

***THE HON'BLE SMT. JUSTICE P.SREE SUDHA**

+ APPEAL SUIT No.400 OF 2011

% 24-11-2023

The District Collector,
Ranga Reddy District at Khairatabad, Hyderabad.
...Appellant

vs.

\$ M.Kashinath and others.
... Respondents

!Counsel for the Appellant: Sri G.P for Appeals

^Counsel for Respondents: Sri Madhusudan Reddy
Gavinolla

<Gist :

>Head Note :

? Cases referred:

- 1) (2014) 2 SCC 269
- 2) (2010) 14 SCC 316

IN THE HIGH COURT FOR THE STATE OF TELANGANA**HYDERABAD***** * * *****APPEAL SUIT No.400 OF 2011**

Between:

The District Collector,

Ranga Reddy District at Khairatabad, Hyderabad.

...Appellant

vs.

M.Kashinath and others.

... Respondents

JUDGMENT PRONOUNCED ON: 24.11.2023

THE HON'BLE SMT JUSTICE P.SREE SUDHA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : -
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : -

JUSTICE P.SREE SUDHA

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA**APPEAL SUIT No.400 of 2011****JUDGMENT:**

This appeal suit is filed against the Judgment and decree dated 29.10.2010 in O.S.No.848 of 2002, passed by the learned V – Additional Senior Civil Judge, R.R.District.

2. The respondents/plaintiffs filed a suit *vide* O.S.No.848 of 2002 against the appellant/defendant for declaration and perpetual injunction regarding the land in Sy.No.8 admeasuring Acs.15 – 12 gts, situated at Himyathsagar, Rajendranagar Mandal, Ranga Reddy District. The trial Court got examined P.Ws.1 to 3 and marked Exs.A1 to A59 on behalf of the plaintiffs and the defendant got examined D.W.1 and marked Exs.B1 to B18 on his behalf. The trial Court after considering the oral and documentary evidence on record, decreed the suit in favour of the respondents/plaintiffs. Aggrieved by the said Judgment and decree, defendant therein preferred the present appeal.

3. The learned Counsel for the appellant/defendant contended that the trial Court erred in decreeing the suit stating that respondents/defendants are the owners and are in possession of the suit schedule property, without any evidence

for such declaration and also contended that trial Court failed to see the penalty imposed under Section 3 of the Land Encroachment Act for illegal possession by one Mallappa i.e., grandfather of respondents No.1 and 5. The trial Court failed to see that the subject land was a Government land as per Khasra pahani prepared during the year 1954-55, in which the said land was mentioned as Sarkari Poramboke. He further contended that the trial Court failed to see that injunction cannot be granted to an illegal possessor. The trial Court failed to see that amount paid to the respondents for the acquisition of land made for the purpose of laying outer ring road was only Exgratia to the encroachers, but not compensation. The possession of the respondents/plaintiffs was unauthorized and illegal and they failed to prove that they are in possession of the suit schedule property. Therefore, requested the Court to set aside the Judgment and decree passed by the trial Court.

4. Heard arguments of both sides and perused the entire evidence on record.

5. The parties herein are referred as plaintiffs and defendant as arrayed in the trial Court for the sake of convenience.

6. Originally, one Mallappa/grand-father of the plaintiffs No.1 and 5 acquired the land bearing Sy.No.8, admeasuring Acs.15 – 12 gts, situated at Himayathsagar Village, Rajendra Nagar Mandal, Ranga Reddy District for more than 70 years and enjoyed the possession of the property during his lifetime and he died in the year 1981 leaving the plaintiffs as his legal heirs. He is the grand-father of plaintiffs No.1 and 5, great grand-father of plaintiffs No.3 and father-in-law of plaintiff No.2 and thus they derived right of ownership and possession through succession and continuing enjoying the suit schedule property. The ancestor of the plaintiffs acquired the suit lands more than 70 years back and had been enjoying the same by making them cultivable by spending huge sums and he was also paying the land revenue to the Government and thus he became the owner of the suit lands during his life time and after his demise plaintiffs are enjoying the property as owners. At the time of construction of Himayathnagar Tank, many lands of Ryots of Himayathsagar village have been sub-merged and the new village of Himayathsagar has been established to rehabilitate the ryots of the village, they were allotted Government land and allowed to cultivate them at free of cost under the then Government scheme and policy. The ryots of the village occupied different lands and began to cultivate the same under

the said scheme and the ancestor of the plaintiffs M.Mallappa had acquired the suit lands and thus he and his family is in continuous possession of the suit lands from more than 70 years.

7. The subordinates of the defendant under wrong impression levied penalty against the ancestor of the plaintiffs and he in turn preferred jamabandi appeal before the Collector of Hyderabad and it was registered as Appeal No.A1/18246/1973 and the same was allowed on 29.06.1974 and the penalty imposed by Nazim-e-jamabandi was returned and the possession of the ancestor of the plaintiffs was held to be valid as per the Government Memo No.3365, dated 3rd Amardad 1351 Fasli. The said Mallappa was in possession of the suit lands from 1351 Fasli (1942) by making payment of land revenue to the Government and perfected his title during his life time in the year 1972 and he had been enjoying the possession of the suit lands as owner till his death without any obstruction or interference. He died in the year 1981 and after his demise, plaintiffs are enjoying the possession as owners being the legal heirs of the Mallappa and thus they became entitled to get Patta affected in their names. The plaintiffs are claiming title by way of adverse possession in view of their long

standing possession over the suit property, even the Government also admitted the Title and possession of the plaintiffs over the suit schedule property, as such Government has paid the compensation to the plaintiffs for an extent of Acs.03 – 02 gts, in Sy.No.8 with regard to the land acquired by the Government to lay the Outer Ring Road. The plaintiffs have also reminded the Subordinates of the defendant to recognize them as owners and to effect Patta in their names in respect of the suit lands, but the subordinates of the defendant instead of recognizing the status of the plaintiffs as owners and possessors of the suit lands, threatened them to oust forcibly from the suit land and they have also denied to furnish the copies to the plaintiffs and to make entries in their names in the present revenue records. In the month of September, 1998, they have given threats through village officers of the Himayathsagar to get the plaintiffs dispossessed and due to the threats, plaintiffs got issued legal notices under Section 80 of C.P.C on 18.09.1998 and the same was served upon the defendant on 19.09.1998, as such plaintiffs filed suit for declaration to declare them as owners and possessors of the suit land and also to effect the Patta in their names in the revenue records and from restraining the defendant from interfering with the peaceful possession and enjoyment of the suit lands. Later, as

per the Orders in I.A.No.548 of 2009 dated 07.09.2009, plaintiffs amended the plaint and incorporated that after receiving the notice dated 18.09.1998, the subordinates of the defendant have kept quiet for few years and later plaintiffs had sent another legal notice dated 17.06.2002 under Section 80 of C.P.C, as the Subordinates of the defendant again made attempts to interfere with their peaceful possession, they filed the suit for declaration.

8. The defendant had filed three written statements. The first written statement was filed by the District Collector on 11.12.2002, in which he denied all the material allegations and stated that plaintiffs have no such right vested on them to sue the defendant in respect of the suit schedule property. The suit filed by the plaintiffs is bad in law for want of cause of action and no proper notice under Section 80 of C.P.C was given to him. It was stated that he was not aware that plaintiffs No.1 to 5 are the legal heirs of Mallappa and they succeeded the suit property through him. Neither the plaintiffs nor their grandfather have never cultivated the suit lands, only to grab the valuable Government land, plaintiffs concocted a false story and filed the suit without any right or title over the suit property. The said Mallappa, during his life time illegally

cultivated the suit lands for few years, for which the defendant has levied 'Sivai Jamabandhi'. As per Section 3 of the Land Encroachment Act, the penalty will be imposed for those who are in illegal possession of the Government lands, as such by paying the 'Sivai Jamabandhi', plaintiffs nor their ancestors could not get any title over the suit lands. As the suit lands are Government lands, the question of succeeding the land by plaintiffs does not arise. As per the village revenue records and "Khasra Pahani" for the year 1954-55, the land bearing Sy.No.8 admeasuring Acs.18 - 14 gts, was recorded as "Sarkari Poramboke", for which plaintiffs are no way concerned with the suit schedule lands.

9. The said Mallappa, had encroached the suit lands unauthorizedly and cultivated for few years, for which defendant imposed penalty, for several years the said lands are kept as 'Padava' i.e., without any cultivation. Neither the defendant nor erstwhile Government has never issued any Patta certificates to Riots nor allowed any person to cultivate the suit lands. As the said land was a Government land, the said Mallappa illegally cultivated the said lands for some years during his life time and no Patta certificate was issued and he was a trespasser over the Government land. Mere possession in the revenue records does

not confer any title over the suit lands. The law is well settled that no injunction can be granted to the illegal possessor or those persons in unauthorized possession. The said Mallappa was a trespasser of the Government land, as such the said Mallappa nor plaintiffs are entitled for any injunction to protect their alleged possession. It is further denied that Mallappa acquired the suit lands for more than 7 years and after spending huge amounts got the suit lands cultivable. The contents of the plaintiffs in the plaint are baseless without any right or title over the suit lands and to grab the valuable Government land, plaintiffs have filed the suit for injunction.

10. The defendant denied the possession of Mallappa since 1941, by making payment of land revenue to the Government and perfected his title during his life time by adverse possession. It is further stated that when the plaintiffs claiming adverse possession, they must be in possession as owners to the knowledge of the true owner without interruption and without any break for a period of 30 years for Government lands. As the lands are kept 'Padava' for the last several years, the question of acquiring the adverse possession by the plaintiffs does not arise. He also stated that as the said lands are Government lands, they will not issue any Pahani or entry

cannot be added and the question of recognizing the plaintiffs over the Government land does not arise and moreover the assignment will be granted only to the landless poor to an extent of Acs.5 – 00 gts, but in the present case, plaintiffs are seeking relief of Acs.18 – 14 gts, which is contrary to the provisions of law and moreover the said village comes in the peripheral area within ten miles belt from the municipal limits, but the suit land is within 1 km from the Rajendernagar Municipal limits, as such the question of assignment of the said lands does not arise. The concerned revenue officers have interfered to protect the Government lands from the land grabbers, and to protect the said land, the subordinates of the defendant have interfered with illegal encroachment of the suit lands. The suit filed by the plaintiffs was barred by limitation. As per their own contention, defendant tried to dispossess the plaintiffs on 08.09.1998 and thereafter there is no fresh cause of action and the cost of the suit lands was more than Rs.5,00,000/- per acre, as such the suit was grossly undervalued and paid insufficient Court fees, therefore requested the Court to dismiss the suit.

11. The Deputy Collector & Tahsildar of Rajendranagar Mandal, Ranga Reddy District by filing written statement dated

24.03.2009, stated that plaintiffs have not filed any document to establish their continuous possession for more than statutory period of 30 years against the lands belonging to the Government and thus the suit was liable to be dismissed. He further stated that the Government has paid the Ex-gratia to the encroachers of the Government land and it does not amounts to admitting the title of the plaintiffs over the suit schedule property and they have failed to fulfill the ingredients of adverse possession. As per the revenue records, the land in Sy.No.8, admeasuring Acs.18 - 14 gts situated at Himayathsagar Village was classified as Khariz Khata Sarkari from 1952-53 till today. The name of Mallappa was recorded in the possessor's column of the pahanies for the years 1952-53, 1953-54, 1955-58, 1960-61, 1961-62, 1964-65, 1966-67, 1967-68, 1968-69, 1977-78, 1978-79, 1979-80 and 1980-81. Thereafter, he was not in possession of the above lands, as such his name was not recorded in the possessor's column. The said Mallappa during his life time illegally cultivated the land in question for few years, as such he was levied Shivai Jamabandi. Mere payment of Shivai Jamabandi does not confer any right over the Government land. The grand-father of the plaintiffs was in possession of the above land only for 13 years that too with interruption. He also stated that the amount paid by the HUDA

was only exgratia, but not compensation. To avoid hurdles in the progress of project, HUDA has taken a liberal view for payment of exgratia. Plaintiffs have not filed documentary evidence to prove their long standing possession over the suit schedule property. He further stated that the learned Principle Senior Civil Judge, Ranga Reddy District had also granted interim injunction in E.A.No.24 of 2009 in E.P.No.17 of 2009 in O.S.No.526 of 1995, restraining the Government from assigning or allotting or creating any charge regarding the suit land, as such plaintiffs are not entitled for discretionary relief of declaration and equitable relief of perpetual injunction. The lands in Sy.No.8 are classified as Government Kharez Khata and the Government was in possession of the suit schedule property and thus suit was liable to be dismissed.

12. He had also filed another written statement dated 30.09.2009, in which he further stated that plaintiffs have failed to fulfill the ingredients under Sections 34, 35 and 38 of the Specific Relief Act and they are not aware of the identity of the property and they have also issued legal notice on 18.09.1998 and 19.09.1998 subsequently. He further stated that E.P.No.17 of 2009 in O.S.No.527 of 1995 was allowed by deleting the suit schedule property and thus requested the Court to dismiss the

suit. It was also requested to consider the additional written statement as the part and parcel of the written statement filed by the defendant/District Collector.

13. Plaintiff No.1 was examined as P.W.1 and he stated that plaintiff No.2 is his mother, plaintiffs No.3 and 4 are his sons and plaintiff No.5 is the sister. His grand-father Mallappa had acquired the land in sy.No.8, admeasuring Acs.18 – 14 gts, situated at Himayatsagar village, more than 70 years back. He reiterated the contents of the plaint in his chief affidavit. In the Cross-examination, he stated that his father died in the year 1973 and his grand-father expired in the year 1981. As on the date of filing the suit, he was aged about 48 years. He admitted that Ex.A1, pahani for the year 1953-54 under column No.22, the land was mentioned as 'Padava'. He had also admitted that suit lands fall within the Rajendranagar Mandal and M.R.O, Rajendranagar was not a party to the suit. He further admitted that in Ex.A2, Chessala pahani for the year 1955-56 to 1957-58 the suit schedule property was shown as Sarkari Khariz Khatha in column No.1 and in column No.11 it was shown as Sarkari. In his further evidence, he stated that after filing of the suit, the Government has acquired the land to an extent of Acs.3 – 2 gts for the purpose of laying out ring road and paid compensation

and he also filed the relevant documents under Exs.A31 to A45 regarding the acquisition of the land on payment of compensation, but not Exgratia. He had given boundaries of the suit property on 11.10.2006 and also after the amendment on 21.04.2009. He had filed the Order of the appeal preferred by them under Ex.A25. He further stated that he was not a party to E.P.No.17 of 2009 and now they are claiming for an extent of Acs.15 – 12 gts. He also admitted that in the pahanies filed by him, in the pattadar column it was shown as 'Sarkari Khariz Khata'. He further admitted that they have not pleaded in the plaint that they dug a bore well in the suit schedule property. He had also admitted that in Exs.A17 and A18, the column No.16 was kept blank and further stated that they are cultivating the suit lands, at that time they prayed for rectification of entries in the revenue records as their names were not reflected from 1981-82.

14. He further stated that the Government has tried to dispossess them for the first time in the year 1998 and again on 15.09.2002. They have issued a notice under Section 80 C.P.C to the Government on 18.09.1998. He also stated that he did not know whether the Government has abolished the collection of land revenue in or about 1983. It was suggested to him that

the land revenue records under Ex.A24 are false and fabricated as no land revenue was collected on or after 1983 by the Government, but he denied the same. It was suggested that Ex.A23, 'Pavuthi Bahi' does not belong to his grand-father Mallappa, and he denied the same. It was also suggested to him that Exs.A26 to A30, certified copies of the Choufasla are fabricated, but he denied it.

15. It was further suggested to P.W.1 that their names were not recorded in the revenue records as possessors subsequent to 1980-81, but he denied it. It was suggested that Government paid the exgratia as per G.O.Ms.No.14 dated 18.12.2006 to the encroachers, but he denied it. It was also suggested that Exs.A37 to A47 were not relevant to the suit, but he denied it. It was suggested that Government was shown as the owner and possessor of the suit schedule property from 1983-84 onwards, and the same was also denied by him. Exs.A47 to A59 were marked through him. It was suggested to him that Ex.A46 was a created document, but he denied the same. He stated that he personally served the notice to the office of the collector. He admitted that he has not mentioned the cause of action specifically in his earlier notice issued in the year 1998. He also stated that he had filed all the available documents to show

their possession over the suit schedule property from 1930-2002. He stated that in Exs.A17 and A18, his name was not mentioned and in the pahanies under Exs.B7 to B12, Government was shown as possessor in the possessor's column. He stated that he raised barbed fencing wire to the suit schedule property and his name was also written on the each stone. P.Ws.2 and 3 are independent witnesses examined on behalf of the plaintiffs and they supported the version of P.W.1.

16. The defendant was examined himself as D.W.1 and he reiterated the contents of his written statement in his chief affidavit and Exs.B1 to B14 were marked through him. In his Cross-examination, he stated that he was working as Mandal Revenue Officer, Rajendranagar from 18.02.2008. Previously, he worked as Special Deputy Collector (Land Acquisition) for outer ring road, Ranga Reddy District from January, 2005 to 17.02.2008. He admitted that he has not made any efforts to ascertain whether the plaintiffs are legal heirs of Mallappa or not. As per the revenue records, Mallappa was shown as possessor and cultivator of the suit lands till 1981 and he cannot say whether the said Mallappa was shown as cultivator and possessor in their revenue records from 1942 onwards. He admitted that the name of Mallappa was recorded as possessor

and cultivator from 1953 to 1980-81. He also stated that he was authorized to give evidence by the Collector on his behalf. He stated that he was not aware of the appeal preferred by the Mallappa before the District Revenue Officer, challenging the Order under Ex.A25. Ex.A22 was the certified copy of the Order passed by the District Revenue Officer dated 29.06.1974 and the same was allowed and the assessment under the Land Encroachment Act imposed by the Tahsildar was set aside.

17. He admitted that he has not referred the said Order under Ex.A22 in his additional written statement and also in the written statement filed by the Collector. The Village Officer was the author of the pahanies. He admitted that there was a barbed wire fencing enclosing the suit schedule property and he has not filed any record to show that Government or the Collector has spent the amount for fencing the suit land and he cannot say whether the said records available or not without verification. He also admitted that part of the barbed wire fencing was dismantled for laying of the outer ring road in or around 2006. To his knowledge, the land acquisition proceedings were announced in or around 2004. He addressed a letter as Special Deputy Collector in the year 2007 to the

Deputy Collector and Tahsildar, Rajendranagar to verify regarding the application of P.W.1 about his possession.

18. He further admitted that Ex.A31 was the letter dated 11.02.2008 addressed by the Deputy Collector and Tahsildar, Rajendranagar to the Special Deputy Collector. He stated that he was not aware of the provisions of Sections 34, 35 and 38 of the Specific Relief Act. He stated that whenever the land of the Government has to be acquired, the Government will not pay compensation or Exgratia to any person, who is not in possession and enjoyment of the property as on the date of the acquisition. He also stated that he was not aware of the Orders of the Status-quo passed by the Court to maintain possession in O.S.No.848 of 2002. He was not aware whether the then Nizam Government passed Orders in G.O.Ms.No.3365 equivalent to June, 1942 declaring the persons in possession of the property as owners to enjoy at all times. He also admitted that pahanies will be recorded after binding the leaves of pahanies, but not on separate sheets and further stated that they maintain B-Memorandum when Government lands are being cultivated by the civil persons.

19. He further stated that in the pahanies i.e., Exs.A1 to A18, it was shown that Mallappa had raised Jowar, Sajja, Castor Crop and Vegetable Crops. He also admitted that they have issued a memo under Ex.A32 to the plaintiff No.1 informing him that the record register of pahanies for the years 1959-60, 1970-71, 1971-72 and 1976-77 of Himayatsagar Village were not available in their office. He further stated that they have not issued any notice to Mallappa or his legal heirs before recording the name of Sarkari in the possessor's column. He further stated that the object of maintaining the B-Memorandum register is to collect land revenue from the persons in occupation of the Government land and they will maintain B-memorandum as and when the persons cultivate the Government land for the collection of land revenue, but he denied that the names of the plaintiffs were recorded in the B-memorandum till 1995.

20. He further stated that from 1983-84, the collection of land revenue was dispensed with by the Government, but the Government was collecting water-cess for using water under notified sources and the land revenue was not collected in respect of the lands cultivated through the personal bore-well or open-well or rain-fed water. The land revenue will be collected

by the V.R.O. He could not identify the signatures of the V.R.O who passed the land revenue receipts shown to him. He could not say whether as per Ex.A23, Mallappa has paid land revenue to the Government from 1951 to 1958. They have not challenged the entries made in Ex.A23 from 2006 to till today. He stated that he did not know whether the Government has initiated any legal proceedings under the Land Encroachment Act for recovery of possession from the plaintiffs after 1974 to till today. They did not file any record to show that the location of the suit schedule property was within a radius of one kilometer. He admitted that the amount was paid to the plaintiff by way of cheques which were shown to be encashed as per Exs.A37 to A40. He also admitted that the said Sy.No.8 was not the subject matter of the claim in O.S.No.526 of 1995.

21. The learned Counsel for the appellant/defendant relied upon the decision of the Hon'ble Apex Court in the case of ***Union of India Vs. Vasavi Cooperative Housing Society Limited***,¹ in which it was held that *in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish clear case for granting such a declaration and the weakness, if any, of the case set up by the defendant would not*

¹ (2014) 2 SCC 269

be a ground to grant relief to the plaintiff. Plaintiff could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence. He also relied upon the decision of the Hon'ble Apex Court in the case of **Chatti Konati Rao and others Vs. Palle Venkata Subba Rao**,² in which it was held as follows:

“It is a well settled principle that a party claiming adverse possession must prove that his possession is ‘nec vi, nec clam, nec precario’, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. A person who claims adverse possession should show: a) on what date he came into possession, b) what was the nature of his possession, c) whether the factum of possession was known to the other party, d) how long his possession has continued and e) whether his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.”

22. In the light of the above evidence and citations placed before this Court, now it is for this Court to see whether the Judgment of the trial Court is on proper appreciation of facts or not.

² (2010) 14 SCC 316

23. Plaintiffs are the legal heirs of M.Mallappa, who died in the year 1981. They mainly contended that as per the then Government policy, their grand-father Mallappa had acquired the land to an extent of Acs.18 – 14 gts in Sy.No.8, situated at Himayatsagar village and his possession was held to be valid as per the Government Memo No.3365 dated 3rd Amardad 1351 Fasli. From then onwards, he was in continuous possession of the suit schedule property and pahanies were also issued in his favour. He was in continuous possession of the suit schedule property till his death. He was also issued Patta Passbook, but the defendant in spite of several requests, did not mutate the names of the plaintiffs in the revenue records after the death of their grand-father. They further contended that out of Acs.18 – 14 gts, the land to an extent of Acs.3 – 02 gts was acquired by the Government for the purpose of laying outer ring road on payment of compensation, but in the month of September, 1998, the subordinates of the defendant threatened to dispossess them from the suit schedule property, as such they got issued legal notice under Section 80 of C.P.C on 18.09.1998 to the defendant and the same was served upon the defendant on 19.09.1998 and later they kept quiet for few years. Thereafter, plaintiffs had sent another notice dated 17.06.2002 as the subordinates of the defendant have again made attempt

to interfere with the peaceful possession of the plaintiffs over the suit schedule property and also filed suit for declaration and injunction.

24. Whereas, the defendant contended that Mallappa was an encroacher and trespasser of the Government land. He cultivated the suit lands only for few years, later it was kept 'Padava' (fallow). As the said Mallappa himself has no right or title vested over the suit schedule property, plaintiffs cannot claim title through him and they filed the suit only to grab the valuable Government land and to create the cause of action, they got fabricated the legal notices. He disputed the said documents filed by the plaintiffs. The defendant had also filed certain Pahanies and the same were marked through D.W.1, but the trial Court held that the said pahanies filed by them were not signed by the Mandal Revenue Officer and the trial Court in Paragraph No.26 of its Judgment, clearly held that the said pahanies were not in accordance with the provisions of law and they were not attested by the Mandal Revenue Officer and thus they cannot be looked into.

25. D.W.1 in his Cross-examination clearly admitted that Exs.A47 to A59 were issued by their office, showing the name of

plaintiffs as cultivators in respect of the suit schedule property. He also admitted that the name of Mallappa was recorded in the possessor's column for the year 1952-53, 1953-54, 1955-58, 1960-61, 1961-62, 1964-65, 1966-67, 1967-68, 1968-69, 1977-78, 1978-79, 1979-80 and 1980-81. Plaintiffs have filed chowfasla for the years 1953, 1954, 1956, 1958 and 1959 under Exs.A26 to A30. They have also filed Ex.A2, certified copy of the Chessala pahani for the years 1955-56 to 1957-58. Apart from that they have also filed Ex.A1, Exs.A3 to A18 certified copies of the pahanies for the years 1953-1954, 1960-61 to 1982-83. They have also filed Rytwari Pattadar Passbook for the year 1965 issued in favour of Mallappa under Ex.A19. Plaintiffs have filed certified copies of the B-Memorandum for the years 1986 to 1996 under Exs.A52 to A59 and also certified copies of Faisal patty for the year 1982 to 1985 under Exs.A47 to A49. Ex.A32 was the memo issued by the Tahsildar, Rajendranagar Mandal dated 23.05.2008 to the plaintiffs, in which it was stated that pahanies for the year 1959-60, 1970-71, 1971-72 and 1976-77 of Himayatsagar Village are not available in their office. Plaintiffs stated that they filed all the documents available with them to prove their possession and enjoyment of the suit schedule property.

26. The said Mallappa preferred an appeal against the imposition of penalty in the name of Shivai Jamabandi and the District Collector by order dated 29.06.1973 stated that no penalty can be imposed on “Khariz Khata Lands”, when once it has been decided that, only fixed assessment can be collected. The patta proceedings were initiated in his favour long back and recently patta was ordered. It was also observed that Mallappa was paying fixed land revenue till that date. The patta proceedings were already completed and the file was lying in F-Section. The above Khariz Khata Lands are either cultivated by the Mallappa or under their possession. As per the certified copy of the Faisal Patti of 1353, the said lands were cultivated under due permission and in accordance with the Government memo No.3365 of 3rd Amardad 1351 fasli, i.e., from 1942 onwards. It was also held that the procedure envisaged in the Land Encroachment Act was not followed while imposing penalty and accordingly it was allowed by setting aside the penalty.

27. The learned counsel for the appellant/defendant argued that it is for the plaintiffs to show that their grand-father acquired the land under Himayatsagar project, but they did not file any document to show the allotment of the land in the name

of Mallappa. But in the appeal filed against several survey numbers, the survey No.8 was also mentioned, in which it was referred that the said lands were cultivated by them under due permission and in accordance with the Government memo No.3365 of 3rd Amardad 1351 fasli and thus the argument of the appellant counsel that no allotment of land was made in favour of Mallappa cannot be accepted as they are in possession of the lands from 1942 onwards. The Government came to know about the possession of the lands by the Mallappa in the year 1974 itself, but they have not initiated any proceedings against him either under land grabbing Act or under land Encroachment Act and allowed them to continue in the said land. Again, the Government has come to know about the possession of the plaintiffs during the acquisition of the land for laying outer ring road in the year 2006.

28. Plaintiffs have also filed Exs.A37 to A45, documents regarding receiving of the amount for acquisition of the land measuring an extent of Ac.3-2 gts for laying outer ring road. The learned counsel for the appellant/defendant mainly contended that the amount paid to the plaintiffs at the time of acquisition of land was Exgratia, but not compensation as they are encroachers of the suit schedule property. Even perusal of the

document shows that initially Sy.No.8 was not included for payment of compensation. When the plaintiff No.1 gave an application, it was considered. He was considered as encroacher and Exgratia was paid to him and his family members and the amount was also deposited in their accounts equally. Therefore, the argument of the learned Counsel for the plaintiffs that amount paid to them was not Exgratia, but compensation, is not tenable. This is the second occasion when Government came to know about the plaintiffs as encroachers of the land. Even then, they have not initiated any action against the plaintiffs for eviction, by declaring them as encroachers or land grabbers and allowed them to continue in the suit schedule property. The land revenue receipts were filed under Ex.A24, but the arguments of the appellant/defendant Counsel is that Government has stopped collecting land revenue from 1983 onwards, but the receipts filed by the plaintiffs are pertaining to the years 1964, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983 and others are filed in the name of plaintiffs during the year 1988-89, 1990 to 1992 and 1993-94. Therefore, the revenue receipts filed till 1983 can be considered in support of the plaintiffs case.

29. Regarding the cause of action, the defendant's Counsel mainly denied the legal notice given by the plaintiffs on 18.09.1998 and also on 17.06.2002. Plaintiffs stated that the legal notice issued on 18.09.1998 was served upon the defendant on 19.09.1998 and later they kept quiet for several years and again they made an attempt to dispossess them on 14.06.2002 and thus they issued another notice on 17.06.2002, and in the said notices, the case of the plaintiffs was explained in detail. P.W.1 stated that second notice was served upon the defendant personally in the office of the District Collector and the seal and endorsement was also available on the said legal notices, but defendant did not choose to give any reply even after the service of notice by the plaintiffs. The Government has not taken any steps to declare them as land grabbers or encroachers, though they mainly contended that Mallappa was a trespasser.

30. D.W.1 in his Cross-examination stated that after 1981, the name of the Sarkari was mentioned in the possessor's column and before recording the same they have not issued any notice to the plaintiffs and this clearly shows that after the death of Mallappa, the name of Sarkari was mentioned in the possessor's column, even without giving any opportunity to the

legal heirs of the Mallappa. D.W.1 had also stated that it is the Government land, they did not give any notice to the plaintiffs, but patta passbook was also issued in the name of Mallappa way back in the year 1965 and entries were also made for the years 1966 and 1967. So also, entries were made in favour of Mallappa in the 'Pavuthibahi' under Ex.A.23. All the documents filed by the plaintiffs are of more than 30 years and they are filed from the proper custody, as such presumption can be raised in favour of the plaintiffs regarding the said documents under Section 90 of the Indian Evidence Act. D.W.1 initially stated that there was injunction order against the plaintiffs in E.P.No.17 of 2009 in O.S.No.527 of 1995, but later it was stated that the names of the plaintiffs were deleted and in fact Survey No.8 is not the subject matter of the suit.

31. The main contention of the defendant's counsel is that it is for the plaintiffs to prove that they are in possession of the suit schedule property. In view of the above discussion, it clearly shows that the possession of the plaintiffs over the suit schedule property was peaceful, open and to the knowledge of the true owner for a much longer period than a statutory period of 30 years. The person who claims adverse possession is required to establish the date on which he came into

possession, the nature of possession, the factum of possession to the knowledge of the true owner, duration of the possession and that the possession was open and undisturbed. When the lands of Mallappa were submerged in Himayath Sagar Project, villagers were allowed to cultivate the lands in the neighboring village without paying any compensation. It seems that there was lot of surplus land during that time. Plaintiffs from the beginning stated that the the suit lands were allotted to the said Mallappa and he was the cultivator and possessor of the suit schedule lands. It was also admitted by D.W.1 that plaintiffs were in possession of the suit schedule property to the knowledge of the defendant from 1974 onwards, but they allowed them to continue in the suit schedule property without taking any necessary steps either under the Land Grabbing or under the Land Encroachment Act, even under Ex.A5 they were termed as encroachers. So also, they paid Exgratia by considering them as encroachers while acquiring the land to an extent of Acs.3 – 2 gts. Defendant willfully not entered the names of the plaintiffs in the revenue records in spite of several representations from 1981 onwards. They received land revenue, as such the argument of the defendant's counsel that plaintiffs did not prove their possession of the suit schedule property for more than 30 years as it is a Government land

cannot be accepted. Plaintiffs are entitled for declaration by adverse possession as their possession was to the knowledge of the defendant from 1974 onwards.

32. The contention of the plaintiffs is that when their lands were sub-merged under Himayatsagar project, the then Government allotted certain lands and accordingly Mallappa acquired Acs.18-14 gts of land and spent huge amounts for getting them cultivable and from then onwards he was cultivating the suit schedule property. The learned counsel for the defendant argued that if at all they intended to assign any land to the Mallappa, they might have given Acs.5-00 gts, but not Acs.18-14 gts as contended by them, but while issuing patta for Mallappa they have not followed the said rule and issued patta passbook for the entire extent of Acs.18-14 gts, as such they cannot raise the said plea at a later point of time. The trial Court also considered the said aspect in detail and rightly arrived to the conclusion and decreed the suit in favour of the plaintiffs. This Court finds no infirmity or illegality in the order of the trial Court and accordingly the appeal suit is dismissed.

33. In the result, the appeal suit is dismissed confirming the Judgment and decree passed by the trial Court dated

29.10.2010 in O.S.No.848 of 2002. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATE: 24.11.2023

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THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.400 of 2011

DATE: 24.11.2023

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