

(1997) 04 AP CK 0075

In the Andhra Pradesh High Court

Case No : C.C.C. Appeal No. 92 of 1989

Zaibunnisa Begum

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 28-04-1997

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : (1997) 4 ALT 659

Hon'ble Judges : P. Ramakrishnam Raju, J

Bench : Single Bench

Advocate : K.C.P. Sarathy, for the Appellant; G.P. for Respondent Nos. 1 and 3, T. Ramulu, SC for Housing Board, for the Respondent

Final Decision : Dismissed

Judgement

P. Ramakrishnam Raju, J.—Plaintiff No. 5 is the appellant. Originally O.S. No. 27 of 1962 was filed by one Syed Afzal Hussain Abidi for declaration of his title to the suit land admeasuring Ac. 9-00 situated in Survey No. 162 of Mallepally village, Hyderabad, and for recovery of possession, or in the alternative, for compensation and mesne profits. The said plaintiff died pending the suit and his legal representatives- plaintiff Nos. 1 to 4, were brought on record. The suit was dismissed for default. However, defendant No. 3-Zaibunnisa Begum, got transposed herself as plaintiff No. 5 and prosecuted the suit.

2. The case of the original plaintiff is that one Smt. Zohra Begum was the pattedar of the land in Survey No. 162 having been declared as such under a consent decree in Case No. 83/1 of 1952 F. between herself and Yousuf Ali Mirza and others on 15-1-1951, and he obtained the said land from her under a perpetual registered lease deed dated 8-9-1952. After obtaining the land on lease, he obtained sanctioned-lay out from the Municipal Corporation of Hyderabad under its letter No. 1041/MN dated 5-8-1953. The first defendant the Collector District Hyderabad started disputing the title of the plaintiff in the year 1953 and issued orders to the Municipal Corporation of Hyderabad to cancel the

sanctioned-plan. The plaintiff, therefore, issued notice u/s 80 C.P.C. and filed the suit. The third defendant purchased a portion of the suit property under a registered sale deed dated 6-4-1957 from the original plaintiff, and therefore, she was added as a party. As already stated she transposed herself as plaintiff No. 5, and she alone pursued the suit.

3. The first defendant in his written statement while denying the material allegations contained in the plaint stated that Zohra Begum had no title and she was never granted any patta for the suit land. The alleged compromise between Jagirdars and Hissedars of Mallepally was not binding on the Government. The Government records did not disclose the extent of Survey No. 162 in Mallepally village. The plaintiff did not produce the original order granting patta in favour of Zohra Begum. All the lands in Mallepally including the suit land were acquired by the Military Department, prior to disbandment after police action in 1950. Thereafter the lands were handed over to the Collector of Hyderabad, who in turn handed over the suit land to defendant No. 2, A.P. Housing Board. The Government was alone in possession of the suit land for more than 60 years prior to the suit. The decree obtained by Zohra Begum in O.S. No. 83/1/1352 F. is not binding on the Government as it was a collusive decree, and inasmuch as the Government was not a party to it. The request of Zohra Begum to include her name in the revenue records was rejected by the Collector after due enquiry as she was never in possession. As Zohra Begum had no title to the suit land, the alleged perpetual lease in favour of the original plaintiff does not confer any right or title in his favour.

4. Defendant No. 2 also more or less filed the written statement supporting the averments of the first defendant.

The original plaintiff obtained sanctioned-plan by playing fraud and misrepresentation by presenting a collusive and fraudulent decree in O.S. No. 83/1 of 1352F. The first defendant advised the second defendant to cancel the sanctioned-lay out in view of the fraud and misrepresentation played by the plaintiff. The lay out was submitted by the plaintiff when the suit land was in possession of the first defendant without notice to it.

5. Before the trial Court, plaintiff No. 5 examined 9 witnesses including the original plaintiff as P.W. 1 besides marking Exs. A-1 to A-96. She also examined her husband as D.W. 6. The defendants examined D.Ws, 1 to 9 and marked Exs. B-1 to B-124. The trial Court framed 10 issues, and on a consideration of the entire material on record came to the conclusion that plaintiff No. 5 could not establish her title, and accordingly, dismissed the suit. Hence the appeal by the unsuccessful plaintiff.

6. The case of the fifth plaintiff is that she entered into an agreement for sale with the original plaintiff in respect of 5295. 49 sq. yards of site on 20-8-1955, followed by a registered sale deed dated 6-4-1957. She traces out the history of Jagir of Mallepally village. Sanad of Bolepalli village, later called Mallepalli dated

21st Rabiul-Awal, 1329 H. duly signed by Maharaja Bahadur on 14th Shahban, 1257-Hijri, according to which the village Mallepalli has been granted in lieu of Bolepalli in favour of Mohtaramuddowla Bahadur as personal jagir is relied on.

7. The genealogical table is shown below:

Nawab	Mohtaram-ud-Doula	
-----	-----	Mahmood Mirza Khan
Maqbool Mirza Khan	-----	
Mohd. Ali Hyder Jafar Abbas Mirza Hassan Mirza Mirza Mirza (Shikmidar)		
(Shikmidar) -----	Safdar Mirza Mehdi Mirza (died issueless)	-----
Ahmed Abbas Zohra Sheher Khairnnuisa Soghra Ali Mirza Ali Mirza Begum Bano Begum Begum Begum	-----	
Maqbool Mahmood Kuloom Sakina Ali Mirza Ali Mirza Begum Begum		
Yousuf Ali Mirza (Under the guardianship of Court of Wards)		

According to her after Jafer Mirza came into possession of jagir of Mallepalli by about the year 1333-F he died issueless. After the death of Jaffer Mirza, the Jagir was taken over by the Government for the time being, pending determination of succession. Later succession proceedings were initiated and Ahmed Ali Mirza, Abbas Ali Mirza, Mehdi Mirza, Khairunnissa Begum, Soghra Begum, Sheher Bano Begum and Zohra Begum, cousin brothers and sisters of Jaffer Mirza applied for succession. The patwari from whom a report was called for submitted his report dated 4th Khurdad, 1338-F which discloses that some wet land was acquired by the City Improvement Board for Government purposes. However a compromise was effected between Ahmed Ali Mirza and other share holders viz., Zohra Begum and others. Accordingly succession was granted in the name of Ahmed Ali Mirza with the Shikmi of Zohra Begum and 5 others through Muntakhab No. 2868 dated 21st Shehrewar, 1339-F. The said grant was confirmed and finally affirmed by a Firman of H.E.H. the Nizam dated 29th Ziqad 1354-Hijri and possession of the Jagir Mallepally which was taken over by the Government was released in favour of Ahmed Ali Mirza and Zohra Begum and others. Again in the year 1343-Fasli a dispute arose between the share holders and Ahmed Ali Mirza regarding possession of the land. The then Collector, District Hyderabad declared that Ahmed Ali Mirza was entitled for patta of the lands as well as other share holders on 28th Shehrewar, 1344-F. On 17th Mehar a compromise was effected between the parties. Under Clause-4 of the said compromise Zohra Begum was allowed to remain in possession as absolute owner to the extent of the whole land just opposite to the houses constructed by the C.I.B. and just behind the third lancer because she was holding possession since a long time, and the other share holders had given up their rights to the said land. The said compromise was confirmed through Firman H.E.H. the Nizam dated 28th Ziqad 1354-Hijri. In accordance with the said compromise the parties applied for issue of pattas. After due enquiry, patta in respect of Survey No. 162 was sanctioned in the name of Zohra Begum and a notice from the Secretariat, Sarfekhas Mubarak,

Court of Wards dated 2-10-1350 F states that pursuant to the terms of compromise deed, the patta of the land in Survey No. 162 is granted in her name and she should pay the land revenue for 7 years from 1344-F to 1350-F. Accordingly she continued to be in possession and enjoyment of the land in Survey No. 162 to an extent of Ac. 177-18 guntas. When the Army started trespassing into the said land Zohra Begum made a representation to the Minister Sarfekhas Mubarak requesting to stop the illegal activities. In view of this representation, regular Army of the Hyderabad State took 150 acres of land from Zohra Begum in this survey number on lease of Rs. 12/- per acre from 12th Aban 1347-F for temporary use. The said lease was confirmed by the Minister Sarfekhas Mubarak. After some time Ahmed Ali Mirza died leaving two sons, Maqbool Ali Mirza and Mahmood Ali Mirza. Maqbool Ali Mirza became the estate holder being the eldest son. Few months later he also died leaving a minor son, Yousuf Ali Mirza as the estate holder. As he was a minor, Mahmood Ali Mirza the younger brother of the deceased became the Manager of the estate. As he was not managing the estate properly, the management was taken over by the Court of Wards in 1350-F. Zohra Begum thereafter filed an application in the Court of Wards to evict the regular Army of the then Hyderabad State from its illegal occupation of four acres and two guntas of her land forming part of Survey No. 162. On this application the Army vacated the said land and delivered possession to the Court of Wards on 25th Khurdad 1351-F. Thereafter Zohra Begum applied to Court of Wards for possession of Ac. 4-02 guntas of land. The Court of Wards refused to deliver possession of Ac. 4-02 guntas of land to her until she gets her title established in a Court of law. Thereupon she filed Suit No. 83/1 of 1352-F on the file of the Munsif Magistrate, Hyderabad West for recovery of possession. The suit was decreed as prayed for declaring her title to the entire extent of land therein and directing delivery of possession of land of Ac. 4-02 guntas to her. The said decree was executed on 27-1-1951 and it has become final. After the decree, the Army was disbanded. Therefore, Zohra Begum applied to the Collector to record her name in the land revenue record in the place of disbanded army in respect of 150 acres of land. Subsequently, Survey No. 162 was subdivided into Survey Nos. 10 and 11. Zohra Begum was thus in exclusive possession and enjoyment of the land in Survey No. 162. Survey No. 162 was fragmented and new survey numbers were given as 83 and 78. Which were again assigned new Survey Nos. 10 and 11 as clarified through letter No. 993 dated 23rd July, 1953 by the Collector, District Hyderabad (land record section). In view of the said fragmentation orders were issued through letter No. 11113 dated 11-8-1953 from the office of the Collector, Hyderabad District to the Tahsildar for compliance according to the new survey numbers in the name of pattedar, Zohra Begum. Being the pattedar she has given on perpetual Nuzool a small plot of land consisting of 9 acres to the deceased plaintiff under registered sale deed dated 8-9-1952. The Army or the Collector were never in possession of the said land. The Court of Wards was a party to the civil suit filed by her. The said decree is therefore binding on the defendants till it is set aside. She was dispossessed on 11-2-1959. Therefore, she is entitled to a decree for recovery of

possession of an extent of 5295.49 sq. yards out of the suit property of 9 acres of land by virtue of the registered sale deed executed by the original plaintiff on 6-4-1957. If for any reason possession cannot be given, she is entitled to claim compensation in respect of the same at the rate of Rs. 15/- per sq. yards.

The point that arises for consideration is: "Whether the appellant is entitled to a decree in her favour for recovery of possession of an extent of 5295.49 sq. yards out of the suit property of 9 acres situated in Survey No. 162 of Mallepally village?

Point: As already seen after the death of the original plaintiff, plaintiff Nos. 1 to 4 were brought on record as his legal representatives. As they could not pay the Court-fee the suit was dismissed for default so far as the interest of those plaintiffs are concerned. The appellant has purchased a portion of the suit property which is of an extent of 5295.49 sq. yards under a registered sale deed dated 6-4-1957 from the deceased original plaintiff during the pendency of the suit. She will be entitled to the relief, provided the deceased plaintiff has title to the suit land of 9 acres who in turn obtained a registered perpetual lease from Zohra begum the pattedar of the whole survey No. 162 under a consent decree in Case No. 83 /1 of 1352 F. between herself and Yousuf Ali Mirza and others dated 15-1-1951.

8. P.W. 1 is the original deceased plaintiff. According to him Mallepally was the Jagir village. The income pertaining to village Bolepalli, Khairtabad Pargana was granted from the year 1228 F. to Khaja Quli Khan Mohtaramul Mulk by Raja Chandu Lai Bahadur under Sanad (Ex. A-1) which does not bear the date. Later the Sanad of Bolepalli village dated 21st Rabiul-Awal; 1329 H duly signed by Maharaja Bahadur on 14th Shahban, 1257 H. was issued wherein it is seen that Mallepalli village has been granted in lieu of Bolepalli as personal Jagir of Mohtaramuddowla Bahadur. According to him Ex.A-2 is the letter of implementation of the Sanad. Ex. A-3 is another letter of Nawab Motham-ud-Doula stating that Jagir has developed on his heirs. He also filed Ex. A-4 dated 4th Dai, 1334 F. which is a copy of the judgment of Sadrul Moham Sarfekhas Mubarak of Peshi Khudavandi dismissing the appeal filed by Mohd. Mehdi Mirza for half share of Jaffar Mirza who died issueless, his share is kept in abeyance and out of the balance to the extent of 1/2 was given to Mehdi Mirza, and the other half share was given to Ahmed Mirza. As Jafar Mirza died issueless, his estate was taken over by the Government for custody and revenue collected in suspense account. Ex. A-5 dated 25th Farwardi, 1325 F. was issued by the Collector, District Atrah Balda, Sarfekhas. Prior to that a notice under Ex. A-6 was issued on 1st Teer, 1325 F. by the said Collector calling for legal representatives of Jaffar Mirza to put in claim petition. Ahmed Ali Mirza, Abbas Ali Mirza, Mehdi Mirza, Khairunisa Begum, Sughra Begum, Shahr Bano Begum, Zohra Begum filed application as heirs and share holders of Jaffar Mirza. Under Ex. A-7 dated 18th Farwardi 1348-F. Zohra Begum was given a share under the compromise. As per Succession statement, Muntakhab, 1/4th revenue is released in the name of

Ahmed Ali Mirza and the balance to other respective sharers including Zohra Begum. Under Ex. A-8 compromise deed dated Meher, 17th-1344 F. Ahmed Ali Mirza and Abbas Ali Mirza filed a compromise petition in the office of the Secretary, Sarfekhas Mubarak, according to which Ahmed Ali Mirza and Abbas Ali Mirza should take possession of half portion of the land Zohra Begum should take land behind the "Third Lancers" and in front of the new C.I.B. Quarters adjacent to Mosque Dhobi Ghat as the same is in her possession and enjoyment from a very long time. Under Ex. A-8 a compromise appears to have been ordered. However, it is stated that under Ex. A-11 dated 26th Aban, 1344 F. The Tahsil West District Balda Sarfekhas Mubarak wrote to the Muqaddam Patwari, Mallepalli village to enter the names of the share holders in jamabandi including the name of Zohra Begum as per the compromise. Under Ex. A-9 dated 29 Ziquada 1354 H. a Farman was issued by H.E.H. the Nizam releasing 1/4 revenue to Ahmed Ali Mirza and the balance to the other sharers including Zohra Begum as per the compromise. Reliance is also placed on Ex. A-59 dated 2-10-1350 F which is a notice from Secretariat, Sarfekhas Mubarak, Court of Wards to Zohra Begum stating that pursuant to the compromise deed, patta in respect of the land in Survey No. 162 is granted in her name, and she should pay land revenue for 7 years from 1344 F to 1350 F. Zohra Begum was leasing out the lands in portions to various persons in Survey No. 162 and the tenants were paying land revenue to the Court of Wards for which they were issued receipts under Exs. A-13 to A-17. There were disputes between Zohra Begum on one side and the Court of Wards and the tenants on the other, and so, Zohra Begum filed O.S. No. 83/1 of 1350 F. to establish her title and forrecovery of possession. A compromise was entered into between the Court of Wards and Zohra Begum under Ex. A-18. Ex. A-19 is the certified copy of the decree. Under Ex. A-20, the deceased plaintiff obtained registered lease deed and took possession of the suit property and got it divided into plots and boundary stones were fixed to them. He appointed Mohd. Ayazuddin (P.W. 6) as Chowkidar. He also claims that he submitted lay out plan under Ex. A-21 which was approved by City Improvement Board. However a notice was issued by Collector to the deceased plaintiff why action should not be taken for encroachment of Government land in Survey No. 162 since he had fixed Kadies (cement Posts) and trying to sell the land. Under Ex. A-26 Assistant Superintendent of Court submitted a report to the Fourth Judge, City Civil Court, Hyderabad that pits were dug by the City Improvement Board by interfering with plaintiff's possession. Of course, one Subba Rao, Superintending Engineer, City Improvement Board, filed Ex. A-27 affidavit dated 3-9-1958 in O.S. No. 29 of 1958 that City Improvement Board is not a party and so it is not binding on the Board and Zohra Begum cannot convey the land to the plaintiff. Under Ex. A-10 dated 28th Farwardi, 1345 F. a letter was issued from Mouzziz Committee to the Secretary, Sarfekhas Mubarak stating that 1 /4th of revenue be collected and the Government's supervision be withdrawn and Zohra Begum and others be given their shares as per the compromise. Of course, it is also stated that under Ex. A-35 dated 31st Shehrewar, 1347 F, Zohra Begum sent an application to the Minister Nawab Sedrul Moham Bahadur complaining about

trampling of horses at the time of parade on the suit land and the loss of tobacco crop. It is stated that an enquiry was ordered under Ex. A-37 dated 7th Meher, 1347 F. Major General Nawab Khader Jung, Commander, Regular Forces sought permission for acquisition of the land under Ex. A-39 dated 12th Aban, 1347 F. He also states therein that meanwhile land will be taken on kaul and accordingly 177 acres 3 guntas have been taken on kaul at Rs. 12/- per acre in the presence and consent of pattedars and hissedars Jagir Mallepalli, Zohra Begum and her sister's son-in-law Mr. Habis Ali, and he finally sought for permission for taking the land on kaul. The Chief Secretary to Government writes to the Collector, Hyderabad District that on abolition of Hyderabad Cantonment action is being taken to cancel the earlier notification dated 10th Shehrewar 1358 F. This letter is dated 21-3-1951 which was marked as Ex. B-53. Accordingly cantonment was abolished under Ex. B-64 notification dated 21-3-1951 with effect from 1-4-1951. According to Ex. A-45, a letter bearing No. 2134 dated 21st Aban, 1352-F. the Court of Wards has ordered not to pay the kaul amount to Zohra Begum till a decision is taken by the Court. Exs. A-49 and Ex. A-50, dated 9-2-1954 and 10-3-1956 respectively, are receipts passed by Zohra Begum for payment of kaul. These two receipts are issued to Syed Afzal Hussain Abedi towards the perpetual lease amount. The Collector, District Hyderabad (Section land Records) wrote a letter under Ex. A-56 in File No. 50-3-53 dated 11-8-1953 to Tahsildar, Taluk West stating that Sethwar for Survey No. 162 of Mallepalli is being sent for necessary action. Mohtamin (Director) Settlement forwarded the report for fixing Nuzool for the village Mallepalli Jagir to the Minister under date 15th Ardhbahisht 56 Fasli.

9. As against these documents, the defendants also filed number of documents. Ex. B-2 is a letter dated 11-8-1951 from the Secretary to Government to the Collector stating that as per decision of the Council of Ministers the whole land should be handed over to the City Improvement Board. In this, a reference was also made about the letter No 12992 dated 25-7-1951. Under Ex. B-3 a reminder was sent by the Secretary to Government to hand over the land to City Improvement Board. Ex. B-4 is the plan dated 1-2-1956 showing the land handed over by the Collector. Ex. B-5 is a survey plan of Mallepalli village, West Taluk District, Atraf Balda Surfekhas Mubarak for the year 1335 F. Ex.B-7 dated 16th Meher 1346 F. is a letter from Divisional Engineer I, City Improvement Board, Hyderabad to the Collector, Atraf Balda, Sarfekhas Mubarak informing that compensation of Rs. 30,892/- was paid to the jagirdar for acquisition of the land in Mallepally Jagir. This shows acquisition and passing of award before 1342 F. According to the learned Counsel for the appellant it relates to 1326 F acquisition and not relating to the present Survey No. 162 of Zohra Begum. Ex.B-54 which is a copy of Muntakhab (Succession Statement) in Inam enquiry. Column-5, item-3 shows that 164 Bighas 18 Bams were acquired by City Improvement Board by 1348 F. Under Ex.B-8 dated 9th Ardibehasht 1341 F. Rs. 100/- was paid to Zohra Begum as advance. This must relate to 1326 acquisition. This award is made in 1342 F. as seen from Ex.B-7. Under Ex.B-9 a list of lands proposed for

acquisition in 1344 F in which Survey No. 162 is shown as of Inamdars as per the letter of Divisional Engineer I, City Improvement Board. This also relates to 1326 F. acquisition as per the learned Counsel for the appellant. Under Ex.B-20 and Ex.B-33, Survey No. 162 is O-5 Boms and Banda Ramanna is the pattedar. D.W. 5 states that this land of O-5 Boms was in possession of Banda Ramanna. Ex.B-12 dated 20-1-1955 is the judgment of the Collector, Hyderabad District wherein he observed that the existence of Survey No. 162 cannot be accepted and the lands in Mallepalli village are in possession of Government for the last 60 years. As already seen under Ex.C-4 compromise, the land in front of the new C.I.B. quarters adjacent to Mosque Dob Ghat should be given to Zohra Begum, but no details of its extent or the boundaries are given. Under Ex.C-1 dated 27-II-1967 the Director of Settlement, Survey & Land Records says that the map of Mallepalli Jagir for the year 1309 F. was sent to Sri Sriram Reddy, Government Pleader for production in the Court of 1st Addl. Chief Judge, City Civil Court, Hyderabad in Case No. 27 of 1962. Under Ex.B-23 details of earlier notification were given. Notification was published u/s 4 (1) dated 29th Behman 1326 F. Possession was taken in the year 26-27. Patwari record is not available. Of course, Zohra Begum's name is found in the award as against Rs. 1986-5-6. Ex.B-27 does not contain any date. Ex.B-27 is the receipt for payment of Rs. 3,000/- to Zohra Begum. It is not known how a sum of Rs. 3,000/- was paid to her when her entitlement was for Rs. 1986, 5 Annas and 6 Paise.

10. Under Ex.B-38, corresponding to Ex.A-57, dated 11-8-1953, the Collector, District Hyderabad issued directions to the Tahsildar, Taluk West to carry out corrections in the revenue record, but immediately on 27-8-1953 under Ex.B-39 proceedings, the Collector has cancelled the earlier proceedings. Further, the Collector has issued proceedings under Ex.B-34 dated 28-8-1953 saying that the decree against the Court of Wards relating to the rectification of the name has not been obtained. Hence directed to obtain a judicial decree against the Cantonment. The learned Counsel for the appellant comments that why should Zohra Begum obtain another decree when the Court of Wards viz., the Government, is a party, but according to the Collector the Cantonment should have been made a party. However, Zohra Begum did not file a suit and obtain judicial decree. Moreover under Ex.B-35 dated 28-7-1953, Zohra Begum prays the Collector to enter her name regarding Survey Nos. 10,11, 6/2 (Old Survey No. 162) in Vasul Baqi and Seethwar. The learned Counsel further contends that the Cantonment was abolished under Ex.B-53 with effect from 1-4-1961. So, no question of obtaining any decree against Cantonment arises. Under Ex.B-34, application, Zohra Begum prays the Collector to enter her name regarding Survey No. 10 in Vasul Baqi and Seethwar. Under Ex.B-36 a report was submitted demarcating Survey Nos. 10 & 11. The said report shows that it is a patta land. Full report was not filed, but only a part of the report was filed. Therefore, it is not very clear how this report has emanated and who has filed the same. Again under Ex.C-8, dated 27-7-1953 a Panchanama is said to have been prepared to identify Survey No. 10 in suit No. 49/1 of 1953 by the Munsif's

Court, West, Hyderabad District. According to this report Survey No.10 was identified, but there is no indication anywhere in the said report that the same was delivered to Zohra Begum. Ex.C-7 is dated 27-1-1951. The said proceeding shows that Moulvi Gulam Ghouse Sahib Qadri, Nazir, Munsif f's Court, West is ordered to delivery possession of the property to the Decree-holder, Zohra Begum. But here again, no proceeding was filed to show whether any delivery was in fact effected. Under Ex.B-38 dated 11-8-1953 it is seen that the office of the Collector, District Hyderabad says that old Survey No. 162 has been changed to new Survey No. 6/2,10 & 11 and a direction was given to the Thasildar, Taluk West to carry out the correction in the records. Ex.B-40 is a decree dated 15-1-1951. As already seen a direction was given to the Tahsildar, Taluq West, cancelling the earlier direction to carry out the correction. The said letter is under Ex.B-39 dated 27-8-1953. Ex.B-44 is the plan showing the land acquired by City Improvement Board in Mallepally village and also the land handed over by the Collector to the C.I.B. and the Collector handed over Ac. 15-09 guntas to the Technical Education Department. Under Ex.B-53 the Cantonment ceased to exist with effect from 1-4-1951. Under Ex.A-39 dated 12th Aban, 1347 Fasli, the Commander Regular Forces sought for sanction to take the land on lease. Ex.B-35 is an application put in by Zohra Begum to the Collector, Hyderabad District (Land Record Section) seeking change of the name and enter her name in Vasul Baqi and Seethwar. Ex.B-55 is a notification dated 24-9-1949 under which the revenue Department decided to transfer Jagir to Ahmed Ali Mirza consequent on abolition of Jagirs. But there is no proof that the land was actually transferred. Under Ex.B-57 dated 13-9-1965, one Jagirdar and five Hissedars are declared as entitled to the compensation as held by Jagir Administration in the award. Under Ex.B-58 dated 11-1-1957 possession was given to Military in the year 1348 F. Under Ex.B-58 letter Yousuf Ali Mirza, minor requested that Award passed on 1-1-1955 be cancelled and correct award be passed. Under Ex.A-19 decree in O.S.No. 83/1 of 1352 F. dated 15-1-1951 Ac.4-2 guntas and 70 sq. Yards was given to the plaintiff and possession of the land together with the buildings constructed and standing thereon should be handed over to the plaintiff by evicting the defendants. But there is no proof whether the said land was actually delivered. Even then the Government is not a party. Under Ex.B-65 dated 10-10-1956 the Chief Secretary addressed a letter to the Secretary to Government of India to take over Cantonment land and Mallepally land fell to the share of State Government as seen from Ex.B-55. Under Ex.B-73, Pahani, it is seen that records are not handed over on the abolition of the Jagir. Ex.B-73 is illegible and nothing can be culled out from it. Under Ex.B-105 dated 9-6-1950 Nazim, Court of Wards, Government of Hyderabad, the Tahsildar writes that no records are available. The Surfekhas authorities were collecting only Nuzul (cess). There are no agricultural lands and hence no Jamabandi. So, the learned Counsel for the appellant contends that the name of the owner, Zohra Begum could not be shown as the land is no more an agricultural land. Under Ex.B-83 copy of plan of Mallepally village, it appears that it is a true copy of plan of 1352 F. which was copied from the copy of map of 1309 F. Under Ex.B-106 which is

equivalent to Ex.B-98, a report for fixing Nuzool for the village Mallepalli Jagir was prepared by Mahtamin Bandobast (Settlement) Department, Sarefekhas Mubarak. It is not known who are the persons and to what extent they are entitled to. Under Ex.B-107, copy of the letter from the Secretariat Department dated 20th Farwardi 1354F. it is stated that after due verification, Dhara may be imposed on the persons who are in possession of non-agricultural lands. Even under Ex.B-109 (Ex.B-96 dated 18th Azar, 1345 F. the Tahsildar, West Taluk promises to implement corrections of names for 1345 F. Ex.B-110 is the Tonch of Village Mallepally prepared in the year 1953 for Survey No. 162/1. Under Ex.B-117 memo the Assistant Secretary (Atiyat) informs that the record is not readily available. Under Ex.B-119, the Secretary informs that the lay out plan in respect of Survey No. 162 is not available. From these records the learned Counsel for the appellant contends that Zohra Begum is the pattedar, and that therefore, she is entitled to execute the lease deed in favour of the deceased plaintiff and the sale by the deceased plaintiff in favour of the fifth defendant is valid.

11. The other witness examined is P.W. 2 who is the plaintiff in O.S. No. 27 of 1963 who has similarly obtained perpetual lease in respect of Ac. 60-00 cents from Zohra Begum on 8-12-1952. P.W. 3 is the Assistant Superintendent of City Civil Court, Hyderabad, who was appointed as Commissioner to inspect the suit land and who gave his report under Ex.A-81 dated 6-3-1957 stating that the suit land was divided into plots and boundary stones as already fixed were also removed. P.W. 4 is a L.D.C. in the Office of Director of Settlement, Government of Andhra Pradesh. He produced the Tonch of Mallepalli 1309-F. Though the said Survey Map was originally produced in the Court on 16-7-1963 as per Ex.A-82, but the same was taken return under Ex.A-83 after obtaining orders from the Court. The map was taken away by a Deputy Tahsildar who has come from the Collector's Office. P. W. 5 is a Clerk working in the District Registrar's Office at Moazamjahi Market, who produced the registration extract under Ex.A-20 which is a perpetual lease deed executed by Zohra Begum in favour of Syed Afzal Hussain Sahib Abedi (P.W. 1). P.W. 2 is also an identifying witness to the said lease deed. P.W. 7 is a Tappal Peon of the Court who was entrusted with the letter dated 9-9-1968 and he delivered the said letter in the office of Nazim Atiyat. P.W. 8 is a record keeper in the office of Nazim Atiyat. He brought the file 49/58 of 1328-F and all the documents, particulars of which are given in the letters of request are not available in their office. It is stated that Exs.A-1 to A-7, A-9 & A-10 are certified copies granted by their office and they bear the seal of their office and the originals of those copies were available in their office when those copies were granted. P.W. 9 is the retired Munsif Magistrate who disposed of the suit in O.S.No. 83/1 of 1352-Fasli on 15-1-1951.

12. In view of the evidence of the above witnessess and the documents referred to above, Sri C.P. Saradhy, learned Senior Advocate appearing for the appellant submits that Zohra Begum was the pattedar. Zohra Begum was given 3 Annas share as per the Succession Statement (Muntakhab), 1/3rd to Ahmed Ali Mirza

and the balance to the other sharers including Zohra Begum. Under Ex.A-11 dated 26th Aban, 1344-F, the Tahsildar has directed the Mugaddam Patwari, Mallepalli village to enter the names in Jamabandi year 1345-F including the name of Zohra Begum as per the compromise. It is curious to note how even on 26th Aban, 1344-F the Tahsildar can come forward with such a letter when the compromise was accepted only under Ex.A-7 on 18th Farwardi 1348-F. The Sanad (Ex.A-1) pertains to village Bolepalli. However, under Ex.A-2 there is a reference that Mallepalli has been granted in lieu of Bolepalli village in favour of Mohtaramuddowla Bahadur as personal Jagir. The Original Sanad is not filed.

13. P.W. 1 was an Assistant Producer in All India Radio, Hyderabad. He left that job, and remained unemployed since 1951. It was suggested to him that Ex.A-8 was a collusive document, so also the original of Ex.A-20 and that he did not pay any consideration therefore and that possession of the land was not delivered to him as it is a Government land. After registration of the lease deed, Zohra Begum came to the suit land personally and delivered possession of the same to him. No doubt he says that he does not remember the time of delivery of possession of the suit land and he did not also pass any receipt at the time of taking delivery of possession. He admits that he has no other receipt except Exs. A-4 and A-50 evidencing payment of rent to Zohra Begum. It was also suggested to him that Exs.A-49 and A-50 did not bear the thumb impression of the same person. He did not apply to the revenue authorities to include his name in pahanies in place of Zohra Begum. He denied the suggestion that the land was acquired for Military department in 1309-F and the Military department was in possession of the said land till 1950. He claimed that Exs.A-34, A-36, A-38, A-40, A-42, A-44 and A-46 are the certified copies issued by the Secretary to Government, Revenue Department and the originals of the said documents were called for and were verified by the then Government Pleader, Ganapati Rao. Although summons were (sic. was) taken from the Court for production of their originals, they were not produced. Similarly the village map of Mallepalli for the year 1309-F summoned from the Survey & Settlement Department was also not received although the Government Pleader Ganapathi Rao had taken back the map before evidence was recorded on specific undertaking that he would produce the same as and when directed by the Court and produced the said map in O.S.No. 27 of 1963 and the same was sent to the High Court in connection with the appeal. No certified copy was obtained from the High Court in C.C.A.No. 122/73.

14. P.W. 3 was appointed as Commissioner, and he submitted Ex.A-81 report regarding removal of boundary stones in the suit land by the City Improvement Board. Ex.A-87 is the document filed by Housing Board according to which Survey No. 162 is a mazi number and its extent is 177 acres 3 guntas. Ex.C-1 is the letter dated 27-11-1967 addressed by the Director of Survey Settlement and Land Records that all agricultural and non-agricultural lands of Mallepally in Survey No. 162 and the plan of 1309-F were implemented and a supplement Sethwar was issued. Ex.C-4 is the certified copy of compromise dated 17th Mehr

1344-F in File No. 65 of 149 of 1344-F. Ex.C-5 is the certified copy of letter from Secretary, Sarfekhas to the 1st Taluqdar of Hyderabad Rural confirming the compromise of 1344-F and settling some disputes. Ex. C-6 is the certified copy of the letter dated 16th Abon 1344-F from the 1st Taluqdar to the Tahsildar West directing distribution of land as per the compromise. Ex.C-7 is the certified copy of warrant of possession and declaration in O.S.No. 83/1 on the file of Munsif Magistrate, Hyderabad West dated 27-1-1951. Ex.C-8 is the certified copy of a copy of panchanama made by M.C. Inspector, Hyderabad West in respect of fixation of boundaries in Survey No. 162. Ex.C-9 is the compromise petition between Zohra Begum and Yousuf Ali Mirza and the Court of Wards in O.S. No, 83/1/53F. Ex.C-10 is the judgment and Ex.C-11 is the decree. Ex.C-11 does not tally with the certified copy of judgment under Ex.C-10.

15. Of Course it is not in dispute that Mallepalli village was a Jagir village in Sarfekhas. It was surveyed for the first time in 1309 Fasli. Although the original map of 1309-F was filed into Court by defendant No.I, but it was subsequently taken return by the Government Pleader for production in O.S.27 of 1963 on the file of Additional Chief Judge, City Civil Court, Secunderabad. The plan was marked as an exhibit in O.S.No. 27 of 1963, was sent to the High Court in connection with the appeal C.C.A.No. 122 of 1973. A copy was not obtained by the appellant from the High Court or from the trial Court and filed. Of course Ex.B-83 is the blue print of Survey Map of 1309-F. Ex.B-111 is the tonch plan prepared in 1309-F. It appears that the said survey was not announced. According to this survey, there was Survey No. 162. The village was again surveyed in the year 1334-F and the Survey was announced in 1335-F. Of course the Survey plans, Exs.B-5 and B-14 show that there are only 68 survey numbers. They do not show the existence of Survey No. 162. It appears that the old Survey No. 162 was converted into new Survey No. 16. After necessary corrections were made in the map, Ex.B-5, supplementary Sethwar was issued as affirmed by D.W. 5 and duly supported by Ex.A-53. According to the appellant, Survey No. 162 was sub-divided into Survey Nos. 83 and 87 as per Survey of 1334-F and these two survey numbers were assigned the new Survey Nos. 6/2, 10 and 11 in the year 1351-F as evident from Ex.A-56. The lower Court observed that from the record produced by either side, there is no clinching evidence either from Sarfekhas or Revenue Department to show that as per the Survey made in 1309-F the extent of Survey No. 162 was 177 acres 3 guntas or that it was initially numbered as Survey No. 162 and subsequently sub-divided into Survey Nos. 83 and 87 and again sub-divided into Survey Nos. 6,2,10 and 11. Even in Ex.A-20 lease deed under which the plaintiff has obtained 9 acres of land on perpetual lease from Zohra Begum on 8-9-1952, the survey number was significantly omitted. The finding of the High Court in C.C.C.A.No. 122 of 1973 arising out of the connected suit O.S.No. 27 of 1963 on the file of the City Civil Court at Secunderabad is relevant. Since the High Court came to the conclusion that Survey No. 162 was existing, although its extent was not established. In view of this, the trial Court held that there was Survey No. 162 in Mallepalli

village and the authorities are acting as if Survey No. 162 was existing even after the said survey number was re-numbered and sub-divisions took place from time to time. Of course, D.W. 1 has stated in his deposition that the suit land forms part of original Survey No. 157 and not Survey No. 162. As the witness has no personal knowledge about the location of the suit land or Survey No. 162, they gave evidence only on the basis of the material produced by either side. O.S.No. 27 of 1963 was filed by P.W. 2. He also obtained a bit of land from Zohra Begum on lease, and the said suit was filed for recovery of possession from the Government through the paramount title of Zohra Begum. The said suit was dismissed and the appeal C.C.C.A.No. 122 of 1973 was also dismissed on 21-9-1976 by a Division Bench of this Court holding that though Survey No. 162 was existing, it is not established that its extent was 177 acres 3 guntas, or that Zohra Begum was granted patta for the said land and there was absolutely no evidence to show that Zohra Begum was in possession of old Survey No. 162 to the extent of 177 acres 8 guntas, or that the plaintiff (P.W. 2) was in possession of 50 acres of land from 1952 on the basis of the alleged perpetual lease. It was also found that there was not even a single receipt showing payment of land revenue by Zohra Begum during her life time before 1957, nor was there any proof that she was receiving any lease amount from the Military which was in occupation of 150 acres of land and the claim of Zohra Begum for the extent of 177 acres 3 guntas in old Survey No. 162 was not recognised by Government at any time till the execution of the lease deed. The location and identity of old Survey No. 162 is not established. The High Court further observed that until 1953 Zohra Begum did not make any attempt to have her name entered as pattedar in respect of Survey No. 162 in the revenue records and that for the first time she made an application on 28-7-1953 as per Ex.B-35 and that she had no possession of land at any time muchless within 12 years prior to the date of the suit. The High Court also felt that P.W. 2 had failed to establish that Zohra Begum has leased out Ac. 150-00 cents of land in Survey No. 162 to Hyderabad Army in 1346-F. and that the Army was in possession of the same till 1950-51.

16. As already seen Mallepally was a Jagir village. The Jagirs were inalienable and Jagirdar is entitled only for usufruct of the Jagir and it is not the private property of the Jagirdar. Although Jagirs are inalienable, still they are heritable. H.E.H. the Nizam had the right to resume the Jagir on the death of the Jagirdar. Whenever the Jagir is resumed, the heirs of the deceased Jagirdar has no right in the Jagir till the Jagir is re-granted in their favour. In this case on the death of the original Jagirdar of Mallepally, Safdar Ali Mirza died leaving behind him his minor son Mehdi Mirza. His brother Hussien Ali Mirza was managing the Jagir village during the minority of Mehdi Mirza. As Hussien Ali Mirza died leaving behind his two sons Ahmed Ali Mirza and Abbas Ali Mirza and daughters Khairunnissa Begum, Sugra Begum, Shaherbanu Begum and Zohra Begum and since all of them were minors, the Jagir was resumed under Ex.A-5. The Collector, Hyderabad in his letter to Tahsildar, West dated 25th Ferwardi 1352-F. informed that as Jafer Mirza, Jagirdar of Mallepally died issueless, the Jagir was

taken over by the Government for custody and the revenue collected be kept in suspense account. Subsequently, notices of enquiry were issued by the Collector, under Ex.A-6. Thereafter, the heirs of Hussain Ali Mirza approached the Collector claiming themselves as shareholders of Jagir. A compromise was entered into between the shareholders on 18th Isfandar 1338-F in respect of the Jagir lands of Mallepally. Under this compromise. Ahmed Ali Mirza and Abbas Ali Mirza were entitled to 5 annas share each and Zohra Begum 3 annas share and the other 3 sisters to 1 anna share each. In view of this compromise, the Muntakab (Ex. A-7) was issued by Sarfekhas Mubarak under the authority of H.E.H. the Nizam on 29th Ziqad 1354 Hijri. In that a reference was made about the compromise entered between the shareholders. It appears that subsequently a dispute arose between the brothers which was compromised in File No.65 /149 appeal 1344-F. Parties have filed a compromise deed, certified copy of which was marked as Ex. A-8. Ex. A-8 was subsequently modified by another compromise under which 10 acres was relinquished by Abbas Ali Mirza in favour of Ahmed Ali Mirza for a consideration of Rs. 1,000/-. There is no reference in Ex.A-8 to the sisters directly getting any share in the aforesaid land. Even in para-4 of the compromise with respect to the land allotted to Zohra Begum neither the extent nor the survey number was mentioned. What all mentioned is that the remaining land behind third lancer, adjacent to Dhobighat and in front of C.I.B. Quarters shall be entirely in possession and enjoyment of Zohra Begum as she was in possession and enjoyment of the same from a very long time. The identity of the land mentioned therein is not established by any reliable evidence or with reference to any map. In the appeal C.C.C.A.No. 122 of 1973 which arises out of O.S.No. 27 of 1963, it was observed by the High Court that the word "Mosque" in Ex.A-8 was an interpolation and if the word "Mosque" was omitted, the map would not afford any guidance to locate the land allotted to Zohra Begum under Ex.A-8. The other maps filed in the suit and the blue print of Mallepalli are in no way helpful in establishing the identity or the extent of the land in Survey No. 162, or new Survey Nos. 6/2,10 and 11.

17. As already seen after the compromise under Ex.A-8 in 1344-F. the Court of Wards came into management of the estate from 1349-F till it was released in 1956. No patta was issued to Zohra Begum in respect of the said land. Under Ex.A-59 dated 2-10-1350-F, the Secretariat Sarfekahs Mubarak, the Court of Wards, issued notice to Zohra Begum stating that pursuant to the compromise deed, patta in Survey No. 162 was granted in her name and she should pay the land revenue for 7 years from 1344-F. But there is no evidence whether she has paid the land revenue accordingly. Even earlier on 31st Shehrewar, 1347-F, Zohra Begum addressed a letter to the Hon"ble Nawab Sedrul Moham Bahadur, Sarfekhas Mubarak stating that due to trampling of horses at the time of parade, the cultivation has been damaged. Thereafter, an enquiry was ordered under Ex.A-37 dated 7th Meher, 1347-F and Major General, Commander Regular Forces has sought permission for taking the land on lease. The letter addressed by him is marked as Ex.A-39 dated 12th Aban, 1347-F. There does not appear to be any

sanction accorded as requested. Of course, the record does not show whether any such sanction was accorded, but from 1951 onwards, it appears, on abolition of Cantonment, steps are initiated for taking possession of the land. Of course, the Major General, Commander Regular Forces while seeking permission under the said letter expressed his opinion that before the land is acquired, pending acquisition, the same will be taken on Kaul which is 177 acres 3 guntas at Rs. 12/- per acre with the consent of pattedars and hissedars. The name of Zohra Begum and her sister's son-in-law Mr. Habib Ali etc., are mentioned. On the basis of this letter, it is contended that 177 acres 3 guntas of land belongs to Zohra Begum in Survey No. 162 and out of which an extent of 150 acres has been taken on Kaul from her on payment of Rs. 12/- per acre by the Army. Ex. A-40 is the letter from Peshi Sadrul Mahaami Sarfekhas Mubarak No. 4001 dated 14th Aban 1347-F, addressed to the Head Quarters Regular Forces which is said to be in reply to Ex.A-38 in which it is stated that the land of Zohra Begum will be used for non-agricultural purposes for which cess will be levied in place of present land revenue and the present fixed land revenue will be collected from Head-quarters Regular Forces and hence sanction is accorded. Ex.A-42 is the statement of lands of village Sarfekhas Mubarak and Jagir at Mallepalli under possession of Regular Forces of the Government as on 2-2-1356-F. In the remarks column, it is mentioned that out of the land of this Survey Number, 150 acres of land has been taken in the year 1347-F. from Zohra Begum under Kaulnama as per the sanction of Sadrul Mahami Serfekhas and Military letter 25/120 C.E.O. dated 12th Aban 1347-F. The land revenue is to be collected from the Pattedar as the land is under the supervision of the Court of Wards, Sarfekha Mubarak. It is also seen as per letter No. 2134 dated 1352-F of Nazim Saheb Court of Wards, Sarfekhas Mubarak Peshi Kuda Vandi and the Nazim Court has ordered not to pay the Kaul amount to Zohra Begum till a final decision is taken by the Court. This letter bearing No. 2134 dated 21st Aban 1352-F. if marked as Ex.A-44. Through this letter the Military Head Quarter Regular Forces were informed that a case was pending in the Court between Zohra Begum and the Court of Wards and till the final decision of the Court, Kaul amount should not be paid to Zohra Begum. Ex.A-52 is the certified copy of the letter No. 124 dated 10-2-1955 issued by the Collector, Hyderabad District to the Director Settlement Department informing him that Mallepally village was surveyed in the year 1309-F. which was again revised in the year 1334-F. and the records relating to agricultural and non-agricultural lands were maintained separately. It was also stated that in view of subdivision of old Survey No. 162, corresponding to new Survey No. 16, a supplement was issued and the touch drawn in accordance with this subdivision is sent for correcting the records. Ex.A-53 is the letter issued by the Collector, Hyderabad District to the Tahsildar Taluq West informing that a copy of supplementary Sethwar in respect of Survey No. 162 of Mallepally was sent along with the touch for necessary action. A copy was also marked to Director of Settlements for carrying out necessary corrections. Under Ex.A-54 letter No. 993 dated 23-7-1953 which was addressed to Zohra Begum it is stated that the technical record of village Mallepalli was examined and it appears that

Survey No. 162 measuring 177 acres 3 guntas was sub-divided in 1350-F. and two survey numbers 83 and 78 were allotted and that later in 1351-F. Survey No. 83 was re-numbered as Survey No. 10 and Survey No. 87 was re-numbered as Survey No. 11. Ex.B-56 is another letter from the District Collector stating that Zohra Begum was the Pattedar of old Survey No. 162, corresponding to Survey No. 6/2,10 and 11 measuring 203 acres 9 guntas. Of course as already seen under Ex.A-59, a notice from the Court of Wards was issued to Zohra Begum stating that she was a pattedar of Survey No. 162 and that patta was granted in her name by the revenue department and she was asked to remit the land revenue for 7 years from 1344-F to 1350-F. within one week. Under Ex.A-69 a counter-affidavit was filed by Assistant Secretary to Government in Writ Petition No. 303 of 1960 stating that Survey No. 162, re-numbered as Survey Nos. 10 and 11 measuring 203 acres is a part of Mallepally Jagir and it was acquired by the Army Department in 1307-F. On the basis of these documents, it is contended by the learned Counsel for the appellant that Zohra Begum was the Pattedar for old Survey No. 162 which was subsequently sub-divided and an extent of 150 acres was taken on Kaul from her on payment of Rs. 12/- per acre by the Army. Reliance is also placed on Ex.A-9 Farman Mubarak issued by H.E.H. the Nizam addressed to the Sadarul Muham (Minister) releasing 1/4th revenue in favour of Ahmed Ali Mirza and the balance to other sharers including Zohra Begum recognising the terms of compromise among the parties. In Ex.A-9 there is no reference about the compromise between the parties entered on 17th Meher 1344-F. So also in Ex.A-10 letter dated 28th Farwardi 1345-F. of Mouziz Committee to the Secretary Sarfekhas Mubarak wherein it is stated that 1/4th revenue and the Government supervision should be withdrawn and Zohra Begum and others be given their shares. There is no reference there to the compromise dated 17th Meher 1344-F. or its terms. What all mentioned is that Zohra Begum and others should be given their shares as per the compromise. The appellant contends that the certified copies obtained from Sarfakhas are filed and although originals are summoned they are not forth coming. The lower Court, therefore, rightly in my view came to the conclusion that since there is no evidence about the existence of originals and that there was a compromise of 17th Meher 1344-F. and the same was not referred to in the Muntakab no reliance can be placed on Exs.A-9 to A-12 and A-60. It is further observed by the lower Court that although under Ex.A-11 the Tahsildar, West, District Atraf Balda, Sarfekhas wrote to the Muqaddam Patwari, Mallepal Fi village to enter the names in Jamabandi including the name of Zohra Begum as toer the compromise (Ex.A-8), it does not appear from the record that any reply was sent by the Patwari giving survey numbers and the area or the extent. Therefore, the lower Court has rightly come to the conclusion that these documents do not establish that Zohra Begum was the Pattedar for old Survey No. 162 for an extent of 177 acres 3 guntas. Under Ex.A-59, a notice amanated from Secretariat, Sarfekhas Mubarak, Court of Wards to Zohra Begum stating that patta in Survey No. 162 was granted in her name and she should pay land revenue for 7 years. It does not appear that patta was actually granted. As already seen Ex.A-7 refers to patta land. The extent of

land in respect of which patta was sought to be granted in favour of two brothers viz., Ahmed Ali Mirza and Abbas Ali Mirza who are major share holders to the extent of 10 annas is only Ac. 38-00, it is impossible to believe that they have conceded an extent of 177 acres in favour of Zohra Begum who is only a 3 annas share holder when the total extent is Ac. 203-09 guntas only. Under Ex.A-8 compromise the extent or location of the land allotted to Zohra Begum was not mentioned. What all mentioned is that Zohra Begum should take the land behind the "Third Lancers" and in front of the new C.I.B. Quarters adjacent to Mosque, Dhobi Ghat as the same is in her possession since a very long time. This aspect was already discussed earlier, and accordingly, I found that Ex.A-8 does not establish the title of Zohra Begum for 177 acres of land. In fact no map which is helpful to identify the said land of 177 acres 3 guntas in old Survey No. 162 was filed, or the new corresponding Survey Nos. 10 and 11. It is not even established that Survey Nos. 10 and 11 corresponds to old Survey No. 162. Thus the location, identity or the extent of old Survey No. 162 has not been established. The lower Court has rightly found that the identity, location or the extent of old survey number has not been established by evidence, so also the alleged compromise in 1344-F. No patta was granted in favour of Zohra Begum. It is also not shown that Zohra Begum or any of the pattadars paid any Nuzul or darkhasat for the land in Survey No. 162 at any time subsequent to 1344-F. The estate was in the management of Court of Wards from 1349-F. till it was released in 1956 in favour of Yousuf Ali Mirza. There is no proof of payment of any land revenue or Nuzul. The lower Court observed that with a view to fill up the lacuna Ex.A-12 was introduced as if the same was amanated from the Secretariat Serfhakas informing Zohra Begum to pay the land revenue. Ex.A-12 corresponds to Ex. A-59 demanding payment of land revenue for 7 years from 1344-F. Relying on Exs.A-13 to A-9 tax receipts from the Court of Wards, it is contended that these tax receipts establish the possession of Zohra Begum. But these receipts do not support the claim of the appellant that there was any compromise as contended and on the other hand they only show that land revenue was being paid by the persons who are in possession of each bit of land and the land revenue was being remitted to Sarfekhas towards the estate of Ahmed Ali Mirza.

18. The learned Government Pleader also contended that the so called compromise was not acted upon because it has no stamp of approval by the ruler H.E.H. the Nizam which is necessary because it deviates from the original of Muntakab Ex.A-7 1348-F. which clearly fixed the share of Zohra Begum at 3 annas. The Jagir was resumed in about 1326-F. on the death of Jaffar Mirza and it was re-granted by H.E.H. the Nizam under the Muntakab, Ex.A-7 fixing the shares of all co-sharers as per the compromise arrived at and if the intention was to act upon the alleged compromise, dated 17th Meher 1344-F., the H.E.H. Nizam should have granted the Muntakab as per the alleged compromise already arrived at 4 years earlier. Exs.A-7 and A-9 would disprove that the compromise, Ex.A-8 was acted upon and if the said compromise was acted upon, a patta should have been issued in favour of Zohra Begum and there would not have

been any necessity for her to file a suit for declaration that she was the pattedar. Another important circumstance is about the extent of Survey No. 162. Ex.B-66 which is Fisal Patty for the year 1350-F shows the extent of Survey No. 162 as only 4 acres. Ex.B-69 Pahani for the year 1356-F. shows that the extent of Survey No. 162 as only 19 acres. In Ex.B-73, Pahani for the year 1954, the extent of Survey No. 162 is shown as 2 acres. Thus, the correct extent of Survey No. 162 is not established by the plaintiff. Apart from that the evidence of D. W. 5 who is an Engineer in City Improvement Board shows that the extent of Survey No. 162 is only 5 bams which is in possession of one B. Ramamma.

19. Relying on Ex.A-36, the appellant contends that 150 acres of land was leased out to Military authorities. It is the contention of the learned Government Pleader that the re-grant under the Muntakhab, Ex. A-7 was made only in 1348-F. and Zohra Begum could not have leased out the land to the extent of 150 acres in 1347-F. itself. In fact in between 1326-F. and 1348-F. the Jagir was resumed and none of the shareholders including Zohra Begum had any right in the property, and therefore, she could not have exercised any right like entering into a lease agreement which it was released in 1348-F. as per the Muntakab, Ex. A-7. Another important aspect pointed by the learned Government Pleader is that the re-grant under the Muntakab, Ex. A-7 in respect of all the share-holders is only 106 acres. Therefore, it is impossible to believe that Zohra Begum was allotted under the compromise, Ex.A-8 an extent of 177 acres 3 guntas of land or Zohra Begum leased out Ac. 150-00 cents to Military authorities. If really the Army had taken Ac. 150-00 cents of land from Zohra Begum on lease, the Army should have re-delivered possession to her on the disbandment of Army in the year 1950-51. Possession of the land was delivered to the Government by the Army and it does not appear that Zohra Begum has raised any objection when the Army handed over the land to the Government.

20. It is next contended by the learned Counsel for the appellant that Zohra Begum has established her title on the basis of the decree passed in O.S. No. 81 /1/1352-F dated 15-1-1951 under Ex.A-19. In the copy of the plaint only one sheet was available. It appears that the suit was confined to recovery of Ac. 4-02 guntas in old Survey No. 162. There is no mention whether the said Ac. 4-02 guntas was part of 177 acres in old Survey No. 162, or Zohra Begum was granted patta in respect of the said land. Even in the application addressed to the Collector under Ex.B-35 dated 28-7-1953, to enter her name in Vasul Baqi and Sethwar in respect of Survey No. 162, new Survey Nos. 10,11 and 6/2, no reference was made to the lease of land to the Army. In the earlier suit notice dated 17-6-1959 issued by Zohra Begum to the Government of Andhra Pradesh also there is no reference to the lease of 150 acres to the Army. She filed Writ Petition No. 308 of 1960 and in the affidavit no such lease was referred to. But what all stated is that the Hyderabad Defence Department required immediate possession of certain lands in Mallepalli village for Sanitary purpose which included the lands belonging to Zohra Begum and consequently possession was taken through Revenue Department on the specific condition that the

compensation would be paid to the respective owners of the land and it is further stated therein that Hyderabad Defence Department handed over the land to the Collector, Hyderabad District including the land of Smt. Zohra Begum to be returned to the respective owners. Thus it is clear that there is no reference even in these proceedings about the lease in favour of Army in respect of Ac. 150-00 cents of land in old Survey No. 162. Therefore this contention cannot be accepted.

21. As already mentioned O.S.No. 83/1 of 1352 Fasli filed by Zohra Begum relates to declaration of title and for recovery of possession of Ac. 4-02 guntas of land in Survey No. 162. The said suit was compromised under Ex.A-19. But the learned Counsel for the appellant contends that the suit relates to declaration for the entire extent of 177 acres 3 guntas in old Survey No. 162 and for that purpose she examined P.W. 9 Md. Abdul Ali, who worked as Munsif Magistrate, Hyderabad West between 1949 and 1951 and who delivered the judgment and passed decree basing on the terms of compromise petition as entered between the parties. According to P.W. 9 Clause-2 of the compromise, all the rights in the land in Survey No. 162 behind third lancer was transferred in the name of Zohra Begum and that the first defendant had no right in that land. Ex.C-9 (a) is the signature of Nazim Court of Wards who was of the rank of District Collector. Under the decree, Zohra Begum was entitled to have possession over Ac. 4-02 guntas out of 177 acres in Survey No. 162. The second defendant did not sign the compromise memo, Ex.C-9. There were three defendants in the suit. According to the witness, the certified copy, Ex.B-40 does not tally with its original, Ex.C-9. Page 2 of Ex.B-40 reads that the land in Survey No. 163 situated in Mallepally out of which land measuring Ac. 3-17 guntas and 24 sq. yards and makta land of 3071 sq. yards equivalent to 25 guntas and 46 sq. yards be given possession to the plaintiff after dispossessing the defendant. The witness admits that in Ex.B-40 it is not mentioned that patta of Survey No. 162 be granted in the name of the plaintiff. So, in view of his evidence it cannot be concluded that under Ex.B-40 the plaintiff was granted patta in respect of the entire survey No. 162 or 177 acres. Ex.C-12 is the first sheet of the plaint in the suit which refers only to the names of parties. The second sheet is not available. In the original decree, Ex.C-11 there are interpolations and those interpolations occur when the decree refers to Survey No. 162 comprising 177 acres. Therefore, Ex.B-40 does not establish the case of the plaintiff; inasmuch as in Ex.C-9 the extent of Survey No. 162 is not mentioned as 177 acres.

22. P.W. 9 also admits that Ex.C-9 compromise memo does not bear the stamp of Nazim Court of Wards although in the suit the Court of Wards was acting as guardian of the first defendant. Therefore, Ex.B-40 certified copy was obtained and corrections and interpolations were made in Ex.C-11. In fact, except the first defendant the other defendants were not parties to the compromise, Ex.C-9 memo. Therefore, these proceedings regarding OS. No. 83/1/1352 of which the plaint is not available cannot advance the contention of the appellant. Therefore, it cannot be accepted that under the said compromise decree, Zohra Begum

obtained declaration that she was the pattedar in respect of 177 acres 3 guntas in Survey No. 162. In fact the High Court on an earlier occasion in the appeal had an occasion to consider the effect of this decree. The High Court observed that the Government was not a party to the said suit and the Court of Wards representing the estate of Jaff ar Mirza, possessor of the Jagir Mallepalli village was a party to the said decree and therefore, the same would not bind the defendant. According to Ex. A-7 Muntakhab of 1348-F. 144 Bighas 17 Bams amounting to 105 acres were re-granted as Jagir to shareholders including Zohra Begum and what was remaining was only 174 acres, and therefore, it is not possible to accept the case of the appellant that such a large extent of 177 acres and 3 guntas was granted to her.

23. In other words the contention of the respondents is that a major portion of the land in Mallepally Jagir was acquired by the Army long back and subsequently another portion was acquired by City Improvement Board and that compensation was paid to Jagirdars and Hissadars, and therefore, no land to the extent of 177 acres 3 guntas was available in old Survey No. 162 for granting patta to Zohra Begum. Of course it is contended on behalf of the appellant that Exs.A-34 to A-46 were marked with the consent of the then Government pleader late Ganapathi Rao who endorsed on the certified copies and admitted those documents which clearly establish that Zohra Begum had title to Survey No. 162 for an extent of 177 acres 3 guntas. The Government Pleader had no authority or power to admit the corrections of the documents, that too when the Government was contesting the suit. The Government Pleader has no authority to admit the corrections of the documents without obtaining instructions from the Government. The originals have not been produced. It is not known whether the originals for these documents are existing at all. Therefore, the endorsement of the Government Pleader has no effect and in any event they cannot bind the Government. When the Government is seriously contesting the matter and the value of subject matter and the stakes being high, it is really surprising how the Government Pleader has endorsed that the corrections found in those documents are true and they are the true copies of the original. The party who relies on such documents should produce independent evidence to establish that they are true copies of the originals. It is none of the business of the Government Pleader appearing for the opposite party to certify that the copies filed are true copies. The Advocate appearing for one party cannot certify the correctness of the copies filed by the other side. Such an attitude or gesture cannot be swallowed without a pinch of salt. There is absolutely no necessity for the Counsel of the opposite side to make an endorsement or issue certificate about the truth or correctness of the documents filed by the other side. Such a conduct on the part of the Counsel to say the least is highly reprehensible. Therefore, such an endorsement has no effect in the eye of law and it does not bind the Government. The learned Government Pleader submits that the original perpetual lease deed executed by Zohra Begum in favour of the original plaintiff was not produced in the Court. According to P.W. 1, the land was measured and demarcated one or two days

prior to the execution of the perpetual lease deed, and after execution of the lease deed, possession was delivered to him. It is in evidence that Zohra Begum lost her eye sight even prior to 1950, and therefor, she could not have shown the boundaries of the suit site and helped in demarcating the demised land. Even the original of Ex.A-20 leasing out 9 acres to Syed Afzal Hussain was not filed. It is doubtful whether the original plaintiff could have been put in possession of 9 acres under Ex.A-20 when Zohra Begum leased out the land to Army even as back as in 1347-F. at Rs. 12/- per acre. It is highly unbelievable that she could have granted lease to the original plaintiff on an annual Nuzool of Rs. 5/- per acre in the year 1952. D.W. 6 who is the husband of plaintiff No. 5 claims that his wife purchased 5,295.94 sq. yards under a registered sale deed, Ex.A-48 dated 6-4-1957 for a consideration of Rs. 10,000/-. He is a retired Superintendent of City Courts at Hyderabad. It was suggested to him that no consideration was paid under Ex.A-48 by his wife to P.W. 1 in view of the help rendered to P.W. 1 in this litigation since he was working in the Court. The said sale deed was registered in the name of his wife without consideration. Whatever it is, inasmuch as Zohra Begum had no title to 177 acres 3 guntas in Survey No. 162, P.W. 1 could not get any right under Ex.A-20 and subsequently he cannot convey any right to others in this land. Further, after abolition of Jagirs under A.P. (Telangana Area) Land Revenue Act, 1327-F. the Jagirs vest in Government, subject of course payment of commutation value. It is therefore rightly contended that after 1327-F. Jagirdar has no right except to claim payment of compensation.

24. Under Ex.B-9, list of the lands proposed for acquisition, Survey No. 162 is shown as the land under Inamdars. This is the letter from the office of the Divisional Engineer, City Improvement Board dated 9th Amardad 1344-F. As per the learned Counsel for the appellant this letter relates to 1326-F. The award itself was passed before 1342-F. So, this letter of Divisional Engineer, City Improvement Board to Atraf Balda, Sarfekhas, Mubarak although shows Survey No. 162, it is not relevant and it has no bearing on the issue in question.

25. Relying on Exs.C-9,10, and 11, compromise memo, judgment and decree respectively passed in O.S.No. 83/1 of 1350 F, the learned Counsel for the appellant submits that the suit was filed for declaration of title and possession relating to Survey No. 162 and finally ended up in a compromise giving Ac. 177-00 cents to Zohra Begum. Although, the Government of erstwhile Hyderabad was not a party to the suit, the first defendant was represented by Court of Wards, Sarfekhas Mubarak. As already seen Ex.C-9 compromise memo does not bear the stamp of the Nizam, Court of Wards. It is however contended by the learned Counsel for the appellant that since Court of Wards was represented by the Nazim who was of a rank of District Collector, the compromise is binding on the Government. Ex.B-40 does not tally with the original of Ex.C-9. These are number of interpolations in Ex.C-9. There interpolations occur with reference to survey number and the extent of land. On the basis of Exs.C-9,10 and 11 it cannot be held that the suit was filed for declaration of title and for possession of

127 acres in Survey No. 164. Except the first sheet containing the cause title, the body of the plaint is not available.

26. Sub-section (a) of Section 3 of Court of Wards Act, 1350 F. defines the word "Ward" as a person whose property or person who has been under the custody and superintendence of the Court of Wards under the Act or by the Farmana of H.E.H. the Nizam. Court is defined u/s 4 of Court of Wards Act and Section 4 states that the Director General of Revenue or such officer as may be from time to time nominated by the Government shall be deemed to be the Court and for the purpose of the Act Subedars and Talukdars shall be subject to his control. No doubt u/s 2 (A) of the General Clauses Act 1308 F. what is stated is unless there is anything repugnant to the subject or context when there is a reference to the area H.E.H. the Nizam's Government, it shall be deemed to include the area of the Sarfekhas also and when there is a reference to a Government it shall be deemed to include the area of the Sarfekhas. But as already seen, the memorandum of compromise was not signed by Nazim, Court of Wards, only the Advocate on record had signed the memorandum of compromise and the certified copy, Ex.B-40 does not tally with the original, Ex.C-9 and it contains several material alterations and interpolations. For all these reasons, I agree with the finding of the trial Court that these documents do not establish that the suit was for declaration of Ac. 177-00 cents in Survey No. 162 or that the compromise is binding on the first defendant.

27. The point is accordingly held against the appellant. For all these reasons, I do not find any ground to interfere with the finding of the trial Court.

The C.C.C.A. is accordingly dismissed, but in the circumstances without.