

(2014) 08 AP CK 0130
In the Andhra Pradesh High Court
Case No : A.S. No. 655 of 1995

The State of Andhra Pradesh

APPELLANT

Vs

Sattiraju and Others

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884 — Section 11, 16, 3, 5, 7
Andhra Pradesh Land Encroachment Act, 1905 — Section 14, 4, 7
Civil Procedure Code, 1908 (CPC) — Section 80, 9
Evidence Act, 1872 — Section 114(e), 31, 58
Specific Relief Act, 1963 — Section 38

Citation : (2015) 3 ALD 106

Hon'ble Judges : M. Satyanarayana Murthy, J

Bench : Single Bench

Judgement

M. Satyanarayana Murthy, J.—The State filed this appeal against the decree and judgment passed in O.S. No. 18 of 1980 on the file of the Court of Subordinate Judge, Ramachandrapuram (for short, "the trial Court"), dated 18-09-1987. The appellant was the defendant, the respondents were the plaintiffs before the trial Court and they will hereinafter be referred as defendant and plaintiffs for convenience.

2. Initially, plaintiff Nos. 1 to 11 filed suit O.S. No. 51 of 1976 on the file of the Court of Subordinate Judge, Rajahmundry, and, later, plaintiff Nos. 12 to 16 are impleaded as per the orders in I.A. No. 1478 of 1977 dated 06-11-1979. Later, it was transferred to the trial Court and renumbered as O.S. No. 18 of 1980. Though the appeal was filed against plaintiff Nos. 1 to 16, the appeal against plaintiff Nos. 3 and 11 to 14 is dismissed for default vide order dated 17-09-1993 for non-prosecution, the appeal against plaintiff Nos. 9 and 15 is dismissed as abated by Court order dated 09-04-2001 as legal-heirs of plaintiff Nos. 9 and 15 are not brought on record and the appeal against plaintiff Nos. 10 and 16 is dismissed for default vide Court order dated 17-12-2007.

3. The plaintiffs filed this suit against the defendant, for declaration of their title

to schedule property and for consequential permanent injunction restraining the defendant and its men from interfering with the possession and enjoyment of schedule property, alleging that schedule property is Lanka land, contiguous to Goutami river, which is a branch of Godavari river, within the limits of Baduguvani Lanka of Alamuru Taluk and Vaddiparru of Kothapet Taluk, East Godavari District. The schedule property is ryotwari patta land belonging to the plaintiffs. The total extent of land was about Ac. 50.00 cents and the land was submerged and washed away by the river on account of floods in Godavari for some years. Subsequently, there was a large reformation of Lanka land due to receding of water and changing its course by the river in the year 1962-63. The plaintiffs, believing that the newly formed Lanka was the reformation of their eroded ryotwary patta land, applied for localization of their patta land and for possession on payment of necessary fee to Government. On the application of the plaintiffs, Tahsildar, Kothapet Taluk, got the land localized by Lanka Deputy Surveyor, the same was approved, after due scrutiny, by District Surveyor, conducted necessary enquiry as to title of the plaintiffs and passed appropriate orders. The plaintiffs were directed to enter into possession as per the orders of Tahsildar in D. Dis. No. 5350/67 dated 31-10-1967. On the similar application of the plaintiffs, Deputy Tahsildar, Alamuru Taluk, got the land localized in Baduguvani Lanka with Lanka Deputy Surveyor, passed an order in D. Dis. No. 4262/69 dated 26-12-1969 and delivered possession of Baduguvani Lanka land through Revenue Inspector, Alamuru Taluk.

Ever since delivery of possession or taking possession as directed by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, the plaintiffs are continuing in possession and enjoyment of schedule property by paying land revenue to Government.

As the matter stood thus, some of the villagers, due to local disputes, made a complaint to Tahsildar, Kothapet Taluk, in the year 1970, alleging that the plaintiffs are in unauthorized occupation of reformed Government Lanka land. Thereupon, the then Tahsildar, without considering the orders passed by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, issued notice on 18-02-1970 under Section 7 of Andhra Pradesh Land Encroachment Act, 1905 (for brevity, "the Act of 1905"), presuming that plaintiff schedule land is the land belonging to the State. In fact, the plaintiffs are the owners of schedule property and it is ryotwary patta land. Thereby, Government is not entitled to claim any right over the reformed Lanka land after receding water in the river. Therefore, notice dated 18-02-1970 issued by Tahsildar is contrary to the proceedings issued by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, dated 31-10-1967 and 26-12-1969 respectively. On receipt of notice, the plaintiffs filed objections on the ground referred above but, without considering the objections, issued restraint notices. Thereupon, the plaintiffs preferred an appeal before Collector who refused to grant stay of further proceedings in pursuance of the notices. The plaintiffs filed a revision before Government and Government granted interim stay initially but, disposing of the revision by order dated

06-05-1974, dismissed the revision.

Aggrieved by the order passed by Government dated 06-05-1974 dismissing the revision, the plaintiffs filed a batch of Writ Petitions before this Court, wherein the defendant admitted that the plaintiffs had their ryotwary patta land earlier to submersion and also admitted about reformation but the defendant pleaded that survey conducted by earlier Deputy Inspector of Survey and Land Records and Revenue Division Officer's report dated 19-07-1975 are based on combined sketches and disputed identity of the land and also reformation of Lanka after diluviation but contended that Lanka was newly formed. Therefore, it vests on Government and Government alone is the owner of newly formed Lanka land. This Court, by common judgment dated 02-12-1975, directed the parties to settle this issue in a regular civil suit. Thereupon, the plaintiffs made representations to District Collector, East Godavari District. The District Collector directed fresh survey and verification. Accordingly, fresh survey was conducted by Inspector of Survey and Land Records and submitted his report to Collector in R.C. No. 43/71 dated 25-12-1971. Even according to the report, Lanka is only a reformation of schedule land but report dated 19-07-1975 is relied on by Government.

The survey report dated 19-07-1975 is without notice to the plaintiffs and it is not in accordance with the provisions of Survey and Boundaries Act. Therefore, no evidentiary value can be attached to the said report.

As the Writ Petitions were dismissed, the defendant tried to take possession of the property through Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk. Thereupon, the plaintiffs got issued a notice on 15-08-1975 under Section 80 of the Code of Civil Procedure (for brevity, "C.P.C.") and the same was served but no purpose was served. Hence, the suit is filed for declaration of their title to schedule property and for consequential permanent injunction restraining the defendant and its men from interfering with the possession and enjoyment of the plaintiffs over schedule property.

4. The defendant filed written statement denying material allegations of the plaint while admitting about issuance of proceedings by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, after localizing Lanka land on the application of the plaintiffs so also notice under Section 7 of the Act of 1905 and filing objections thereto. It is further admitted that as per the survey conducted by Deputy Inspector of Survey and Land Records, Amalapuram, an extent of Ac. 4.53 cents covered by R.S. Nos. 172, 173 and 174 of Vaddiparru Village was found to be patta land, breakup figures being Ac. 1.80 cents in R.S. No. 172/1, Ac. 1.06 cents in R.S. No. 173/1, Ac. 1.63 cents in R.S. No. 173/2, Ac. 0.04 cents in R.S. No. 174/1, rest of the extent covered by the said survey numbers of Vaddiparru and the land covered in S. Nos. 28 and 29 of Baduguvani Lanka were not reformed at all.

The plaintiffs' claim is resisted on the ground that schedule property, except Ac.

4.53 cents in the S. Nos. referred supra, is newly formed Lanka belonging to Government and the plaintiffs have no manner of right in the land other than the land referred in the earlier para as it is a ryotwary patta land. Therefore, the plaintiffs are not entitled to claim any declaration of title to the property so also consequential permanent injunction.

The civil Court has no jurisdiction to entertain the suit in view of Section 14 of the Act of 1905. The notice issued under Section 80 of C.P.C. is not in accordance with law and it was not served even on the defendant. Finally, the defendant prayed to dismiss the suit on those grounds.

5. After impleading plaintiff Nos. 12 to 16, the defendant filed additional written statement contending that plaintiffs cannot seek declaration of their title to schedule property, they are not the owners of schedule property, the Court fee paid on the plaint is not correct and prayed to dismiss the suit on the above grounds.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaint schedule lands are the reformed patta lands of the plaintiffs?

2. Whether the plaintiffs are entitled for declaration that the plaint schedule lankas are their patta lands?

3. Which of the surveys conducted by the Government is correct?

4. Whether the plaintiffs are entitled to the permanent injunction prayed for?

5. Whether there is valid suit notice under Section 80 C.P.C.?

6. Whether this Court has no jurisdiction to entertain the suit in view of the amendment of Section 14 of the Land Encroachment Act, Act 23 of 1976?

7. To what relief?

7. During the course of trial, on behalf of the plaintiffs, P.Ws. 1 to 4 were examined and got marked Exs. A1 to A51. On behalf of the defendant, D.Ws. 1 and 2 were examined and got marked Exs. B1 and B2.

8. Upon hearing argument of both counsel and considering oral and documentary evidence on record, the trial Court partly decreed the suit declaring rights of the plaintiffs in the land covered by S. Nos. 173/1 and 173/2 of an extent of Ac. 1.06 cents and Ac. 1.93 cents respectively while declining to grant decree in respect of other land at Vaddiparru; the trial Court also declared title of the plaintiffs in respect of Baduguvani Lanka land for an extent of Ac. 1.12 cents in S. No. 28/2, Ac. 2.24 cents in S. No. 28/3, Ac. 1.71 cents in S. No. 28/5 and Ac. 4.40 cents in S. No. 29/1 accepting both Exs. A1 and A2 and also granted consequential permanent injunction for the above lands. The trial Court also held issue Nos. 5 and 6 in favour of the plaintiffs and against the defendant holding that notice issued under Section 80 of C.P.C. is in accordance with law and that civil Court

has got jurisdiction to try the suit.

9. Aggrieved by the decree and judgment of the trial court, the State, being the unsuccessful, preferred this appeal on various grounds.

10. The main contention of the defendant is that Lanka was not re-formed in patta lands and it was newly formed Lanka but the trial Court did not consider the evidence more particularly Exs. B1 and B2 in proper perspective. If that is considered, the trial Court would not have granted decree in favour of the plaintiffs. Even according to the evidence of P.Ws. 1 to 3, patta lands belonging to the plaintiffs were eroded from one side and there is formation of new Lanka on the other side and thus, newly formed Lanka is quite different from plaint schedule land. If the evidence of P.Ws. 1 to 3 is appreciated with reference to the specific plea of the defendant-State, suit schedule property is a newly formed Lanka but not a re-formation of Lanka in the ryotwari patta lands but the trial Court did not appreciate this evidence. In a suit for declaration, the plaintiff has to succeed on the strength of title but the plaintiffs did not produce any piece of evidence to support their title to the land but the trial Court still granted decree basing on Exs. A1 and A2 on erroneous appreciation of facts on record. During argument, it is further contended that notice under Section 80 of C.P.C. was not issued and that admissions in the evidence of P.Ws. 1 and 2 go to show that no pattas were granted in favour of their ancestors but the trial Court believed the case of the plaintiffs and granted decree. The trial Court did not appreciate the specific contention about failure of the plaintiffs to issue mandatory notice under Section 80 of C.P.C. so also jurisdiction of civil Court in view of the bar under Section 7 of the Act of 1905 and finally prayed to dismiss the suit allowing this appeal setting aside the impugned decree and judgment of the trial Court.

11. None appeared for the plaintiffs and no argument is advanced.

12. Considering argument of learned Government Pleader for the State, perusing oral and documentary evidence including the impugned decree and judgment of the trial Court, the points that arise for consideration are as follows:

(1) Whether Lanka is re-formed in S. Nos. 173/1 and 173/2 of Vaddiparru Village?

(2) Whether Lanka is re-formed in S. Nos. 28/2, 28/3, 28/5 and 29/1 of Baduguvani Lanka?

(3) Whether the land in S. Nos. 28/2, 28/3, 28/5 and 29/1 of Baduguvani Lanka is ryotwari patta land?

(4) Whether civil Court has got jurisdiction in view of the bar under Section 7 of the Act of 1905?

(5) Whether the plaintiffs issued notice under Section 80 of C.P.C., if so, whether it is proper and served on the defendant?

(6) Whether the plaintiffs are entitled to declaration of their title to land in S. Nos. 173/1 and 173/2 of Vaddiparru Village and S. Nos. 28/2, 28/3, 28/5 and

29/1 of Baduguvani Lanka and for consequential permanent injunction restraining the defendant from interfering with the possession and enjoyment of the plaintiffs?

13. In Re. Point Nos. 1 to 3:

The plaintiffs' specific case is that schedule property is ryotwari patta land and it was washed away due to diluviation in the floods of Godavari and, later, re-formed as Lanka in situ. Thereby, they are the owners of plaint schedule property, applied, for localizing suit schedule property and to deliver possession of the same, to Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, and, on proper survey by Lanka Deputy Surveyor, confirmed by District Surveyor, proceedings marked as Exs. A1 and A2 were issued localizing the land, directing the plaintiffs to take possession of the property in Vaddiparru of Kothapet Taluk by Tahsildar and Deputy Tahsildar, Alamuru Taluk, directed Revenue Inspector to deliver possession of the property in Vaddiparru. Accordingly, the property of Vaddiparru was taken possession by the plaintiffs and delivered possession of the property of Baduguvani Lanka through Revenue Inspector. Since then, they are in possession and enjoyment of the property.

14. The consistent case of the defendant in the written statement is that suit schedule property is not re-formed Lanka and it is newly formed Lanka. However, in para No. 6 of the written statement, the defendant admitted as follows:

"As per the Survey conducted by the Deputy Inspector of Survey and Land Records, Amalapuram, an extent of Ac. 4.53 cents covered by R.S. No. 172, 173 and 174 of Vaddiparru Village was found to be patta lands, the break-up figures, being Ac. 1.80 cents in S. No. 172/1, Ac. 1.06 cents in R.S. No. 173/1, Ac. 1.63 cents in R.S. No. 173/2 and Ac. 0.04 cents in R.S. No. 174/1 and the rest of the extents covered by the said survey numbers of Vaddiparru and the lands covered by S. Nos. 28 and 29 of Baduguvani Lanka were not reformed at all."

From this specific admission, the land in S. Nos. 172/1, 173/1, 173/2 and 174/1 is ryotwari patta land. Thus, the total extent covered by these survey numbers is only Ac. 4.53 cents of Vaddiparru Village and denied grant of patta in favour of the plaintiffs, for rest of the land in Vaddiparru Village and total land claimed by the plaintiffs in Baduguvani Lanka, contending that Lanka is newly formed but not in the situ of patta land.

15. The trial Court, basing on Exs. A1 and A2 admittedly issued by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, concluded that the plaintiffs are the owners of the land in an extent of Ac. 1.06 cents in S. No. 173/1 and Ac. 1.93 cents in S. No. 173/2 of Vaddiparru Village and Ac. 1.12 cents in S. No. 28/2, Ac. 2.24 cents in S. No. 28/3, Ac. 1.71 cents in S. No. 28/5 and Ac. 4.40 cents in S. No. 29/1 of Baduguvani Lanka and declared right of the plaintiffs in the above items and granted permanent injunction. The finding of the trial Court is challenged by the defendant mainly contending that the property was not identified with reference to records by Lanka Deputy Surveyor but, later,

Deputy Inspector of Survey and Land Records, Amalapuram, surveyed the land and submitted his report marked as Exs. B1 and B2. According to these reports, Lanka land in Baduguvani Lanka and Vaddiparru is only newly formed Lanka but not re-formed Lanka and it vests on Government. During the course of argument, learned Government Pleader contended that the trial Court did not consider the oral admissions of the plaintiffs, more particularly the admission that no patta was granted in favour of their ancestors. If that is accepted, suit schedule property is not ryotwari patta land and it is only a river-bed belonging to the State and due to collection of silt in the course of time, Lanka was newly formed. Thereby, the land in dispute is only Government Land. It is further contended that the admission of P.Ws. 1 to 3 regarding erosion of Lanka from one side and formation of Lanka on other side is sufficient to show that Lanka land both at Vaddiparru Village and Baduguvani Lanka is newly formed but not re-formed but the trial Court did not appreciate the facts elicited in the examination of P.Ws. 1 to 3 in proper perspective. Apart from that, the burden is always on the plaintiffs to establish their independent title as they are claiming right basing on pattas granted in their favour for suit schedule property. Without producing pattas granted in their favour or in favour of their ancestors and totally ignoring the admission of the witnesses examined on behalf of the plaintiffs, the trial Court decreed the suit shifting the burden of proof on the defendant erroneously. Before going to decide the real dispute, I would like to refer the law laid down by various Courts regarding rights of pattadars of Lanka land when the land was submerged due to floods on its re-formation on situ.

16. Learned Government Pleader did not bring to my notice any enactment which governs rights of Government and pattadars in Lanka land but advanced a general argument basing on general law regarding appreciation of facts and evidence.

17. The State of Andhra Pradesh was a part of composite State of Madras and Andhra Pradesh and, earlier, Bengal was also a part of Madras State. In fact, there was no law governing rights of Government and persons in occupation of Lanka land in Andhra Area or Tamil Nadu area. In Bengal, an ordinance was passed known as Bengal Regulation (Regulation XI of 1825). Section 4(1) of Bengal Regulation (Regulation XI of 1825) deals with "gradual accession" and that is with regard to rights of riparian owner in alluvion i.e. accession to land belonging to riparian owner but the regulation is silent with regard to diluviation of land on rights of pattadars and Government. In fact, when Bengal was part of Madras province, the regulation was applied to the State of Madras and Andhra Pradesh which was a part of composite State. The regulation was repealed after introducing Land Reform Laws in Bengal. Now, the Bengal Regulation has no application to the State of Andhra Pradesh. As on today, the only law, which determines rights of Government and pattadars, is Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884 (for brevity, "the Act of 1884"), which is *impari materia* with the Madras Rivers Conservancy Act, 1884. The provisions of both the Acts are analogous. Section 16 of the Act of 1884 deals with payment of

compensation to owner or occupier of land within river-bed for constructions removed. The word "River-bed" is defined under Section 7 of the act of 1884 as follows:

"The land within the limits so defined and approved by the State Government shall be deemed to be the river-bed and the limits shall, when necessary, be defined by boundary-stones or other suitable marks to be set up."

If the definition of river-bed under Section 7 of the Act of 1884 referred supra is taken into consideration, any Lanka newly formed or re-formed is also a part of river-bed. Section 11 of the Act of 1884 prohibits new cultivation on land in bed of notified rivers. Except the above enactment, no other enactment is available to regulate rights of pattadars on Lanka land and Government. The law laid down by Privy Council in various judgments is still good law as no law was laid down in the recent past with regard to rights of Government and pattadars in newly formed or re-formed Lanka land. In *State of Andhra Pradesh Vs. Koneru Suryanarayana and Others*, , his Lordship Seshachalapathi, J., after elaborate discussion on various provisions of Madras Rivers Conservancy Act, 1884, and the law laid down by Privy Council in various decisions on this aspect, observed in para No. 14 as follows:

"According to the Indian law as expounded by the Privy Council, the bed of a public navigable river is presumed to be the property of the Government, whether tidal or not. (Vide *Haradas Vs. Secretary of State*, AIR 1917 PC 86 and *Tarakdas Acharjee Choudhury and Others vs. Secy. of State*, AIR 1935 125 (Privy Council) :). In *Maharaja of Pittapuram vs. Province of Madras*, AIR 1949 3 (Privy Council) : , Lord Normand observed that:

The rule to be applied is that the bed of a navigable river in any part of India, whether tidal or not, is vested in the Government, unless it has been granted to private individuals.

Under the Indian law, therefore, the public ownership of the bed of the river does not depend upon its tidality, but upon its navigability. In this case, the question of the tidality of the river at the locus of the island principally depends upon the evidence of P.W. 1. He has stated that there were records to prove that the river was tidal. But those records were not produced. The learned Subordinate Judge, in my view, was right in rejecting the case that the river is tidal at the site of the island. Equally right is, to my mind, his conclusion that the river is navigable."

In view of the principle laid down by Lord Normand in *Maharaja of Pithapuram Vs. Madras Province* (supra), a river-bed can be granted to private individuals. If a river-bed is not granted to any private individuals, the river-bed vests on Government and State is the owner of the river-bed irrespective of tidality but depending upon its navigability. In the present case, these questions have not come up before the trial Court, more particularly about tidality and navigability. However, in *Secretary of State for India in Council vs. Raja of Vizianagaram*, AIR 1922 105 (Privy Council) , the Privy Council held that the river Godavari, at the

locus of the island in question, was both tidal and navigable and, therefore, the bed of the river belonged to the Government. Nevertheless, it was held by the Madras High Court and by the Privy Council that the Raja of Vizianagaram was entitled to the property claimed as lateral accretions to his pre-existing lankas i.e. by alluvion. In *State of Andhra Pradesh Vs. Koneru Suryanarayana and others* (supra), this Court, in para No. 39, ruled as follows:

"The submerged area was included in R.S. No. 14. According to the Government that is all the area which the plaintiffs are entitled to on the principle of reformation in site. Upon that footing, the Government restored that area to the plaintiffs. It is, therefore, contended that the remainder 45 acres and 91 cents of the total accreted area now is the property of the Government and the plaintiffs are not entitled thereto."

In the same judgment, this Court further held as follows:

"Lands washed away and afterwards re-formed upon the old site, which can be clearly recognized are not "lands gained" within the meaning of Section 4, Regulation XI of 1825; they do not become the property of the adjoining owner, but remain the property of the original owner."

In *Hursahai Singh Vs. Syed Lootf Ali Khan* 2 Ind. App. 28 (PC), a similar question came up before Privy Council. In the facts of the above decision, the river Ganges washed away portions of the "mauza" and, after the recession of the water, it was found that the submerged land adhered to the adjoined estate of Ramnuggar, which claimed the addition as lateral accretion by alluvion. The Privy Council found on the facts that the adhered portion belonged to mauza Muteor, and following the principle in *Felix Lopez vs. Muddun Mohun Thakoor*,¹³ M.I.A. 467 (Privy Council) held that the appellants there were entitled to the land. In other decisions, such as *Sarat Sundari Debya Vs. Soorjya Kant Acharjya* (1876) 25 Suth. W.R. 242 and *Maharaja of Dumraon Vs. Secretary of State*, the same view was taken by the Privy Council. In *Maharaja of Dumraon Vs. Secretary of State* (supra), after a review of the authorities referred to above, the Privy Council held that the land which by fluvial, action had gradually accreted to that of a riparian owner does not become his property under Bengal Regulation XI of 1825, Section 4 if it is a re-formation on the site of diluviated land of another proprietor who has not abandoned his right to it. The above rule applies whether the land of the two proprietors was originally on the same or on different sides of the river.

18. In view of the principles laid down in the above judgments, if there is material that Lanka is a formation in situ of private land i.e. ryotwari patta land, on its identification, the private individual can be said to be the owner on its reformation. Therefore, identification of land on ground with reference to survey number is an important piece of evidence. In *Lopez's* case (supra), it was held that:

"A proprietor may, in certain cases, be taken to have abandoned his rights in the

diluviated soil. It is unnecessary to consider whether this might not be the result of a successful application for remission of revenue under Act IX of 1647, Section 5. If the owner established a prima facie title to the land in dispute as a re-formation, the question is whether the respondents have a superior title to it as an accretion to their settled chur."

19. In *Nogender Chunder Ghose and Another Vs. Mahomed Esof and Others* 10 B.L.R. 406, rights in alluvion and diluvion came up for consideration before Privy Council in view of rival claims by riparian owner and owner of diluviated land due to erosion on account of floods in the river and the Privy Council observed that:

"In Section 4, Regulation XI of 1825, there is no express provision, in the Regulation for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river, and which, after diluviation, re-appears on the recession of the sea or river, and there is nothing to take away or destroy the original proprietor's right. Such a case is to be determined by the general principles of equity and justice under the 5th rule contained in Section 4. A title founded on the original ownership and identification of land re-appearing is to be confined prima facie to the re-formation on that site."

20. Even according to the principles laid down in the above judgment, identification of re-formed Lanka, after diluviation, is important for deciding rights of private individuals and the Privy Council in the above judgment held that private individual, owner of diluvion Lanka land or land washed away, is entitled to claim the property not the riparian owner as an accretion to pre-existing land (alluvion). In *The Province of Madras Vs. Sri Rajah Uppalapati Suryanarayaneswara Jogi Jagannadha Raju Garu and Another*, , it was held as follows:

"The river was tidal and navigable and the Crown was the owner of the bed of the river. The ownership of the bed of the river would depend upon its character at the time of the grant of adjacent land to the plaintiffs. As the river was navigable at the particular spot at the time of the grant to the plaintiffs, any later cross-bunding of the river affecting its navigability would not affect its character or the title of the Crown to the bed of the river."

In the facts of the above decision, the plaintiffs claimed declaration of their title not only to cultivated area but also the sand shoals around it. While deciding the matter, the Privy Council in para No. 30 held as follows:

"The principle that land washed away but subsequently re-formed on its original site belongs to the original proprietor is well established (see *Maharaja of Dumraon Vs. Secretary of State for India in Council* (1896) 2 Ch. 1 (9)). Whether this principle is applicable only where the land is lost to the original owner by a sudden irruption of the river in which case the title of the original owner continues unless abandoned, or whether it applies also to cases where the original owners' title is lost by the gradual slow and imperceptible process of diluvion, we need not pause to enquire, as it does not appear on the evidence in

this case that the encroachment was by such slow and imperceptible degrees as to destroy the respondents' title to the land submerged."

Finally, in the facts of the above decision, the plaintiffs set up a different plea claiming accretion to existing land as an alluvial accretion to their riparian land but the Court Held that the plaintiffs are not entitled to claim alluvial accretion to their riparian. In view of the principles laid down by the Privy Council and this Court referred in the earlier paras, if land belonging to private individual or granted to private individual by Government in river-bed, even if it is washed away or diluviation by sudden irruption of river, the ownership will remain with the owner of the land unless it is abandoned. Therefore, identity of the property on its re-formation and abandonment of right by the owner are important for deciding the real controversy in the present facts of the case.

21. The plaintiffs made a specific allegation in para Nos. 2 and 3 of the plaint that schedule property is Lanka land abutting to Gowtami river, a branch of Godavari river, within the revenue limits of Baduguvani Lanka of Alamuru Taluk and Vaddiparru of Kothapet Taluk of East Godavari District. They form single contiguous block of re-formed Lanka land. It is further alleged that it is a ryotwari patta land belonging to the plaintiffs but the land was submerged and washed away during floods to Godavari some years ago. Later, re-formed as Lanka in the same survey number due to change in its course during 1962-63. Thus, schedule property is re-formed Lanka land, after submersion, in the same survey number. Therefore, the plaintiffs are the owners of the property since the land remained under water due to submersion and, after re-appearance or reformation, they are entitled to claim right in the property.

22. After its re-appearance, the plaintiffs made an application to the defendant for localizing the land and to handover possession of the same. The Tahsildar, Kothapet Taluk, issuing necessary proceedings in D. Dis. No. 5350/67 dated 31-10-1967 after conducting due survey and scrutiny of records, permitted the plaintiffs to enter into possession of the property. Similarly, the Deputy Tahsildar, Alamuru Taluk, got the land in Baduguvani Lanka localized and, after conducting enquiry, delivered possession of the land vide proceedings in D. Dis. No. 4262/69 dated 26-12-1969 through Revenue Inspector of Alamuru Taluk. Since then, the plaintiffs are in exclusive possession and enjoyment of the property. The defendant did not dispute issuance of proceedings referred above permitting the plaintiffs to enter into possession of the property and delivering possession of the property by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, but contended that the land in question is not a reformed Lanka and it is a newly formed Lanka in different survey numbers. Therefore, identity is required to be established in view of the dispute relating to identity raised by the defendant.

23. Undoubtedly, a survey was conducted initially by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, got identified the land on ground with reference to revenue registers and F.M.B. through Lanka Surveyor and issued proceedings. However, on the application of some villagers, the defendant got

surveyed the land without any information or notice to the plaintiffs and found that schedule property is not the land belonging to the plaintiffs. Thereupon, issued a notice under the Act of 1905 for evicting the plaintiffs from schedule property. On receipt of notice, objections were filed but, without considering their objections, the defendant passed an order and preferred a revision against the said order but the revision was dismissed by Collector vide order dated 06-05-1974. Aggrieved by the order passed by District Collector, the plaintiffs filed a batch of Writ Petitions against the defendant. In the said Writ Petitions, the defendant filed counter, admitting that pattas were issued to the plaintiffs and the land in question is ryotwari patta land but it was submerged and re-formed recently, contending that the previous survey numbers were found to be incorrect in view of the report of Deputy Inspector of Survey and Land Records and Revenue Divisional Officer's report dated 19-07-1975. In view of the admission made in the counter affidavit filed in the Writ Petitions, which is marked as Ex. A6, the land is ryotwari patta land. The specific admission in the counter is extracted hereunder for better appreciation:

"In this context, it may be mentioned that even the R.D.O., Amalapuram, through his letter No. 4299/75 dated 17-07-1975 addressed to the Tahsildar, Kothapeta, has observed that the sketches prepared by the Deputy Inspector of Survey, Amalapuram, are correct and the demand of the land Revenue may be pursued. Thus it is submitted that there is only extent of Ac. 4.53 which could be treated as patta lands."

At best, the admission extracted above shows that only an extent of Ac. 4.53 cents is patta land in Vaddiparru Village and the remaining land is poramboke vested on the Government. There is a lot of discrepancy in the report of Inspector of Survey and Land Records and Deputy Inspector of Survey, Amalapuram. As per the first report dated 25-12-1971, an extent of Ac. 30.83 cents is patta land and Ac. 17.10 cents is poramboke but in the later report by Deputy Inspector, Amalapuram, an extent of Ac. 4.53 cents is patta land and the remaining Ac. 43.40 cents is poramboke. Even according to these reports, identity of the property is not in dispute. If the admission, in the counter affidavit filed in the Writ Petition marked as Ex. A6, is taken into consideration, at best it is sufficient to prove that Ac. 4.53 cents is patta land in Vaddiparru Village and the remaining land is poramboke which is vested on Government. In pursuance of the directions of Collector, East Godavari District, on the representations of the plaintiffs, a survey was conducted by Inspector of Survey, identified the land, handed over possession of schedule property by issuing proceedings Exs. A1 and A2. Therefore, taking advantage of Exs. A1 and A2, the plaintiffs contended that admission in Exs. A1 and A2 is sufficient to believe that the property in question is patta land. A perusal of Ex. A1, Tahsildar, Kothapet Taluk, issued memo on the representations of Mudunuri Mahalakshmi Raju and Mudunuri Gani Raju of Atreyapuram and permitted them to enter the localized land covered by S. Nos. 173/1 and 173/2 but the memo is silent whether the land in question is patta land or poramboke land. Similarly, a perusal of Ex. A2, Deputy Tahsildar, Alamuru

Taluk, issued proceedings, the land was localized by Lanka Deputy Surveyor, get it scrutinized by District Surveyor, Kakinada, decided the ownership as per G.O.Ms. No. 182 dated 09-02-1966 and directed Lanka Revenue Inspector, Alamuru, to deliver possession of the land and obtain acknowledgement of delivery from Addala Suraparaju, Patchamatla Surekantam, Mudunuri Appala Narasimharaju, Mudunuri Appalaraju, Mudunuri Tataraju @ Venkataraju, Mudunuri Nagaraju, Chempati Sathiraju, S/o. Subbaraju, Chempati Sathiraju, S/o. Latchiraju, Mudunuri Ramamurtaraju, Mudunuri Venkataraju, Mudunuri Suryanarayanaraju, Addala Venkataraju, Addala Suraparaju, Addala Ramaraju, Chempati Sathiraju, Chempati Venkataraju, Mudunuri Sathemma and Mudunuri Sathiraju. It appears from the recitals of Ex. A2, ownership of the land was decided basing on the report for an extent of Ac. 0.50 cents in S. No. 29/4, Ac. 4.40 cents in S. No. 29/1, Ac. 12.00 cents in S. No. 30, Ac. 1.21 cents in S. No. 29/2, Ac. 1.34 cents in S. No. 29/3, Ac. 1.12 cents in S. No. 28/2, Ac. 2.24 cents in S. No. 28/3, Ac. 1.25 cents in S. No. 28/4 and Ac. 1.71 cents in S. No. 28/5. Thus, the basis for claiming right by the plaintiffs is Exs. A1 and A2 but they did not produce the pattas granted by Government in their favour or in favour of their ancestors. Curiously, there is admission in the oral evidence of P.W. 1 regarding their ownership. P.W. 1 clearly admitted that he could not say the land, which was submerged in water between two milestones, and that he mentioned in the plaint that Lanka belongs to him. The plaintiffs claimed the land, which was submerged in water and re-formed, on the belief that it belongs to them and that he could not say survey number of the land submerged in Baduguvani Lanka but did not file any patta granted in their favour to claim title over the property. Similarly, P.W. 2, in his examination in chief, asserted title to the property basing on patta granted in his favour for an extent of Ac. 2.00 cents and that P.W. 2 and other plaintiffs are the owners of schedule property having obtained patta from Government. In the cross-examination by the defendant's counsel, he admitted that there is no document to show he got Ac. 2.00 cents of land which he referred in his examination in chief but patta was granted to him for an extent of Ac. 2.00 cents and he filed the same into Court. Again went back and stated that patta was granted in favour of his father Mahalakshmiraju who is no more. On verification of entire record, no patta, granted in favour of Mahalakshmiraju, father of P.W. 2, or in his favour, is produced to accept the contention of the plaintiffs. Even otherwise, as per the material available on record, more particularly Exs. A1 and A2, the land is identified on ground after re-formation basing on Surveyor's report. In Ex. A2, Deputy Tahsildar, Alamuru Taluk, confirmed ownership of the applicants, referred in the proceedings, basing on G.O.Ms. No. 182 dated 09-02-1966 but there is nothing on record to show that as to how Deputy Tahsildar, Alamuru Taluk, came to conclusion that the plaintiffs are the owners. On the strength of Ex. A2, it is difficult to conclude that the land in question is patta land as there is no reference of survey numbers of the land in Ex. A2 and, similarly, representations submitted by the plaintiffs claiming right in a particular survey number of the village.

24. The plaintiffs identified the land by appointing an Advocate Commissioner, P.W. 4, an independent witness, who filed his preliminary and final report marked as Exs. A10 and A11 respectively. According to the evidence of P.W. 4, he issued notice to both the counsel before proceeding to execute warrant, localized the disputed land with the aid of Sankara Sarma, Inspector of Survey and Land Records, Kakinada, and filed his report. In the cross-examination, he admitted that there are no fixed identification marks for suit land and at the time of his inspection, Ex. Village Officers of both the villages were not present. As he was directed to take assistance of District Surveyor, he took assistance accordingly and further admitted that no direction was given to him to localize suit land independently. Therefore, he did not independently identify the land. Thus, in the entire cross-examination of P.W. 4, nothing has been elicited to disprove the conclusions arrived by him. Even according to Ex. A10, the land was identified with the help of surveyor only, localized the land in question with reference to revenue records and chain survey was conducted fixing G line. As per Ex. A11, he prepared combined sketch of Vaddiparru Lanka land and Baduguvani Lanka land and identified suit land on ground with reference to field measurement book. He also noted encroachments mentioned in blue colour. Major part of the land is patta land according to the combined sketch, certified by Tahsildar, Kothapet Taluk. Similarly, Baduguvani Lanka land was also identified on ground with reference to field measurement book, prepared combined sketch and the eroded land was also shown in white colour. Therefore, it is clear from Ex. A11 that pattas were granted to different persons in Lanka land and filed proceedings in Ref. No. E.1.236/70 dated 02-02-1972 issued by Collector, Kakinada. Classification of the land and ownership is mentioned in page No. 5 of the same proceedings for both Vaddiparru and Baduguvani Lanka. Thus, proceedings issued by District Collector dated 02-02-1972 is sufficient to believe that pattas were granted in favour of different ryots for Lanka land which is in dispute. The details of patta lands and encroached portions of Vaddiparru Village and Baduguvani Lanka are mentioned hereunder (vide page No. 5 of the proceedings of the Collector dated 02-02-1972):

The plaintiffs produced "A" registers of Vaddiparru and Baduguvani Lanka marked as Exs. A49 and A50. In column No. 10 of Exs. A49 and A50, names of pattadars and column No. 1 disclosed survey numbers of the land. If the entries in "A" register of both the villages are accepted, schedule property is patta land and no further proof is required. If really no pattas were granted in favour of various ryots, question of issuing proceedings referred above by Collector, East Godavari District, does not arise. However, when the land is identified by Advocate Commissioner with the help of District Surveyor with reference to revenue records and when no objections were filed on the commissioner's report, the Court has to accept such report. The main contention of the appellant-defendant is that report of surveyor and commissioner are not correct; thereafter, they got surveyed the land and obtained Exs. B1 and B2 reports. Hence, the report filed by commissioner is not conclusive proof of identification of

land on ground. As seen from the material available on record, no notice was issued, while getting the land surveyed, to the plaintiffs and that too the survey reports are dated 03-07-1979 and 22-08-1975 i.e. much later to the proceedings issued by Tahsildar and Deputy Tahsildar marked as Exs. A1 and A2. When the lands are in dispute, a notice is required to be issued before conducting survey but, obviously for different reasons, no notice was issued. Therefore, Exs. B1 and B2 survey reports are not binding on the plaintiffs.

25. The main endeavour of learned counsel for the Government is that Exs. A1 and A2 were issued without proper identification and they cannot be relied upon to decide the real controversy between the parties. Exs. A1 and A2 were issued by Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, who are officials of the defendant. The acts done by the plaintiffs in discharge of their duties are deemed to have been performed in accordance with the procedure in view of Section 114(e) of Indian Evidence Act, 1872 (for brevity, "the Act of 1872"). That apart, the crucial admissions about identity of the land and delivery of possession under Exs. A1 and A2 are sufficient to conclude that the land was identified on ground with the help of Lanka Surveyor and District Surveyor. Apart from Exs. A1 and A2, proceedings issued by Collector, East Godavari District, referred above also supports the case of the plaintiffs that pattas were granted to different ryots of both Vaddiparru and Baduguvani Lanka. If both the documents Exs. A1 and A2 and proceedings issued by Collector, East Godavari District, referred above, which is a part of Ex. A11, are considered together, it is evident that the land in dispute is patta land and it is in existence on ground after re-formation. The admissions made by the Government Officials in Exs. A1 and A2 and the proceedings referred above are the best of piece of evidence to decide that the plaintiffs are the pattadars of land in dispute. According to settled law, a judicial admission is a conclusive proof unless it is explained as per Section 31 of the Act of 1872. That apart, the facts admitted in writing need not be proved according to Section 58 of the Act of 1872. The law is well settled by Apex Court regarding admissions. In *Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another*, , the Apex Court held that:

"Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in certain circumstances, operate as an estoppel. The question which is needed to be considered is what weight is to be attached to an admission and for that purpose, it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission.

In view of the above, the law on the admissions can be summarized to the effect that admission made by a party though not conclusive, is a decisive factor in a

case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive, it may operate as an estoppel. Law requires that an opportunity be given to the person who has made admission under cross-examination to tender his explanation and clarify the point on the question of admission. Failure of a party to prove its defence does not amount to admission, nor it can reverse or discharge the burden of proof of the plaintiff."

In Nagubai Ammal and Others Vs. B. Shama Rao and Others, , the Supreme Court held that:

"Admission made by a party is admissible and best evidence, unless it is proved that it had been made under a mistaken belief."

While deciding the above, reliance has been placed upon the judgment in Slatterie Vs. Pooely, wherein it had been observed that

"What a party himself admits to be true, may reasonably be presumed to be so."

The aforesaid judgments along with some other judgments were considered by Apex Court in Union of India (UOI) Vs. Ibrahim Uddin and Another, . By applying the principles laid down in the above judgments to the present facts of the case, it is clear from the proceedings issued by District Collector, East Godavari, Tahsildar, Kothapet Taluk, and Deputy Tahsildar, Alamuru Taluk, that the land in question is re-formed land due to submersion long prior to its re-appearance, it is patta land and enjoying the same by pattadars in their own right. Therefore, identification of suit land is not much in controversy. Thus, the plaintiffs are able to prove identification of suit schedule property on ground whereas the defendant failed to establish that survey reports marked as Exs. B1 and B2 are done in accordance with the procedure prescribed under Survey and Boundaries Act. The land was localized by Lanka Deputy Surveyor, submitted his report to Sub Division and, after scrutiny by District Surveyor, Kakinada, basing on G.O.Ms. No. 182 dated 09-02-1966, ownership of the land has been decided. However, the land in Baduguvani Lanka was handed over through Revenue Inspector to the applicants. Some of the plaintiffs are pattadars of the land covered by Ex. A2. The survey numbers are 29/1, 29/2, 29/3, 29/4, 28/2, 28/3, 28/4, 28/5 and 30. As per schedule, land in S. No. 28/2 is Ac. 1.12 cents, 28/5 is Ac. 1.71 cents, 28/3 is Ac. 2.24 cents and 29/1 is Ac. 4.40 cents only. The plaintiffs claimed an extent of Ac. 1.12 cents in S. No. 28/2, Ac. 1.71 cents in S. No. 28/5, Ac. 2.24 cents in S. No. 28/3 and Ac. 4.40 cents in S. No. 29/1 but, as per Ex. A2, there are some more items in S. Nos. 28, 29 and 30. The total extent in S. No. 29 is Ac. 7.45 cents but the plaintiffs claimed only Ac. 4.40 cents. The plaintiffs did not claim any right in land in S. No. 30 of Baduguvani Lanka which is an extent of Ac. 12.00 cents as per Ex. A2. If at all, the plaintiffs are entitled to only Ac. 1.12 cents in S. No. 28/2, Ac. 1.71 cents in S. No. 28/5, Ac. 2.24 cents in S. No. 28/3 and Ac. 4.40 cents in S. No. 29/1 but not Ac. 7.45 cents. Thus, the plaintiffs claimed part of the land covered by Ex. A2 in Baduguvani

Lanka.

26. So far as Vaddiparru lands are concerned, the plaintiffs claimed right in total extent of Ac. 20.11 cents in S. Nos. 172/1, 172/2, 173/1, 173/2, 173/3, 174/1, 174/2 and 174/3 but, as per Ex. A1, land in S. No. 173/1 is Ac. 1.06 cents and S. No. 173/2 is Ac. 1.93 cents only. Thus, the plaintiffs claimed only Ac. 2.99 cents in the above two survey numbers and not entitled to claim other part of the land covered by Ex. A1 in Vaddiparru. When I advert to Exs. B1 and B2 reports relied on by Government, the patta land in Vaddiparru is Ac. 4.53 cents in S. Nos. 172, 173 and 174 whereas the plaintiffs claimed only Ac. 2.99 cents in S. Nos. 173/1 and 173/2. As per Ex. B2 dated 22-08-1975, Ac. 16.98 cents in Vaddiparru and Ac. 9.98 cents in Baduguvani Lanka were washed away and there remained only Ac. 4.53 cents in S. Nos. 172, 173 and 174, which are patta lands of Vaddiparru, as those items are not eroded. The total patta land in Vaddiparru is only Ac. 4.53 cents whereas there is no patta land in Baduguvani Lanka as per Exs. B1 and B2. However, in the evidence of D.W. 1, he admitted that he never inspected suit land at any time but P.W. 4, Advocate Commissioner, inspected suit land and identified the same with the help of Lanka Deputy Surveyor, Kakinada, and Lanka Surveyor, Rajahmundry. D.W. 1, particularly, admitted that S. Nos. 172, 173, 174, 28 and 29 are patta lands as per Government records. Thus, as per the evidence of D.W. 1, it is clear that pattas were granted to the plaintiffs and other ryots of the village. Hence, the testimony of D.W. 1 is more helpful to the plaintiffs than the defendant. The Government also examined D.W. 2 who, pleaded ignorance about entries in revenue records, did not produce revenue records pertaining to faslis 1385 and 1386 and there is no record about survey of land in 1975. Thus, the oral evidence of D.Ws. 1 and 2 is of no avail to establish the case of the defendant and they were examined only to prove contents-of Exs. B1 and B2 but they pleaded their ignorance about contents of Exs. B1 and B2. On the other hand, they made crucial admissions with regard to grant of pattas in favour of different ryots for the land in S. Nos. 172, 173, 174, 28 and 29 of Vaddiparru whereas the plaintiffs established both identify of the land on ground so also grant of patta in their favour by relying on the evidence of D.Ws. 1 and 2 and Exs. A49 and 50. The trial Court, on close analysis of oral and documentary evidence, concluded that the plaintiffs were inducted in Ac. 2.99 cents in Vaddiparru by issuing proceedings under Ex. A1 and, similarly, the plaintiffs were inducted in possession Ac. 4.40 cents in S. Nos. 28/2, 28/3, 28/5 and 29/1 as per Ex. A2.

27. As per the provisions of Section 3 of the Act of 1884, the State Government may direct, that a survey be made for the purpose of determining the limits within which this Act is to be applied, charts and registers be prepared setting forth the channel and all boundaries and landmarks and all other matters necessary for the purpose of ascertaining such limits. Similarly, Section 5 of the Act of 1884 specifies duties of surveyor to note upon the charts thereof all cultivation existing or ordinarily carried on, groynes, buildings, plantations, constructions or obstructions within the surveyed limits of the said river and to

prepare a register known as survey-register. In view of the power conferred on surveyor, he must note down Lanka land in riverbed including diluvion and alluvion and cultivation thereon. If register of survey is produced, every encroachment and cultivation of Lanka land can be found out but, for the reasons best known, the State did not produce the survey register and suppressed the same. According to Section 9 of the Act of 1884, copies of all charts and registers prepared as provided in Section 5, as finally approved, shall be deposited in the office of the Collector of the district in which any part of the river so defined is situated, and shall be open to the inspection of the public at all reasonable times. Similarly, registers pertaining to grant of pattas to ryots in Lanka land are supposed to be under the control of concerned official but no such registers are produced for inspection of trial Court to resolve the real controversy. In the absence of production of registers pertaining to grant of pattas, "A" register and resettlement register of Vaddiparru and Baduguvani Lanka marked as Exs. A49 and 50 are to be believed. If Exs. A49 and 50 are accepted, plaintiff Nos. 5 to 7 established their right and title and they are the pattadars of land in S. Nos. 173/1 and 173/2 of Vaddiparru so also plaintiff Nos. 11, 12, 15 and 16 proved their title to the property in an extent of Ac. 0.50 cents in S. No. 29/4, Ac. 4.40 cents in S. No. 29/1, Ac. 1.25 cents in S. No. 28/4 and Ac. 2.24 cents in S. No. 28/3 Baduguvani Lanka. Thus, the plaintiffs discharged their initial burden and proved that they are pattadars of land in the above survey numbers but the defendant did not discharge the burden shifted to it by producing any cogent and satisfactory evidence.

28. When the plaintiffs established that pattas were granted in their favour and also established identity of the land on ground after re-appearance, they are entitled to claim right in part of schedule land as Government failed to prove the subsequent reports marked as Exs. B1 and 2. On the other hand, its evidence is totally in support of the case of the plaintiffs. Hence, admissions of D.Ws. 1 and 2 coupled with proceedings issued by Tahsildar, Kothapet Taluk, Deputy Tahsildar, Alamuru Taluk, and proceedings issued by District Collector, East Godavari, which is part of Ex. A11, established that the plaintiffs are in possession and enjoyment of Ac. 2.99 cents in Vaddiparru and Ac. 4.40 cents in Baduguvani Lanka in different survey numbers, they are continuing in possession and enjoyment of the property paying land revenue under Exs. A12 to A47 land revenue receipts and they did not abandon their right in schedule property. Thereby, they are deemed to be the owners of the property in view of the pattas admittedly granted in their favour for the extent mentioned above. Therefore, they are entitled to claim right and title to Ac. 2.99 cents in Vaddiparru as held by the trial Court. Similarly, the plaintiffs are entitled to claim right and title in Ac. 4.40 cents in Baduguvani Lanka as held by the trial Court in para Nos. 29 and 30 of the judgment.

29. It is evident that the plaintiffs also filed a separate appeal A.S. No. 1 of 1988 challenging the impugned decree and judgment passed by the trial Court with regard to other items but the appeal was dismissed for default on 26-06-2002.

Hence, I need not decide rights of the other plaintiffs in other survey numbers of both Vaddiparru and Baduguvani Lanka in view of dismissal of their appeal A.S. No. 1 of 1988. Hence, I find no error in the finding of the trial Court on this point. Accordingly, the points are held in favour of the plaintiffs and against the defendant.

30. In Re. Point No. 4:

One of the contentions of the defendant is that civil Court has no jurisdiction when proceedings are initiated under the Act of 1905. No doubt, there is a bar under Section 4 of the Act of 1905 to entertain a suit by civil Court, which specifically ousted jurisdiction of civil Court, and no injunction can be granted by any Court in respect of any proceedings under the Act of 1905. Here, the plaintiffs exhausted remedies by way of appeal to Collector, revision to commissioner of Land Revenue, filed Writ Petitions questioning the proceedings issued by the defendant under the Act of 1905 and, finally, in view of the direction issued by this Court in Writ Petitions, to establish their title to the property, they filed the present suit. Therefore, bar under Section 4 of the Act of 1905 is not a complete bar and, that apart, authorities under the Act of 1905 would not grant relief which a civil Court is competent to grant i.e. declaration of title. If the statute prescribes effective machinery to grant relief, which a civil Court is competent to grant, this Court cannot infer ouster of jurisdiction of civil Court under Section 9 of C.P.C. but no such effective machinery is provided for grant of declaratory relief in respect of immovable property under the provisions of the Act of 1905. When a similar question came up for consideration in *Kamala Mills Ltd. Vs. State of Bombay*, the Apex Court held as follows:

"Exclusion of jurisdiction of civil Court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court will consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar, such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then, Court will enquire whether remedies normally available in civil Court are prescribed by such statute."

By applying the principles laid down by Apex Court, the ouster is not complete. Hence, civil Court has got jurisdiction to entertain the suit as no effective machinery is provided to grant the relief claimed in the suit under the provisions of the Act of 1905. Hence, I find that civil Court has got jurisdiction. Accordingly, the point is held in favour of the plaintiffs and against the defendant.

31. In Re. Point No. 5:

One of the contentions raised by the defendant is that a mandatory notice under Section 80 of C.P.C. was not served on the defendant and, for want of notice, the suit is not maintainable. The trial Court framed an issue with regard to maintainability of suit for want of notice under Section 80 of C.P.C. i.e. issue No.

5 and answered the same in favour of the plaintiffs in para No. 32 of the judgment. Ex. A4 is office copy of the notice issued under Section 80 of C.P.C. and Ex. A5 is postal acknowledgement dated 16-08-1975. Thus, the notice, marked as Ex. A4, is strictly in accordance with Section 80 of C.P.C. and it was served vide Ex. A5. Therefore, there is no inherent defect in the notice marked as Ex. A4 to invalidate the same. Hence, the trial Court rightly concluded that the notice is valid and I find no ground warranting interference with the finding of the trial Court. Accordingly, the point is held in favour of the plaintiffs and against the defendant.

32. In Re. Point No. 6:

As per my finding on point Nos. 1 to 3, plaintiff Nos. 5 to 7 established their right and title and they are the pattadars of land in S. Nos. 173/1 and 173/2 of Vaddiparru. Similarly, plaintiff Nos. 11, 12, 15 and 16 proved their title to the property in an extent of Ac. 0.50 cents in S. No. 29/4, Ac. 4.40 cents in S. No. 29/1, Ac. 1.25 cents in S. No. 28/4 and Ac. 2.24 cents in S. No. 28/3. The same is supported by the proceedings issued by District Collector which is part of Exs. A11, A49 and A50. Therefore, plaintiff Nos. 5 to 7, 11, 12, 15 and 16 proved their title to schedule property being pattadars. The other plaintiffs failed to establish their right and title to the property in both the villages. The trial Court, after discussing entire material available on record, rightly concluded that an extent of Ac. 4.40 cents alone is patta land and the remaining land of Lanka is not patta land. Similarly, in Baduguvani Lanka, the plaintiffs are entitled to claim patta land alone but the plaintiffs claimed land in S. Nos. 28/4, 30, 29/2, 29/3 and 29/4. The plaintiffs are not entitled to claim any right and title to any property other than patta land. The plaintiffs claimed the land covered by S. No. 28/2 of an extent of Ac. 1.12 cents and Ac. 4.80 cents in S. No. 29 but failed to establish grant of pattas in their favour for the said land but the trial Court passed decree in favour of all the plaintiffs instead of granting decree in favour of the plaintiffs who proved grant of pattas in their favour and committed an error.

33. In view of my discussion in the earlier paras, I hold that plaintiff Nos. 5 to 7, 11, 12, 15 and 16 are entitled to declaration of title for an extent of Ac. 1.06 cents in S. No. 173/1 and Ac. 1.93 cents in S. No. 173/2 of Vaddiparru Village; Ac. 1.12 cents in S. No. 28/2, Ac. 2.24 cents in S. No. 28/3, Ac. 1.71 cents in S. No. 28/5 and Ac. 4.40 cents in S. No. 29/1 of Baduguvani Lanka. Accordingly, the decree is modified declaring title of the plaintiffs for the above extent and the issue is decided accordingly.

34. The plaintiffs also claimed permanent injunction restraining the defendant from interfering with their possession and enjoyment claiming that they are in possession and enjoyment of the property without any interruption but the trial Court granted decree in respect of the above items. In fact, the defendant issued a notice for removal of encroachments under the Act of 1905 that itself indicates that the plaintiffs are in possession and enjoyment of the property. In view of the notice under the Act of 1905, the plaintiffs proved their title and possession to

the property referred above. Issuance of notice under the Act of 1905 is nothing but threat to dispossess them. Thus, the plaintiffs proved their lawful possession and enjoyment to the property as on the date of filing of the suit so also the attempt made to infringe or invade legal right of the plaintiffs by the defendant. Hence, the plaintiffs are entitled to protect their possession and enjoyment by prohibitory injunction under Section 38 of the Specific Relief Act, 1963.

35. Though the other plaintiffs also received notice under the provisions of the Act of 1905, they did not establish their title to the property by producing any pattas granted in their favour and there is no admission by the defendant regarding title to the property of the other plaintiffs. Even assuming for a moment that the other plaintiffs are in possession and enjoyment of the property without any title, they are not entitled to protect their possession and enjoyment when the defendant wanted to recover possession of the property by due process of law i.e. issuing notice under the provisions of the Act of 1905 for removal of illegal encroachments. In *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others*, , a Division Bench of Apex Court laid down the following guidelines as to when a suit for bare injunction is maintainable and declaration is required to be sought for:

"11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly:

11.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simplicitor will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2. Where the title of the plaintiff is not disputed, but he is in not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simplicitor, without claiming the relief of possession.

11.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."

By applying the principles laid down in the above judgment, the plaintiffs, though in possession, are not entitled to claim permanent injunction restraining the defendant from dispossessing them by due process of law. Consequently, they

are not entitled to protect their possession claiming equitable relief of permanent injunction or perpetual injunction restraining the defendant from interfering with the possession and enjoyment of their property.

36. In view of my foregoing discussion, plaintiff Nos. 5 to 7, 11, 12, 15 and 16 established their title to the property, being pattadars, and their possession and the trial Court granted permanent injunction only in respect of items referred above but in favour of all the plaintiffs and it is erroneous for the reason that other plaintiffs were not in lawful possession and enjoyment of the property since no pattas were granted in their favour for any extent. Consequently, they are not entitled to protect their possession in schedule property. Therefore, the decree of the trial Court is modified granting permanent injunction restraining the defendant and its men from interfering with the possession and enjoyment of plaintiff Nos. 5 to 7 in an extent of Ac. 1.06 cents in S. No. 173/1 and Ac. 1.93 cents in S. No. 173/2 of Vaddiparru Village and plaintiff Nos. 11, 12, 15 and 16 in an extent of Ac. 1.12 cents in S. No. 28/2, Ac. 2.24 cents in S. No. 28/3, Ac. 1.71 cents in S. No. 28/5 and Ac. 4.40 cents in S. No. 29/1 of Baduguvani Lanka while dismissing the claim of other plaintiffs. Accordingly, the point is decided.

37. In the result, the appeal is dismissed modifying the decree of the trial Court declaring title of plaintiffs Nos. 5 to 7 in an extent of Ac. 1.06 cents in S. No. 173/1 and Ac. 1.93 cents in S. No. 173/2 of Vaddiparru Village and plaintiff Nos. 11, 12, 15 and 16 in an extent of Ac. 1.12 cents in S. No. 28/2, Ac. 2.24 cents in S. No. 28/3, Ac. 1.71 cents in S. No. 28/5 and Ac. 4.40 cents in S. No. 29/1 of Baduguvani Lanka and granted permanent injunction in their favour restraining the defendant and its men from dispossessing from the land in their possession while dismissing the claim of other plaintiffs. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.