Sardar Prahlad Singh vs Syed Ali Musa Raza And Ors. on 27 February, 1997

Equivalent citations: 1997(3)ALT562, 1997 A I H C 3122, (1997) 2 CIVILCOURTC 96, (1997) 3 LJR 457, (1997) 3 ANDHLD 741, (1997) 4 ICC 71, (1997) 3 ANDH LT 562, (1998) 1 CIVLJ 359

JUDGMENT

B.K. Somasekhara, J.

1. The Appellant who is the Defendant No. 1 in O.S. No. 331/80 (old 54/78) has challenged the Judgment and decree of the learned Addl. Chief Judge, City Civil Court, Hyderabad dt. 15-1-1983 passed in favour of respondents 1 to 3 who were the plaintiffs in the suit for recovery of the possession of the suit property after demolishing the structure thereon and by evicting the defendants therefrom. The respondent No. 4 herein is the defendant No. 2 in the suit. The suit property is a portion of S. No. 129/55 (old) New Sy. No. 165 to an extent of 2125 sq. yards out of 3500 sq. yards and Ac.3-26 guntas situated at Kancha Tattikhana Sivar, Shaikpet village, Banjara Hills, (Jubilee Hills) Hyderabad described in the plaint schedule. One Saraf-e-Khas Mubarak, its original pattadar transferred it in the name of the plaintiffs' father Syed Shah Abdul Khader on 25-Azur 1340 Fasli (30-10-1930) and he in turn transferred it to his wife Fathima Soghra under a settlement deed dt. 10th Aban 1347 Fasli(15-9-1938). Fathima Soghra died on 24-7-1973 leaving behind her the plaintiffs, her children, as legal heirs, who succeeded to the said land after her death. It was alleged that the plaintiffs' father and thereafter their mother Fathima Soghra was in continuous possession of the said land. It appears that one Agamaiah or Agaiah was managing the suit survey number leasing out and collecting rent from tenants at the instance of the owners thereof. It was alleged that the Defendant No. 1 without any right, title or interest occupied the suit land to an extent of 2125 sq. yards during the fourth week of 1965 and put up a construction on the ground that he had been put into possession by Defendant No. 2 and in spite of the repeated oral requests, the 1st defendant did not demolish the illegal construction nor handed over possession of the suit land to the plaintiffs and therefore they have to file the suit for possession, for damages at the rate of Rs. 250/- and for demolition of the illegal construction.

2. Both the defendants by filing the written statement resisted the suit. According to them the said Agamaiah was the owner of the suit survey number with an extent of 3500 sq. yards and he entered into an agreement of sale dt. 16-8-1965 in favour of 2nd defendant and sold it to him under the sale deed dt. 25-10-1965 and put him in possession of the same. The 2nd defendant in turn sold a portion of it to the extent of 2125sq. yards being the suit land in favour of defendant No. 1 under the regd. sale deed dt. 24-12-1965. It was contended that defendant No. 2 was put into possession of the land by Agamaiah under the agreement of sale and later on Defendant No. 2 put Defendant No. 1 in possession by virtue of the sale transaction. It appears that the Defendant No.2 after obtaining

permission from the police had arranged for blasting the stones in the suit land, that the Defendant No. 1 after obtaining the approved plan and licence put up a building on the suit land and he has been in possession of the same since then. They have contended that they are the bona fide purchasers of the suit land for value without notice of any right or title of any other person as alleged. In the alternative they have contended that Agamaiah, thereafter Defendant No. 2 and Defendant No. 1 have been in continuous possession of suit survey number and the suit land for over 12 years and therefore they have perfected their title to it by adverse possession. They have denied the right, title or possession of the suit survey number and the suit land either with the father of the plaintiffs, their mother or the plaintiffs themselves at any time.

3. The parties went to trial on the following issues which were settled wherein the Plaintiff No. 1 examined himself as P.W.1 and two witnesses as per P.Ws.2 and 3 and Defendant No. 1 examined himself as D.W.1, Defendant No. 2 as D.W.2 and a witness as per D.W.3 respectively. By way of documentary evidence Exs. A-1 to A-8 for the plaintiffs and Exs.B-1 to B-22 for the defendants were marked.

(1) Whether the plaintiffs are legal heirs of the original pattadar?

(2) Whether Fathima Soghra was continuously in possession till 1973?

(3) Whether Agaiah was in possession of suit land and whether he sold it to the 2nd defendant?

(4) Whether the 1st defendant is a bona fide purchaser of suit land for valuable consideration from the 2nd defendant?

(5) Whether the defendants have perfected title by adverse possession?

(6) Whether the suit is not properly valued and Court fee paid is incorrect?

(7) Whether the plaintiffs are entitled for recovery of possession?

(8) Whether the plaintiffs arc entitled for damages ? If so, at what rate?

(9) To what relief?

With these materials, and after hearing both the sides, the learned Civil Judge held issues I to 3 and 6 to 8 in the affirmative, issue Nos. 4 and 5 in the negative and consequently decreed the suit. Thus, the aggrieved 1st defendant has filed this appeal.

4. Broadly stated the grounds of appeal and the contentions of the learned Advocate Sri Venugopal Reddy for the appellant are, that the learned trial Judge was wrong in accepting the title of the plaintiffs as proved, that the possession was with them through Agamayya, that Agamayya and defendants did not acquire title to the suit Survey Number and the land and that they did not get

possession of the same, that there was no adverse possession as pleaded, that the possession of the suit land was taken by the first defendant forcibly as he was holding the power as Commissioner of Police, that the defendants are not the bonafide purchasers of the suit land for value and that the plaintiffs were entitled to the decree for possession and demolition of the construction of the 1st defendant. It is contended that the plaintiffs were estopped from challenging the title or possession of the defendants in view of failure to prove the permissive possession of the suit Survey Number and the land with Agamayya, the transactions between Agamayya and defendants coming out after a public notice through the local newspapers and after the clear knowledge that defendants were in possession of the suit land and exercising their right openly by obtaining permission, licence, etc., from the prescribed authorities and in spite of the Defendant No. 1 completing the construction quite a long back, to the notice of the plaintiffs residing therein by investing huge sum of money. It is contended that in regard to such matters, the appreciation of evidence by the learned Civil Judge is opposed to the materials on record, the law applied to the facts are also incorrect and that the Judgment and Decree passed by the learned Civil Judge cannot be sustained. Mr. Venugopal Reddy, the learned Advocate has categorically contended that the learned Civil Judge is prejudiced due to certain circumstances wherein Defendant No. 1 was a police officer at the relevant time, that there were criminal proceedings against the defendants resulting in their conviction in regard to certain offences relating to the documents between Agamayya and the defendants and because of the failure or production of the agreement of sale between Agamayya and Defendant No. 2, which was actually filed before the criminal Court. He has also contended that the suit was barred by limitation as neither the plaintiffs nor their predecessors in interest were in possession of the suit survey number at any time for over 2 to 3 decades and the right, if any, in them had been extinguished vesting the right and title in the defendants and Agamayya due to their long and continuous possession with the legal and valid title acquired thereunder. According to him, even assuming that the defendants had been convicted in the criminal proceedings, that will not be binding on the civil Court on the facts in issue involved in the suit which were to be independently examined on the materials placed before the Court as per the settled law. Mr. Venugopal Reddy has pointed out that as against the abundant oral and documentary evidence and the positive circumstances in favour of the defendants, the case of the plaintiffs being not supported by such materials in addition to their conduct in keeping quiet for a long time without setting up their claims before the appropriate authorities in spite of opportunities, the learned Civil Judge was totally wrong in accepting the case of the plaintiffs and rejecting the case of the defendants. Mr. Vilas Afjal Purkar, the learned Counsel of the plaintiffs, while repelling all the above contentions, has totally tried to support the findings and the Judgment and Decree of the learned Civil Judge except the finding on Issue No. 3 and the finding that Fathima Soghra, the mother of the plaintiffs was not in possession of the suit land till 1973 which is against the evidence according to him. He has also contended that conviction of defendants upto Supreme Court is a strong piece of material supporting the case of the plaintiffs and rejecting the case of the defendants in setting up their right and title over the suit property and atleast it is sufficient to corrobotate the evidence of the plaintiffs.

5. Thus, these points arise for consideration :-

> 1. Whether Syed Shah Abdul Khader, the father of the plaintiffs was the original owner of the suit Sy. No. 129/55 (Old) New 165, with an extent of Ac.3-26 guntas

having got it from the original pattadar Saraf-e-Khas Mubarak ?

2. Whether the plaintiffs' father transferred the suit Sy. No. in favour of his wife and the mother of the plaintiffs Fathima Soghra, under the settlement deed dt.15-9-1938 ?

3. (a) Whether on the death of their mother Fathima Soghra, the plaintiffs succeeded to the suit Sy. No. as her legal heirs? (b) If Fathima Soghra did not get any right or possession over the suit Survey Number, whether the plaintiffs succeeded to it as the legal heirs of their father ?

4. (a) Whether Agayya or Agamaiah acquired the title to the suit Sy. No. to the extent of 2500 sq. yards through the plaintiffs' father ?

(b) If so, whether he could have got a valid title if Fathima Soghra had already acquired the title to the suit Sy. No., through her husband ?

(c) If so, whether Agamaiah could confer a legal and valid title in favour of Defendant No. 2 under the sale deed dt.25-10-1965 and whether Defendant No. 2 could confer valid title on 1st defendant under the sale deed dt. 24-12-1965 ?

5. (a) Whether Agamaiah was in possession of the suit Sy. No. or the suit property as the owner or as a watchman with permission of the plaintiffs' father ?

(b) If not, whether his possession was hostile, and adverse to the right and title of the plaintiffs' father ?

(c) If so, when the adverse possession of Agamaiah commenced ?

6. Whether defendants 2 and 1 are the bona fide purchasers of the suit property for value and without notice of the title or right of the original pattadar viz., the plaintiffs' father still subsisting on the date of their sale deeds?

7. Whether the defendants have perfected their title to the suit property by adverse possession ?

8. (a) Whether the Defendant No. 1 put up the construction on the suit property with the knowledge and implied consent of the plaintiffs and as a bona fide purchaser through Defendant No. 2.?

(b) If so, whether the plaintiffs are acquiesced in regard to their right over the suit property and to get the construction thereon demolished to get the possession of the suit property ultimately?

9. Whether the conviction of the defendants by a criminal Court in regard to the offences in bringing about the documents between Agamaiah and the defendants has any bearing on the decision on the same question to be decided in the suit affecting the right and title of the parties ?

10. Whether the findings of the learned Civil Judge on the issues against the defendants are wrong and recorded by wrong appreciation of evidence and opposed to law ?

11. (a) Whether the Judgment and decree of the learned Civil Judge are opposed to facts, law and probabilities of the case ? (b) If so, whether they are liable to be set aside and to what extent?

12. Whether the Defendant No. 1 is entitled to any equities in regard to the construction on the suit property to get its value or to purchase the suit property by paying its value to the plaintiffs either Under Section 51 of the Transfer of Property Act or in the general rule of equities and whether the plaintiffs are also entitled to such a benefit ?

13. What order ?

6. The evidence of the plaintiffs that they are the children of Syed Shah Abdul Khader and his second wife Fathima Soghra is not challenged. They being the legal heirs of such parents is also not in serious challenge. The learned Civil Judge based on evidence and supported by reasons has come to such a correct conclusion. The suit survey number 129/55 with an extent of Ac.3-24 guntas of Shaikpet village of which the original pattadar was one Saraf-e-Khas Mubarak having been transferred to plaintiffs' father is also not seriously challenged and borne out from the evidence. Ex.A-8 the certified copy of the decree in A.S.48/63 on the file of the II Addl. Chief Judge, City Civil Court, Hyderabad dated 29-1-1964 discloses that the suit filed by Syed Ali Hussain, the paternal uncle of the plaintiffs for partition against the plaintiffs' mother Fathima Soghra and other close relatives which came to be dismissed also confirms the suit survey number having been in the possession of the family of the parents of the plaintiffs and the others having no right in the same. P.W.3 a close relative of the plaintiffs' mother who has nothing to speak against the defendants has also confirmed such a factual position. The defendants themselves tracing their title through their predecessor in interest viz., one Agaiah or Agamaiah through the plaintiffs' father only consolidates the existence of the initial title of the suit survey number and the suit property with the plaintiffs' father and in none else. Therefore the learned Civil Judge was right in holding that suit surveynumber originally belonged to the plaintiffs' father.

7. The settlement by the plaintiffs' father in favour of their mother Fathima Soghra has a documented support in Ex.A-2 (copy, Ex.A-7), the registered settlement deed dt.10th Aban 1347 Fasli (15-9-1938) the formal proof of which is given through the testimony of the attestor P.W.3 and the legal proof established by virtue of Section 90 of the Evidence Act, the document being 30 year old and its coming out from the proper custody, is not in challenge when the Court will presume that the signature and every other part of the document which purports to be in the handwriting of any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to have been executed and attested. The validity of Ex.A-2 is not challenged by the defendants on any other ground. Ex.A-3, the Khasra Pahani for the year 1954-55 also shows that Fathima Soghra has come into possession of the suit survey number regarding which Exs.A-4 and A-5 the Vasulbaki for 1349 Fasli and the inspection report also supports such a right of Fathima Soghra over the land. The attempted failure to prove the contrary by the defendants without any counter materials much less with their

testimony was sufficient for the learned Civil Judge to hold the title of the suit survey number in favour of Fathima Soghra. The fact that Fathima Soghra died on 24-7-1973 is also established. Thus, the plaintiffs succeeding to the suit survey number comprising the suit property as the legal heirs of Fathima Soghra in the absence of any other legal heirs or at any time Agaiah and the defendants having no such status is more than established. In other words, till the defendants are able to establish that Agaiah or Agamaiah had acquired a valid title to the suit survey number through the plaintiffs' father, the title of the plaintiffs over the same should be accepted, however, subject to the probe into the plea of adverse possession set up by the defendants.

8. When the defendants set up their title through Agaiah and through the plaintiffs' father, it was for them to establish it in order to demolish the plaintiffs' right to acquire their title to the suit survey number and the suit land as legal heirs. The testimony of the defendants in regard to Agaiah acquiring the title through the plaintiffs' father has no supporting documentary evidence. Agaiah is dead. His wife who was alive during trial was not examined. The theory that Agaiah purchased the suit land from the plaintiffs' father under an unregd. sale deed dt.1-10-1951 is not established, in the first place by producing such a document and secondly in view of the legal bar to acquire the title to an immovable property of whose value is more than Rs. 100/- and in view of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act. Therefore even assuming that Agaiah had obtained an unregd. sale deed from the plaintiffs' father in regard to the suit survey number, he could not acquire a valid title. Therefore as rightly held by the learned Civil Judge, Agaiah could not confer a better title to Defendant No. 2, he himself not having acquired the legal title, in spite of the alleged agreement of sale 16-9-1965 in favour of Defendant No. 2, Ex.B-7, the regd. sale deed dt.25-10-1965, in favour of Defendant No. 2 and Ex.B-1 the regd. sale deed dated 24-12-1965 by Defendant No. 2 in favour of Defendant No. 1. Significantly enough the patta of the suit survey number which was in the name of the plaintiffs' father till he died, the name of their mother Fathima Soghra came to be entered in Khasra Pahani Ex.A-1 for the year 1954-55 by virtue of the settlement deed Ex.A-2 continued in her name till she died. Therefore, even assuming that Agaiah could get the transfer of the suit survey number to him from the plaintiffs' father and further transferred it to Defendant No. 2 who in turn transferred it to Defendant No. 1, on the dated 1-10-1951, the so-called sale deed in favour of Agaiah, the plaintiffs' father had no title at all to convey it to Agaiah. Even on that count, the defendants cannot successfully establish the title to the suit property through the plaintiffs' father. Therefore, as between the preferential title and superior title between the plaintiffs and the defendants, the former has a legal incline to balance down the right in law than the latter.

9. It is true that the plaintiffs' father and the mother were the absentee owners of the suit survey number including the suit property. The property was not such of positive utility nor it was put to as evidently most of it was a rocky area. The evidence discloses that there were several hutments said to have been put up with the management of Agaiah under the plaintiffs' father. It is true that the plea of Agaiah being a watchman or a manager of the plaintiffs or their parents finds no documentary evidence. At the same time except till Ex.B-7 dated 25-10-1965 came into being and in the absence of agreement of sale dt. 16-8-1965 between Agaiah and Defendant No.2, there is no record of the possession of Agaiah over the suit survey number or the suit land. The recital of possession of Agaiah in Ex.B-7 cannot relate back to any date beyond that in the absence of any

documentary evidence. Any amount of oral evidence including the testimony of the defendants or any witness cannot be a substitute for the proof through the documentary evidence said to have been in existence including the stamp paper dt. 13-10-1951 and the agreement of sale dt.16-8-1965. In the absence of such materials, the possession of Agaiah regarding the suit survey number belonging to the plaintiffs' parents, could never be but either on their behalf or adverse to them. There is not even a whisper of the possession of Agaiah being adverse to the tile of the real owner, plaintiffs' father or the mother at any point of time. On the otherhand, Agaiah's possession is traced to his title which is found to be doubtful if not false. The law is settled that the alleged possession of a person claiming to be under a title can never be adverse as against the real owner as such a stand would be inconsistent with the legal basis of title and possession. In Premendh Bhushan v. Sripada Ranjan Chakravarthy (1976 Calcutta 55), it was held that a person in unauthorised possession admitting title of the true owner should be deemed on his behalf. Even according to Section 110 of Evidence Act when the question is, whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner and the rule of possession following the title has not been ignored. When the possession of the plaintiffs' father in regard to the suit survey number as the owner till he allegedly parted with it in favour of Agaiah, the reason for Agaiah coming into possession thereafter except under the banner of title which is not established, the possession of the former should be deemed to be continued till Agaiah's possession if any is established to be a perfected title due to adverse possession. Beset with such a background from the totality of the circumstances based on evidence, the possession of Agaiah should be deemed to be for and on behalf of the true owner and even if he had transferred such a possession to Defendant No. 2, the character of such a possession could not be taken to have been changed.

10. Except that Agamiah started setting up his own title to the suit survey number, in view of his alienation in favour of Defendant No. 2 since the date of agreement of sale dt.16-8-1965, there is not even an iota of evidence to prove his adverse or hostile possession as against the real owner. Barring the documents commencingfromEx.B-7dt. 25-10-1965 in favour of 2nd defendant purporting to transfer the title and possession, there is no positive evidence in proof of Agamaiah's adverse possession over the suit survey number or the suit property. As rightly pointed out by the learned Civil Judge, even the testimony of D.W.3, the attestor of Exs.B-7 and B-8 finds no expression of delivery of possession to Defendant No. 2 under the documents. He also did not say anything about the earlier agreement of sale deed dt. 16-8-1965 which is also an inconsistent theory as the written statement of Defendant No. 1 styled it as 'an oral' between Agamaiah and Defendant No. 2. Ex.B-7 also did not mention it as oral or written. Therefore, Agamaiah being in possession of the suit survey number either in his own right or adversely to the real owner till the date of Ex.B-7 borders at falsity or atleast remains without probability or without proof. Judged in that background, the finding of the learned Civil Judge that Fathima Soghra was not in possession of the suit land till 1973 cannot be supported. However, the question of adverse possession set up by the defendants through Agamaiah is yet to be decided, the adverse possession of Agamaiah found to be improbable discussed in the light of the question of title of the parties and the possession following that, may not conclude the topic.

11. Having confronted with the legal fortress against their title, the defendants have tried to insolate their title through Agamaiah in the garb of bonafide purchase for value without notice of the right or title of the plaintiffs' parents regarding the suit survey number including the suit property. There is nothing to indicate in their testimony about a reasonable enquiry into the alleged title of Agamaiah either through the persons close to the plaintiffs or through any documents. Even from their own attire they depended upon an unregistered sale deed or stamp paper in favour of Agamaiah dated 13-10-1951 not finding its light of the day before the learned Civil Judge. As against the property found in the name of the plaintiffs' father and their mother under Ex.A-1 the patta certificate and Ex.A-3 the Kasarapahani, no such document is verified or procured by the defendants before bringing about the title deeds in their favour. It is true that starting from Agamaiah the transfer of title was effected through the registered sale deed Ex.B-7 in favour of the 2nd defendant and Ex.B-1 in favour of the first defendant. There is not even a whisper in these documents that bonafide enquiries were made through any legitimate sources about Agamaiah acquiring title to the suit survey number or through any official records or any official source. The only attempt said to have been made by them to notify the true owners was the paper publication of the notice in Ex.B-9, Shivasat daily dt.9-10-1965, Ex.B-10 Deccan Chronicle dt.27-5-1975. Several questions arise in regard to the legal and factual implications of Exs.B-9 and B-10. Admittedly, they are not the public documents and patently they are private documents. They do not come within any of the categories of the documents forming the acts or records of the acts under Sub-clause (1) and public records kept in any State of private documents Under Section 74 of the Evidence Act and they being out of such a category would be private documents Under Section 75 of the Evidence Act. The simple legal rule is that all the documents not falling in the category of public documents under Section 74 of the Evidence Act would be private documents like Exs.B-9 and B-10. The proof of public documents will be by mere production of certified copies as laid down Under Section 77 of the Evidence Act. Certain kinds of public documents are to be proved in accordance with Section 78 of the Evidence Act. No presumption in regard to private documents are available as in the case of public documents either regarding the genuineness or regarding the contents in view of Sections 79 to 88 and 90 of the Evidence Act. However, the private documents get the presumptions of the contents like signature, handwriting, execution, attestation etc., if they arc thirty year old Under Section 90 of the Act. Exs.B-9 and B-10 were not thirty year old when they were tendered in evidence. They do not come within the category of the facts of which the Court must take judicial notice Under Section 57 of the Evidence Act. Therefore they were to be proved in accordance with the proof of documents not falling in the category of public documents under Chapter V of the Evidence Act and in particular under Sections 47, 61, 62 to 73 of the Act.

12. The evidentiary legal rule as to proof of private documents or the documents not falling in the category of public documents may be stated in brief: Documents are evidence produced for the inspection of the Court called documentary evidence' within the definition. It is a fact to be proved as to its existence that the Court believes its existence or considers its existence so probable that a prudent man ought under the circumstances of a particular case do act upon the proposition that it exists. The relevancy or otherwise of the document makes it fit for admission as a piece of evidence. The contents of documents may be proved either by primary or secondary evidence and the document itself may be produced for inspection of the Court. When there are number of documents printed at one time from one original, any one of them is primary evidence of the contents of any

other, but no one of them is primary evidence of the contents of the original. The secondary evidence means and includes:

> "(1) certified copies given under the provisions hereinafter contained;
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> (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
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> (3) copies made from or compared with the original;
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> (4) counterparts of documents as against the parties who did not execute them;
>
> (5) oral accounts of the contents of a document given by some person who has himself seen it."

(Section 63 of the Evidence Act).

The rule is that documents must be proved by primary evidence except under certain circumstances enumerated in Section 65 of the Act and not otherwise and subject to the conditions Under Section 66 of the Act. If a document is alleged to be signed or to have written wholly or in part by any person, the signature or handwriting of so much of the document must be proved to be his handwriting. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact and a person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for that purpose. The opinion of expert in that regard may also be made use of. A document required by law to be attested shall not be used as evidence until one attesting witness atleast has been called for the purpose of proving its execution, if there be an attesting witness alive. If no attesting witness is alive, his signature must be proved to be in his handwriting within the rule of proof of signature as above. All facts except the contents of the documents may be proved by oral evidence as the popular expression goes that 'a document speaks for itself.

13. Now within the above parameters can Exs.B-9 and B-10 be fitted determines their legal status of documents becoming piece of evidence requires probe. They can never be primary evidence as they are mechanically prepared documents from the original prepared and maintained in the press. They do not come within the nomenclature of Secondary Evidence Under Section 65 of the Evidence Act.

The law was considered and settled as back as in twenties in Bawa Sarup v. R, AIR 1925 Lahore 299 that even if a newspaper is admissible without formal proof, the paper itself is not proof of its contents. It would merely amount to an anonymous statement the contents of which had to be proved aliunde. In Nisar Ali v. Mohd. Ali Khan, AIR 1929 Orissa 494 it was held that an extract from a newspaper standing by itself is not admissible and if the writer is called as witness it can be used to corroborate or contradict his statement. However, in Samant v. Fernandez, , possibly taking it for granted that newspapers are admissible, it was said that without further proof it is at best second hand secondary evidence as a fact has first to be alleged and proved and then newspaper reports can be taken in support of it but not independently. The implications of Section 159 of the Evidence Act appears to have been borrowed in regard to newspapers. 'A witness may refer to a newspaper report to refresh his memory, if he had read it at the time when he had a recollection of the statements contained therein and knew them to be true but a newspaper report is not generally admissible as evidence of the facts therein recorded. A witness who heard a speech may refer to a newspaper account which he read at or near the time of transaction. It is a fact that he had known it to be correct when he read it that is his justification for doing it'(Page 2126 of Sarkar on Evidence Vol. No. 2 Reprint of 1994). The circumstances under which the secondary evidence of Exs.B-9 and B-10 can be allowed are not made out. The author or the publisher of them is not examined. The existence or otherwise of such documents, both in law and fact, except the papers on which they are printed, is not established. The probability of their existence is also not proved, to make it a fact and relevant fact. Whether such a newspaper has a large reasonable circulation in the place or the locality of the true owners including the plaintiffs is not known. Whether such persons are familiar with their language and whether they arc in the habit of reading such newspapers or whether they are literates in such language are also not brought out in the evidence. Except that the plaintiffs and their father are Muslims whose mother-tongue may be normally and judicially noticed to be Urdu language, nothing more is established. There is nothing to indicate that copies of Exs.B-9 and B-10 were sent to the true owners. They are not confronted to P.W.1 to seek his knowledge of having known or read the contents to refresh his memory or to contradict his statement nor they are Used by Defendants Nos. 1 and 2 in their, testimony to refresh their memory about their contents nor any other witness in the locality or within the township is examined to refresh their memory for having read such newspapers or to recall their memory in regard to such contents. Ex.B-9 was got issued through one Mr. Rama Rao, Advocate on behalf-of Defendant No. 2 on 9-10-1965 stating that Defendant No. 2 had purchased S. No. 129/55 from one Ashiah s/o Pochaiah. Ex.B-10 was published on the same day in Deccan Chronicle by Sri Koka Ranghava Rao, Advocate, stating that one Ashaiah s/o Pochaiah had agreed to sell a part of the land in S. No. 129/55 of Shaikpet village to Defendant No. 2. It is nobody's case that defendants traced their title to the suit property through Ashaiah but through Agaiah or Agamaiah. The authors of Exs.B-9 and B-10 are not examined to explain as to such a discrepancy nor the defendants have explained as to why the two notices were issued through two different advocates with material contradictions. Admittedly, by 9-10-1965 Defendant No. 2 had never purchased the suit property from Agaiah or Ashaiah if they are one and the same persons. If such documents were intended to serve as notice to the true owners or the plainiffs or to the public at large as they intended, the law cannot permit it.

14. At no stretch of the legal perambulations Exs.B-9 and B-10 can be mulcted into either actual or constructive notice to the plaintiffs and their parents or as a public notice to encompass them. Their

relevancy due to imported knowledge by publication to have a state of mind is covered by Section 14 of the Evidence Act and Section 3 of the Transfer of Property Act. In order they to constitute notice should seek its contents to bring out the implications of Section 3 of the Transfer of Property Act regarding notice of a fact to a person 'when he actually knows that fact or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it'. Therefore, 'in order that a notification in newspaper may amount to actual notice, it must be proved that attention was drawn to that notification (Page 176 of Sarkar on Evidence 13th Edition). Nothing of the kind has happened in this case. The attempted public notice by the Defendant No. 2 through Exs.B-9 and B-10 has a camouflage under the circumstances may not be but beyond the probability in this case. That they had no notice of the plaintiffs' father and the plaintiffs being the owners is totally out of context and contradicting their stand of acquiring the title through Agamaiah who acquired it through the plaintiffs' father. That they are the bonafide purchasers is totally doubtful. It is demonstrated very well that the consideration under the two documents are disproportionate to jump within the shortest time. The Defendant No. 2 claims that he purchased 3500 sq. yards in the suit survey number on 16-8-1965 by entering into an agreement with Agamaiah for a consideration of Rs. 3000/- receiving an advance of Rs. 1600/-. The sale deed Ex.B-7 is for consideration of Rs. 3000/-. The 2nd defendant has not said as to when he paid the balance out of Rs. 3000/- to Agamaiah. D.W.3, the attestor, of the sale deed admits that no amount was paid to Agamaiah before the Sub-Registrar. Patently Ex.B-7 is dated 25-10-1965 regarding which the consideration is said to be Rs. 3000/- for the entire 3500 sq. yards. Ex.B-1 the sale deed in favour of 1st defendant was brought about within two months after Ex.B-7 only in regard to the extent of 2125 sq. yards but for a consideration of Rs. 8500/- regarding which there is no explanation by the defendants. There is not even a whisper by the defendants that either the Defendant No. 1 paid the consideration to Defendant No. 2 or that the latter received it from Defendant No. 1 under Ex.B.1. The 1st defendant made a clean abreast that he saw the regd. sale deed executed by Agamaah in favour of Defendant No. 2 and publication and did not see any document regarding the ownership of Agamaiah except through the wife of Agamaiah. The 1st defendant being a senior police officer at the relevant time (a police Commissioner till 1967 and later a DIG of Police) who was expected to know atleast something about the law could not have acted in such a manner in such transactions. The expressions 'bona fides' on the part of defendants without notice of the title and the true owners for valuable consideration under Exs.B-1 and B-7 may be nothing short of hollow words and euphemerisms.

15. The so-called bona fides sought to be demonstrated are subsequent to the alleged sale transactions. That commenced with the Defendant No. 2 obtaining permission Ex.B-11 dt. 12-10-1965 for blasting the rocks in the suit survey number, Ex.B-12 dated 5-11-1965 the sanctioned plan, Ex.B-13 dated 21-12-1965 for water connection. It appears that the department of electricity has proposed to put some poles by opening the holes in the land regarding which the Defendant No. 2 objected as per Ex.B-14 and got the reply as per Ex.B-15 and informed the Municipality and the Divl. Engineer as per Ex.B-16 and complained to the police in regard to alleged encroachment on the suit survey number by third parties as per Ex.B-17 and got the reply from the Divl. Electrical Engineer as per Exs.B.18. Understandably, the 1st defendant himself being the senior police officer at the relevant time obliged the 2nd defendant in doing all this. He has never pleaded ignorance about these matters as if he did it in the usual course of his official duties. Without even making

enquiry about the basis on which Defendant No. 2, a contractor, was laying his claim over the suit survey number inspite of neither he nor Agamaiah not having found their names in the official records, the 1st defendant readily assisting the 2nd defendant in such matters is a clear conduct of collusion. It is surprising that even the officers of electricity department and the Municipality have obliged the 2nd defendant, possibly due to the 1st defendant being in the background. Even the other officers like Tahsildar, Urban Ceiling authorities, have obliged the defendants and Agamaiah by issuing the demand notice as per Exs.B-19 and B-20 regarding the arrears of revenue from 1343 Fasli to 1963, by collecting the amount under Ex.B-21 the Challan from Rajamma the wife of .Agamaiah and the Urban Ceiling authorities accepting the declaration made by the 2nd defendant Under Section 6 of the Urban Land Ceiling Act. Significantly, the 2nd defendant got these benefits without reference to the official records bearing the patta in the name of the plaintiffs' father, the settlement deed registered in the name of the plaintiffs' mother and there being no registered sale deed in favour of Agamaiah by the plaintiffs' father, but for the interest evinced by the 1st defendant. Such bona fides of the 2nd defendant can never be but the reflections of the misuse of official powers by the 1st defendant. The 1st defendant claimed that he verified the title deeds before purchasing the suit property through the wife of Agamaiah as he was not alive at that time. He constructed a house on the suit property by obtaining the permission from MCH as per the plan Ex.B-2, obtained loan from the Government under Ex.B-3, fought the assessment of the rental value of Rs. 7200/- by filing an appeal and succeeded as per the orders in Ex.B-4 reducing the rental value to Rs. 3600/-, got Ex.B-5 the demand notice and paid it. According to him he commenced construction in June, 1966 and completed it in April, 1969. The defendants have testified that none including the plaintiffs objected for such things. The learned Counsel for the plaintiffs is right in pointing out that a protector of the public and the preserver of the law like the 1st defendant holding very high and influential post of a police officer in the place, nobody muchless the plaintiffs could resist or oppose and therefore the defendants were able to successfully achieve their objective in grabbing the land belonging to the plaintiffs. Mr. Venugopal Reddy, the learned Advocate for the defendants did his best to contend that the plaintiffs' conduct in not raising their little finger throughout is an indication of the defendants acting bona fide. The answer lies in the reasoned contention as above. The question of the first defendant under his sale deed Ex.B-1 from the second defendant and constructing a house thereon are all the insignia of the same conduct flowing from the planning preparation and execution of the alleged conspiracy, collusion and misuse of power. The attempted continuance of the possession of the remaining portion of the suit survey number by the second defendant also appears to be rejected by the Courts below in the admitted litigations between the plaintiffs and the second defendant in the City Civil Court, Hyderabad in OS. No. 55/78, OS.1876/79 and 4474/80. Therefore, the contention that the challenge only in regard to the portion of the suit survey number by the plaintiffs is against the question of bona fides does no longer survive. These matters have been examined with all probabilities to hold that all the transactions between Agamaiah and Defendant No. 2 on one hand and between the defendants themselves were the outcome of a designed mala fide conduct and misuse of power or abuse of power on the part of the 1st defendant through the second defendant, very much within the fraud.

16. Mr. Vilas Afzulpurkar, the learned Counsel for the plaintiffs has pointed out that the sale transactions upon which the defendants are depending in the suit to prove their title, possession and bona fides have been held to be fraudulent and brought about by committing offences and both of

them have been convicted by a competent criminal Court confirmed upto the Apex Court. The records bear out that the defendants were prosecuted before the II Addl. Judge for SPE and ACB Cases in C.C. No. 4/1978 for the offences punishable Under Section 120-B and 471 r/w 466 IPC and Section 5(2) read 5(1)(d) of Prevention of Corruption Act and convicted for the said offences and sentenced to undergo 6 months SI under each of the counts and in the Criminal Appeals 240/83 and 257/83 in which the order of conviction was confirmed but the order of sentence was reduced to the one of imprisonment till the raising of the Court in the Judgment dated 24-3-1986. The first defendant took the matter in appeal to the Supreme Court in Crl. A. No. 307/89 which came to be dismissed on 7-2-1995. Mr. Venugopal Reddy, the learned Counsel for the defendants could not deny all this in view of the copies of the said Judgments produced in support of such a contention and they being the matters of record also cannot be ignored. Patently, the defendants were prosecuted and convicted for such offences only in relation to the so called transactions between Agamaiah and 2nd defendant on one hand and between the defendants on the other. The two sale deeds Exs.B-1 and B-7 were Exs.P-28 and P-29 in the criminal trial and Ex.P-37 the photostat copy of the purported sale deed dt. 16-10-1951 between Agamaiah and the plaintiffs' father which is found to be a forged document. In fact, the defence case that such transactions are bona fide ones is also rejected. It appears that such offences were brought out while the complaint against the first defendant of his amassing assets disproportionate to his known sources of income was investigated. Mr. Venugopal Reddy, the learned Advocate contends that neither the Judgment of the Criminal Court nor the findings on the charges nor the conviction for any offence which is the subject matter of a civil litigation is relevant in view of Section 43 of the Evidence Act, as such an issue has to be independently tried and decided by the Civil Court and therefore he wants the Court to ignore the same. It is true that the relevancy of Judgments are regulated under Sections 40 to 43 of the Evidence Act. The existence of a Judgment in relation to res judicata or for the Court to take cognizance of any suit etc., as per Section 40 a final Judgment, order or decree of a competent Court regarding the probate, matrimonial, admiralty or insolvency jurisdiction and the Judgments relating to the matters of public nature relevant to the enquiry would come within the relevancy and the admissibility Under Sections 40 to 42 of the Evidence Act and all other Judgments, orders or decrees other than the one Under Sections 40 to 42 are irrelevant unless the existence of such Judgment, order or decree is a fact in issue or is relevant under some other provision of the Evidence Act. The illustrations appended to Section 43 at (b) and (f) shows that the mere conviction in a criminal Court for an offence of adultery, theft, murder, and libel is not relevant except to prove the motive and the previous conviction. The learned Advocate for the defendants is right in postulating that a Judgment is relevant only to show that there was a trial resulted in conviction and not as evidence that the person so convicted was the offender. In Anil Behari Ghosh v. Lalika Bala Dassa, where the question was whether the Will is a valid and genuine Will in favour of a particular person said to be the murderer of the testator, the Judgment of conviction and sentence of the Court holding that the said person was the murderer although was relevant to prove the trial for the offence leading to conviction and sentence, it was held to be not the evidence of the fact that the said person was the murderer of the testator. Our own High Court in M/s. Macherlappa & sons v. Govt. of Andhra Pradesh, AIR 1958 A.P. 371, referring to various pronouncements held that Judgments of a Criminal Court are not admissible in evidence and not binding on civil Court barring an exception that the Judgment of Crl. Courts are conclusive for the purpose that the prosecution terminated in favour of plaintiff and not as piece of evidence to prove the fact in issue in a civil Court and it is for

the civil Court to go into all the evidence and decide for itself whether such allegation of malice or cause existed as held in Subrati v. Shamsuddin, AIR 1928 Allahabad 337. In Govindachandra Chanda Singh v. Sukendha Padhi, , it was pointed out that the sense in which it is said that the Crl. Court judgment is not admissible in evidence is that apart from the fact of result of the Crl. Court judgment its termination in favour of the accused, the observations of the Crl. Court or the reasoning on which the order of acquittal or conviction is based is not to be accepted as conclusive. However, in Perumal v. Devarajan, , it was held that the judgment of Criminal Court is admissible in evidence to prove that the accused was charged and convicted. Therefore, the law in this regard so far settled may be stated in brief: The Judgments of Courts in any trial are relevant for particular purposes and not otherwise within the contemplation of Sections 40 to 43 of the Evidence Act. The Judgment of Criminal Courts or the findings supported by reasons are by themselves not binding on Civil Court nor would be conclusive of the facts involved therein for the purpose of determination of the similar facts in issue in a civil case which has to be gone into on evidence adduced before it to be independently decided. The rule is not that the Judgment of the criminal Court has to be ignored altogether but it should not be relied as conclusive proof for deciding the disputes in a civil suit. Such Judgments and findings of criminal Courts although by themselves may not constitute the proof of the facts in issue in a civil case, they still hold the field of proof by corroboration. The rule requires further elaboration within the true concept of the binding nature or persuasive nature of the decisions of a criminal Court in civil cases. In view of the concept of proof beyond reasonable doubt for an offence in a criminal Court, the acquittal of an accused may be for various reasons including a technical flaw and the benefit of doubt. Whereas the conviction for an offence will be only on the proof of the offence beyond reasonable doubt. In a civil case, the proof of a fact or fact in issue being one based on the probability would not be that stricter as in the case of proof of an offence beyond reasonable doubt. Therefore, broadly stated, the acquittal of an accused for an offence in a criminal case is not relevant or binding on the civil Court whereas the conviction may be not only relevant but also has a stronger probative force of a fact in issue in a civil Court to record a finding not within the meaning of having binding force. With such improvement in the statement of law within the legal implications, having due regard to the facts and circumstances of this case establishing that the documents depended upon by the defendants to establish their title to the suit property or the suit survey number through Agamaiah being improbable, unreliable and not established to be true and genuine with sufficient evidence, the conviction of the defendants by the criminal Court confirmed upto Apex Court in relation to same documents as having been not genuine and brought about with conspiracy, fraud etc., has all the probative value to strengthen the inference of this Court and the trial Court in regard to such documents atleast as a corroborative piece of material the legal consequence thus being not to confer any right or title in the defendants regarding the suit property.

17. The last of the weapon in the armoury of the defence is the perfection of title to the suit property by the defendants by adverse possession. Mr. Venugopal Reddy, the learned Advocate has very sincerely and ably argued that notwithstanding the absence of the sale deed between the plaintiffs' father and Agamaiah and the agreement of sale between Agamaiah and 2nd defendant, the chain of events disclosed from evidence relates back the possession of Agamaiah till the suit survey number was sold to 2nd defendant, thereafter with Defendant No. 2 and then with the first defendant continuously and therefore, the adverse possession as against the plaintiffs and their parents

commenced atleast on 16-8-1965 particularly when there is failure to prove the permissive possession of Agamaiah under the plaintiffs' father. The contention fails initially on the proved facts. The title of the suit survey number remained with the plaintiffs' mother Fathima Soghra till she died on 24-7-1973 and the possession of Agamaiah is found to be through the former owners or pattadars. His adverse conduct in possession or title against the real owners is not proved to be prior to 24-7-1973 if his possession was under the colour of title. Even construing Ex.B-7 the regd. sale deed dated 25-10-1965 as the public notice, there cannot be any expression of adverse possession as there is no acceptable evidence regarding the second defendant getting possession of the property under Ex.B-7 dt. 25-10-1965. Even the citations, Exs.B-9 and B-10 in the local newspapers, have never mentioned that Agamaiah was in possession of the suit survey number or the suit property. The permission to blast the stones was obtained by the second defendant under Ex.B-11 on 12-10-1965. His overt acts thus commenced from 12-10-1965 and continued till he sold the suit property to the first defendant under Ex.B-1 on 24-12-1965 whereby he obtained permission to lay the pipe connection for water, protested against the attempt of the. electricity department to lay the poles on the suit property as evidenced under Exs.B-14 and B-15 and the adverse possession of the first defendant commenced on 24-12-1965 by virtue of Ex.B-1 the sale deed and continued till the date of suit when he managed to get the permission to blast the rocks, get the plan by Ex.B-12, when he constructed the house by obtaining licence, obtaining government loan, when he completed the construction in about April 1969 commencing it in June 1966 and when he fought the assessment of the house tax by filing appeal etc., as evidenced by Exs.B-4 and B.5 which ended on 8-9-1972. Even according to the plaintiffs the first defendant allegedly occupied the suit property in the fourth week of December, 1965. The 1st plaintiff has testified that somewhere in the last week of December, 1965 it was learnt that the defendants had taken the land from Agamaiah on obtaining the certified copy, they learnt that Agamaiah had executed a sale deed in favour of Defendant No. 2 and later on he had transferred it to first defendant and when Agamaiah was contacted he fell to their feet and begged pardon. The plaintiffs or their mother could not have kept quiet without protesting when the second defendant was blasting the stones in about the year 1965 to 1966 although possibly because of the fear of the first defendant the police officer, who was assisting the second defendant, even though their right over the suit property became jeopardised and their possession became upset due to the conduct of the defendants. Therefore, on facts if at all the adverse possession of the second defendant commenced, it was only from the date Ex.B-7 viz., 25-10-1965 and thereafter to continue till the suit when they did not prevent the first defendant from putting up a pucca construction of a house thereon. Even on such established facts, the adverse possession of defendants could have fructified into perfected title on the completion of twelve years from 25-10-1965 and on 25-10-1977 but it failed as the suit was filed on 15-10-1977 within the statutory period of 12 years to fructify the title by adverse possession. Notwithstanding such a legal effect flowing from the facts in this case, the law also reject the defendants' plea of adverse possession as they are claiming the counter title or rival title as against the plaintiffs and their predecessors in title. In Arundati Mishra v. Sriramacharita Pandey, (1996) 2 SCC 29 = 1994 (1) ALT 26 (D.N.) wherein a party pleading that he came into possession of the property in his own right and remained in possession as its owner, thereby basing the plea on title, where he never denounced the title nor admitted the plea of the appellant nor he renounced its character as an owner asserting adverse possession openly to the knowledge of the real owner, it was held that the alternative plea of adverse possession without a proper plea or proof cannot be accepted. It is not their case that either Agamaiah or the 2nd

defendant or Defendant No. 1 entered on the suit property by adverse possession but under a colour of title. On the other hand, it is found that Agamaiah was in permissive possession through the parents of the plaintiffs. When the initial possession is under a licence or is permissive the burden lies on the person claiming adverse possession to establish by cogent evidence that the possession became adverse as declared by the Supreme Court in Takur Kishan Singh v. Aravind Kumar, . In Ramachandra Manohar v. Vasanta Narain, AIR 1955 Nagpur 221, it was held that the possession of a person who has admitted the title of the true owners must be regarded as on behalf of the true owner and not independent or adverse to him and that his continued possession of the property must be deemed to be in the same capacity unless it is established that he, to the knowledge of the true owners cease to hold possession on their behalf and assumed possession in his own right and on his own behalf. In Shiv Shankar v. Sadashiva Reddy, 1990 (2) An.W.R. 511, it was held by our High Court that when the possession is sought based on title, Article 65 and not Article 64 of the Limitation Act applies and where Municipal records show the title of the plaintiff to the suit property, the mere payment of property tax by the defendant does not disprove the plaintiff's title to the property. While dealing with the fundamentals of the plea and proof of adverse possession, our High Court in Yarlagadda Venkanna Chowdary v. Daggubati Lakshminarayana, , of a latest origin held as follows:-

> '... The legal and lucid distinction between the doctrines of 'adverse possession' and 'prescription' appears to be well established. 'Adverse possession' means-
>
> "The enjoyment of land, or such estate as lies in grant, under such circumstances as indicate that such enjoyment has been commenced and continued under an assertion or colour of right on the part of the possessor...
>
> The adverse possession must be actual, continued, visible, notorious, distinct and hostile.
>
> (P.152and 153 of Bouvier's Law Dictionary, Vol.1, 3rd Edition 1914) 'Adverse possession is -
>
> that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the right owners title viz., trustees/guardians, bailiffs or agents. Such persons cannot set up adverse possession."

The conduct of Agamaiah and the first defendant as has been found consistently was not to deny the title of the plaintiffs' father, the true owner at any point of time. Even after the 2nd defendant purchased the property from Agamaiah under Ex.B-7 the title was traced through Agamaiah whose title was traced through the plaintiffs' father. There is nothing to indicate that either the plaintiffs conceded the title of the defendants at any time or acquiesced through their conduct regarding their possession except perhaps due to the misuse of power by the 1st defendant through the second defendant when the blasting of the stones started after Ex.B-7 and prior to Ex.B-1. Therefore, as

already pointed out, the adverse conduct of the defendants as against the plaintiffs could never be before the date of Ex.B-7 which falls very much within 12 years before the date of the suit and not to be barred by limitation under Article 65 of the Limitation Act, in the present suit filed for possession based on title. Therefore, the plea of adverse possession of the defendants as against the plaintiffs regarding the suit property has no merit.

18. The learned Civil Judge for justifiable reasons based on material has rightly recorded the findings on Issue Nos. 1, 3 to 5 against the defendants and in favour of the plaintiffs and this Court finds ample reasons to confirm them.

19. The plaintiffs having established their title to the suit property were entitled to a decree for possession in the normal course and the mesne profits regarding which the learned Civil Judge has passed the decree with a specific direction to demolish the structure put up by the first defendant thereon. Mr. Venugopal Reddy, the learned Counsel for the defendants has made a severe attack on this part of the decree which, according to him, is in the nature of mandatory injunction, could not have been afforded to the plaintiffs who are guilty of acquiescence and lached for not preventing the defendants from putting up such a construction by investing lot of money and remaining in possession for a long time before the suit was filed. It is also his serious contention that the learned Civil Judge totally overlooked the rules in equity in general Under Section 51 of the Transfer of property Act and in particular to workout the equities. It is his contention that even in case the decree should stand for possession, the first defendant could have been permitted to purchase the suit site at reasonable value or on his failure, to allow the plaintiffs to purchase the building or the construction at a reasonable value before they could be allowed to have the benefits of this decree.

20. The learned Advocate has supported himself for such a postulation . with the pronouncement of Supreme Court in Dayaram v. Shama Sundari, Kidar Nath v. Mathumal, (1913) 40 Calcutta 555, 19 IC 946, P.C., P.C. Kunhi v. Kunkan, (1896) 19 Madras 384, Cangadhar v. Rachappa, (1929) 31 Bomb. L.E. 453, Sripati Raoji v. Viswanath, (1995) Bomb. 1-33, Narayana Rao v. Basarayappa, (1956) AC 727, in support of such a contention. All these" precedents, were considered by this Court in R.B. Bharathacharyulu v. R.B. Alivelu Mangathayalu, 1996 (1) An.W.R. 456, which in principle supports the learned Advocate. Broadly stated, it was held therein that the rule of equity has been the part of Section 51 of the Transfer of Property Act, whether it is borrowed from English law or not codified under the provision and subject to the stipulations in the very provision, the implication being in these terms:

> "... Rule of equity' is a part of natural justice, it is only a part or portion of natural justice, a portion of which may be codified now and then by human beings who frame law and administer law for human beings. It is a myth to think that the entire 'rule of equity' can be codified. It is said to be human when human beings apply for human beings, in humane way and divine when they traverse beyond the subjective core and act within the objective mind and heart of a 'sthithapragna' within the meaning of Chapter II of Song Celestial Bhagavadgeetha of Lord Krishna. In this contest, it may be necessary to point out that the rule of equity whether in England or India or elsewhere in the universe may not be different in the sense that it is going to be

applied for human beings in a particular situation depending upon the facts and circumstances. It cannot be a technical rule. However, it is subject to certain restrictions as per the well settled principles. Under the circumstances, this Court may not be wrong in saying that the 'rule of equity' or 'doctrine of equity' is not exhaustively codified Under Section 51 of the Act and this Court is entitled to apply such a principle to the facts and circumstances of this case also to meet the ends of justice. There is one more illustration to support such an inference. There may be many instances where there may be improvements by certain persons although the property belongs to others. The illustrations may be plenty, be the very common illustrations are by mortgagee, inter-meddlers, lessees, agents etc. Under Section 108-B of the Transfer of Property Act, as rightly postulated by the learned Counsel for the plaintiff/respondent, the rule that any improvement forms part of the soil has been enshrined. Therein, the implication is that if during the continuance of the lease any accession is made to the property, such accession shall be deemed to be comprised in the lease itself to go to the benefit of the lessor. However, by operating the 'rule of equity' in such a situation, the law has allowed option to the tenant or the lessee to remove the super-structure before the delivery of possession and not thereafter. That is made amply clear in Section 108(h) of the Act. In other words, the 'rule of equity' has been codified in the form of statute here and there to meet the ends of justice. If we logically think that the whole 'rule of equity' applies to only such a situation as has been codified either Under Section 51 of 108 of the Act, perhaps the results may be disastrous and may lead to injustice. Thus the expression 'transferee' Under Section 51 of the T.P. Act need not be confined to an alienee in the strict technical sense, but should be understood to be any person acting under some colour of title and possession or bona fide belief and who improves it with such a bona fide belief (Dayaram v. Shama Sundari . The law settled in such a situation is that such a person improving the property on eviction be compensated in two ways, either (1) by being paid the value of the improvements, or (2) by bying out the better title at a valuation of the property irrespective of the improvements. 11 is settled that the option as to the mode of compensation is that of the evictor, who can either pay the value of the improvement and take the land or sell the land instead of evicting him ..."

As laid down in Dayaram's case supra, the law settled is that such a person losing the property on eviction be compensated in two ways, by being paid the value of improvements or by buying out the better title by valuation of the improvements which would be not the amount expended in making the improvement but the extent to which the value of the property is enhanced thereby to be the valuation as on the date of actual eviction and not on the date of exercise of the option by the real owner. The spiritual hallow behind the rule can be further imported. Strategim or trick or terrorism has no place in equity. It is akin to Dharma which holds the truth and proprieties and good conduct, which protects one who protects it (Dharma Rakshati Rakshithaha). One who holds equity will be held in equity. The content for equity cannot contain inequity. It is a divine rule to preserve and maintain Dharma and not to negate it. Judged in this background of the rule of equity, the facts and circumstances of this case should get it or not would be a moot question.

21. It is true that the plaintiffs did not or could not raise their little finger when the second defendant started blasting the stones on the suit property and established the control over it through various authorities and when Defendant No. 1 took over the reins from the second defendant to perpetrate his conduct by putting up pucca construction by spending substantial amount and when he remained in possession for over a decade as against their interest. The reason being that the 1st defendant was in the background throughout and came on the scene after a particular point of time while holding the authoritative force against the plaintiffs to consolidate his possession with the assistance of other authorities to issue licence etc. The topper in the hierarchy of the police officers in the place, the 1st defendant, had all the advantages to resist any adversary conduct either by the plaintiffs or anybody claiming through them. In such a conduct, the plaintiffs cannot be guilty of laches or acquiescence to stand by the misuse of possession or power by the 1st defendant through the second defendant and by himself till he faced the prosecution for the offences in connection with the same transactions regarding the suit property including amassing assets disproportionate to his known sources of income. Not only he succeeded in such illegal endeavours but has retained the riches in the form of the suit property including the building thereon. The 1st defendant who was expected to be a protector and preserver of law and equity became a destructor. A prosecutor of crimes was himself prosecuted and convicted and may by his dubious ways and designs enriched himself. To call such a conduct 'bona fide' or 'Dharmic' would be a paradox of the rule of law which cannot be antethesis of rule of equity. One who has a contempt for equity while holding the power and ego has sought equity. One who has suffered for his own conduct in law although the sentence was small for the conviction of serious offences wants to be atoned himself to preserve the fruits of sin by seeking equity. Mr. Afzulpurkar, the learned Advocate for the plaintiffs is right in expressing that to extend any kind of equity to the 1st defendant in this case apart from the facts and circumstances of the case would be 'Adharma' or inequity expended by a Court of law and Court of equity. This Court after a very serious consideration with all anxieties to do full and absolute justice feels unable to persuade itself to spend or expend any of its discretion in equity in favour of the first defendant.

22. Having due regard to the scope of Order 41, Rule 27 of C.P.C., and ample material on record when the trial Court and this Court is able to render the decision fully and effectively, there is no need to allow the additional evidence viz., the deposition of one Ali Mosa Razi P.W.2 in CC. No. 4/78 on the file of the Special Judge for SPE and ACB Cases, Hyderabad, which even if made use of, cannot alter or improve the consequences. The CMP. No. 15118/87 filed by the appellant for receiving additional evidence, thus, has no merit and is accordingly dismissed without costs.

23. The result is that the Appeal fails and accordingly dismissed with costs. However, the 1st defendant shall have the option to remove the building or the construction on the suit property within two months from to-day failing which the plaintiffs shall be entitled to get the possession of the suit property along with the building or the construction thereon and to demolish the same and sell the materials in a public auction and keep the proceeds in any Nationalised Bank, which the Defendant No. 1 shall be entitled to withdraw. The plaintiffs shall be entitled to deduct any cost or expenses incurred by them for such purposes out of the amount to be deposited in the Bank. If the plaintiffs fail to act as above in regard to the building or the construction of Defendant No. 1 within three months from the date of getting possession of the suit property, the first defendant shall be

entitled to get it removed through the Court after due notice to the plaintiffs and within three months thereafter failing which he shall be debarred from having any right over such building or construction.