

THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO
A.S.Nos.2446 AND 2469 OF 1987

COMMON JUDGMENT:-

These two appeals arise out of a common judgment and decree in O.S.Nos.74 of 1980 and 225 of 1987 on the file of the Court of Principal Subordinate Judge, Visakhapatnam.

02. Suits were filed for partition of the suit schedule properties shown as "AA" and an extent of Ac.1.50 cents in Sy.No.9, which is also part of the schedule in O.S.No.74 of 1980. The latter suit filed for declaration of title and for injunction.

03. The plaint averments are, in brief, as follows:-

“ The suit A Schedule properties covered by Inam P.No.164 of Maddilapalem village, which is of an extent of Ac.50.72 cents, originally belonged to Digurarthi Ramaswami, who from one Oleti Sayyanna Sastrulu purchased under a registered sale deed dated 3-2-1968. The said Sayyanna Sastrulu sold away the said lands to one B.Appala Rao under a registered sale deed dated 26-08-1877. One Yellapu rydayya (the predecessor of the plaintiff) purchased the entire land which is described in A schedule for a consideration under a registered sale deed dated 27-10-1982 from Birra Appala Rao. The said Pydayya during his life time had possession and enjoyment of the same and after his death, the property devolved on his three sons namely Yerrayya, Pydayya and Rama Swami. The eldest son of Pydayya namely Yerrayya had two wives and the plaintiffs 3 and 4 represent the 1st wife branch who are entitled to half share of Pydayya 1/3rd share of property. The remaining half devolved on one Y.V.Ramanayya and Y.Suryanarayana being the sons born through the second wife of Pydayya as can be seen from the genealogy of the plaintiff given below. Thus, the plaintiffs 3 and 4 have together got right half in 1/3rd share in A schedule properties. The second son of Pydayya namely

Pydayya got two sons namely Appalanidu and Adinarayana, Adinarayana died unmarried, while Appalanidu married Appayamma Parvathamma and Appalanidu died issueless and therefore the entire $\frac{1}{3}$ rd share of Pydayya's branch devolved on the said Yellapu Appayamma alias Parvathamma, the widow of Appalanidu and their adopted son Krishna, the 2nd plaintiff herein. Since Adinarayana executed a registered will dated 26-06-1948 bequeathing his share in favour of his brother's widow viz., Appayamma alias Parvathamma and their adopted son, Krishna (*a genealogy was also enclosed in the plaint*).

The third son of Pydayya namely Ramaswamy had no sons but had two daughters only viz., Budha Pydithallamma and P.Annapoornamma the mother of the 1st plaintiff. The said Ramaswamy died in the year 1957 after making a testamentary disposition of his entire $\frac{1}{3}$ rd share in favour of the 1st plaintiff by means of a registered will dated 8-8-54. Thus the 1st plaintiff became entitled to the $\frac{1}{3}$ rd share of Ramaswami, while out of her two shares, one share devolved on one Yellapu Appayamma alias Parvathamma and Y. Krishna the adopted son. During the life time of the said Paravathamma, she filed a suit *informa pauperis* in O.P. 32/78 on the file of this court, and after her death, the 2nd plaintiff is continuing the proceedings. Thus, the plaintiffs 1 to 4 are in the joint possession and enjoyment of the entire land covered by item P.No.164 and the plaintiffs have got $\frac{5}{6}$ share in the said land.

While the said sharers and their predecessors were in joint possession and enjoyment of entire A schedule property comprised in Inam P.No.164 of an extent of Ac.50/72 cts. The Inams Abolition Act has come into force. After the advent of the said Act, a joint patta was granted u/s 4 of the A.P.Inams Abolition and Conversion into Ryotwari Act, 1956 in the name of Yellapu Audemma, Venkatarao, Suryanarayana and Y. Parvathamma, representing the entire body of the joint

owners as P.No.164 by the Inam Tahsildar, Visakhapatnam by means of patta in Form No.8 under rule 7 of the Inam Abolition Act. The above named joint owners continued to remain in joint possession and enjoyment of the properties by paying land revenue to the Government jointly for some time. Later for the convenient enjoyment of the said properties, the parties effected provisional partition in respect of some items of properties and kept the other properties as joint properties.

While so, the defendants 1 to 4 have set up a false claim and manipulated records in the Settlement Department and clandestinely obtained ryotwari patta in respect of the lands covered by items 1 to 7 of A schedule under Estates Abolition Act. The lands which are wrongfully claimed by the Defendants 1 to 4 are covered by items 1 to 7 of A schedule. Out of them, items 1 to 5 were acquired by means of notification under Sec.4(1) by the Urban Development Authority. In the said land acquisition proceedings also the D.1 to D.4 managed that the names of the plaintiffs are not shown as claimants or as the reputed owners thereof and thus the entire amount of compensation covered by the Acquisition was realized by the D.1 to D.4 on the strength of the said patta obtained by them fraudulently from the Settlement Department. The remaining lands which are covered by items 6 and 7 of A Schedule were also given away to the Urban Development Authority by D.1 to D.4 under private negotiations after taking an advance amount of Rs.42,000/-. The defendants 1 to 4 are not at all entitled to deal with any of the properties covered by items 1 to 7 of the A Schedule. The plaintiffs and Y.V.Ramanayya and Suryanarayana alone have been in the Exclusive possession and enjoyment of the said properties in their own right since their ancestors.

So far as item No.8 is concerned, it would appear that the District Collector and the Tahsildar, the 8th defendant and 9th defendants herein had issued D.Form pattas in favour of 3rd parties treating the said land as

though it is a government poramboke. On the basis of the said illegal pattas granted by the District Collector, the Social Welfare Department is constructing houses unauthorisedly. The plaintiffs alone are entitled to the said land as this item also forms part of their holding in T.D. No.164, and which has been in the plaintiffs' possession and enjoyment since their ancestors. Under these circumstances the defendants 8 to 10 are not entitled to deal with the said land without acquiring the same through the machinery provided under the L.A.Act. The disputed items 1 to 8 of A Schedule is described as AA Schedule property which is the suit schedule property.

The Urban Development Authority had after acquiring the lands covered by items 1 to 5 under the L.A.Act and items 6 and 7 by private negotiations handed over some items to the A.P.Housing Board, the 7th defendant herein who is about to construct buildings. Hence, the housing board is impleaded as a party to the suit. Since the rival claimants were granted pattas under two different enactment, the High Court of A.P. in W.P.No.2390 and 5648 of 1979 directed the plaintiffs 3 and 4 to seek relief on the basis of possession and title in a civil court granting two months time from 18-2-1980. The High Court also ordered that status-quo may be maintained in the meanwhile."

04. The second defendant filed a written statement denying the allegations in the plaint contending that the genealogy filed by the plaintiffs and their source of title is not correct. It was also pleaded that neither the predecessors-in-title of the plaintiffs nor the plaintiffs were in possession of the properties. It was further pleaded the Settlement Department after survey and after an elaborate enquiry granted patta in favour of the defendant Nos.1 to 4 and the said orders have become final. If any inam land is wrongly surveyed in the erstwhile zamin estates, the remedy is

to prefer the objections before the Survey Department, but no such objections were raised. It was further led that patta No.164 which is relied on by the plaintiffs does not contain the survey numbers and there was no localization and in fact the sale deeds in favour of the defendants clearly goes to show their right and possession of the property. It was also pleaded that the Government has acquired the land as mentioned in the plaint after due verification of the title and interest and compensation was paid and the plaintiffs have not taken any action during the award enquiry or acquisition proceedings. Therefore, in view of the above circumstances, the plaintiffs cannot claim that the acquisition proceedings are bad. Furthermore, a comprehensive enquiry is also contemplated under Section 30 of the Land Acquisition Act, 1894 and the plaintiffs have not availed the remedy. The observations in the writ petition relied on by the plaintiffs will not create any right to file the suit. Therefore, the defendants pleaded that they have got right and interest in the suit schedule properties.

05. The second defendant's written statement was adopted by defendant Nos.1, 3, 4 and 11. Defendant Nos.6 to 8 have contended that the plaintiffs or their predecessors-in-title have no right or title to the property and in fact the lands were acquired after due notification and enquiry and at no point of time the plaintiffs have claimed rights or interest in the suit schedule properties. The alleged patta No.164 does not contain the suit schedule survey numbers and consequently the plaintiffs are not entitled for the relief. So far as the land in Sy.No.9 is concerned, it is a Government Poramboke and the plaintiffs have no right in the suit schedule properties.

06. After considering the rival contentions, which are similar in both the suits, and after framing necessary issues, the court below has dismissed both the suits. Aggrieved by the judgment in O.S.No.74 of 1980, A.S.No.2446 of 1987 was filed and as against the judgment and decree in O.S.No.225 of 1987, A.S.No.2469 of 1987 was filed.

07. Now the points that arise for consideration are:-

1. Whether the plaintiffs have got right and interest in the suit schedule properties and they have got valid title?
2. Whether the judgment and decree passed by the court below is legal and sustainable?

POINTS:-

08. The substance of the contention of the plaintiffs is that the suit schedule properties are inam lands and it was originally belonging to one Digurarthi Ramaswamy and from him one Oleti Sayannasastrulu purchased and subsequently it was alienated in favour of the ancestors of the plaintiffs. The strong reliance of the plaintiffs is on Ex.A-1 and A-2, which are sale deeds. Ex.A-4 is the inam patta granted in favour of one Y.Aademma in respect of T.D.No.164, dated.29-10-1961. It was said to be for an extent of Ac.50.72 cents and four persons were named as the pattadars and it is described as "personal inam". In order to show the validity of this patta, in fact, the plaintiffs have to prove that by the date of abolition of the inam and the relevant date mentioned therein, the plaintiffs or their predecessors-in-title have been in possession and enjoyment of the property. There is not of much material evidence to show that the plaintiffs or their predecessors-in-title have been in

possession and enjoyment of the suit schedule properties prior to the grant of the alleged patta. In fact, the land revenue receipts filed on behalf of the plaintiffs are only subsequent to 1961. The documents Exs.A-18 to 33 are said to be quit rent receipts and kattubadi receipts for several faslies in favour of Y.Ramaswamy. Evidently, these documents do not contain the particulars of the survey numbers or the particulars of the enjoyment. As matter stands, it is not in dispute that the lands in Maddilapalem were declared as zamindari village and the estate was abolished and was taken over by the Government on 12-01-1961.

09. The learned counsel for the appellants strongly contends that there is a dispute between the parties as to whether the patta granted by the Settlement Officer under the Estates Abolition Act can be taken into consideration to overcome the right of the plaintiffs under Ex.A-4 patta given under Inams Abolition Act. There is not of much dispute about the fact that the village Maddilapalem is a zamin village. Therefore, if there is any inam estate entitling the plaintiffs to show their right, it is for the plaintiffs to establish that this land is part of the inam estate. In fact, there is no document to show that immediately after the abolition of the imams in 1948, any application was made by the plaintiffs or their predecessors-in-title for grant of patta with regard to the suit schedule properties.

10. Be that as it may, it is not in dispute that earlier the proceedings in favour of the defendants have been challenged by the plaintiffs in series of litigation before the revenue authorities and also the High Court. As can be seen from Ex.A-

10, the order in W.P.No.6871 of 1974 dated 29-07-1975, the plaintiffs have challenged the issue of patta to the defendants under Estates Abolition Act by the Settlement Officer and which was confirmed by the Board of Revenue. This court has taken note of the fact that the particulars of the Survey number were not mentioned; on the bare allegation no relief can be granted and consequently the writ petition is dismissed and a liberty was given to pursue any other remedy. Again W.P.No.1390 of 1975 was filed and as can be seen from the order Ex.A-12, the court has taken note of the earlier order, but, however it was pleaded that there was a co-relation order on 06-05-1976, which is marked as Ex.A-11 and as a result of it, the patta granted to the defendants has to be quashed. This court found the patta was granted 20 years back and the land was also acquired and consequently the petitioner is to agitate in a civil court if a suit is maintainable or pursue any other remedy as ordered in W.P.No.6871 of 1974 and consequently the writ petition was dismissed. As against that Writ Appeal was preferred in W.A.No.679 of 1976 and as can be seen from Ex.A-13 finding that no provision has been made by the Legislature to resolve a dispute in case of two parties claiming pattas under two different enactments and agreeing with the single judge to move a civil court the Writ Appeal has been dismissed on 24-05-1978.

11. The thrust of the argument of the counsel for the appellants is since a co-relation statement under Ex.A-11 was passed by the Director of Survey and Settlement on 06-05-1976 and the subject matter of the suit survey numbers is co-related to the patta No.164 and directions were given to the Inam Deputy Tahasildar to implement the co-relation as furnished by the

Survey Officer and to incorporate the names of the pattadars. According to him, this order has become final. It is not in dispute that the defendants have preferred a revision to the Government and as per Ex.B-16 dated 02-08-1978, the Commissioner of Survey and Settlement has passed an order informing the petitioners that the Board's earlier orders were correct and those orders will have continued validity. Reference was made to the order dated 29-07-1968 under Exs.B-13, 14 and 15. Evidently, they recognized the rights of the defendants. Therefore, it is quite clear that the order under Ex.B-16 clearly shows that the Commissioner of Settlement has accepted the earlier orders and consequently the grievance of the defendants with regard to co-relation made by the Director of Survey is accepted. Therefore, in view of the above circumstances, the contention of the counsel for the appellants that the co-relation order has become final and consequently the plaintiffs are entitled to the patta and title to the property, cannot be accepted.

12. It is to be noted that after the alleged co-relation of the property with different survey numbers as mentioned in Ex.A-11, no further modified patta was given to the plaintiffs with regard to suit schedule property. Evidently, issue of a patta is the exclusive jurisdiction of the Settlement Officer either under the Estates Abolition Act or Inams Abolition Act. In this case, till today no patta was granted by the competent authority and the civil court cannot decide the rights of the parties on the basis of the conflict. As matter stands, the patta Ex.A-4 is without the survey numbers and the co-relation order is not implemented and in fact it is found to be not considerable in view of the order of the Commissioner under Ex.B-16. Therefore, the whole case

of the plaintiffs that Ex.A-4 patta relates to the suit schedule properties cannot be accepted and Ex.A-11 by itself without further proceedings granting patta incorporating the co-related survey numbers will not confer any title to the plaintiffs.

13. When once it is to be held that the civil court has no right to consider the grant of patta, the right of the plaintiffs cannot be determined leave alone the fact whether the patta issued under the Estates Abolition Act or Inams Abolition Act takes precedence. Further-more, as rightly found by the court below, there is neither proof of continuous possession and enjoyment and in fact when the land acquisition proceedings were started long prior to the agitation of the title by the plaintiffs, the plaintiffs never raised objections and never participated in the enquiry proceedings and in fact the compensation was paid to the defendants who are found to be the owners. In disputes of this nature with regard to title to the property, the Land Acquisition Act itself provides a remedy under Section 30 of the Act to determine the rights. The plaintiffs have kept quite for a longer time when the proceedings were pending and were also finalized.

14. Evidently, the court below relying upon a judgment in ***Pinninty Peda Govindayya and others Vs. Pinnity Subba Rao and others***^[1] found that the inam patta is only for the purpose of collecting of the cist and does not confer any right. But, however, according to the counsel for the appellants, in a decision reported in ***Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and others***^[2] it was found that patta granted under the Inams Abolition Act is final and the

civil court's jurisdiction to retry the issue once over is barred. The Apex Court was considering the exclusion of the jurisdiction of the civil court by virtue of the specific statutory provisions with regard to determination of the rights. In this case, evidently, after Ex.B-16, the plaintiffs have not sought for any further relief of grant of patta and in the absence of such an action, the plaintiffs cannot fall-back on Ex.A-4. The learned counsel for the appellants also relied on a decision reported in ***Nallipattu Ramakrishna Reddy and another Vs. Kasala Balaiah and another***^[3] where- under it was held the civil court has jurisdiction to decide the question arising under Section 11 of Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 as to the persons entitled to the grant of patta under the Act. Evidently, in this case, the plaintiffs have not forcing the claim under the Estates Abolition Act. In fact, a grant of patta or refusal of patta is within the jurisdiction of the authorities provided under the Inams Abolition Act. Therefore, in view of the above circumstances, it cannot be said that the plaintiffs have got any right established with regard to suit schedule properties and consequently the judgment and decree passed by the court below does not call for any interference and the directions given in the Writ Appeal were approaching the appropriate forum and civil court will not confer jurisdiction on the civil court for implementation of the co-relation order, since it clearly says if there is jurisdiction to the civil court only. In fact, if the plaintiffs are aggrieved as against Ex.B-16, it should have been challenged and when Ex.B-16 has become final, the question of co-relation does not arise and consequently substitution of the patta by the court with survey numbers is beyond the jurisdiction of the civil court. Therefore,

there are no merits in both the appeals and the same are liable to be dismissed.

Accordingly, both Appeal Suits are dismissed. No costs.

N.R.L.NAGESWARA RAO,J

19-02-2013
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- [\[1\]](#) 1969(2) ALT 336
[\[2\]](#) 1991 Supp(2) SCC 228
[\[3\]](#) 1987 (1) ALT 120