Govt.Of A.P.Tr.Prinl.Sec.& Ors vs Pratap Karan & Ors on 9 October, 2015

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Bench: M.Y. Eqbal, C. Nagappan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2963 OF 2013

Government of Andhra Pradesh
Thr. Principal Secretary and others …Appellant(s)

versus

Pratap Karan and others …Respondent(s)

with

CIVIL APPEAL No. 2964 OF 2013

Andhra Pradesh Industrial
Infrastructure Corporation Limited …Appellant(s)

versus

Pratap Karan and others …Respondent(s)

JUDGMENT

M. Y. EQBAL, J.

This appeal being C.A.No.2963 of 2013 arises out of the judgment and order dated 19.12.2011 passed by the 3rd Judge of the High Court of Andhra Pradesh to whom the matter was referred to by the Chief Justice for final decision against the conflicting judgments passed by the two judges of the said High Court. The appeal was preferred by the plaintiff-respondent before the High Court which was heard by a Division Bench. The two judges of the Division Bench delivered two conflicting judgments, one by allowing the appeal and setting aside the judgment of the trial court and the other by dismissing the appeal and affirming the judgment of the trial court. The 3rd Judge to whom the matter was referred, passed the impugned judgment upholding the judgment of one of the learned judges and allowing the appeal and decreeing the suit of the plaintiff-respondent. Another appeal being C.A.No.2964 of 2013 has been filed by the transferee of the suit property during the

pendency of the appeal in the High Court. Since leave was granted, both the appeals have been heard and disposed of by this judgment.

2. The plaintiffs (hereinafter referred to as the respondents) filed Title Suit No. 274 of 2007 for rectification of Revenue Records by incorporating their names as owners and possessors in respect of the suit land comprised within Survey No.613 of Nadergul Village, Saroornagar Mandal, Rangareddy District, by deleting the duplicate Sy.No.119 in respect of portion of the land of the said Village.

3. The factual matrix of the case is that the contesting plaintiff- respondents filed the above suit stating that their predecessor in title late Raja Shivraj Dharmavanth Bahadur (hereinafter referred to as "late Raja") was the pattadar and absolute owner of the suit schedule property. The succession of the estate of late Raja was declared by a Royal Firman of the Nizam in favour of Raja Dhiraj Karan, late Raja Dharam Karan, late Raja Mehboob Karan and the heirs of Raja Manohar Raj vide Firman dated 4th Ramzan 1359 Hizri {Ex.A1). On the death of late Raja issueless in the year 1917, the succession of his estate was granted by the Royal Firman in favour of the sons of his two brothers Raja Lokchan Chand and Raja Murali Manohar Bahadur by another Royal Firman dated 5th Safar 13 1361 Hizri, the succession of estate of late Raja Dhiraj Karan was granted in the name of Pratap Karan who is one of the plaintiffs, under Ex.A2. The other plaintiffs are the successors of legal heirs of Raja Dharam Karan, Raja Mehboob Karan and Raja Manohar Raj.

4. It has been contended on behalf of the plaintiff-Respondents that they are, therefore, the absolute owners and possessors of the suit schedule land. The land in Nadergul Village was subject matter of survey and settlement of the year 1326 Fasli (year 1917) and under the said survey and settlement the lands of late Raja were part of Khata No.1 wherein the suit schedule land was having Survey Number 579. Late Raja's name was also shown as Khatadar in Setwar and Vasul Baqui. Thus, the suit lands are private lands of late Raja. The revisional survey of Nadergul Village was given effect in the year 1352 Fasli (year 1943) and the said survey has also confirmed the ownership of late Raja in Khata No.3 (Khata No.1 as per survey of 1326 Fasli (year 1917) which also made it clear that the suit lands are private lands of late Raja. The present survey number 613 was shown as the corresponding old Survey Number 579 without any change in the extent of the land.

5. The Respondent's further case is that the certified copy of Setwar and Vasul Baqui relating to Sy.No.613 for the year 1352 Fasli (year 1943) clearly disclose that late Raja was the Khatadar of all the land in Sy.No.613 of Nadergul Village, Saroornagar Mandal, Rangareddy District, Ex.A5. The village map of Nadergul Village and plan of S.No.613 clearly disclose the land as 'Kancha' of Late Raja. The total survey numbers in the village are about 875. As per the village map and the corresponding land records ie., Setwar, Vasool Baqui, Touch Plan and Pahanies, the land within the boundaries of S.No.119 consists of an extent of Ac.1-20 guntas, which is in the name of Gaddam Mallaiah as Khatadar. However, as per the endorsement made in the Khasra Pahani (1954-55) there is a remark that the lands of late Raja are shown in separate series and in the Pahanies subsequent to the Khasra, S.No.613 is shown as Shivaraj Bahadur Ilaka without determining the extent.

6. It is the plaintiffs' case that as per the certified copies of pahanies for the years 1949-50 and 2000-01 the land in S.No.613 of Nadergul Village stood in the name of late Raja. However, it is alleged that in the Khasra Pahani, S.No.613 is rounded up, which does not convey any meaning. After 1954-55, Revenue Records are showing the land in S.No.119 with an extent of Ac.355-12 guntas and it is not known as to how the original extent of land in S.No.119 shown as Ac.1-20 has swollen to Ac.355-12 guntas with endorsement of "Sarkari" from the original endorsement of Gaddam Mallaiah, which clearly discloses duplication of the land in S.No.119 and to say the least, the Revenue Record has been tampered with by the custodians of the records with an oblique motive of depriving the legitimate owners of the land in S.No.613 of Nadergul Village. Even today, pahanies, village maps, and touch plan clearly disclose the existence of S.No. 613 with a large chunk of land but purposefully the revenue authorities are not disclosing the details of the ownership of the suit land. The basic record ie., Setwar and Vasul Baqui Register of 1352 Fasli (year 1943). The endorsement in the Khasra Pahani of 1954-55 that the lands of late Raja in S.No.613 are being shown separately, is devoid of a sensible meaning. As per the endorsement, it is incumbent on the defendants to continue to maintain the revenue records in the name of late Raja and the plaintiffs being the predecessors in interest as pattadar/khatadar of the said land in S.No.613 of Nadergul Village.

7. The plaintiffs' case is that in certified copies of the pahanies for the years 1955-01, there is duplication of S.No.119, and while Gaddam Mallaiah is shown as Khatadar of S.No.119 in respect of land admeasuring Ac.1-20 guntas, the duplicated S.No. 119 admeasuring more than 355 acres and sometimes Ac.373-22 guntas is being shown as Kancha Sarkari notwithstanding the fact that in the Khasra Pahani for the year 1954-55 it is clearly mentioned late Raja as khatadar/pattadar of the entire land in S.No.119. Since the Khasra Pahani has confirmed the ownership of late Raja, the same cannot be changed as Sarkari Kancha in the Pahani without there being any proceedings. When the land in S.No.613 is continuing to exist as per the village maps and touch plan, the pahanies and other records are being maintained with mis-description, by which title of the real owner will not vanish. The plaintiffs who are successors in interest of the land made attempts for correction of the entries in the Revenue Records under A.P. Record of Right in Land and Pattadar Pass Books Act, 1971 (for short "the Act") and the authorities rejected the claim for correction of entries on the ground that unless the plaintiffs get their title declared in a court of law, the mutation in the name of the plaintiffs cannot be effected under Section 8(2) of the Act. The defendants have no title over the suit schedule land.

8. The 5th defendant-appellant Mandal Revenue Officer, Saroornagar, while denying the suit claim, contended that the suit is not maintainable. According to him, the plaintiffs are neither owners nor possessors of the suit schedule property and they are in no way concerned with the suit land as per the Revenue Records. It has been pleaded on behalf of the defendants that the plaintiffs did not obtain succession certificate from the competent civil court and have not acquired the suit property of late Raja through succession as pleaded.

9. In the amended written statement, it has been pleaded by the defendant that Nadergul was a Jagir Village and as all the jagirs were abolished under the Hyderabad Abolition of Jagirs Regulation, all Jagir properties vested in the State and the Jagirdars became entitled only to receive compensation

amount and the estate of late Raja also got merged with the State and all Jagirs in Hyderabad State were taken over by the Government and transferred to Deewani after publication of Notification No.8 dated 07-04-1949. Further Nazim Atiyat had passed an order dated 20- 01-1958 in File No.1/56 Warangal/1950 and the legal heirs of Late Raja had participated in the said proceedings and staked claim for commutation amount in respect of the Jagir land. Aggrieved by the said proceedings, some of the plaintiffs and certain other successors of late Raja had filed appeal before the Board of Revenue and the same was dismissed vide order dated 24.07.92 and a review petition was also dismissed by the Board of Revenue and, thereafter, the same persons had filed W.P.No.4999 of 1974 in the High Court and as per the judgment in the said writ petition, dated 22.04.76, the matter was remanded back to the Board of Revenue and after remand, the appeals filed by the above said persons were dismissed for non- prosecution.

10. It has been further pleaded in the aforesaid amended written statement that after abolition of Jagirs, the Jagir lands of late Raja numbering about 8 survey numbers were rounded off and separate numbers from 1 to 194 were given as evidenced in the Khasra Pahani for the year 1954–55 and as such the contention of the plaintiffs that original Sy.No.119 admeasuring Ac.1-20 guntas in the name of Gaddam Mallaiah has increased to 355 acres is not only false but the same is contrary to the record. Sy.No.119 admeasuring Ac.1-20 guntas is separate and distinct survey number from the Sy.No.119 which finds place in the Khasra Pahani in separate series of 1 to 194. This Sy.No.119 is admeasuring Ac.355.00 and recorded as Sarkari Poramboke. Having not filed any declarations under the Land Ceiling Laws, the plaintiffs are not entitled to stake the suit claim. It is further pleaded by the defendant that the plaintiffs and their ancestors have participated in the enquiry before Nazim Atiyat for the award of commutation amount and hence they are estopped from filing the present suit, that too after lapse of about 5 decades.

11. The trial court, on consideration of evidence came to the conclusion that the plaintiffs have not made out a case for correction of Revenue Record and dismissed the suit. Aggrieved by the same, the plaintiffs filed the appeal before the High Court, which being allowed by one Judge and dismissed by another Judge, was heard by a third Judge, who after considering the law laid down by the High Court as well as this Court, held that the plaintiffs successfully demonstrated that late Raja was pattadar/khatadar of the land covered by S.No.613 admeasuring 373-22 guntas in the Khasra Pahani, the presumption backward/forward can be applied in his favour and in favour of his heirs that he or they continued to be the pattadar(s). Allowing the appeal of the plaintiffs and setting aside the judgment and decree of the trial court, the learned third Judge of the High Court observed, thus:

> "Unless the State proves that the said land has been confiscated or vest in the State under Jagir Abolition Act on abolition of jagirs or for non filing of the declaration, the property vest in the Government under the provisions of Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings), 1973, mere mentioning "Sarkari" in subsequent pahanies or giving duplication S.No.119, title of the original owner will not vanish and it continues to be vest with them. In Khasra Pahani for the year 1954-55 covered under Ex.12(a), when it is stated that S.No.613 has been recorded as "Self Cultivation Dastagardan" and numbers of the Sivaraj Bahadur has been written separately and the same has also been shown as S.No.119 under Ex.12(b). Therefore,

> late Raja or his heirs continue(s) to be pattadar(s) for the corresponding survey number and on changing also, but the same cannot become the government property as contended by the learned Advocate General. Further, the identity of land in S.No.613, suit land, as found in Ex.A-10-touch plan and Ex.A- 9-village map cannot undergo any change whatsoever and ownership may change from one person to the other but the location of land and its identity with reference to survey number cannot be changed. Therefore, there is no further necessity for the plaintiffs to seek declaration of their title except to seek correction of record of rights recording the names of the heirs of late Raja i.e. the plaintiffs. Thus, the plaintiffs are entitled for a declaration for correction of the entries in the record of rights recording the names of the legal heirs of late Raja and also injunction restraining the defendants from interfering with the plaintiffs peaceful possession."

12. Aggrieved by the decision of the High Court, the defendants – appellants have preferred this appeal.

13. We have heard learned senior counsel appearing for the parties and also perused the written submissions filed by them.

14. While raising an additional ground for the first time here in this appeal, Mr. Mukul Rohatgi, learned Attorney General appearing for the appellants, submitted that the learned judges of the Division Bench who heard the appeal differed vertically in as much as Section 98(2) of CPC provides for confirmation of decree of the trial court. Reference to the 3rd Judge was made in the present case not after formulating any points of disagreement on the question of law, hence the reference by the Chief Justice to the learned 3rd Judge is ultra vires. In this connection learned counsel referred the decision of this Court in Tej Kumar vs. Kirpal Singh, (1995) 5 SCC 119. It was further submitted that even if the provisions of Letters Patent Act are invoked the same cannot override the provisions of Section 98 CPC. In this connection learned counsel referred decisions in P.V. Hemalatha v. Kattamkandi Puthiya Maliackal Saheeda, (2002) 5 SCC 548 and Centre For Environmental Law v. Union of India, (2010)12 SCC 303. It was further contended that even if Clause 36 of the Letters Patent of the Madras High Court which has been adopted for the A.P. High Court is held applicable, nonetheless, in the present case, since no points of agreement have at all been formulated for consideration by the two learned judges who had heard the appeal, reference to the 3rd judge was, therefore, clearly incompetent.

15. Learned Attorney General appearing for the appellant raised another point with regard to abatement of the appeal pending before the High Court on the ground inter alia that one of the respondents i.e., Respondent No. 12 died on 21.12.2010 during the pendency of the appeal before the High Court. Since the prayer made in the suit is the one for declaration of title of the plaintiffs as a single entity the appeal pending in the High Court itself stands abated. Further, the appeal in the High Court got abated as a whole in as much as the decree that was challenged before the High Court was a joint and indivisible decree. In this connection the appellants relied upon the decision in the case of (2006) 6 SCC 569 and (2010) 11 SCC 476.

16. On merit of the appeal, the appellants first assailed the finding and the conclusion arrived at by the High Court that the area by name Bhagat Nadegul of Hyderabad District is different from Nadergul Village. According to the appellant there is absolutely no material to show that there is any other village by the name Nadergul in any part of the State. In this connection learned counsel referred the evidence of PW-1.

17. Further, the contention of the appellants is that the predecessors of the plaintiffs had sought for commutation in respect of land in Nadergul Village will show that the said lands were treated as Jagir land. The findings of the Atiyat Court qua Nadergul with the relevant Sandas have not been produced for verification. There is no finding anywhere in Exh. B.1 that Nadergul is not a Jagir Village. Merely because commutation amount was not awarded in respect of Nadergul Village, it shall not be treated as a private land. It was submitted that none of the plaintiffs entered the witness box and testified on any of the averments made in the plaint and the only person examined was PW-1 as General Power of Attorney holder of the plaintiffs who could not have any personal knowledge on the issues relating to the grant made by Nizam and the proceeding relating thereto.

18. On the relevancy of documentary evidence learned counsel contended that Sethwar (Exh.A-5), Register of Vasool Baqui and Khasra Pahani in respect of Survey No. 613 are not sufficient to declare title of Raja Shiv Bahadur and, thereafter, the plaintiffs as successors to the Estate in respect of the suit property. Learned counsel contended that it is inconceivable that fairly large extent of 373.22 acres of private land would otherwise not be subjected to any land revenue. According to the appellants since the land of Survey No.613 was a Crown's land it was not assessed to land revenue. With regard to Pahani Patrika from 1949-50 till 2000-01 shows that the land in survey No.613 as Kancha-Sarkari or Kancha- Shiv Raj Bahadur. It was contended that there is no document whatsoever to support the case of the plaintiffs with regard to the title to the suit property. These documents cannot be treated as document of title of the plaintiffs.

19. Lastly, the submissions of the appellants is assuming that without admitting that there has been duplication of survey numbers is accepted that by itself cannot enable the plaintiffs to get a declaration of title unless there is prima facie evidence of title being acquired by their predecessors in interest. In any view of the matter the suit itself is barred by limitation.

20. Mr. Dushyant A. Dave, learned senior counsel appearing for the appellant Corporation in Civil Appeal No.2964 of 2013, also made his submission on behalf of the Corporation and contended that none of the plaintiffs have entered in the witness box and the only witness who was examined was the plaintiff's GPA holder whose evidence cannot be taken into consideration. Mr. Dave contended that the plaintiffs have kept quiet for more than 50 years and hence the suit claim is a chance litigation. It was further contended that the judgment of the 3rd learned Judge is opposed to Section 98(2) of the CPC and suggested that the matter will have to be remanded to the High Court.

21. Per contra, Dr. A.M. Singhvi, learned senior counsel appearing for the plaintiffs-respondents, at the very outset submitted that although A.P. Industrial Infrastructure Corporation Limited to whom the suit property was illegally transferred by the appellant-State during the pendency of appeal in High Court is neither a necessary party nor have got any right to prefer appeal against the impugned

judgment passed by the High Court.

22. On the issue of application of Section 98(2) of CPC, Dr. Singhvi, learned senior counsel, submitted that A.P. High Court is governed by the Letters Patent of Madras High Court and, therefore, Section 98(2) of the Code has no application by reason of Section 98(3) of the Code. It is submitted that the decision of this Court relied upon by both the parties on this point itself clarify that Section 98(2) of the Code has no application to the High Court which is governed by Letters Patent. In this connection learned counsel also referred the decision of Patna High Court in AIR 1984 Patna 296 and AIR 1979 Patna 115. Learned counsel therefore submitted that there is no illegality in the reference made by the Chief Justice to the 3rd Judge of the High Court for deciding the appeal.

23. Rebutting the submission made by the appellants on the question of abatement learned counsel submitted that the present suit is for declaration of title and permanent injunction. On the death if Defendant No.12 the right to sue survives with the remaining plaintiffs and, therefore, that the appeal then pending in the High Court will not abate. Learned counsel referred Order 22 Rule 2 CPC and submitted that the objection with regard to abatement of appeal in the High Court was neither raised before the High Court nor raised in the grounds of memo of appeal filed before this Court.

24. Replying the submissions made by Mr. Dave, appearing for the appellant Corporation in another appeal, learned senior counsel appearing for the respondents submitted that a GPA holder can give evidence on matters which are within his knowledge and he is competent enough to give evidence on behalf of the party. In this connection he relied upon AIR 2005 SC 439.

25. Further submissions on behalf of the respective respondents have been made by Mr. Vikas Singh and Mr. Harin P. Raval, learned senior counsel, that since there is no dispute on the genuineness and authenticity of documentary evidence on record, the suit claim has to be decided on documentary evidence i.e. Exhs. A1-A-19. According to the learned senior counsel Exh. A-5(Sethwar), Exh. A-6(Vasool Baqui Record), Exh. A-12(Khasra Pahani) shows that the name of Shiv Raj Bahadur was recorded as the Pattadar of the suit land. From these documents it can be inferred without any doubt that ruler of the kingdom has accepted the ownership of Shiv Raj Bahadur and there is no need to have either Patta or title documents.

26. Referring to the admission in written statement filed by the defendant-appellants it was submitted that there are various other Pattadar in Nadergul Village. Further there is no pleading in the written statement that Shiv Raj Bahadur was a Jagirdar of the suit land. It was further contended that in the order passed in Nizam Atiyat proceeding it was declared that some villages are not Jagir lands. The declaration by Nizam Atiyat is for the whole village and not for some survey numbers in the Village. Admittedly, there are various other Pattadars in Nadergul Village and, therefore, in the Nizam Atiyat proceeding Nadergul was shown in List-3 as patta lands.

27. So far as the issue with regard to the suit, being barred by limitation it was submitted by the respondents that the suit for declaration of title and injunction falls under Article 65 of the Limitation Act 1963 where limitation is 12 years from the date when possession of the defendant

become adverse to that of the plaintiff. There is no pleading in the written statement that the State has obtained title by adverse possession. In the present case the defendant-State has never set up and or cannot set up title by adverse possession, hence the suit cannot be held to be barred by limitation. There is no evidence adduced from the side of the defendants that the State ever came in possession. On the contrary the possession of the plaintiff-respondents was sufficiently proved by the trial court while deciding the injunction petition as also in the finding recorded by the High Court dismissing the appeal against the order of injunction.

28. We have heard learned senior counsel appearing for the parties at length and perused the record.

29. Before we decide the merit of the appeal, we shall take up the interlocutory applications filed by the appellant during the pendency of this appeal. By I.A. No.9/2015 filed on 20th July, 2015, the appellant stated that during the pendency of the appeal in the High Court, respondent No.12 died but the legal representatives have not been substituted by the respondents, who were appellants before the High Court which resulted in abatement of the said appeal. Hence, prayer has been made that non- substitution of legal representatives of respondent No.12 in the appeal pending in the High Court, the appeal stood abated by operation of law and consequently judgment and decree passed by the High Court in the appeal suit No.274 of 2007 is rendered nullity in law.

30. By another I.A. Nos. 10 and 11 of 2015, the appellant has stated that during pendency of this appeal respondent No.6 died on 8.4.2015 and respondent No.14 died on 6.1.2014 which were not within the knowledge of the appellant, hence prayer has been made to set aside the abatement and substitute their legal representatives.

31. Learned Attorney General appearing for the appellant pressed these two applications relying upon the decision of this Court in the case of Matindu Prakash (Deceased) by L.Rs. vs. Bachan Singh and others, AIR 1977 SC 2029; Amba Bai and others vs. Gopal and others, (2001) 5 SCC 570; Budh Ram and others vs. Bansi and others, (2010) Vol. 11 SCC 476.

32. In the case of Matindu Prakash (Deceased) by L.R.s vs. Bachan Singh and others, AIR 1977 SC 2029, when the appeal was pending in this Court, it revealed that two of the appellants died and no step was taken to bring the heirs and legal representatives of those appellants on the record. The question, therefore, that fell for consideration was whether appeal abated as a whole so as to entail a dismissal of the entire suit. This Court, therefore, remitted the matter back to the High Court to record a finding and to decide whether by virtue of the death, the appeal abated as a whole or the appeal had abated qua the deceased appellants before the Civil Appeal is disposed of.

33. In the case of Amba Bai and others vs. Gopal and others, 2001(5) SCC 570, this Court was considering the case where a suit for specific performance by one plaintiff against the defendant was finally allowed in appeal and the suit was decreed. During the pendency of Second Appeal by the defendant in the High Court, the plaintiff died and his legal representatives were brought on record. Subsequently, the defendant also died, but this fact was not brought to the notice of the Court and the appeal was dismissed. In those facts this Court considering the provision of Order 22 Rule 3 of

the Code held that "in a case where the plaintiff or the defendant dies and the right to sue does not survive, and consequently the Second Appeal had abated and the decree attained finality inasmuch as there cannot be merger of the judgment or decree passed in Second Appeal with that passed in the First Appeal." The said decision therefore, in our considered opinion will not apply in the present case. In the instant case, there are more plaintiffs than one and one of them died and the right to sue survives upon the surviving plaintiffs. In the said circumstances Order 22 Rule 2 of the Code will come into operation and the appeal will not abate.

34. In the case of Budh Ram and others vs. Bansi and others, (2010) Vol. 11 SCC 476, this Court after considering series of judgments rendered by this Court in the State of Punjab vs. Nathu Ram, (AIR 1962) SC 89, Sri Chand vs. Jagdish Pershad Kishan Chand, AIR 1966 SC 1427, Ramagya Prasad Gupta vs. Murli Prasad, (1973) 2 SCC 9 and Sardar Amarjit Singh Kalra vs. Pramod Gupta, (2003) 3 SCC 72 held as under:-

> "17. Therefore, the law on the issue stands crystalLised to the effect that as to whether non-substitution of LRs of the respondent-defendants would abate the appeal in toto or only qua the deceased respondent-defendants, depends upon the facts and circumstances of an individual case. Where each one of the parties has an independent and distinct right of his own, not interdependent upon one or the other, nor the parties have conflicting interests inter se, the appeal may abate only qua the deceased respondent. However, in case, there is a possibility that the court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto for the simple reason that the appeal is a continuity of suit and the law does not permit two contradictory decrees on the same subject-matter in the same suit. Thus, whether the judgment/decree passed in the proceedings vis-à-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree is the relevant test."
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> 35. In the case of Harihar Singh vs. Balmiki Prasad Singh, AIR 1975 SC 733 = (1976) 1 SCC 212, this Court observed:
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> "32. The important point to note about this litigation is that each of the reversioners is entitled to his own specific share. He could have sued for his own share and got a decree for his share. That is why five Title Suits Nos. 53 and 61 of 1934 and 20, 29 and 41 of 1935 were filed in respect of the same estate. In the present case also the suit in the first instance was filed by the first and second plaintiffs for their one-twelfth share. Thereafter many of the other reversioners who were originally added as defendants were transposed as plaintiffs. Though the decree of the trial court was one, three Appeals Nos. 326, 332 and 333 of 1948 were filed by three sets of parties. Therefore, if one of the plaintiffs dies and his legal representatives are not brought on record the suit or the appeal might abate as far as he is concerned but not as regards the other plaintiffs or the appellants. Furthermore, the principle that applies to this case is whether the estate of the deceased appellant or respondent is represented. This is not a case where no legal representative of Manmohini was on

record."

36. Similarly, in the case of State of Punjab vs. Nathu Ram, AIR 1962 SC 89 = (1962) 2 SCR 636, which arose out of acquisition of land under the Defence of India Act, 1939, when the landowners refused to accept compensation offered by the Collector, the dispute was referred by the State Government to an arbitrator, who passed an award for payment of higher compensation. The State appealed against the award. During pendency of the appeal, one of the landowner namely Labhu Ram died. The High Court, holding that the appeal abated against Labhu Ram and its effect was that the appeal against another respondent also abated, the appeal was dismissed. When the matter came up to this Court, at the instance of the State Government, this Court deciding the issue held as under:

"4. It is not disputed that in view of Order 22 Rule 4 Civil Procedure Code, hereinafter called the Code, the appeal abated against Labhu Ram, deceased, when no application for bringing on record his legal representatives had been made within the time limited by law. The Code does not provide for the abatement of the appeal against the other respondents. Courts have held that in certain circumstances, the appeals against the co- respondents would also abate as a result of the abatement of the appeal against the deceased respondent. They have not been always agreed with respect to the result of the particular circumstances of a case and there has been, consequently, divergence of opinion in the application of the principle. It will serve no useful purpose to consider the cases. Suffice it to say that when Order 22 Rule 4 does not provide for the abatement of the appeals against the co-respondents of the deceased respondent there can be no question of abatement of the appeals against them. To say that the appeals against them abated in certain circumstances, is not a correct statement. Of course, the appeals against them cannot proceed in certain circumstances and have therefore to be dismissed. Such a result depends on the nature of the relief sought in the appeal."

37. Five Judges Constitution Bench of this Court in the case of Sardar Amarjit Singh Kalra vs. Pramod Gupta, AIR 2003 SC 2588, was considering the question as to the effect of death of some of the appellants during the pendency of appeal. In that case, during the pendency of appeal, some of the appellants died on different dates and there was no attempt to take any step within time for bringing to the Court the legal representatives of the deceased appellants. The respondents, therefore, filed application praying for dismissal of those appeals as having been abated. It appears that during the pendency of appeal in the High Court, some of the appellants were said to have died, the plea of partial abatement of the appeals qua only those deceased appellants were not accepted by the High Court on the view that decree was joint based on common right and interest, the appeal was rejected in toto. On these facts, the Constitution Bench after discussing all earlier decisions held as under:-

"27. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice." xxxxx

32. But, in our view also, as to what those circumstances are to be, cannot be exhaustively enumerated and no hard-and-fast rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. Consequently, having regard to the nature of the proceedings under the Act and the purpose of reference proceedings and the appeal therefrom, the courts should adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging the nature of the decree i.e. whether it is joint and inseverable or joint and severable or separable. The fact that the Reference Court has chosen to pass a decree jointly in the matters before us is and should be no ground by itself to construe the decree to be joint and inseparable. At times, as in the cases on hand, the court for its convenience might have combined the claims for joint consideration on account of similar nature of the issues in all such cases and for that reason the parties should not be penalized, for no fault of theirs. Actus curiae neminem gravabit (an act of court shall prejudice no one) is the maxim of law, which comes into play in such situations. A number of people, more for the sake of convenience, may be counselled to join together to ventilate, all their separate but similar nature of claims and this also should not result in the claims of all such others being rejected merely because one or the other of such claims by one or more of the parties abated on account of death and consequent omission to bring on record the legal heirs of the deceased party. At times, one or the other parties on either side in a litigation involving several claims or more than one, pertaining to their individual rights may settle among themselves the dispute to the extent their share or proportion of rights is concerned and may drop out of contest, bringing even the proceedings to a conclusion so far as they are concerned. If all such moves are allowed to boomerang adversely on the

rights of the remaining parties even to contest and have their claims adjudicated on merits, it would be a travesty of administration of justice itself.

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35. In the light of the above discussion, we hold:

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other.

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37. For all the reasons stated above, we are unable to approve the decision or the manner of disposal given by the High Court in these cases, which resulted in grave injustice to the remaining appellants

in denying them of their right to have an adjudication of their claims on merits. The High Court ought to have condoned the delay as prayed for, keeping in view the pendency of the main appeals on its file, adopting a liberal and reasonable approach, which would have facilitated an effective adjudication of the rights of parties on either side, avoiding summary rejection of the appeals in entirety. The judgment and decrees passed by the High Court in all these appeals are set aside and appeals are remitted to the High Court to be restored to their original files for being disposed of afresh on merits of the claims of both parties and in accordance with law. These appeals are allowed on the above terms, with no order as to costs."

38. In the instant case, the plaintiffs joined together and filed the suit for rectification of the revenue record by incorporating their names as the owners and possessors in respect of the suit land on the ground inter alia that after the death of their predecessor-in-title, who was admittedly the Pattadar and Khatadar, the plaintiffs succeeded the estate as sharers being the sons of Khatadar. Indisputably, therefore, all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the estate is fully and substantially represented by the other sharers as owners of the suit property. We are, therefore, of the view that by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated. We, therefore, do not find any reason to agree with the submission made by the learned counsel appearing for the appellants.

39. By filing another I.A. No.7 of 2015 on 17.4.2015, the appellants sought permission to urge additional grounds as contemplated under Section 98 of the Code of Civil Procedure. Admittedly, this ground was not urged before the learned third Judge of the High Court at the time of hearing of the appeal. Be that as it may, we allow the appellant to urge additional ground in this appeal.

40. By urging this additional ground learned senior counsel for the appellants submitted that the procedure adopted by the High Court in the disposal of the appeal is not in consonance with the provisions contained in Section 98 of the CPC. Learned counsel submitted that the appeal in the High Court was originally heard by two judges who differed in their opinion and wrote two separate judgments. While giving judgments, both the judges have not recorded their opinion on the point of difference on the point of law. Without formulating the point of difference the matter was referred to a third judge by the Chief Justice and the third judge finally passed the impugned judgment concurring with one of the judge. According to the learned counsel, therefore, the impugned judgment is vitiated in law and cannot be sustained. In this connection, learned counsel relied upon the decision of this Court in Tej Kaur and Another vs. Kirpal Singh and Another, (1995) 5 SCC119; P.V. Hemalatha vs. Kattamkandi Puthiya Maliackal Saheeda and Another, (2002) 5 SCC 548; Pankajakshi (Dead) Through Lrs. And Others vs. Chandrika and Others, (2010) 13 SCC 303.

41. Section 98 of the Code of Civil Procedure reads as under :-

> "98. Decision where appeal heard by two or more Judges.

(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal including those who first heard it.

(3) Nothing in this Section shall be deemed to alter or otherwise affect any provision of the letters patent of any High Court."

42. From the legislative history of enactment of Code of Civil Procedure, it would appear that Section 98 of the CPC was for the first time enacted in 1861 by the Act amending the Civil Procedure Code of 1859. Subsequently in 1862, Letters Patents were issued establishing the High Court of Madras and these Letters Patents were modified in 1865. Clause 36 of the Letters Patent declared that in exercise of appellate jurisdiction the certain procedure is to be adopted. In 1877 and 1882 amendments were brought in the Code of Civil Procedure but no provision was made to the effect that the Code shall not affect the Letters Patent. Thereafter many High Courts and the Privy Council interpreted the provisions of Section 98 and Clause 36 of the Letters Patent and it was consistently held by the Full Bench of the Madras High Court as under:-

"The result is that it is now beyond all doubt that Clause 36 of the Letters Patent applies to all appeals. It may be asked, when does Section 98 of the Civil Procedure Code have any operation and why should the legislature not say that the section does not apply to Chartered High Courts instead of adding an explanation to the section? The reply is that Section 98 applies now only to Courts other than the Chartered High Courts, that is, the Chief Courts and Courts of judicial Commissioners and the reason why the legislature adopted this particular form of elucidating the matter is that it was intended to retain Section 98 as applicable even to Chartered High Courts but to make the application subject to Clause 36 of the Letters Patent. If, at any time, Clause 36 of the Letters Patent ceases to exist, Section 98 will come into operation. It is to attain this particular result that the explanation was added to Section 98 instead of saying that Section 98 does not apply to Chartered High Courts at all. I would answer the question referred to us thus:"

43. Clause 36 of Amended Letters Patent of the High Court of Madras, which has been made applicable to the High Court of Andhra Pradesh, reads as under:-

> "36. Single Judge and Division Courts:-- And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of Section 108 of the Government of India Act, 1915 and in such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it."

> 44. Learned senior counsel appearing for the respondents in response to the argument on Section 98 of the CPC, submitted that in view of Sub-

section (3) of Section 98, the provision of Section 98 of the Code will not apply. Ld. senior counsel submitted that this Court cannot go into that question for the reason that the appellants neither raised this point before the third judge who passed the impugned judgment nor the appellants have been granted permission to raise the question of application of Section 98 of the CPC. According to the learned counsel having regard to the procedure provided under the Letters Patent of the High Court, the objection cannot be entertained.

45. Firstly, we shall discuss the decisions cited by the learned counsel on both sides. In the case of Tej Kaur and another (supra), a Division Bench of this Court has considered the provisions of Section 98 of CPC. The Attorney General put reliance on paragraphs 3, 6 and 9 of judgment whereas Dr. Singhvi relied on paragraphs 8 and 9 of the judgment. Hence we extract paras 3, 6, 8 and 9 of judgment which are as under:-

> "3. The question, therefore, is whether the finding of the court below that the will has not been proved is a finding of fact? If so, whether in the absence of majority opinion of the Division Bench, the confirmation of the decree of civil court is valid in law? Thirdly, whether this Court can examine the case on merits to find whether the will is validly proved, in which event would sub-section (2) of Section 98 be not rendered otiose or ineffective?

> 6. In other words, the difference of opinion between Judges, who constitute the Bench hearing the appeal, on a point of law alone would be referred to a third or other Judges according to the rules of that High Court. By implication, on question of fact, when there is no majority opinion varying or reversing the decree appealed from, such decree should be confirmed.

> 8. The ratio in Jayanti Devi v. Chand Mal Agrawa which has been referred by Shri Bagga, is inapplicable to the point in issue. Therein, because of what has been

> provided in sub-section (3) of Section 98 CPC, the letter patent power was taken aid of and it was held that the letter patent court was not confined to the hearing of the appeal by the third Judge on the question of law only, on which the Judges hearing the appeal had differed. Such a difference of opinion could be on a question of fact as well. It could, thus, be seen that the reference there was under the letters patent which power has been expressly preserved by sub-section (3) of Section 98. But in the case at hand, the letters patent power was not available and therefore, by operation of sub-section (2) of Section 98, the decree of the court below stands affirmed.
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> 9. The question then is whether this Court could nullify the scheme of Section 98(2) by examining the dispute on merits and by implication render sub-section (2) surplusage or otiose. In our considered view the contention of the appellant cannot be accepted. It is true that in a case where there is difference of opinion among the Judges of the High Court, the power of this Court under Article 136 is wide enough to test the correctness of the conclusion reached by the differing learned Judges as pointed out by this Court in Dr Prem Chand Tandon case. This proposition is unexceptionable but this Court had no occasion in that case to consider the scope of sub-

section (2) of Section 98. The language employed in sub-section (2) is imperative and in mandatory terms. The object appears to be that on a question of fact when there is a difference of opinion, the view expressed by the court below, in the absence of a majority opinion, needs to be given primacy and confirmed. When such is the animation, this Court cannot enlarge the scope of the controversy by itself examining the correctness of the finding of fact and decide which view of the two is correct. This would be in direct negation of the legislative mandate expressed in sub-section (2) of Section 98 of the CPC."

46. From perusal of the above quoted paragraphs in the decision given in Tej Kaur (supra) it is manifest that this Court considered the procedure to be adopted as contemplated under Section 98 of the Code and held that for those courts, the procedure of which is governed by Letters Patent, the power has been expressly reserved by Sub section (3) of Section 98. Hence, in the instant case the procedure provided in the Letters Patent of the High Court shall prevail.

47. Reference has also been made to the case of P.V. Hemalatha (supra) where the judges in appeal constituting a Division Bench pronounced two separate judgments wherein they differed in almost all the issues arising in the case. A point was raised that since the judges comprising the Division bench delivered two separate judgments and have not identified the difference on any point of law, the decree of the court below is liable to be confirmed in terms of Section 98(2) of the Code. This Court held that in such cases the procedure is to be adopted as contemplated under Section 98 of the Code having regard to the fact that the provisions of Clause 36 of Letters Patent of the Madras High Court is not applicable. This Court held:-

> "17. Admittedly, the High Court of Kerala is a newly constituted court for the newly formed State of Kerala in 1956 and governed by the Kerala Act. The said High Court

> does not have any Letters Patent — it being not a Chartered High Court continuing from the British period. In such a situation, it is submitted that the learned Judges were perfectly justified in giving effect to the provision of sub-section (2) of Section 98 of the Code and coming to the conclusion that because of the two different judgments passed by them the decree of the subordinate court was liable to be confirmed. On behalf of the respondent very strong reliance has been placed on a two-Judge Bench decision of this Court in the case of Tej Kaur v. Kirpal Singh in which in a similar situation the Supreme Court held that the provision of sub-section (2) of Section 98 would be attracted and in view of the two conflicting judgments passed by two Judges who differed on issues of fact, the judgment of the subordinate court is liable to be confirmed.
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> 35. We have reached the conclusion as stated above that clause 36 of the Letters Patent of the Madras High Court on "practice and procedure" and "powers of Judges" is not applicable to any part of the new territory of the State of Kerala and to the new High Court of that State. Law with regard to the "practice, procedure and powers of Judges" as contained in the Kerala Act, would be applicable uniformly to all the territories now forming part of the new State of Kerala and the High Court established for it. We have also held even on assumption that Section 23 of the Travancore-

Cochin Act is saved under Section 9 of the Kerala Act that since the said Kerala Act is a "general law", it has to give place to Section 98 of the Code of Civil Procedure which is a "special law" applicable to civil appeals arising from civil suits."

48. In the case of Pankajakshi (Dead) Through Lrs. and Others (supra), this Court followed the earlier two decisions in Tej Kaur and P.V. Hemalatha since the practice and procedure of Letters Patent was not applicable.

49. A comparative study of Section 98 CPC vis-à-vis clause 36 of the Amended Letters Patent of the Andhra Pradesh High Court will reveal that while Section 98 provides that in a case where the Judges comprising the Bench differ in opinion on point of law, they may state the point of law upon which they differ and the appeal shall be heard upon that point only by one or more of the other Judges, such point shall be decided according to the opinion of the majority of the Judges. Whereas Clause 36 of the amended Letters Patent provides that in a case the Division Court exercising its original or appellate jurisdiction hears the appeal and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of majority of Judges. If the Judges are equally divided they shall state the point upon which they differ and the case shall then be heard on that point by one or more of the Judges and the point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it.

50. Section 98(3) of the Code was added in 1928 by the repealing amending Act (18 of 1928). The amended Sub-section (3) of Section 98 was considered by a Full Bench of the Madras High Court in

Dhanaraju vs. Motilal Daga and Another, AIR 1929 (Mad.) 641 (F.B.). The Division Bench of the High Court of Patna in the case of Bokaro and Ramgur Ltd. vs. State of Bihar, AIR 1966 (Patna) 154, considered the similar question and observed:-

> "The view which I have expressed above is supported by a Full Bench decision of the Madras High Court reported in Dhanaraju v. Bala-kissendas Motilal : AIR 1929 Mad 641 FB) : ILR Mad 563, and by two decisions of this Court; one reported in Debi Prasad Pandey v. Gaudham Rai : AIR 1933 Pat 67 at p. 69 : ILR Pat 772 and the other in Rajnarain v. Saligram ILR Pat 332. Clause 28 governs not merely Clause 10, but also Clause 11 of the Letters Patent which ordains that this Court is a Court of Appeal from the Civil Courts of the State of Bihar. Clause 28 of the Letters Patent being wider in scope than section 98 of the Code of Civil Procedure, because it covers points of fact as well as points of law, a reference to a third Judge in the present appeal is not incompetent merely because there has been no difference of opinion between Sinha and S. N. P. Singh, JJ. on a point of law. The cases relied upon by the learned Advocate General were decided before the insertion of Sub-section (3) in Section 98 of the Code and they have become obsolete. I am, therefore, of the opinion that the point raised by the learned Advocate General is without merit and must be overruled, and I must deal with this appeal as one referred to me under Clause 28 of the Letters Patent. I must, however, indicate that I ought to deal with only such point or points in this appeal upon which there has been a difference of opinion between Sinha and S. N. P. Singh, JJ. This is clear not only from the terms of Clause 28, but also from the decision of this Court in Zainuddin Hussain v. Sohan Lal. In that case, Rai, J. indicated that it is not open to a third Judge to adjudicate upon a point on which there is no difference of opinion between the two Judges who heard the appeal in the first instance. Similar view was taken by a special Bench of the Allahabad High Court in Akbari Begam v. Rahmat Husain : AIR 1933 All 861 SB : ILR All
>
> 39."

51. A similar question with regard to the interpretation of Section 98 CPC and the Patna High Court Rules came for consideration before the Patna High Court in the case of Smt. Jayanti Devi vs. Srichand Mal Agrawal and Ors. AIR 1984 Patna 296. Noticing the provision of High Court Rules, the Court came to the conclusion that the Letters Patent of the Court has not confined the hearing of the appeal by a third Judge on the questions of law only upon which the Judges hearing the appeal differ. Such a difference of opinion can be on question of facts also. The High Court is also of the view that there is no imperative prescription that the difference of opinion has to be formulated by a joint order. If such difference or differences is expressly enumerated in a joint order it may serve better. Still absence of such joint order will not vitiate the reference. The Court observed:-

> "It may be seen that the Letter Patent of the Court has not confined the hearing of the appeal by a 3rd Judge on, the questions of law upon which the Judges hearing the appeal differ. Such a difference of opinion can be on a question of fact also. That the Judges should record expressly in a joint order what their differences are may be

desirable. But there is no imperative prescription that the difference of opinion has to be formulated by a joint order. If such difference or differences is expressly enumerated in a joint order, it may serve better and the 3rd Judge hearing the appeal may not be required to investigate into their respective judgments to discover the difference or differences of opinion. Still absence of a joint order specifying the difference as envisaged under the proviso to Sub- section (2) of Section 98 of the Code cannot be taken, to vitiate the reference or the hearing of the appeal by a third Judge. This view is supported by a judgment by Lalit Mohan Sharma, J. in Rulia Devi v. Raghunath Prasad, I am in respectful and complete agreement with the views expressed in Rulia's case and find no substance in the preliminary objection of Mr. Chatterjee in this regard. Mr. Chatterjee's further contention that there being no majority, and the reference being invalid, the judgment and decree of the court below should be deemed to be confirmed, is also devoid of say merit. Any majority that may conclude the judgment can be noticed only after the disposal of the appeal by the third Judge and not before that. Such a conclusion can be arrived at only if any views do not agree with the views of the Hon'ble Judge taking the view that the judgment and decree should be reversed. The preliminary objection is accordingly disposed of."

52. In the case of Reliance Industries Ltd. vs. Pravinbhai Jasbhai Patel, 1997(7) SCC 300, the provision of Section 98 came for consideration before this Court as to the applicability of the Section in the matter of reference to a third judge, the Court held:-

"11. As laid down by Section 4 sub-section (1) CPC itself in the absence of any specific provision to the contrary, nothing in the Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. It cannot be disputed that Letters Patent as applicable to the High Court of Gujarat is a special law in force which confers special jurisdiction or power and lays down special form of procedure prescribed therein for governing the cases where the two learned Judges forming the Division Bench of the High Court differed on a question of law or fact. Under such circumstances clause 36 of the Letters Patent laying down the special procedure for meeting such a contingency was required to be followed without in any way being impeded or restricted or being cut across by the procedural requirements laid down by Order 47 Rule 6 CPC. The said provision on its own would apply to those courts which were governed strictly by the procedure of Code of Civil Procedure and had no provision of Letters Patent Charter to fall back upon. In other words chartered High Courts governed by the Letters Patent which were original chartered High Courts or which were the successor High Courts like the Gujarat High Court, would be governed by the special procedure laid down by clause 36 of the Letters Patent and that would remain saved by the operation of Section 4 sub-section (1) CPC noted above. It is, therefore, not possible to agree with the reasoning of the High Court in the impugned judgment to the effect that clause 36 of the Letters Patent does not deal with a situation where there is conflict of decisions between the two learned Judges of the Bench sitting in review

against the earlier judgment of the Division Bench of the High Court.

xxxxx Moreover the fact remains that by the enactment of Section 98(3) CPC whatever doubt earlier remained in connection with this controversy was put at rest by the legislature and the view propounded by the Privy Council got statutory recognition by the amendment of Section 98 and the insertion of sub-section (3) thereof."

53. In the case of Rulia Devi and others vs. Raghunath Prasad, AIR 1979 Patna 115, a Bench of the Patna High Court while considering the provision of Section 98 CPC vis a vis clause 28 of the Letters Patent held:-

"It will be observed that the Letters Patent does not confine the point of difference to a question of law and since it is not subject to any limitation mentioned in Section 98 of the Civil P. C., it must be held that a difference between the Judges constituting a Division Bench, for the purpose of reference to a third Judge, can be on a question of fact also. However, in the present case, the learned Judges did not jointly formulate the points of difference, after delivering their separate judgments. They have in the order-sheet merely stated that as they differed the case should be placed before the Hon'ble the Chief Justice for placing it before a third Judge.

7. Mr. Yogendra Mishra, appearing for the plaintiff-respondent raised a preliminary objection that since the points were not stated by the Bench, the reference to the third Judge was illegal. I do not see any merit in this argument inasmuch as the points, although not expressly enumerated by a joint order, are apparent from the judgments. It is nowhere peremptorily prescribed that the difference of opinion has to be formulated by a joint order. Besides, the irregularity in not doing so, if at all, is of formal nature and does not vitiate the proceeding including the reference. On examining the observations contained in para 23 of the judgment of the Madras High Court in A. K. Gopalan v. District Magistrate, Malabar (AIR 1949 Mad 596) Mr. Mishra stated that he withdrew his objection and the reference may be treated as good and be decided on merits."

54. Coming back to the instant case, the two learned Judges of the Division Bench passed separate judgments. One of the learned Judges allowed the appeal and set aside the trial court judgment, whereas another learned Judge affirmed the trial court finding and dismissed the appeal. Both the learned Judges differed not only on the point of facts but also on the point of law. The learned Chief Justice, therefore, referred the matter to the third Judge for deciding the appeal. The learned third Judge, after going through the judgments of the learned differing Judges, formulated various issues and recorded its finding on all the points. The learned third Judge finally upheld the finding recorded by one of the learned differing Judges and allowed the appeal. In our considered opinion, therefore, there has been complete compliance of Clause 36 of the Letters Patent of the Andhra Pradesh High Court and the impugned judgment cannot be vitiated on that account.

55. Now, we shall discuss the judgment and the findings recorded by the two learned differing Judges of the High Court. In the judgment rendered by Justice B. Prakash Rao the following points have been formulated for consideration:-

> a) Whether the plaintiffs have established the claim for declaration of title in respect of the suit land.
>
> b) Whether the plaintiffs are in possession of the suit lands for claiming permanent injunction.
>
> c) whether the suit lands are Jagir lands as contested by the defendants?
>
> d) Whether the relief of declaration of title can be granted in the absence of truth of flow of title?
>
> e) Whether non filing of ceiling declaration can have the effect of waiver of title?
>
> f) Whether the entries in the revenue records can be basis for grant of a decree of declaration of title?
>
> g) Whether the suit is barred by limitation and whether the plaintiff's are estopped from filing the suit since they had earlier claimed for award of computation amount contending that suit lands are Jagir lands?
>
> h) Whether the judgment of the trial court warrants any interference as regards the findings recorded there?

56. On consideration of the pleadings of the parties on the point of change of survey number, the Court observed:-

> "From a thoughtful consideration of the pleadings of the parties, we find that the state has been searching for proper defence to the suit. If defence of the state has been varying from time to time. We are unable to understand as to how land admeasuring 373.22 acres in Sy. No.613 of Nadergul Village can be separately shown in new series of survey numbers from 1 to 191. The village plan showing the number of survey numbers has not undergone any change. No supplementary sethwar has been issued and there is no evidence on record that the original survey numbers i.e. 1 to 875, have been increased by another set of survey numbers i.e. the new series survey numbers 1 to 191. Again the pahanies filed by both parties disclose the existence of Sy. No.613, they also disclose the existence of survey number 119 as two different extent of land, the original survey number is admeasuring AC. 1.20 guntas. After the khasra pahani, the same survey number 119 is shown as having an extent of Ac.355.12 guntas. The plaintiffs have impleded the survey department of the state as one of the defendants but no person from such a department has been examined as

witness. The oral evidence adduced by the Sate consists of a Mandal Revenue Officer and Legal Officer. None of these witnesses are competent to give evidence about the survey numbers in village, the sub division of survey numbers, the settlement operations where the total survey numbers in the village can get decreased or increased. On one hand, the State is contesting the suit on the ground that Nadergul Village is Jagir and/or Inam and/or confiscated by the State. In any of these eventualities, there cannot be change of location and existence together with extent of survey No.613. We are at a loss to understand as to how there can be duplicate survey numbers in the same village. Similarly it is understandable as to how patta land can be confiscated and under which law such an action can be justified."

57. After considering Exhibits A-5 and A-6 which are Setwar and Vasul Baqui, the learned Judge held that these documents have not been challenged. So far Exhibit A-12 which is Khasra Pahani, the land of Raja Shivraj Dharmavanth Bahadur are recorded in a separate series. This document has also not been challenged by the defendant. The learned Judge examined the written statement and observed:-

"Thus there is a clear admission in the written statement that up to the khasra pahani, Raja Shivraj Dharmavanth Bahadur recorded as pattadar of the suit land. As commented by us earlier, there is no evidence that any additional survey numbers added to the total survey numbers 875 in Nadergul village. If that be so, it is the duty of the state to explain as to what has happened to the vast chunk of land which was part of survey No.613 of Nadergul village. It is not explained as to why Raja Shivraj Dharmavanth Bahadur lands were to be recorded in a separate series of survey numbers from 1 to 194. The state has not explained as to what is the extent of each of these survey numbers 1 to 194. It is not the case of the state that the village map of the Nadergul village has undergone a change or that any re-settlement and survey operations were carried out in Nadergul village. Hence, we have no hesitation to hold that Raja Shivraj Dharmavanth Bahadur was the pattadar of the suit land and he was khatadar for payment of revenue (khata No.3)."

58. The learned judge further observed:-

"The learned Advocate General had vehemently submitted that entries in Revenue Records can neither create title nor they take away title. He has further submitted that in order to make out a case of declaration of title, the plaintiff is obligated to establish the flow of title by producing the link documents and established that he has acquired ownership from a valid person. On the other hand, the learned counsel for the plaintiffs had submitted that in Telangana Area, the matters of revenue were regulated by the A.P. (T.A.) land Revenue Act 1317 F and various rules were made under the said Act and the entries in Sethwar, vasulbaki and khasra pahani cannot be construed as entries in yearly pahanies and that the recording of a person as a pattadar under Section 2(11) of the act, he is entitled to be declared as owner of the said land, the plaintiffs have not placed by evidence before us as to how Raja Shivraj

Dharmavanth Bahadur had acquired the suit lands. According to the learned counsel for the plaintiff, the fundamental mode of acquisition the most primitive mode of acquisition is capturement and if the Ruler that Nizam acknowledges the same, that would be sufficient to construed him as owner of the land, the learned counsel for the plaintiff has placed reliance on a Division bench of this Court reported in AIR 1970 AP 19 para 19. In the said judgment it has been held that the act has defined the expression permanent Alienation "in section 2

(o) to include any sale exchange or gift and any transfer of a right of occupancy or of the patta of holding but excluding any dispossession by will. It is therefore obvious from the provisions of the Land Revenue Act any person is legally entitled to be in possession, whether with the permission of Tehsildar in respect of vacant lands under Section 54 or of a pattadar who is in possession, has a right of occupancy which is heritable and transferable under section 58. It is this type of occupancy that is included in the definition of permanent alienation" in Section 2(o) of the Tenancy Act. The learned counsel for the plaintiffs has placed reliance on section 2((11) of A.P. (T.A.) Land Revenue Act with defines a pattadar which means the person who is directly responsible to the Government for payment of land revenue and whose names has been entered as such in government records whether he be personally in possession of the holding or thorough his Shikmidar . Section 24 of the Act declares that all public roads, lanes, paths, bridges, ditches, dikes, rivers, streams, tanks, ponds, canals, lakes and flowing water and all lands, wherever situated, together with all rights appertaining thereto are the property of the Government excepting."

59. Referring various decisions of the High Court and Supreme Court, learned judge concluded that the entries in Setwar and Vasul Baqui and Khasra Pahani are prepared under the statute and hence these entries constitute title. The learned Judge observed as under:

"We are unable to understand as to why the plaintiffs cannot placed reliance on entries in the sethwar, vasulbaki and khasra pahani which are exhibited as Ex.B19 (bunch of pleaded). This is a very peculiar case where duplicated survey numbers are pleaded by the State. It is not possible to digest as to what has happened to the land in survey No.613 (suit land) since it was specifically in existence with Raja Shivraj Dharmavanth Bahadur as pattadar and Khatadar up to the year 1954-55. Even if Nadergul village is assumed as Jagir village or Inam village, the entire land in Nadergul village must have the same consequence i.e. getting vested in the State. But the written statement shows that Raja Shivraj Dharmavanth Bahadur land are separately shown in separate series of survey numbers from 1 to 194 with different owners. It is not the case of the state that it has granted by assignment of the land in Nadergul village. There is no possibility of a single survey number i.e. sy. No. 613 (suit land) getting covered either under the Hyderabad Abolition of Jagir Regulation or the A.P. (T.A.) Abolition of Inams Act 1955. At any rate the identity of land in Sy. No.613 (suit land) as found in Ex. A.10 touch plan and Exd.A9 village map cannot undergo any change whatsoever. Ownership may change from one person to the

> other but the land cannot change its location and identity when described with reference a survey number. Hence, we are unable to agree with the state that Ex. A.5 and A 6 cannot be taken as title documents. Hence, we hold that Raja Shivraj Dharmavanth Bahadur was the pattadar, khatadar and owner of the suit land and since the plaintiffs are the successors of Raja Shivraj Dharmavanth Bahadur, they are the successors to claim title of the suit land. We reject the contention of the state that the lands of Raja Shivraj Dharmavanth Bahadur are recorded separately in a new series of survey numbers i.e. 1 to 194 since there is no iota of evidence about the creation or existence of such survey numbers.

It is now possible to comprehend that survey numbers would be changed when it relates to the title of the person. The object of conducting survey of land is to maintain the identity of the land and hence the endorsement in the khasra pahani that lands of Raja Shivraj Dharmavanth Bahadur are shown separately is of no intelligible meaning. The evidence of DW 1 and DW2 has not thrown any light on these aspects. It is to be remembered that the State has pleaded that the lands of Raja Shivraj Dharmavanth Bahadur are recorded in separate series of survey numbers from 1 to 194 (written statement para 4) and hence the burden is upon the state to prove the same and explain as to what had happened to the lands of Raja Shivraj Dharmavanth Bahadur. No such attempt has been made by the State and hence we are constrained to reject the contention of the state after the khasra pahani, Raja Shivraj Dharmavanth Bahadur's land in Sy. No.613 of Nadergul village is shown separately in a fresh series of survey numbers i.e. 1 to

194."

60. On the issue whether the Nadergul Village is a Jagir village, the Court held:-

> "From the documentary evidence adduced by the State, there is no basis to construe that Nadergul village is a Jagir village. We have earlier observed that if a village happens to be a jagir village, all the survey numbers of the village should have the same effect by virtue of the Jagir Abolition Law. The state has contended that there are private patta lands in Nadergul village in other survey numbers. Hence it is absurd to appreciate that survey No.613 of Raja Shivraj Dharmavanth Bahadur alone can be construed as a Jagir. Above all, the state has not chosen to partify its pleading by adducing the best evidence i.e. any notification showing that the suit lands are jagir lands. Hence we have no hesitation to hold that the suit land is not Jagir land and hence it cannot be claimed by the State."

61. On the issue of maintainability of suit, the learned Judge finally held that:-

> "We have already noticed the judgment of the Nazim Atiyat, which has rejected computation amount for List III villages in Ex.B1. Hence there is nothing improper in filing the present suit for declaration of title. It is settled law that a claim for declaration of title never gets extinguished by efflux of time. Even under Article 65 of the Limitation Act, 1963 the Limitation runs only from the date on which the

possession of the defendants becomes adverse to the plaintiffs. Hence we hold that the plaintiffs are not disqualified from filing the suit even if they had approached the Nazim Atiyat under Ex. B1 proceedings."

62. On these findings, the learned judge allowed the appeal and set aside the judgment passed by the Trial Court.

63. The second learned Judge, Justice R. Kantha Rao, delivered a separate judgment, disagreeing with all the findings recorded by Justice B. Prakash Rao. Learned Judge firstly held that the suit for declaration of title as owners of the property, the burden is on the plaintiffs to prove their title of ownership. The learned Judge referring various judgments rendered by this Court and the High Court came to the conclusion that the holder of General Power of Attorney (GPA) is not competent to give evidence. The holder of GPA cannot be substituted for the said purpose. Learned Judge further noticed that the legal heirs of Raja Sivaraj Bahadur participated in the Inam Enquiry before the Nizam Atiyat to declare their rights and fix the commutation in respect of Jagir lands. The Nizam Atiyat by judgment dated 20.07.1958 (Ex.B-1) passed order for payment of commutation amount in respect of Jagir villages. Some of the plaintiffs preferred appeal against the judgment of the Nazim Atiyat to Board of Revenue and this appeal was dismissed. Thereafter, some of the plaintiffs filed the writ petition, which was allowed and the matter was remanded to the Board of Revenue for fresh disposal. Further, the appeal was ultimately dismissed for non- prosecution. According to the learned Judge, therefore the order passed by the Appellate Authority dismissing the appeal for non-prosecution will operate as res judicata.

64. The learned Judge also disagreed with the another Judge on the finding that when a person is recorded as Pattedar and Khatadar he has to be considered to be the owner of the property and there is no necessity of proving the source of the acquisition of the land. According to the learned Judge, mere marking of documents such as Ex.A-5, certified copy of Sethwar relating to Sy.No.613 of Nadergul Village, Ex.A.6, certified copy of the Vasulbaki Register of Sy.No.613 of Nadergul village and Exs.A-12 to A-14 – certified copies of pahanies where name of Raja Sivaraj Bahadur is found, the plaintiffs are not entitled for declaration of title. The learned Judge is of the view that plaintiffs failed to adduce any positive evidence to prove title and possession of the suit property. Accordingly, he by his judgment dismissed the appeal.

65. It is pertinent to mention here that on perusal of two separate judgments written by learned Judges of the Division Bench, they have not agreed on any point of facts or point of law rather they have decided the appeal by expressing their separate views. This may be the reason when the file was placed before the Chief Justice, he referred the matter to a third Judge for deciding the appeal after considering the different views given by the two learned Judges in the separate judgments written and signed by them.

66. Justice A. Gopal Reddy, before whom the appeal was referred and finally placed for hearing, has considered the two judgments delivered by the differing Judges. The third Judge considered in detail the judgment given by Justice B. Prakash Rao, who extensively dealt with the entire facts of the case and the evidence brought on record. After discussing the pleadings of the parties in detail,

the learned Judge framed the following eight points for consideration:

> "a) Whether the plaintiffs have established the claim for declaration of title in respect of the suit land.
>
> b) Whether the plaintiffs are in possession of the suit lands for claiming permanent injunction.
>
> c) whether the suit lands are Jagir lands as contested by the defendants?
>
> d) Whether the relief of declaration of title can be granted in the absence of truth of flow of title?
>
> e) Whether non filing of ceiling declaration can have the effect of waiver of title?
>
> f) Whether the entries in the revenue records can be basis for grant of a decree of declaration of title?
>
> g) Whether the suit is barred by limitation and whether the plaintiff's are estopped from filing the suit since they had earlier claimed for award of computation amount contending that suit lands are Jagir lands?
>
> h) Whether the judgment of the trial court warrants any interference as regards the findings recorded there?"

67. At the very outset, the learned Judge noticed the admission made in the written statement that in Khasra pahani of 1954-55 late Raja Sivaraj Dharmavanth Bahadur was recorded as Pattadar and Khatadar of S.No.613 admeasuring AC.373-22. It has further been admitted that in the said Khasra Pahani survey numbers the name of Raja Sivaraj Bahadur are recorded separately in a new series of Survey Numbers from 1 to 194. Further in Ex.12(a), which is a Khasra Pahani, it is recorded as 'cultivated self' and it is mentioned as Inam Dastagardan (suspense account) and in which Pattadar's name is mentioned as "Sivaraju Ilaka" and survey numbers of Siva Raju Bahadur are written separately. The learned Judge further noticed that even in pahani for the year 1960-61 of Nadergul Village covered under Ex.12(b), which is mentioned at serial no.2, Survey No.613 Sivaraju Ilaka. The learned Judge further came to the following finding:

> "In pahani pathrika for the year 1949-50 covered under Ex.19(a), S.No.613 is shown as Kancha Siva Raj Dastagardan admeasuring AC.323-22. In the pahani patrika for the year 1950-51 covered under Ex.B-19, S.No.613 admeasuring Ac.373-22 is classified as "Kancha Sevaraj Munzabta Confiscated", and name of Khathadar is mentioned as Kancha Severaj. In th Khsra Pahani for the year 1954-55 covered under Ex.B-19(a), it was shown as S.No.119 and extent is shown as Ac.355-12 guntas and column No.6 was shown as Sirkari and land name is Khas Sagu (cultivated self). D.Ws.1 and 2, who entered into the witness box have not clarified as to how two

different Khasra pahanies were maintained, namely, in the khasra pahani for the year 1954-55, Raja Sivaraj Dharmavanth Bahadur has been recorded as Pattadar and Khatadar of S.No.613 admeasuring 373-22, another Khasra Pahani covered under Ex.B-19(a), S.No.119 of Nadergul is admeasuring Ac.355-12 guntas which is Sirkari but Sivaraj Ilaka. It is admitted by the defendants that total survey numbers in Nadergul village are 875. The village map which was marked by the plaintiffs shows original 875 survey numbers and the new series of 1 to 194 survey numbers. It is admitted in the first written statement filed by the fifth defendant that suit land was confiscated to the State and how the same was confiscated to the State and under what proceedings the land was confiscated has not be stated. In the amended written statement, State has taken several alternative and inconsistent defences by contending that Nadergul village is Inam Dastagardan. Even if we accept that is Inam Dastagardan, it is only a suspense account and rights of the parties have to be determined under Inams Abolition Act. There is no proof that the land has been treated as government land and confiscated to the State. Once it is recorded that S. No.119 admeasuring Ac.1-20 guntas belongs to Gaddam Mallaiah, how the same survey Number i.e. 119 can be recorded as having an extent of Ac.355-12 guntas, shown it as government land. D.Ws.1 and 2 have not properly explained the same in their evidence."

68. The learned Judge on the issue with regard to Atiyat proceedings in respect of Jagir land came to the following finding:

"It is relevant to note here, Baga Nadergul village has been mentioned in List-III under the heading Tahrir Pawanni Jagirs under Serial No.8. Therefore, no commutation amount has been fixed for list III villages, which is subject to further enquiry with regard to the claim, if any filed by sub-grants to prove their possession. By any stretch of imagination, the heirs of Raja Shivaraj Dharmmavanth Bahadur were awarded commutation amount to foreclose their rights under the above proceedings. Even if the appeals were dismissed after remand order passed by the High Court, the commutation amount, if any awarded under Ex.B-2 is only for the lands which are not covered by proceedings under Ex.B-1. Further, as per Khasra Pahani, the land revenue account of late Raja was Khata No.3. The said fact has been admitted in the written statement. Whereas Ex.B-2 and B-27 are in respect of Khata No.6, which should obviously be different from the revenue account of late Raja i.e. Khata No.3. Therefore, it can safely be concluded that Exs.B-2 and B-27 do not pertain to the lands of which late Raja was Khatadar/pattadar. Further, it was categorically stated in NB(1) of Ex.B-2 that the award will be implemented on the payments side after carefully checking and reconciling the number of jagir villages as furnished by the estate authorities with the list recently received from the Atiyat Department, so as to keep the commutation sum of villages shown in list No.III attached to Nazim Saheb Atiyat's L.No.1884 dt. 27-2-1958 in reserve as ordered by the Board of Revenue in their letter No.U/993/58/Atiyat dt.12-4-1958. So, the amounts so mentioned are not conclusive but were ordered to keep in reserve until

> rights of the parties are decided in separate proceedings. Therefore, it is not open for the Government to contend that the properties are confiscated or vest in the Government in the light of the commutation award passed by the Office of the Jagir Administrator, Government of Andhra Pradesh, Hyderabad-Deccan dt.30.3.1959 (Exs.B-2 and B-27)."

69. The learned Judge has further taken notice of the fact that of late the State Government, now, is claiming property by rounding off the names of pattadars and others in the revenue records without referring to any proceedings, which fact has been observed by one of the decision in Syed Ahmad Hasan case, 2011(4) ALT 262 (DB).

70. Finally, the learned Judge came to the following conclusion:

> "From the above discussion and the law laid down by this Court as well as the Supreme Court, it is to be held that the plaintiffs successfully demonstrated that the late Raja was pattadar/khatadar of the land covered by S.No.613 admeasuring 373-22 guntas in the Khasra Pahani, the presumption backward/forward can be applied in his favour or in favour of his heirs that he or they continued to be pattadar(s). Unless the State proves that the said land has been confiscated or vest in the State under Jagir Abolition Act on abolition of jagirs or for non filing of declaration, the property vest in the Government under the provisions of Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings), 1973, mere mentioning "Sarkari" in subsequent pahanies or giving duplication S.No.119, title of the original owner will not vanish and it continues to be vest with them. In Khasra Pahani for the year 1954-55 covered under Ex.12(a), when it is stated that S.No.613 has been recorded as "Self Cultivation Dastagardan" and numbers of the Sivaraj Bahadur has been written separately and the same has also been shown as S.No.119 under Ex.12(b). Therefore, late Raja or his heirs continue(s) to be pattadar(s) for the corresponding survey number and on changing also, but the same cannot become the government property as contended by the learned Advocate General. Further, the identity of land in S.No.613, suit land, as found in Ex.A-10-touch plan and Ex.A-9-village map cannot undergo any change whatsoever and ownership may change from one person to the other but the location of land and its identity with reference to survey number cannot be changed. Therefore, there is no further necessity for the plaintiffs to seek declaration of their title except to seek correction of record of rights recording the names of the heirs of late Raja i.e. the plaintiffs. Thus, the plaintiffs are entitled for a declaration for correction of the entries in the record of rights recording the names of the legal heirs of late Raja and also injunction restraining the defendants from interfering with the plaintiffs peaceful possession."

71. The learned third Judge, therefore, agreed with the finding recorded by one of the Judge, Justice B. Prakash Rao and upheld the conclusion arrived at by him and consequently allowed the appeal.

72. We have meticulously perused the pleadings of the parties, and the evidence, both oral and documentary adduced by them. We have also gone through the findings recorded by the trial court, the findings recorded in two separate judgments passed by the Division Bench of the High Court and finally the impugned judgment passed by the third learned Judge of the High Court. The third learned Judge to whom the matter was referred has agreed with and upheld the finding recorded by one of the judges of the Division Bench and allowed the appeal decreeing the suit filed by the plaintiff- respondents.

73. The plaintiff-respondents filed the suit for correction and rectification of record of right in respect of S.No.613 measuring 373.22 guntas of land which was recorded in the name of the predecessors of the plaintiffs and the same alleged to have been illegally rounded up by the Revenue authorities and a new S.No.119 was created in favour of the State without any notice and legal proceedings.

74. It has not been disputed by the appellant-State that the suit land comprised within S.No.613 measuring 373.22 guntas was held and possessed by Raja Shiv Raj Bahadur who was the Khatadar and Pattadar of S.No.613 of Village Nadergul. It is also not in dispute that succession of the Estate of Late Raja Shiv Raj Bahadur was declared by a Royal Firman of the Nizam in favour of Raja Dhiraj Karan, Dharam Karan, Mehboob Karan and the heirs of Manohar Raj vide Firman dated 4th Ramzan 1359 Fasli. On the death of Raja the succession of the Estate was granted by the Royal Firman in favour of the sons of the two brothers and by subsequent Firman in favour of Pratap Karan, who is one of the plaintiffs.

75. It has been admitted in the written statement that in the Setwar and Vasool Baqui, the name of Raja was recorded as the owner of the said S.No.613. Subsequently, in the Khasra Pahani which is the basic record of right prepared by the Board of Revenue, Andhra Pradesh for the year 1954-55 the name of Raja Shiv Raj Bahadur was entered as the absolute owner and possessor of the suit land. Hence, the title of the owner supported by various documents including the Khasra Pahani, which is a document of title has been proved beyond doubt.

76. Recently, in the case of Collector vs. Narsing Rao, (2015) 3 SCC 695, this Court (one of us-Hon'ble C. Nagappan, J. was a party) had considered a similar question where the challenge to the title of pattadar by the Government was negatived and this court held :-

> "13. Consequent to the merger of Hyderabad State with India in 1948 the Jagirs were abolished by the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulation, 1358 Fasli. "Khasra pahani" is the basic record-of- rights prepared by the Board of Revenue Andhra Pradesh in the year 1954- 1955. It was gazetted under Regulation 4 of the A.P. (Telangana Area) Record-of-Rights in Land Regulation, 1358 F. As per Regulation 13 any entry in the said record-of-rights shall be presumed to be true until the contrary is proved. The said regulation of 1358 F was in vogue till it was repealed by the A.P. Rights in Land and Pattadar Pass Books Act, 1971, which came into force on15-8-1978. In the 2nd Edn. (1997) of The Law Lexicon by P. Ramanatha Aiyar (at p. 1053) "Khasra" is described as follows:

> "Khasra.—Khasra is a register recording the incidents of a tenure and is a historical record. Khasra would serve the purpose of a deed of title, when there is no other title deed."

77. One of the Judges of the Division Bench after considering the facts of the case and discussing elaborately the oral and documentary evidence recorded a finding with regard to the title in respect of S.No.613 in favour of the plaintiffs. The third Judge in the impugned judgement has also discussed the evidence and finally upheld the finding recorded by one of the Judges of the Division Bench. We do not find any reason to differ with the finding recorded by the two judges of the High Court on the issue of title of the plaintiffs predecessors over the suit land.

78. Besides the above, it has not been denied by the appellant that there is an endorsement in the said Khasra Pahani, Survey No.613 admeasuring AC 373.22 is recorded as "cultivated self' and in column 7 it is mentioned that Inam Dastagardan (suspense account), Exhibit 12(a). The appellant-State have totally failed to prove as to under which proceeding and under what circumstances, the suit land was suddenly shown as Government land. No proceeding whatsoever was initiated before the alleged confiscation of the suit land. Admittedly, Survey No.119 admeasuring 1.20 guntas belonged to one Gaddam Mallaiah which is evident from the revenue record. We have failed to understand as to how another Survey No.119 came into existence showing entire suit land to the extent of AC 355.12 guntas treating it as Government land.

79. Mr. V. Giri, learned senior counsel appearing for the appellant, contended that under the Jagir Abolition Regulation the suit land is vested in the State. Consequently, the matter was referred to Atiyat proceeding for commutation of compensation it was only because the sanat has not proved the claim for compensation in respect of suit land was rejected.

80. We are unable to accept the submission made by Mr. Giri, learned counsel for the appellant. From perusal of exhibit B-1 which is the judgment of Nizam Atiyat dated 20.1.1958 it is evident that the mass is comprised of Jagir, Rusums and Inam land. The High Court in the impugned judgment has rightly observed:-

> "It is relevant to note here, Baga Nadergul village has been mentioned in List-III under the heading Tahrir Pawanni Jagirs under Serial No.8. Therefore, no commutation amount has been fixed for list III villages, which is subject to further enquiry with regard to the claim, if any filed by sub-grants to prove their possession. By any stretch of imagination, the heirs of Raja Shivaraj Dharmmavanth Bahadur were awarded commutation amount to foreclose their rights under the above proceedings. Even if the appeals were dismissed after remand order passed by the High Court, the commutation amount, if any awarded under Ex.B-2 is only for the lands which are not covered by proceedings under Ex.B-1. Further, as per Khasra Pahani, the land revenue account of late Raja was Khata No.3. The said fact has been admitted in the written statement. Whereas Ex.B-2 and B-27 are in respect of Khata No.6, which should obviously be different from the revenue account of late Raja i.e. Khata No.3. Therefore, it can safely be concluded that Exs.B-2 and B-27 do not

pertain to the lands of which late Raja was Khatadar/pattadar. Further, it was categorically stated in NB(1) of Ex.B-2 that the award will be implemented on the payments side after carefully checking and reconciling the number of jagir villages as furnished by the estate authorities with the list recently received from the Atiyat Department, so as to keep the commutation sum of villages shown in list No.III attached to Nazim Saheb Atiyat's L.No.1884 dt. 27-2-1958 in reserve as ordered by the Board of Revenue in their letter No.U/993/58/Atiyat dt.12-4-1958. So, the amounts so mentioned are not conclusive but were ordered to keep in reserve until rights of the parties are decided in separate proceedings. Therefore, it is not open for the Government to contend that the properties are confiscated or vest in the Government in the light of the commutation award passed by the Office of the Jagir Administrator, Government of Andhra Pradesh, Hyderabad-Deccan dt.30.3.1959 (Exs.B-2 and B-27)."

81. The learned Judge of the High Court in the impugned judgment has taken judicial notice of the fact that the Government, now-a–days is claiming property by rounding off the names of Pattadars and others in the Revenue Records without referring to any proceedings, which fact has also been observed in a Division Bench judgment of the Andhra Pradesh High Court in the case of Syed Ahmad Hasan, 2011(4) ALT 262.

82. Both the trial court and the learned Judge of the Division Bench, who affirmed the finding of the trial Court have failed to take into consideration the relevant provision of the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli and held that by the said Regulation, all Jagir land became the Government land. Sections 17 and 18 of the Jagir Abolition Regulation read as under:-

"17. Home-farms.--

(1) Nothing in this Regulation shall affect the home farm (seri Khudkasht) of a Jagirdar or Hissedar which, subject to any law for the time being in force, he shall continue to hold, -

(a) where the village in which the farm is situate has been brought under survey and settlement whether before or after the appointed day, in accordance with the terms recorded at the time of such survey and settlement;

(b) for so long as the village has not been brought under survey and settlement, in accordance with the terms and conditions prevailing immediately before the appointed day.

(2) For the purposes of sub-section (1) the extent and boundaries of the home-farm of a Jagirdar or Hissedar shall be such as the Jagir Administrator may by order determine :

Provided that no forest or waste land shall be included in any home-farm.

18. Personal property and liabilities not affected.--

Nothing in this Regulation shall affect, -

(a) the personal property of a Jagirdar or Hissedar or any property other than the Jagir held by a Jagirdar on behalf of the Hissedar, or

(b) any liability of a Jagirdar or Hissedar in respect of any loan taken from Government."

83. From bare perusal of the aforesaid provision it is clear that such land which has been brought under survey settlement and record of right has been prepared in the name of the land owner in respect of self cultivated land shall have no effect on the provisions of Jagir Abolition Regulations.

84. On the finding recorded by the Trial Court on the issue of possession, the plaintiff produced evidence stating that for irrigation purpose on the land, 18 bore-wells have been dug, some bore-wells were dug- up in 1980 and some in 1990s and 5 during the last five years. It has also come in evidence that the plaintiff obtains three service connections for the bore-wells in the name of the deponent. The Trial Court took notice of the fact that the defendant State has admitted that both Sethwar and Wasool Baki do contain the name of Shivraj Bahadur, the truth of these documents and the correctness of entries therein are not in dispute. The only contention of the State was that these are the records long prior to independence and subsequently there have been several changes and different revenue entries have been made and there is no consistency in the Revenue entries recognizing the title of the plaintiffs-predecessors interest.

85. The Trial Court considered the decision in the case of State of Himachal Pradesh Vs. Keshav Ram and Ors., 1997 (AIR) SC 2181 which was relied upon by the learned Advocate General, the Trial Court held that the decision of the Supreme Court (Supra) was not considered by the High Court in the earlier decisions. The Trial Court erroneously held that except entries made in Sethwar and Wasool Baqui, there are no subsequent Revenue entries much less consistent entries to corroborate the entries in Sethwar and Wasool Baqui to establish title. The Trial Court recorded incorrect finding that the subsequent Revenue entries do not contain the name of Raja Shivraj Bahadur either pattadar/khatadar and in all the records instead of his name the land was either shown as Kancha-Sarkari or land confiscated by the government. The Trial Court further erroneously held that even in the khasra-pahani of the year 1954-55 which is an important Revenue Record, the name of Raja Shivraj Bahadur was not shown as khatadar/ patadar.

86. In the decision relied upon by the Trial Court (AIR 1997 SC 2181), the fact was that the land originally belonged to the plaintiff but in the year 1950, the name of the State was recorded in the settlement paper as the owner. The plaintiff applied for necessary corrections of the record and ultimately in a suit, the Civil Court passed a decree in favour of the plaintiff. The matter finally came to this Court. Allowing the appeal, this Court held that since the name of the State was recorded to be the owner of the land in the Record of right prepared in the year 1949-50, the Court could not have passed a decree for the change of Revenue record.

87. In the instant case, the fact is totally reverse. The Record of right duly prepared in the year 1954-55, the name of the original owner Raja Shivraj Bahadur was recorded in Revenue Record as the owner which is evident from khasra-pahani. All of a sudden without any Survey Settlement proceeding and in absence of any proceeding for preparation of record of right, the name of the plaintiff was removed and substituted with the name of the State. Hence, the aforesaid decision of this Court rather supports the case of the plaintiff.

88. Admittedly, Nadergul Village was brought under Survey and Settlement in the Revenue record of right including khasra-pahani land which were in original possession of Raja Shivraj Bahadur was given corresponding Survey No. 613 and in the remark column recorded as "Self Cultivation Dastagardan" and the successor of Raja, namely, the plaintiff continued possession of the suit land. Similarly, one Gaddam Mallaiya was allotted Survey No. 119 in respect of his land which is undisputedly come in his possession.

89. Considering all the documentary evidences together viz., Exh.P-2 Firman confirming the successor of Late Raja Dhiraj Karan in favour of Pratap Karan, one of the plaintiffs, Exh.P-5 Sethwar for Survey No.613, Exh. P-8 Vasool Baqui, substantiate the case of the plaintiff-respondents that the Revenue Records were not correctly and properly maintained. Further, the Touch Plan copies of Survey No.613 and 119 and certified copies of Pahani in respect of the suit land show the incorrect maintenance of Revenue Records. Certified copies of Pahani for the year 1949-58 and 2000-01 of Survey No.119 make it clear that there is duplication of survey numbers. Indisputably, Survey No.613 was suddenly rounded off stating that the property was separately shown. There is no explanation or evidence from the side of the appellants as to under which proceeding and by which order the Revenue Record was changed. So far as the claim of confiscation of the land by the Government is concerned no proceeding was initiated by any competent authority under any law before making entries in the Revenue Records that land was confiscated. For doing the same there must be a proceeding and order of confiscation of the land which has not been brought on record. Further, there is no document to show that in pursuance of confiscation entries the person in occupation was dispossessed and the record is maintained showing dispossession and taking possession of the land by the Government. In the survey settlement proceedings there cannot be duplication in survey numbers. We have failed to understand as to how a duplicate Survey No.119 came into existence and the land of Survey No.613 was shown in that duplicate survey No.119. The learned District Judge while deciding the injunction application has recorded admission of the Government that the plaintiffs are in possession of the suit land. On the basis of admission by the appellant and the Revenue Record the Court gave interim protection by granting a temporary injunction in favour of the plaintiffs.

90. In the instant case, although the Trial Court decided the Interlocutory Application for injunction not only on consideration of documentary evidence, but also admission made by the appellant State admitting possession of the plaintiff over the suit land but in the final judgment, no finding recorded with regard to possession of the suit land except that these documents do not prove title of the plaintiff on the suit land.

91. One of the learned Judges of the Division Bench on consideration of all the documentary evidence and the Revenue Records recorded the finding in favour of the plaintiff. The said finding of the learned judges has been affirmed and upheld by the learned third Judge of the High Court and allowed the appeal and set aside the finding of the Trial Court.

92. We have given our thoughtful consideration on the finding recorded by the learned Judges of the Division Bench and finding recorded by the third learned Judge to whom the matter was referred for passing the final judgment. In our view, there is no material on the record to reverse the finding of the two learned Judges of the High Court.

93. For the aforesaid reasons, we find no merit in C.A. No.2963 of 2013 and the same is dismissed.

94. So far as Civil Appeal No.2964 of 2013 filed by the appellant- Corporation is concerned, admittedly the appellant-State, despite pendency of appeal in the High Court, transferred the suit land in favour of the Corporation. The said transfer is not only hit by lis pendens but also appears to be not bonafide. Be that as it may, consequent upon the dismissal of the appeal of the State being C.A.No.2963 of 2013, the appeal being C.A.No.2964 of 2013 filed by the Corporation is also dismissed.

.....J. (M.Y. Eqbal) .....J. (C. Nagappan) New Delhi October 09, 2015