

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4669 OF 2022
(Arising out of SLP(Civil) No.6898/2021)

The Principal Secretary,
Revenue Department, State of Telangana
& Anr.

....Appellant(s)

Versus

B. Rangaswamy (Dead) By Lrs.
& Ors.

....Respondent(s)

WITH

CIVIL APPEAL NO.4670 OF 2022 @ SLP(C) NO.7610/2021)

J U D G M E N T

A.S. Bopanna,J.

Leave granted.

2. The Appellants-State of Telangana through its Principal Secretary as appellant No.1 and District Collector as appellant No.2 are before this Court in the Appeal bearing No.4669/2022 (arising out of SLP 6898/2021), assailing the judgment dated 01.04.2021 passed by High Court for the State of Telangana at Hyderabad in CCCA No.22/1999. The appellant in Appeal No.

4670/2022 (arising out of SLP No.7610/2021), is also assailing the same judgment insofar as cancellation of a portion (298 sq.yards) of the suit subject land allotted in his favour. The consequence of the result of the main appeal will befall on the appellant in the said appeal, due to which there is no need to consider the same in detail.

3. Through the judgment dated 01.04.2021 the High Court has allowed the appeal and set aside the judgment and decree dated 10.11.1998 passed by the V Senior Civil Judge, City Civil Court, Hyderabad in O.S. No.609/1981. Consequently, the suit has been decreed declaring the respondents in the main appeal as owners and restraining the appellants herein from interfering with their possession. The appellant in the connected appeal has been directed to restore possession to the extent of 298 Sq. yards, i.e., a portion of the suit schedule property which has been allotted to him during the pendency of the lis.

4. The case has a chequered history. The suit filed in 1981 was at the first instance dismissed on 24.09.1982 after detailed consideration. The respondents herein filed an appeal before the High Court. The High Court, after consideration, through its judgment dated 26.06.1995 set aside the judgment passed by

the Trial Court and remanded the matter to the Trial Court for fresh determination. It is after such determination the suit was once again dismissed by the Trial Court on 10.11.1998, which was carried in appeal and resulted in the impugned judgment, which is presently assailed herein. The appellants herein were defendants No.1 and 2 in the suit. The respondents No.1 to 12 herein are the legal representatives of plaintiff No.2 who had instituted the suit and respondent No.13 was the plaintiff No.1 in the suit. The parties would be referred to as per their rank in the suit before the Trial Court for the ease of reference, convenience and clarity.

5. The brief facts leading to the present case are; the plaintiffs No.1 and 2 along with one Smt. B. Saroja Devi are partners in the business carried on in the name and style 'Bhagyanagar Studio' which has its office at Road No.14, Banjara Hills, Hyderabad. The second plaintiff claims to have purchased the property measuring 2 acres 10 guntas under a registered sale deed dated 03.09.1964. The property is claimed to be a part of Survey No.129/56 Banjara Hills, Hyderabad. Smt. B. Saroja Devi, one of the partners, in the plaintiff No.1 studio claims to have purchased the property bearing Survey No.129/73 situated

in Banjara Hills, Hyderabad admeasuring 5 acres 38 guntas, under a sale deed dated 03.09.1964. The plaintiffs contend that the said extent of the property situated in Survey No.129/56 and Survey No.129/73 are adjacent to each other. Being a contiguous block of land, the plaintiffs undertook the construction of the studio over the said lands. It is the pleaded case of the plaintiffs that in such circumstance the plaintiff No.1 is in possession of 7 acres and the plaintiff No.2 is in possession of about 3000 sq. yards which he retained for himself. The plaintiff asserts that the said 3000 sq. yards is not government land. It is further averred in the plaint that the plaintiffs are in continuous possession and enjoyment beyond the statutory period adverse to the interest and to the knowledge of one and all. It is therefore alternatively contended that they have become absolute owners in respect of the suit land by adverse possession and by virtue of title.

6. It is averred in the plaint that the defendant/Government at that stage was trying to interfere with the possession of the plaintiff over the suit land, contending that the land belonging to the government was being enclosed with a compound wall and structures were being raised by the plaintiff. The plaintiff contended that the land in question is private land and made a

grievance that the government claiming that the suit land bearing Survey No.403 Shaikpet Village is situate between the plaintiffs' land is not allowing the plaintiff to carry on the construction. The plaintiffs further reiterating that the suit schedule land belongs to the plaintiffs have filed the suit seeking that the plaintiffs be declared as the absolute owners and possessors of the suit land admeasuring about 2 acres 10 guntas, forming part of Survey No.129 as detailed in the schedule and plan annexed to the plaint. It was further prayed that the defendant/Government be prohibited from interfering or causing obstruction in the construction work, enjoyment and possession of the suit land.

7. The defendants filed their written statement disputing the claim of the plaintiffs. Apart from contending that the suit was bad for non-joinder of proper and necessary party the defendants also contended that the suit is not maintainable. Insofar as the averments in the plaint relating to the ownership of the property bearing Survey No.129/56 and Survey No.129/73, reference was made to the total extent which was owned by the vendor of the plaintiff and also the property being sold in portions. In that regard it was contended that the land situate on the western side

to the portion purchased by Smt. B. Saroja Devi, there is government poramboke land bearing Survey No.403. Considering the total extent and the portions sold, it was contended that the extent to which the claim is being made is not situate in Survey No.129/56 but is actually the government land owned and possessed by the government which bears Survey No.403 situate between Survey No.129/56 and 129/73. It is contended that the plaintiffs themselves in the year 1976 and 1978 admitted that the piece of land admeasuring 2 acres is lying in between Survey No.129/56 and Survey No.129/73, which belongs to the government and the plaintiffs applied and requested the government for allotment of the said land for extension of their studio. In fact, they sought allotment at the market rate. The defendants denied that the suit schedule property is a part of land bearing Survey No.129/56. With reference to the various measurements stated in the plaint wherein it is contended that 7 acres is with plaintiff No.1 and plaintiff No.2 is in possession of 3,000 square yards, it is pointed out by the defendant, which if added, would be 7 acres 16 guntas and 64 square yards, though the purchase of 5.38 acres in Survey No.129/73 and 2 acres 10 guntas in Survey No.129/56

as claimed would actually add up to 8 acres 18 guntas. That by itself would indicate that the plaintiffs are not clear about the measurement and the identification of the property.

8. In that light it was further contended in the written statement that the plaintiffs with an intention to grab a portion of the valuable government land bearing Survey No.403 which is situate between the Patta land of Survey No.129/56 and Survey No.129/73 have made an attempt in that regard but were prevented from doing so. It is also contended that the civil court had no jurisdiction under Section 14 of the A.P. Land Encroachment Act 1905. With all the above noted contentions the defendants sought dismissal of the suit.

9. Based on the rival pleadings, the trial court framed six issues for its consideration. Though at the first instance the suit was considered based on such issues, the judgment passed by the trial court was set aside by the High Court and the matter was remitted to the trial court for fresh consideration. At that point, the issues were recast, which read as hereunder:-

“1. Whether the plaintiffs proved the identity of the suit schedule property and also correctness of the plaint schedule?

2. Whether the plaintiffs proved their title to the suit schedule property?

3. Whether the plaintiffs proved their possession to the suit schedule property on the date of suit?
4. Whether the suit is bad for misjoinder or non-joinder of parties?
5. Whether the suit is not maintainable in law?
6. To what relief?"

10. A perusal of the issues framed would indicate that the burden had been cast on the plaintiffs to prove not just the title to the suit schedule property but also the identity of the property and the correctness of the plaint schedule. The plaintiffs examined PW-1 to PW-5 as their witness and got marked the documents at Exhibits A-1 to A-19. The defendants on their behalf examined DW-1 and DW-2 and got marked the documents at Exhibits B-1 to B-7. The trial court on analysing the evidence has arrived at its conclusion that insofar as the identity and ownership which was required to be proved under issues 1 and 2, the plaintiffs failed to prove that the suit schedule property admeasuring 2 acres 10 guntas is part and parcel of Survey No.129/56. In that view, since the identity and correctness of the suit schedule property was not proved, the said issues were held against the plaintiffs in addition to the other findings and the

suit was dismissed. The High Court while considering the appeal, though had reappreciated the evidence, has essentially found fault with the defendants in not producing the original of the documents which were produced and marked. In that light, drawing an adverse inference against the defendants, arrived at a conclusion that the Trial Court had wrongly held that there was land belonging to the government wedged between the property bearing Survey No.129/73 and Survey No.129/56. The High Court set aside the judgment of the trial court and decreed the suit. It is in that view, the defendants claiming to be aggrieved are before this Court in this appeal.

11. We have heard Mr. C.S. Vaidyanathan and Mr. K. Radhakrishnan, learned senior counsel on behalf of the appellants No.1 and 2 (defendants) respectively and Mr. V. Giri, learned senior counsel on behalf of the respondents (plaintiffs) and perused the appeals papers.

12. The learned senior counsel for the defendants, for the first time, in this appeal, sought to contend that the suit is barred by time as it was filed beyond the period of limitation provided in law. To support his contention that the issue of limitation can be raised even at this stage, the learned senior

counsel has relied on ***Management of the State Bank of Hyderabad vs. Vasudev Anant Bhide*** AIR 1970 SC 196 and ***Town Municipal Council, Athani vs. Presiding Officer, Labour Court, Hubli*** AIR 1969 SC 1335. Alternatively, the case in ***Banarasi Das vs. K. Kanshi Ram*** AIR 1963 SC 1165 is relied to contend that even if limitation is not a pure question of law but was a mixed question of fact and law, it is open for the appellate court to frame an issue and remit it to the Trial Court to render a finding on the same. Having noted the decisions rendered in the background of the facts arising therein, though there can be no cavil regarding the proposition of law enunciated therein, the said decisions cannot be considered in the abstract without reference to the facts arising herein.

13. In the instant case, though the issues relating to survey and re-survey of the land had arisen keeping in view the identity of the property being the question, the fact remains that the suit is not predicated on that basis to qualify to be a suit under Section 14 of the Andhra Pradesh and Boundaries Act, 1923 to invoke the limitation period of two years provided therein. On the other hand, the suit is one for declaration of

title and identity of the property, claiming it to be located within the boundaries of a particular survey number. In that view, as rightly contended by the learned senior counsel for the plaintiffs, the period of limitation as provided in Article 58 of the Limitation Act, 1963, which provides the period of three years from the date when the right to sue first accrues to obtain declaration is applicable. On this aspect, the learned senior counsel for the plaintiffs has also relied on ***Daya Singh & Anr. vs. Gurdev Singh (dead) by Lrs. & Ors.*** (2010) 2 SCC 194 and ***MST Rukhmabai vs. Lala Laxminarayan & Ors.*** AIR 1960 SC 335 to fortify his contention that the period of limitation in the instant case is to be computed from the date when the cause of action arose. The learned senior counsel for the defendant contends, even if that be the position, the letter dated 23.05.1976 was written by Sri. B. Ramaswamy when he was aware of the claim of the defendant in respect of the suit schedule property, which therefore ought to be reckoned as the cause of action. Further, the notification dated 29.07.1977 was published on 06.08.1977 when again the cause of action occurred, but the suit was filed only on 22.06.1981 beyond the period of three years and is therefore

beyond limitation. However, a perusal of the plaint averments would disclose that the letter and notification referred above is not the be-all and end-all. There was subsequent correspondence in 1978 and 1979, more particularly when notices dated 06.05.1979 and 10.08.1979, were issued. The plaintiffs thereafter issued the notice dated 30.04.1980 under Section 80 of the Civil Procedure Code. Since according to the plaintiff, the defendants continued to obstruct the peaceful possession of the property, suit was filed on 22.06.1981. The sequence would show that the cause of action has continued after it had first arisen and the suit was filed within the period of limitation provided for in law. We are therefore unable to accede to the contention of the learned senior counsel for the defendants.

14. The learned senior counsel further urged the contention of the suit being not maintainable for not filing the suit on behalf of the partnership firm. The contention is not necessary to be adverted in detail since the same was considered by the Trial Court while answering Issue No.4 and the said finding has not been disturbed by the High Court. In the instant case the question essentially is with regard to the title and identity of the

property bearing Survey No.129/56. The plaintiff No.2 having purchased the same had filed the suit. Though certain averments were made with regard the property being used for the construction of Studio, being contiguous property, there is no concrete material on record to indicate the nature and constitution of the firm and the details of the firm's property. In any event, the concurrent conclusion on that issue does not call for interference.

15. The learned senior counsel representing the defendants while adverting to the merits sought to refer to the documents filed along with I.A. No.137529 of 2021 to buttress their case further, in addition to the documents produced and marked before the trial court. The learned senior counsel for the plaintiffs objected to the documents produced for the first time before this Court along with the said application. It is his contention that the rigor of the provision contained in Order 41 Rule 27 C.P.C. would apply though the said provision has not been invoked in the application.

16. In that light, it would be appropriate for us to take note of the said application and at the outset consider as to whether the said documents are to be taken on record. Only in the

circumstance of the documents being taken on record, the said documents can be referred to, for further consideration in accordance with law. In that view, a perusal of the application would indicate that the only reason assigned by the defendant is that the documents have been discovered recently from amongst the heap of records lying with the department. The learned senior counsel for the defendant relied on the decision in ***Ramanbhai Ashabhai Patel vs. Dabhi Ajithkumar Fulsinji*** AIR 1965 SC 669 and in ***Jamshed Hormusji Wadia vs. Port of Mumbai*** 2004 (3) SCC 214 to contend that this court in exercise of its own jurisdiction could permit to even make good the deficiency by exercising the power under Article 142 of the Constitution. Though on the proposition of law there can be no quarrel that in appropriate cases this court can exercise its power under Article 142 of the Constitution in order to serve the ends of justice, in our opinion, the circumstance in which the defendants are seeking to produce the documents in the instant case, in the manner as has been sought at present, such exercise of discretion is not justified.

17. On the other hand, as rightly pointed out by the learned senior counsel appearing for the plaintiffs, the suit was instituted

as far back in the year 1981 and the suit for the first time was disposed of on 24.09.1982. The appeal was thereafter pending before the High Court till 26.06.1995, when the appeal was allowed and the matter was remanded to the Trial Court for fresh disposal. Thereafter the suit was disposed of on 10.11.1998. The matter was once again pending before the High Court upto 01.04.2021 until the appeal was disposed of. Despite such long pendency of the matter and also there being an opportunity of filing the documents when the matter had been remanded to the Trial Court, no diligence was shown. In such circumstance the attempt made at this belated stage to bring on record additional documents would not be justified. Hence, it cannot be permitted by exercising the plenary power of this court in a matter where the right of the parties relating to immovable property is to be determined and when there was ample opportunity earlier. Further, in a proceeding relating to the civil suit, mere production and the documents being taken on record would not suffice since the documents are to be proved by exhibiting it in accordance with law, which exercise cannot be resorted to at this juncture. In that view, we see no reason to permit the production

of the documents at this stage. Accordingly, I.A. No.137529 of 2021 is rejected.

18. Having concluded so, the rival contentions of the parties are necessary to be adverted based on the evidence that was available before the Trial Court which has been referred to by the Trial Court and reappreciated by the High Court to arrive at their respective conclusion. As noted, the prayer made in the plaint is to the effect that the plaintiffs be declared to be the absolute owners and possessors of the suit schedule property admeasuring about 2 acres 10 guntas forming part of the Survey No.129 as detailed in the schedule and the plan annexed. In the schedule to the suit, the property is described as the land admeasuring 2 acres 10 guntas bearing Survey No.129/56 known as Thathi Khana, Shaikpet Village, Road No.14, Banjara Hills, Hyderabad, A.P. The boundaries shown are the Land and Bungalow of Begum Mehdi Yar Jung on the North, Road No.14 on the South, part of Survey No.129/56 on the East and part of Survey No.129/73 on the West. To seek such relief, the case put forth by the plaintiff is that plaintiff No.2 purchased the property from Raja Dharam Karan under a sale deed dated 03.09.1964. The suit schedule property is a portion of the property which had

been purchased by Raja Dharam Karan from Syed Riaz Ahmed Sahabpattedar in the year 1946. It is the further case of the plaintiff that on the western side of the suit schedule property, the property bearing Survey No.129/73 which was purchased by Smt. B. Saroja Devi, one of the partners of plaintiff No.1 is situated. Therefore, the case of the plaintiff, in effect, is that the suit schedule property No.129/56 purchased by the plaintiff No.2 is immediately next to the property bearing Survey No.129/73 on its eastern side and they are contiguous lands. The need for seeking declaration arose since the defendants had raised an objection to the plaintiff putting up a compound wall enclosing the properties bearing Survey No.129/73 and property bearing Survey No.129/56 which the plaintiff claim to be contiguous. But according to the defendants there exists the government land bearing Survey No.403 wedged between Survey No.129/73 and Survey No.129/56 and such land measured an extent of over 2 acres. The objection is to enclosing the land belonging to the government also while constructing the compound wall.

19. The plaintiff No.2 examined himself as PW-1 and got marked the document at Exhibit A-2 whereunder Shri Syed Riaz

Ahmed, who originally owned the property bearing Survey No.129/56 sold an extent of 8 acres 12 guntas in favour of Shri Raja Dharam Karan Bahadur. The sale deed dated 03.09.1964 under which the plaintiff purchased the property from the legal heirs of Raja Dharam Karan is marked as Exhibit A-3. In the said document the boundary as depicted in the schedule indicates, on the east, vendors land agreed to be sold to B. Balaiah and the western boundary indicated is the land of the vendor No.6, bearing Survey No.129/73 agreed to be sold to B. Saroja Devi. Therefore, that land is the one sold by Rani Jayanthi Devi to Smt. B. Saroja Devi. As far as that aspect there is no serious dispute. However, the boundary shown towards the east as the vendors' land agreed to be sold to Shri B. Balaiah is in fact, another extent of land situated in the very same land bearing Survey No.129/56 which is purported to have been sold under Exhibit A-3 to plaintiff No.2. A sketch attached to the said sale deed is marked as Exhibit A-4.

20. One Shri Krishnaiah son of Balaiah was examined as PW-2, to state with regard to the location of the land since it is stated that the adjoining property was purchased by his father. One Shri D. Venkat Reddy is examined as PW-3 to state with regard

to his knowledge about the location of the property as he has worked as the watchman of the suit property from the year 1950 onwards. Shri M. Krishna Murthy is examined as PW-4 to state about his knowledge regarding the plaintiff No.2 having purchased the property bearing Survey No.129/56 under a sale deed dated 03.09.1964 and to state that the said land is in the possession of the plaintiff No.2. Shri Tej Karan son of Raja Dharam Karan, the vendor of plaintiff No.2 is examined as PW-5. The said witness has stated about his family owning the land measuring 2 acres 10 guntas in Survey No.129/56 of Shaikpet and the said land being sold under the document at Exhibit A-3.

21. Having noted the oral evidence tendered by the said witnesses, it is evident that keeping in view the nature of the controversy, the oral evidence would not be sufficient to resolve the controversy relating to the identity of the property. Insofar as the plaintiff No.2 having entered into a sale transaction and having purchased an extent of 2 acres 10 guntas in Survey No.129/56, the same cannot be in dispute since the same is under a registered document but the issue is; which was the property that was actually conveyed. Though for convenience a sketch was attached to the sale deed and it is marked as Exhibit

A-4, in view of the dispute raised by the defendants that there is a plot of government land to the east of Survey No.129/73 being the west of Survey No.129/56, this aspect of the matter requires consideration since the question essentially is as to whether the identity of the land is established by the plaintiff with reference to the land which is purportedly purchased as land located in Survey No.129/73 under another sale deed at Exhibit A-5. The sketch along with all the sale deeds are not an authenticated record but is prepared for the convenience inter se between the parties to the sale deed and does not bind anyone else.

22. Notwithstanding the fact that we have rejected the application seeking production of the additional documents which included certified copies of various sale deeds under which the family of Raja Dharam Karan had sold different extents of land to different purchasers, the sale transactions being under registered documents is in the public domain and the 'chart of flow of title' referred to by learned senior counsel for the plaintiffs and the consideration by High Court has indicated the different sale deeds starting from the transaction under which Syed Riaz Ahmed sold the total extent of 8 acres 12 guntas to Raja Dharam Karan under the document dated 27.03.1945. Though the extent

of 2 acres 10 guntas was sold to the plaintiff No.2 from out of the said extent of 8 acres 12 guntas under document dated 03.09.1964, it is also indicated that from the property bearing Survey No.129/56 an extent of 2 acres 20 guntas was sold to Moulvi Syed Taqui Bilgrami. Another extent of 2 acres 16 guntas was sold to Natwara Nanda. Further, an extent of 2 acres 16 guntas was sold to Merry Nandi. That apart, an extent of 2 acres 20 guntas was sold to B. Balaiah. In addition to the said transactions, the sale deed in favour of the plaintiff No.2 was to the extent of 2 acres 10 guntas.

23. Apart from the fact that various extents in Survey No.129/56 were sold to different persons, the document at Exhibit A-1 whereunder Syed Riaz Ahmed sold 8 acres 12 guntas in Survey No.129/56 to Raja Dharam Karan Bahadur indicated the western boundary as 'nala' which is claimed by the defendants as the government nala. The learned senior counsel for the plaintiffs no doubt contended that the mere mentioning of 'nala' can only mean that it is a drain and it cannot be a reference to government property being situated on the western side. Even if the said contention is taken note of, in the nature of the evidence presently available on record and in the

circumstance where the plaintiff had sought for a declaration to the effect that the property measuring 2 acres 10 guntas forms a part of Survey No.129, rather than to rely on the weakness of the evidence tendered by the defendant it was for the plaintiff to prove their case. From the document at Exhibit A-5, which is the sale deed dated 03.09.1964 whereunder Smt. Saroja Devi has purchased 5 acres 38 guntas in Survey No.129/73 from R. Jayanthi Devi, it is seen that it is also a portion of the total extent of land in the said Survey No. 129/73, which consisted of 11 acres 10 guntas. The boundary shown to the said document also does not conclusively prove the case of the plaintiff. On the other hand, when it is the case of the plaintiffs that Smt. B. Saroja Devi, a partner in the plaintiff No.1 establishment had purchased a portion of the property bearing Survey No.129/73 and that the plaintiff No.2 had purchased a portion of the property in Survey No.129/56, more particularly in the circumstance when the property bearing Survey No.129/56 was sold in different bits to various purchasers, if the plaintiff was to seek the relief as prayed in the present suit, it was necessary for the plaintiff to bring on record the various sale deeds for the different extents of the land in Survey No.129/56 and Survey No.129/73 so as to

indicate the extent and the boundaries under each of the sale deeds from the eastern most point of Survey No.129/56 so as to progress towards the western boundary and establish that the last extent of property purchased by the plaintiff No.2 was within the total extent contained in Survey No.129/56 and that the portion so purchased is not physically located in the land belonging to the government and no extent of land belonging to the government has been included in the sale deed by purporting it to be the sale of private land bearing Survey No.129/56. The plaintiff having failed to produce the said documents has not proved their case to enable the trial court to come to a conclusion that the property which the plaintiffs are claiming is factually a part of Survey No.129. Instead, when the defendants attempted to produce the same before the High Court in order to place the matter in its perspective, the High Court rebuked the defendants for not producing the same earlier and drew adverse presumption.

24. Further, though the plaintiff No.2 has got the sale deed in his favour as far back in the year 1964, the documents to indicate the mutation proceedings and the revenue documents being mutated in favour of the plaintiff has not been produced.

The document at Exhibit A-10 and A-11 with regard to the notification relating to construction of Bhagyanagar Studios indicating the schedule and the plan for construction of the studio cannot advance the case of the plaintiff insofar as determining the real issue in the suit. The said notification indicates with regard to the construction in Survey No.129/73 to the extent of 5 acres and the layout of the construction is shown only in Survey No.129/73, over which the defendants have no dispute whatsoever relating to that property, that too, when construction was well within the extent of 5 acres 38 guntas. The name of B. Rangaswamy (plaintiff No.2) indicated as neighbour's land to the said plan would not mean that the case of the plaintiff had been accepted by the defendants to be contiguous lands. All that was necessary at that stage for the relevant competent authority was to take note of the permission sought for construction and grant approval to that extent. The dispute arose only when the compound wall beyond that extent was attempted to put up.

25. As against the evidence tendered by the plaintiff, the defendant through DW-1 has stated with regard to the manner in which the approval for construction was granted and in the

said process the revenue authorities were not being involved. The letters dated 15.06.1978 and 23.05.1976 are marked as Exhibits B-1 and B-3 respectively on behalf of the defendants to contend that the plaintiffs being aware of the existence of government land had addressed letters to the Collector, Hyderabad District referring to the piece of land lying in between Survey No.129/56 and 129/73 of Shaikpet Village. The plaintiffs sought allotment of the same to the first plaintiff for extension of the studio activities. In Exhibit B-3, the details are more forthcoming wherein reference is made to the extent of land wherein construction is sought to be put up and also indicating that they have learnt that there is a piece of land in between the land purchased by them and therefore they were requesting for allotment of the same. On the said documents at Exhibits B-1 and B-3 the learned senior counsel for the plaintiffs contended that the plaintiff No.2 who is the owner of the land bearing Survey No.129/56 has not addressed the said letter.

26. The learned senior counsel appearing for plaintiffs contended that the said letters do not amount to admission that there is Government land. He relied on the decisions in **Chikkam Koreswara Rao vs. Chikkam Subba Rao** (1970) 1 SCC 558;

Nagubai Ammal vs. B. Shama Rao AIR 1956 SC 593 and ***Sita Ram Bhau Patil vs. Ramachandra Nagu Patil*** (1977) 2 SCC 49 to the effect that admission has to be unequivocal, which is not so in the instant case. On that aspect, though the letter has not conceded in unequivocal terms, it has referred to the claim made by the revenue authorities and the request has been made instead of asserting their right as has been done later by filing the suit. In any event, the said letters lend perspective to the issue when considered along with the other evidence. Even if contents of the letters are not admission, the letters remain to be a piece of evidence to indicate that the request made for allotment of the same land is indisputable. It is also contended by the learned senior counsel that in the cross-examination of PW-1, he has indicated that the letter has not been written by him. In that regard, a perusal of the cross-examination indicates that the letters dated 15.06.1978 and 23.05.1976 were confronted to PW-1. Though PW-1 denied that he had given such letter to the government and claimed that there was no government land between the two Sy. Nos. and further though he denies the suggestion that his brother applied to the government, he has thereafter added, since his brother is not the owner, he cannot

make such request. Though such a statement is made, what cannot be lost sight of, is that the document is on behalf of the plaintiffs more particularly the plaintiff No.1 i.e. Bhagyanagar Studio. The letters are on its letter head and the signatory Sri B. Ramaswamy was not only the brother of plaintiff No.2 but also a partner along with plaintiff No.2 and Smt. B. Saroja Devi and the reference with regard to the construction to be made as a composite unit is stated with reference to Survey Nos.129/73 and 129/56 for plaintiff No.1 Studio. Further, the said letters are produced by the defendants from their records and the letter has been addressed by the plaintiff within a short duration from the period the sale deed dated 03.09.1964 has come into existence. The fact that the letter is dated 23.05.1976 and G.O. of Municipal Administration approving construction is dated 29.03.1976 cannot be a mere coincidence. This would indicate that from the beginning after approval was given and construction commenced the plaintiff was aware that there was a claim by the government to an extent of property which is located between the two extents in Survey No.129/73 and 129/56 when objection was taken relating to extended construction. In that circumstance when the suit is ultimately filed indicating the cause of action as the

obstruction caused by the defendants and the defendants not heeding to the notice dated 30.04.1980 issued under Section 80 of the Civil Procedure Code, the plaintiff was required to produce the necessary document as already indicated, to establish that out of the total extent of land in Survey No.129/56, even after the sale of the different extents by the family of Raja Dharam Karan the extent as sold to the plaintiff No.2 was still available in Survey No.129/56 and therefore they are entitled to a declaration that the land purchased by them was a part of Survey No.129. Though the plan at Exhibit A-19 relating to the survey plot of Survey No.129/73 dated 10.07.1942 is produced, from the location of the property indicated it does not conclusively show the eastern boundary as claimed by the plaintiffs. In that light, a perusal of the judgment passed by the trial court indicates that the trial court has taken into consideration the evidence available on record and has analysed the same in its correct perspective.

27. In that background, a perusal of the judgment passed by the High Court would indicate that it has proceeded as if the burden which had been cast on the defendant has not been discharged though the issues framed had cast the burden on the

plaintiff not only with regard to the title but also identity of the suit schedule property and also correctness of the plaintiff schedule property. It is noted that the High Court in fact has relied more on the oral evidence of the plaintiff and has commented that the trial court has wrongly relied on the document at Exhibit B-1. The nature of the documents indicated above and the manner in which the plaintiff was required to establish its case in a circumstance where it was claiming that the properties are contiguous was in the circumstance that there was a challenge raised by the defendants to the identity and description of boundaries rather than title. It is in that context Exhibit B-3 that was addressed earlier in point of time and B-1 subsequently becomes relevant. As noted, the said documents were produced from the records of the defendant and mere denial at this point of time more particularly when the dispute between the parties has continued ever since the plaintiff purchased the property and sought to establish their right over the same. However, the High Court in para 96 to 98 has placed it out of context as if the Trial Court has proceeded only by treating the letters as admission. What is necessary to be taken note is that, excluding the property bearing Survey No.403 with its old No. as

151/1 if the plaintiff has purchased any other extent in Survey No.129/56 the defendants have no claim over the same. It is in that light, the High Court was required to examine the matter since what is to be established by the plaintiff was the identification and correctness of the exact location of the land.

28. It is no doubt seen that the High Court in para 23 to 29 of the judgment has adverted to take note of the documents produced by the plaintiff at Exhibits A-1 to A-11 and A-19, more particularly Exhibit A-3. Further, the evidence tendered by PW-1, PW-4 and PW-5 was also taken note of. From the analysis thereto the emphasis is on document at Exhibit A-3, whereunder the plaintiff purchased the extent of 2 acres 10 guntas in Survey No.129/56 from the heirs of Raja Dharam Karan. The evidence of PW-4 was relied upon to take note that he had attested the sale deed at Exhibit A-3. The evidence of PW-5 i.e., the vendor No.5 in the said document was relied upon. Based on the said evidence, the High Court noted the purchase of the property made by the plaintiff No.2 and the schedule indicated to the said document. The title of the plaintiff's vendor to a larger extent of the property than what was sold to the plaintiff No.2 was taken note by referring to Exhibit A-1. On that aspect of the matter,

though such consideration has been made by the High Court, the fact that the plaintiff No.2 had intended to purchase an extent of 2 acres 10 guntas in Survey No.129/56, in any event, was not in dispute and the Trial Court has also accepted the said position as rightly noted by the High Court. However, the dispute arose since the question which required consideration was as to whether the purported sale of Survey no.129/56 to an extent of 2 acres 10 guntas under the said sale deed is in fact a portion of the property which was really located in Survey No.129/56 or as to whether the vendors having sold different extent from the larger extent of property to the various other purchasers, were left with an extent of land measuring 2 acres 10 guntas to be sold to the plaintiff No.2. In that light, the issue that would arise is whether by such purported sale which was intended at selling a portion of the property in Survey No.129/56, it had resulted in physically conveying a portion, or an entire extent of the government land which is claimed by the defendants to have existed in between the lands bearing Survey No.129/56 and Survey No.129/73 due to which the sale deed has also indicated the Survey No.129/73 as the western boundary.

29. That aspect of the matter assumes relevance in the context of the documents that were sought to be produced by the defendants who were the respondents before the High Court by filing I.A. No.2 of 2021 under Order 41 Rule 27 of C.P.C. The High Court having taken note of the decision in the case of **Adil Jamshed Frenchman (Dead) by Lrs Vs. Sardar Dastur Schools Trust & Others** (2005) 2 SCC 476, in **Wadi Vs. Amilal & Others** (2015) 1 SCC 677, **MIS. NETWORX INC. Vs. K.R. MOHAN REDDY** (2006) SCC Online AP 812, **Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi** (1987) 1 SCC 221 and in **H.S. Goutham. Vs. Rama Murthy Anr. Etc.** 2021 SCC Online SC 87 and keeping in view the parameters laid down in considering an application under Order 41 Rule 27 of C.P.C has found it appropriate to reject the application.

30. Having rejected the said application, the High Court has thereafter proceeded to take note of the documents to draw an adverse inference against the defendants. While doing so the High Court in para 38 has extracted a portion of the averments in the written statement to note that the defendants did not dispute regarding the registered sale in favour of plaintiff No.2 nor contended that the sale deed was fraudulent. The stand of

the defendants in the written statement in its entirety would indicate the case as put forth was with regard to the identity of the property which really was the issue. The question was, as to whether a mere indication of the schedule to the sale deed would entitle the plaintiff for a declaration relating to the property even if it was not actually lying within such schedule shown in the document. In fact, the further consideration made by the High Court from para 41 onwards while referring to the additional documents would indicate that it is made in the nature as if the defendants were before the court seeking for a declaration and in support of which the documents were sought to be produced. The certified copies of the registered sale deeds were filed to indicate the total extent of the land in Survey No.129/56 which was available with the vendor of the plaintiff and the portions that had been sold. In fact, during the course of the judgment at an earlier point, we have referred to this aspect of the matter to indicate that in the context of the challenge being raised to there being government land next to Survey no.129/56 and in that circumstance when the plaintiff claimed that the purchase of the land was actually in Survey No.129/56 and was contiguous with Survey No.129/73 on its western side, the plaintiff was required

to show that from the easternmost point of Survey No.129/56 which was available with the vendor of the plaintiff, the sequential sale made to the other purchasers and despite such sale he would have been left with the extent of the property which was sold to the plaintiff No.2 in Survey No.129/56 itself. Therefore, in fact, the said sale deeds not being produced by the plaintiffs would run adverse to their case rather than holding it against the defendants in not producing the same despite the defendants being the State Government under whose custody the registered documents remain as observed by the High Court. In fact, it was an attempt by the defendants to disapprove an aspect which in fact had not been proved by the plaintiffs by producing such documents.

31. Further the regularisation applications dated 29.08.2008 which were sought to be produced were filed by the legal heirs of the original plaintiff No.2, which was much after the suit had been disposed of by the Trial Court on 10.11.1988 and was filed during the pendency of the appeal before the High Court. The High Court in any event has taken note of the said application in the context as to whether the said application should be considered as an admission by the plaintiffs to the title of the

government and in that regard had disagreed with the learned Advocate General who had put forth such contention. Insofar as the existence of such applications, it is not seriously in dispute in as much as the same had also resulted in proceedings before the High Court in W.P.No.18460 of 2010 which was disposed by a detailed order dated 15.04.2011. The learned senior counsel for the plaintiffs while referring to the said applications brought to our notice column No.4(d) to indicate that the nature of occupation stated therein is “in pursuance of registered sale deed 1640/1964 dt. 03.09.1964, in favour of my father B. Rangaswamy” and column 5(a) has also referred to the sale deed and memorandum of family settlement. The learned senior counsel has also cited a decision of the Division Bench of the High Court for the State of Telangana at Hyderabad in W.P.No.46114 of 2018 dated 23.04.2019 wherein a similar situation was in issue and it is held as hereunder:-

“44. Therefore, it is clear that the applications for regularization filed by the petitioner, were not dealt with properly. Though, the petitioner has claimed title to the property on the basis of the registered sale deeds, the petitioner had, in all fairness, also applied for regularization. This does not tantamount to approbating and reprobating. If, with a view to purchase peace, a person, who claims title to a property, chooses to apply for regularization and conveyance, the same can, at the most, tantamount to giving up their title, subject however to the grant of regularisation. If regularisation is rejected, it may

be open to such persons to pursue their remedies before the normal civil court to establish title. In fact, the Government Orders stipulate the payment of market value of the land as per the Basic Value Register maintained in the Office of the Sub-Registrar.”

32. It is no doubt true that the said applications in the year 2008 were made without prejudice to their right, since their appeal was still pending. Further even though as held by the High Court it cannot be construed as an admission, one cannot lose sight of the fact that in the nature of the entire controversy the said applications become relevant. Firstly, what is to be kept in perspective is also the fact that even before the suit was filed, the documents at Exhibits B-1 and B-3 had come into existence whereunder a request was made to allot the said lands. As already noted though an attempt was made to contend that the plaintiff No.2 who was examined as PW-1, in his cross-examination stated that the said letter was not submitted by him and his brother was not authorised, what cannot be lost sight of is that the plaintiff No.1 is the Bhagyanagar Studio and the plaintiff in their averments to the plaint have indicated that the property purchased in Survey No.129/73 and 129/56 were pooled into the activities of the studios. As noted earlier, the communication is addressed on behalf of the Studio by the

brother of plaintiff No.2 who was also a partner and the letter dated 23.05.1976 refers to the fact of the property having been purchased by the partners of the Studio. In the said letter even though there is no categorical admission, the fact remains that at that stage itself they have taken note of the fact that a claim was made by the Patwari of Shaikpet Village and by the Revenue Inspector that there is a piece of land of 2 acres in between their lands and had mooted the proposal for allotment. It is in that background we have observed hereinabove that the defendants had raised the challenge to the claim of the plaintiff to the land which is immediately adjacent to Survey No.129/73 and in that circumstance instead of asserting their title at that stage they had resorted to seek allotment. It is in that circumstance the burden was heavier on the plaintiff when the suit was instituted subsequently and in that context, we had indicated that the proof of the entire extent was necessary to be shown to prove the identity of the property which was purchased by the plaintiff No.2 and thus to establish the same not to be the property belonging to the government.

33. The High Court thereafter in paragraphs 47 to 55 has proceeded to observe with regard to the pleading in the written

statement and in that regard, has commented that the evidence sought to be produced by the defendants is not supported by the pleadings. In that regard, certain decisions of this court have been extracted and noted with emphasis and a conclusion has been reached in para 56 to indicate that the said documents sought to be relied on by the defendants have no relevance to support the case set up by the defendants. As repeatedly indicated by us, the plaintiffs having sought for declaration were to prove the case. To the extent, the defendant had contended with regard to the government property, in support of the pleading in the written statement the defendant had relied on the documents at Exhibits B-2, B-4 and B-5 to indicate that there was an extent of property other than the property bearing Survey No.129/56 which was wedged between Survey No.129/56 and Survey No.129/73. Though much was made about the resurvey not being notified, that would become relevant insofar as the indication of the property as Survey No.403 but that cannot negate the fact that the property existed there and the number assigned was a different one. To that extent the Trial Court had in fact taken note of the Survey No.151/1. In fact, the High Court having extracted the deposition of the PW-1 has sought to give

much credence to the same with regard to the Town Survey records being wrongly prepared behind the back of PW-1 and the Survey No.403 being carved out. Such challenge had not been laid by the plaintiff in the forum provided, but merely have stated so in the evidence which could not have weighed with the High Court, when the larger issue based on substantive evidence relating to the identity of the property was to be taken note. The High Court though has taken note of the evidence of DW-1 and DW-2 to find fault with the documents at Exhibits B-2, B-4 and B-5 relied on by the defendants, what cannot be lost sight of is that from the evidence of the said witnesses what flows is that the initial survey was conducted in the year 1916 and the revision survey was conducted in the year 1942. The town survey was conducted and completed between 1965-1970. The survey and the resurvey were much prior to the purchase of the property by plaintiff No.2 in the year 1964. The survey No. which is shown as 403 in the revision even if it is taken note that as put in the comparative statement by the High Court it is 151/1 in Exhibit B-2 and 151/1, 129/108 in Exhibit B-4 and B-5 and is alleged that it is tampered as 403/108 in Exhibit B-4, as already indicated above, the fact remains that there was an extent of the

property situate between Survey No.129/73 and 129/56. The order dated 04.08.1998 in CRP No.2781/1998 relied upon though allowed the application seeking for original of initial survey map has declined prayer for production of initial survey map and revised survey records. The evaluation of the said evidence is essentially in the context of the plaintiffs seeking a declaration that the property purchased by them under the sale deed dated 03.09.1964 is a part of Survey No.129 which aspect can only be considered in the context of the vendor having purchased the property which is possessed and owned by the vendor and is conveyed without including any other property. To that extent, from the evidence produced by the plaintiff, the proof was insufficient and therefore in that context, the Trial Court had dismissed the suit. The High Court in fact though has rendered an elaborate judgment has proceeded at a tangent.

34. Insofar as the aspect relating to possession, the High Court has adverted to this aspect of the matter in para 106 onwards and has found fault with the Trial Court that despite there being abundant documentary evidence the Trial Court has wrongly dealt with the issue of adverse possession. In fact, the high court has failed to understand the context in which the

consideration with regard to possession had arisen. As noted, if the title to the property along with its identity had been established, the possession would automatically follow from the date of purchase on 03.09.1964. However, in the instant case though the execution of a sale deed purportedly conveying an extent in Survey No.129/56 was proved, the fact as to whether the extent as indicated in the sale deed was actually located in the Survey No.129/56 was not established by the plaintiffs from the discussion made by the Trial Court as well as indicated by us above. If that be the position, even if, the plaintiffs had actually come in physical possession of the extent of property which is not actually situate in Survey No.129/56 and is the property which is claimed as the government property, the possession to be declared to have been perfected by adverse possession will have to pass the test to claim such right. It is in that context it was alternatively contended that the plaintiffs had also stated that they have perfected their title by adverse possession. It is in that context that the Trial Court firstly having noted that there are no documents to indicate possession has also taken note that the purchase being in the year 1964 and the suit being filed in the year 1981 the statutory period of 30 years

to acquire right by way of adverse possession also does not arise. The High Court no doubt has taken into account the evidence of PW-1 who has stated that he has been in possession from the date of purchase. The fact also remains that subsequently when the compound wall was constructed it was demolished and it is the very case of the plaintiffs that since there was interference the suit was filed. Therefore, even if possession was taken by the plaintiff, in the context of claiming title, there is no other material. As already taken note by us, pursuant to the purchase, the mutation proceedings and the assessment for tax if any made has also not been brought on record by way of evidence. Therefore, in the context of the possession sought to be protected based on title, when the identity of the property is not established despite purchase claimed under the registered sale deed the relief as prayed for would not be available and therefore the Trial Court was justified in that regard.

35. On the issue relating to an extent of 298 Sq. yards forming part of the disputed property which is allotted in favour of the appellant in Appeal bearing No.4670/2022 (arising out of SLP No.7610/2021), in view of our conclusion that the judgment of the High Court on the main aspect cannot be sustained and the

judgment of the Trial Court is to be restored, the observations relating to the allottee having no right and the mesne profits being payable is not sustainable and is set aside accordingly. However, we make it clear that we have not expressed any opinion with regard to the correctness of the allotment to the extent of 298 sq. yards or with regard to the manner in which the application for regularisation made by the legal heirs of the original plaintiff No.2 is to be considered. Those aspects of the matter are left open to be considered in accordance with law by the competent authorities/courts relating to the same and all contentions in that regard are left open. The consideration herein is limited to the nature of the relief sought in the suit and the right as claimed by the plaintiffs not being established in accordance with the law.

36. For all the aforestated reasons, the judgment dated 01.04.2021 passed by the High Court for Telangana at Hyderabad in CCCA No.22 of 1999 is set aside. The judgment dated 10.11.1998 passed by the V Senior Civil Judge, City Civil Court, Hyderabad in O.S. No.609 of 1981 is restored.

37. The appeals are allowed. The parties shall bear their own costs.

38. Pending application, if any, shall stand disposed of.

.....**J.**
(INDIRA BANERJEE)

.....**J.**
(A.S. BOPANNA)

**New Delhi,
July 11, 2022**