plot No. 2 and delivered the vacant possession of the same.

15. It is the contention of Sri S.V. Narsaiah that he has purchased the land with the contribution of his associates and he has obtained tentative layout of the said land on 1-11-1973 (Ex.X1) vide approved layout plan MCH No. 8/open/6/66/1547/73. As there is a prohibition for partition of vacant land even among the association of individuals in Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 as no document relating to partition also cannot be made, Sri S.V. Narsaiah applied for permission exempting the provisions under the Act and the Government considering the said application granted permission in G.O. Rt. No. 2513 dated 28-6-1975 for partition of the said land among 13 parties. The plaintiff in OS No. 2493/1979, who is the defendant No. 4 in OS No. 2326/1979, is allotted Plot No. 10 admeasuring 800 Sq.yds forming part of the layout plan dated 1-11-1973. Similarly, Atluri Ashok plaintiff in OS No. 2492/1979 and defendant No. 3 in OS No. 2326/1979 is allotted Plot No. 9 admeasuring 600 Sq.yds as per the aforesaid registered partition deed (Ex.B4) dated 29-10-1975. It is further stated that Sri Atluri Ashok sold his property dividing into two small plots admeasuring 300 Sq.yds in favour of DW1 and DW2 vide Exs.B1 and B7.

16. It is the case of the respondents that the remaining extent of 5862 Sq.yds of Plot No. 2 has been identified by the Engineer-Commissioner appointed by the High Court which was found available in the neighbouring Plot No. 3 and the said land was delivered to the heirs of late Nawab Fakar Jung on 25-10-1970, who are none else than the vendor in the sale deed (Ex.B3) dated 8-1-1964. The plaintiff No. 3 in OS No. 2326/1979 had purchased the land under sale deed dated 25-5-1972 (Ex.A8) from one of the heirs Mir Aijaz Hussain i.e., vendor No. 9 (Ex.B3). The 2nd plaintiff in the said suit purchased the land under sale deed

dated 29-6-1972 (Ex.B2) from Jahangir Hussain, the vendor No. 4 in Ex.B3. Plaintiff No. 4 in the said suit purchased the land under sale deed dated 7-5-1973 (Ex.A12) from Zahoorunnisa Begum vendor No. 12 in Ex.B3. Plaintiff No. 1 purchased the land under sale deed dated 31-8-1974 (Ex.B15) from Mir Aijaz Hussain, Mir Jahangir Hussain and Mir Mumtaz Hussain - vendor Nos.9, 4 and 13 of Ex.B3. It is, thus, obvious that all the sale deeds obtained by the plaintiffs in OS No. 2326/1979 are from the same vendors, who executed sale deed (Ex.B3) dated 8-1-1964 in favour of S.V. Narsaiah - D1.

17. The trial Court dismissed suit OS No. 2326/1979 on ground of neither the plaintiffs nor their vendors have any sanctioned plan in their favour and there is no demarcation of the land for 5,862 Sq.yds and there is no sanctioned layout or approved plan by Municipal Corporation of Hyderabad. Admittedly, there is a boundary dispute between the plaintiffs, who purchased the property from the vendors of Ex.B3 and the plaintiffs in OS No. 2326/1979 have not taken any steps for appointment of Commissioner for taking measurements after obtaining layout in the name of Hill Top Society in the year 1982. PW2 himself agreed that his land is overlapping with defendant Nos.3 and 4, who are the plaintiffs in OS No. 2493/1979 and 2492/1979, and therefore, the plaintiffs are not entitled to seek any relief against defendant Nos.3 and 4 as no amendment is made with respect to the illegal claim against defendant Nos.3 and 4. The trial Court dismissed suit OS No. 2326/ 1979 and allowed OS No. 2493/1979 and 2492/1979 granting injunction in favour of the appellants and against the respondents herein.

18. The lower appellate Court considered only two points, which are as follows:

1. Whether the appellants herein are entitled for grant of perpetual injunction against the respondents in respect of the suit property?

2. Whether the respondents are entitled for injunctions against the applicants?

19. The lower appellate Court received document No. 84/63 dated 28-2-1963 which is the revocation of Power of Attorney by 6 out of 22 legal heirs of late Nawab Fakar Jung Bahadur stating that they have revoked the Power of Attorney dated 30-10-1961 given in favour of Mir Mushraf Hussain. The said document is received pursuant to the application filed in IA No. 33/1989 in AS No. 173/1989 against OS No. 2326/1979. The learned Judge stated that petition is allowed and the document is marked as Ex.A21 and the said document (Ex.A21) clearly proves that the GPA executed by 10 legal heirs was cancelled and even after said cancellation, the GPA executed the registered sale deed (Ex.B3) dated 8-1-1964 in favour of S.V. Narsaiah and the said S.V. Narsaiah transferred the land in favour of some other under the cover of partition deed (Ex.B4) and Ex.B4 was brought into existence with a particular motive with the collusion of S.V. Narsaiah with a view to defeat and over come Act 12 of 1972 and the respondents herein are entitled to question the validity or otherwise of documents (Ex.B3 and Ex.B4). The lower appellate Court further held that there is nothing in the order

(Ex.B5) of the High Court to show that the property was delivered in favour of S.V. Narsaiah.

20. The question that arises for consideration whether Ex.A1 is marked and whether the application IA No. 33/1989 in AS No. 173/1989 filed under Order 41, Rule 27 CPC is allowed. A perusal of the records shows that there is no marking of the document of Ex.B21 and it was not at all received as additional evidence under Order 41, Rule 27 CPC. Order 41, Rule 27 read with Section 107 CPC contemplates that such additional evidence can be received subject to such conditions and limitations by the appellate Court if the appellate Court considers that the trial Court failed to receive and admit the evidence which ought to have been admitted or if the party seeking to adduce additional evidence establishes that inspite of due diligence such evidence was not within his knowledge and could not be produced at the time of the trial and if both these things are satisfied, the appellate Court thinks that such marking of the document is required to be produced through any witness for pronouncing the judgment and if there is substantial cause, it may allow such evidence or documents to be produced by recording the reasons for its admission. In the particular cases, no reasons have been recorded and the docket sheet shows that "heard and for the orders call with suit" and the document is never received or marked as an additional evidence, and therefore, the observation of the lower appellate Court that petition is allowed and document is marked as A21 is contrary to the record and without any justification and there are also no grounds to receive the document under Order 41, Rule 27 CPC. Already the trial Court marked Ex.A1 and A26. The question of marking of the said document as Ex.A21 does not arise. The judgment of the lower appellate Court does not show that any exhibit has been marked. The Document No. 84/1963 dated 28-2-1963 said to have been marked as Ex.A21 has never been acted upon by the so-called executants more so when they are the parties to the sale deed (Ex.B3) dated 8-1-1964 transferring the land along with the other legal heirs of late Nawab Fakar Jung Bahadur in favour of Sri S.V. Narsaiah and Sri S.V. Narsaiah is in continuous possession of the said land from 1964 and a reading of partition deed (Ex.B4) clearly shows that Sri S.V. Narsaiah purchased the said land with the funds contributed by the respective share holders and S.V. Narsaiah prepared a layout for the benefit of the share holders dividing the said entire land into various plots providing roads and open space as per the Municipal rules and regulations and the Municipal Corporation of Hyderabad approved the layout by its order dated 1-11-1973 and the said partition deed (Ex.B4) executed after obtaining prior permission from the Government exempting from the provisions of A.P. Vacant Land in Urban Areas (Prohibition and Alienation) Act 12 of 1972 vide G.O. Rt. No. 2513 dated 26-8-1975 in favour of 13 parties. It is clear that the plaintiffs in OS No. 2493/1979 and 2492/1979 are the allottees of Plot Nos. 10 and 9, and therefore, the possession relates back to sale deed (Ex.B3) dated 8-1-1964 and these appellants are in continuous possession from 8-1-1964 and the vendors of the defendants have never challenged the sale deed (Ex.B3) and the partition

deed (Ex.B4) and the so-called revocation of the Power of Attorney Document No. 84/1973 dated 28-2-1963 is never acted upon. As a matter of fact, the High Court by order dated 8-3-1963 (Ex.B5) held that the Power of Attorney executed on 30-10-1961 in favour of Mir Mushraf Hassain is the irrevocable Power of Attorney authorising him to negotiate for selling the property with his absolute discretion and to receive the purchase money from the purchasers and to give proper receipt and discharge for the sale in their favour and to execute proper conveyance of the said property in favour of the purchasers. They have also agreed to ratify and confirm all the actions of the Power of Attorney. The said Attorney is very comprehensive in its terms and gives the Power of Attorney holder a wide and unlimited power to negotiate, fix the price, to receive the purchase money and execute the conveyance. In those circumstances, the application filed by some of the executants of the Power of Attorney objecting for execution of the sale deed has been rejected confirming the order already passed on 14-12-1962 directing the delivery of the possession of the property of Plot No. 2 to the Power of Attorney holder. The said order (Ex.B5) has become final and the said Power of Attorney holder has executed regular sale deed (Ex.B3) dated 8-1-1964 delivering the possession of the land 15,600 Sq.yds in favour of S.V. Narsaiah, and therefore, the lower appellate Court is not right in holding that there is no document to show that the property was delivered to S.V. Narsaiah at any point of time. The lower appellate Court also without any justification held that subsequent purchasers of some other land through some of the executants of Ex.B3 are entitled to question Ex.B3 and Ex.B4 without any justification based on Document No. 84/63 dated 28-2-1963, which is said to have been, marked as Ex.A21. The lower appellate Court also without any justification held that Partition Deed (Ex.B4) is obtained with a view to defeat and overcome Act 12 of 1972. As already stated supra, after obtaining the exemption from the Government under the provisions of Act 12 of 1972, S. V, Narsaiah - appellant executed registered partition deed, and therefore, it cannot be said that Ex.B4 is illegal and contrary to Act 12 of 1972.

21. The lower appellate Court has no right or authority to decide the title in favour of the respondents by holding that the documents under Ex.B3 and Ex.B4 as illegal. The lower appellate Court also further held without any evidence on record that there are facilities like, drainage, water, electricity and roads in respect of the plots said to have been purchased by the respondents without there being any evidence of PW1 and PW6. The lower appellate Court assumed and presumed several things which are not in existence on record and without recording any finding that the respondents are in possession as on the date of the filing of the suit filed by the respondents held that the legal possession as held by various High Courts is that "even a trespasser can maintain his possession against even a real owner who cannot forcibly evict the persons in possession". The said observation of the learned Judge that a trespasser can maintain his possession against even a real owner who cannot forcibly evict the persons in possession may be right but a trespasser who does not have any legal

right cannot maintain a suit for injunction against a real owner. There cannot be any injunction against a real owner. As rightly observed by the trial Court that the identity of the property is in dispute and there is evidence on record traceable from 1964 onwards that S.V. Narsaiah is in continuous possession of the property and the possession of the appellants relates back to the date of the sale deed (Ex.B3) dated 8-1-1964 and as long as their right and title acquired under Exs.B3 and B4 is not questioned and as long as the property of the respondents is not identified, the respondents are not entitled for an injunction as prayed for, and therefore, the trial Court rightly dismissed the suit of the respondents and decreed the suits of the appellants.

22. I, accordingly answered all the questions of law in favour of the appellants and against the respondents.

23. Though during the pendency of the appeals, an advocate commissioner has been appointed according to which the plots of the respondents are overlapping against the plots of the appellants, and as there are objections filed by the respondents, even without relying on the said report of the commissioner, I am inclined to hold that the respondents have failed in adducing a clear-cut evidence to identify their lands and to show that they are in possession of their respective plots. Correspondence between the Municipality and the parties and the Municipal tax receipts cannot confer any title, and therefore, the evidence relating to the so-called Municipal taxes and even according to the sale deeds, identity is not known and their exact location is not traceable, and therefore, as against the document of the respondents the documents filed by the appellants are preferable and authenticated, and therefore, I hold that the judgment of the lower appellate Court is unsustainable.

24. Therefore, the appeals are liable to be allowed and the judgment of the lower appellate Court in AS No. 173, 174 and 175 of 1989 are liable to be set aside dismissing suit OS No. 2326/1979 and decreeing suit OS No. 2493/1979 and 2492/1979. Accordingly, the appeals are allowed and the common judgment and decrees of the lower appellate Court are set aside and the judgment of the trial Court stand restored. In the circumstances, no order as to costs.