(2007) 08 AP CK 0017

Andhra Pradesh High Court

Case No: Application No''s. 1071 of 2006 and 145 of 2007 in C.S. No. 14 of 1958

K. Rama Rao and Others		APPELLANT
	Vs	
M.A. Bari and B. Shymasundara Rao, Advocates-Receivers-cum-Commissioners and Others		RESPONDENT

Date of Decision: Aug. 14, 2007

Acts Referred:

- Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 - Section 10
- Andhra Pradesh Court Fees and Suits Valuation Act, 1956 - Section 24, 26, 4
- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 10(2), Order 21 Rule 97, Order 21 Rule 99, Order 22 Rule 10
- Contract Act, 1872 - Section 17
- Specific Relief Act, 1963 - Section 34, 35, 38

Citation: (2007) 6 ALD 577 : (2007) 6 ALT 177

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: N. Subba Reddy for Kasa Jagan Mohan Reddy, for the Appellant; M.A. Bari and Shyam Sunder Rao for Respondent No. 1 and Vedula Venkataramana, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.
Inasmuch as common questions of law and fact are involved and as both the parties have consented for a common order, these two applications can be disposed of together.

2. Application No. 145 of 2007 is an application filed u/s 151 of the CPC (for brevity ''the Code'') seeking declarations (1) that Hafeezpet is an Inam land and what was granted to the Inamdar was only land revenue and not the land itself and consequently the heirs of Khurshid Jah Paigah or the respondents herein claiming through them had no right, title or interest in the land in Hafeezpet village'' (2) that the petitioners are the tenants lawfully entitled to the property and consequently to enter their names as pattadars/owners of their respective land in the revenue records; and for the relief of perpetual injunction that the respondents be restrained from interfering with the peaceful possession and enjoyment of the respective properties in survey No. 78 of Hafeezpet village.

3. Application No. 1071 of 2006 is an application filed seeking leave of the Court to implead the applicants as respondents in C.S. No. 14 of 1958 so as to enable them to raise objections in the final decree proceedings and to direct the respondents to remove the fencing laid in survey No. 78 of Hafeezpet village by virtue of the orders of the High Court in Application No. 521 of 2006.

4. The case of the applicants in brief is as follows:--The applicants purchased various extents of plots ranging from 100 to 600 square yards in survey No. 78 of Hafeezpet village, Sherelingampally Mandal, Ranga Reddy District, from K. Ramaswamy, M. Sayanna, Machunuri, B. Ramuloo, E. Sattaiah, Ramakrishna Reddy, M. Sattaiah, G. Guruvuloo, G. Chandrasekhar Reddy, M.A. Aziz, Ansar Ahmad, Abdul Aleem, Abdul Saleem, Mohd. Yaqoob, who are the protected tenants; the fourth respondent represented through his General Power of attorney and the sixth respondent and their vendees on various agreements of sale on various dates after having paid the full sale consideration and they have been handed over possession of the respective extents of land purchased by them. The sale deeds in pursuance of the sale agreements could not be registered because of the dispute raised by the Government although both the parties are ready and willing to have the sale deeds executed and registered as the Registrar refused to register the same. However the claim of the government stood negatived with the dismissal of the review petitions filed on behalf of the Government against the dismissal of the O.S.A. Nos. 19 to 26 of 2001.

5. The applicants'' vendors M/s. Ramaswamy and others purchased the said land under an agreement of sale dated 10-10-1960 executed by Nimmala Veeramallaiah and others. The said Veeramallaiah and others and their predecessors in title had been in possession from the times immemorial and perfected their title by adverse possession. After the agreement dated 10-10-1960 the said Veeramallaiah and others executed a lease in perpetuity in favour of the applicants'' vendors on 11-10-1962 as the sale deed could not be executed by them. Ever since the date of entering into possession under an agreement of sale, Ramaswamy and others enjoyed the land as full owners to the knowledge of one and all openly.

6. While so, the second respondent filed an application No. 521 of 2006 in C.S. No. 14 of 1958 seeking permission of the High Court to erect fencing around the land in survey No. 78 (78-B) including the lands belonging to the applicants herein and certain others who are similarly situated. An ex parte interim order was passed on 12-05-2006 during the vacation by the Vacation Court directing the Receiver to put up fencing as prayed for. Some of the land holders filed applications to implead themselves as respondents in Application No. 521 of 2006, in Application Nos. 704 and 775 of 2006. However, Application No. 521 of 2006 was sought to be withdrawn surreptitiously. By orders dated 11-11-2006 the High Court dismissed the Application No. 521 of 2006 as withdrawn. Thus the respondent No. 2 is trying to interfere with the rights of the applicants even though it has no semblance of right, title and interest.

7. The second respondent is claiming to be an assignee of an extent of 52 acres of land from out of the above said land from Cyrus Investments Limited, which is the third respondent herein, under an unregistered and unstamped deed which has no title in the above said land covered by survey No. 78 so as to validly transfer the same to the second respondent. The third respondent claims to have purchased in its turn the undivided shares of some of the sharers of Khurshid Jah Paigah, from the late Nizam under a document dated 23-02-1967 which is a fabricated document. Late Nizam was in the state of coma on 23-02-1967 and died on 24-02-1967. The document was registered on 28-07-1967 after the death of late Nizam. In fact, late Nizam himself acquired no right, title and interest insofar as the land covered by survey No. 78 of Hafeezept is concerned because sharers of heirs of Khurshid Jah Paigah themselves were held in the Judgment dated 28-06-1963 in C.S. No. 14 of 1958 to have no claim in the land in survey No. 78 of Hafeezpet village in an extent of Ac. 215.27 guntas which represents item No. 37 of the Schedule-IV of the preliminary decree. The said item of property had been deleted from the partitionable properties in the decree. Since same decree is holding the field as on today, the sale of undivided and unspecified shares by some or all of the sharers of Khurshid Jah Pagah does not and cannot relate to a land that is held to be not partitionable.

8. Furthermore, the Jagir Administration in his orders dated 15-10-1953 in File No. 9/52/HD/GA/52 gave a finding that the nature of the land is Jagir and held that the same is classified as Village Maqtas and cannot be released. The said order was confirmed by the Board of Revenue in its decision No. 2 dated 15-02-1954 in File No. 59/87/1953 (Atiyat Appeals). After the decision of the Board of Revenue, the Government ordered Inam enquiry after giving notice to the Ex-Paigah Holders. The Nazim Atiyat also passed its orders holding villages of Hafeezpet and Hydernagar as Inam Altumga. The said Judgment of the Nazim Atiyat was questioned in W.P. No. 2690 of 1977 and the same was dismissed by orders dated 7-12-1993. Thus, the heirs of Khurshid Jah have no right to claim any share in Hafeezpet village firstly because of the decree dated 28-6-1963 in C.S. No. 14 of 1958 which excluded this

land from being partitioned; secondly the nature of the grant is such that the heirs of Khurshid Jah can get no right because Khurshid Jah, the grantee himself had a lifetime interest only; and thirdly that the Jagir Paigah stood abolished with the promulgation of the Jagirs Abolition Regulation, 1949 as it was never the personal property of late Khurshid Jah.

9. In fact the Government by its Memo No. 1278/JA. 3/86-27 Revenue dated 23-6-1989 ordered for an enquiry u/s 10 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for brevity ''the Abolition of Inams Act''), which is still pending.

10. The plaintiffs in the suit C.S. No. 14 of 1958 claiming to be the sharers of Khurshid Jah Paigah and heirs of Amir Paigah and the first defendant and the State Government had not brought to the notice of the Court in C.S. No. 14 of 1958 and failed to file the relevant sanads before the High Court and obtained a ludgment by playing fraud. By the time the suit was filed, the proceedings before the Revenue authorities were pending and a notification was also issued under the provisions of the Jagir Abolition Regulation, 1358 Fasli. This amounts to a fraud on the Court. The fraud, therefore, vitiates all legal (sic. illegal) proceedings and any decision thereon is non est. Thus, the claim of the applicants and their predecessors-in-title that the Hafeezpet village is an Inam village and that they have been in possession of the property as tenants is confirmed. Hence the applications.

11. The first respondent-Receiver filed his counter stating inter alia that the applicants who are third parties to the suit have been making the contradictory claims and are trying to blow hot and cold which is not permissible and the Government which is defendant No. 53 to the suit fought upto the Apex Court and lost its claim. Pursuant to the orders of the Court, the Receiver got fencing erected around the land in Survey No. 78 of Hafeezpet village under a warrant issued in Application No. 521 of 2006 dated 12-05-2006 and only the vacant land available in Survey No. 78 was fenced by the Receiver-cum-Commissioners.

12. The second respondent filed a counter resisting the applications. Subsequently the second respondent also filed an additional counter. The other respondents did not choose to file any counter.

13. The case of the second respondent is as follows:--The claim of the applicants basing on unregistered documents cannot be looked into and either the applicants or their vendors are not entitled to the land in question. The alleged tenants have no right and title over the property in question and their claim of tenancy was negatived by the Court as the alleged compromise with the tenants was not there in the Court records. In Application No. 107 of 1970 the Advocate Receiver requested the Court to accept the offer of respondents 101 to 107 to accept 60% but the Court by its order dated 11-3-1975 granted permission to the Advocate Receiver to enter into compromise. However, subsequently in Application No. 177 of 1981 filed

seeking to implead the occupants, who are respondents in Application No. 107 of 1970 and some others, the High Court by its order dated 17-7-1983 held the question of impleading the persons before compromise is arrived at does not arise, since the claim of the occupants/alleged tenants itself is in dispute and, therefore, no useful purpose would be served by pursuing further in view of the conduct of the occupants. It is thus clear that there was never any compromise with the occupants. The order in Application No. 177 of 1981 was confirmed in O.S.A. No. 1 of 1984 dated 5-3-1985. Subsequently some other persons filed Application No. 701 of 1998 seeking to implead on the premise that they were the occupants/tenants in the land and the same was rejected by the Court by its order dated 26-03-1999 following the order passed in Application No. 177 of 1981 and it was confirmed by a Division Bench of this Court in O.S.A. No. 8 of 1999 and batch by its order dated 8-6-1999.

14. The so-called joint sale agreements executed by M/s. Monka Enterprises and tenants are all invalid. There has been no agreement whatsoever in between the defendants 157 and 206 in favour of the alleged tenants. In view of the orders of this Court in Application No. 177 of 1981, there is no recognition of the tenants and the applicants who are claiming the right through the alleged tenants are not entitled to any relief. The contention of the applicants that they have been in possession of the property uninterruptedly is totally false in view of the fact that the Court Bailiff handed over the possession to the second respondent in the year 1998 in E.P. No. 6 of 1998 under a panchanama.

15. The High Court while passing the preliminary decree in C.S. No. 14 of 1958 held that the land in Hafeezpet village i.e. item No. 37 was part of Khurshid Jah Paigah and liable for partition. In fact, the very same objection which is now taken by the applicants was already taken by the Government as defendant No. 53 in the suit by filing an Application No. 44 of 1982 praying the Court to delete the land in Hafeezpet and other villages from the suit schedule decree. The said contention was rejected on the ground that the Government was a party to the suit. Thereafter, the State filed O.S.A. No. 1 of 1985 and the same was dismissed by a Division Bench of this Court by its Judgment dated 24-12-1999. The State, after having made an abortive attempt to file a special leave petition, filed an appeal before a Division Bench of this Court with delay of more than 38 years and the same was dismissed. The SLP sought to be filed qua the said order too was dismissed. The State also filed O.S.A. No. 19 of 2001 and batch before the High Court. Some third parties impleaded themselves in the said O.S.A. However, those appeals were dismissed by this Court. The SLP filed before the Apex Court against the said orders in O.S.A. No. 19 of 2001 and batch also ended in dismissal by the Apex Court. Havjng lost the claim, the State sought to file review applications in O.S.A. and the same were also dismissed. In view of the above proceedings, the applicants cannot now raise the same issues again which were settled long back. In view of the orders of the Apex Court and the orders passed in O.S.A. filed by the State, subsequently the State had withdrawn the proceedings initiated by it u/s 10 of the Abolition of Inams Act. Some of the

applicants herein filed Writ Petition No. 26166 of 2006 seeking enquiry under the said memo but this Court dismissed the writ petition by its order dated 18-12-2006. The applicants are now coming forward with the present applications. The order passed by the Special Court in L.G.C. was set aside by this Court in the writ petition filed assailing the same and it was confirmed by the Apex Court. Therefore, the applicants cannot place any reliance on those documents in the instant proceedings.

16. Whether the applicants have perfected title by adverse possession or not, is a matter which requires adjudication by a competent Civil Court in a properly instituted suit and the applicants cannot be permitted to short-circuit the remedies which are available in law by resorting to the proceedings. The instant Application No. 145 of 2007 is not in the nature of claim petition under Order 21, Rule 97 or 99 of the Code. The applicants are not the shareholders or assignees of decree and hence they are not entitled for any relief. Pursuant to the order of the High Court, the Chief Commissioner of Land Administration and the Government of A.P. (Revenue Department) have examined the matter and the Chief Commissioner of Land Administration by his letter No. CCLA Lr. No. BBI/2588/2003 dated 23-8-2004 informed the Government that the Collector, Ranga Reddy District, may be permitted to effect mutation in the land records in respect of the lands in survey Nos. 145, 163 and 172 of Hyderanagar and survey Nos. 77,78,79 and 80 of Hafeezpet villages of Balangar and Serilingampally Mandals respectively covered under C.S. No. 14 of 1958 following various orders of Courts. Pursuant to the said recommendation, the Government issued a memo No. 28908/JAI/2004-1 dated 5-11-2004 permitting the Collector, Ranga Reddy District, to effect mutation accordingly. In view of the above, it is beyond doubt that the lands in Hafeezpet village are partitionable since the said proceedings disclose that the Government has released the same and when the government released the same, it cannot be contended by the applicants that the Judgment of Nazim Atiyat would have any effect on the orders that were passed in the suit from time to time.

17. The President of Hafeezpet House Building Welfare Association of which the applicants are members filed Application Nos. 294 and 296 of 2003 along with others seeking to aside the order dated 17-11-1998 passed by this Court in Application No. 1613 of 1998 and for recalling the order passed in Application No. 779 of 1997 in C.S. No. 14 of 1958. The said application was allowed by a learned single Judge of this Court by an order dated 26-8-2004. However, O.S.A. Nos. 52 and 53 of 2004 filed against the said order were allowed thus dismissing the Application Nos. 294 and 295 of 2003. Thus having lost the claim in the said applications in the capacity of an Association, the applicants are now filing the present application for the same relief and on the same averments. The instant application is thus mis-conceived and is liable to be dismissed in limine. The applicants, therefore, cannot be permitted to come on record as prayed for and the instant applications deserve dismissal.

18. The applicants filed a reply to the counter filed by the second respondent refuting the contentions of the second respondent in the counter.

19. No oral evidence has been adduced on either side. But they are relying upon certain documents filed annexing to the applications and the counters. The documents, therefore, can be received and marked as exhibits by consent. Accordingly, Exs. A-1 to A-65 are marked on the side of the applicants and Exs. B-1 to B-18 are marked on the side of the second respondent.

20. Lengthy arguments have been addressed on either side. Sri N. Subba Reddy, learned senior counsel appearing for the applicants, seeks to contend that the two sanads under which the original grant was given were not purposefully produced by both the parties before the Court in C.S. No. 14 of 1958 and thus fraud was played upon the Court. It is his further contention that there has been no preliminary decree insofar as the land covered by survey No. 78 of Hafeezpet village is concerned and, therefore, there can be no partition. It is finally sought to be contended that since admittedly the land in dispute is an Inam land, the Civil Court has no jurisdiction to decree the suit for partition.

21. Per contra, Sri Vedula Venkataramana, learned Counsel appearing for the second respondent, seeks to contend that in view of the recommendation of the Commissioner of Land Revenue and the subsequent Memo issued by the State Government directing the Collector, Ranga Reddy District, to effect the necessary mutation in the revenue records, the conditional decree passed in C.S. No. 14 of 1958 is worked out and, therefore, it is now not open to the applicants to contend that there has been no decree. The learned Counsel further represents that the applicants lost their claim in several applications moved earlier and at any rate it is nothing short of vexatious litigation. Finally, it is contended that the prayer in the application requires adjudication by a competent Civil Court in a properly instituted suit and the applicants cannot be permitted to short-circuit the remedies which are available in law by resorting to the proceedings.

22. In view of the rival contentions, the points that arise for determination are:

(1) Whether the reliefs sought for in the applications can be adjudicated in the instant applications?

(2) Whether the judgment and decree passed in C.S 14/58 are vitiated by fraud and are non est?

23. The quintessence of the case of the applicants seems to be that one Nimmala Veeramallaiah and others and their predecessors-in-title had been in possession of the land in dispute from times immemorial and thus they perfected their title by adverse possession; and that from them M/s. K. Ramaswamy and others came to be in possession of the land in question during the year 1960 under an agreement of sale dated 10-10-1960 which was reinforced by a perpetual lease executed by them;

and that the said Ramaswamy and others were the protected tenants; and that the applicants purchased various extents of plots ranging from 100 to 600 square yards from the said protected tenants under various agreements of sale bona fide after paying full consideration and thus they are the owners of the disputed land; and that the lands situate in Hafeezpet and Hydernagar villages are the lands declared as Inam Altumga by Nazim Atiyat and, therefore, the heirs of Khurshid Jah had no right to claim any share in Hafeezpet village and the said lands stood abolished under the Jagir Abolition Regulation, 1949 and later under the A.P. (T.A.) Abolition of Inams Act, 1955 and stood vested in the State free of all encumbrances and, therefore, the Civil Court had no jurisdiction to pass a decree in C.S. No. 14 of 1958; and that even the decree in C.S. No. 14 of 1958 was silent about the lands situate in Hafeezpet village and indeed there has been no decree at all in regard thereto; and that both the parties to the suit in C.S. No. 14 of 1958 failed to bring it to the notice of the Court about the important sanads under which the grant was given and thereby they played fraud upon the Court and obtained a decree in C.S. No. 14 of 1958 and for that reason, the decree becomes non est.

24. While that is the case of the applicants, the case of the respondents seems to be that the Government claimed the land in question by raising the very same objections in the suit C.S. No. 14 of 1958 and it was negatived by the Courts upto the Apex Court and that in view of the orders of this Court in Application No. 177 of 1981, there is no recognition of the tenants and the applicants who are claiming the right through the alleged tenants are not entitled to any relief.

25. The applicants filed the instant Application No. 145 of 2007 u/s 151 of the Code by paying a court fee Rs. 5/-. The instant application has been filed on the original side jurisdiction of this Court. The applicants sought for the reliefs of declaration and perpetual injunction as stated supra. It is appropriate, therefore, to consider when and under what circumstances the declaratory reliefs can be granted and if so under what proceedings.

26. Section 34 of the Specific Relief Act postulates that any person, who is entitled to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such right, the Court may, in its discretion, pass a declaration that he is so entitled to. As per Section 35 thereof, a declaration thus made is binding only on the parties to the suit or the persons claiming through them respectively. Similarly, as per Section 38 thereof, the Court can grant a preventive relief in the nature of perpetual injunction on being satisfied that there has been a breach of obligation existing in favour of the plaintiffs by the defendants. Therefore, a declaratory relief as prayed for in the instant application or a relief of perpetual injunction as envisaged under Sections 34, 35 and 38 of the Special Relief Act can be granted by the Court only in a properly instituted suit in between the parties who are litigating for their rights. If such suit were to be filed claiming the relief of declaration or perpetual injunction, the necessary court fee shall have to be

paid in accordance with the provisions contained in Sections 24 and 26 of the A.P. Court Fees and Suits Valuation Act, 1956 (for brevity ''the Court Fees Act'') coupled with the Schedule appended thereto. As mandated by Section 4 thereof, no document which is chargeable with fee under the said Act be filed, exhibited or recorded in or be acted on or furnished by, any Court including the High Court. In view of the specific provision contained in Section 4 of the Court Fees Act and having regard to the nature of the application sought to be filed in the instant case contrary to the legislative mandate contained in Sections 34, 35 and 38 of the Specific Relief Act, the instant Application No. 145 of 2007 cannot be maintained in respect of the relief specifically sought for inter alia therein. I have no hesitation to hold that the instant application is mis-conceived. No relief of perpetual injunction can be granted on an interlocutory application filed u/s 151 of the Code and without paying the proper court fee as mandated under the provisions of the Court Fees Act.

27. All this is one aspect. The declaration that Hafeezpet is Inam land and what was granted to the Inamdars was only land revenue and not the land itself cannot be passed by a civil Court as such an enquiry falls within the realm of the provisions of the Abolition of Inams Act and shall have to be considered by the forum constituted under the said Act. Even the other relief of declaration that the applicants are the protected tenants and are lawfully entitled to the property would squarely fall within the jurisdiction of the forum established under the said Act. Therefore, no Civil Court can grant a declaration that a particular person is a lawful tenant and is, therefore, protected and entitled to the protection under the Abolition of Inams Act except the Forum constituted thereunder. In any view of the matter, the three reliefs sought for by the applicants inter alia in the application either on the premise that such declarations cannot be granted by this Court in an interlocutory application contrary to the provisions contained in Specific Relief Act and Court Fees Act or on the premise that such reliefs cannot be granted by the Civil Court which has no jurisdiction to do so except the for a constituted under the Abolition of Inams Act. It is altogether a different aspect if such a question falls for consideration incidentally in the process of considering the title of the applicants. But, in the instant case, the applicants are seeking specific declaratory relief as stated supra which no civil Court can grant for want of necessary jurisdiction.

28. Nonetheless one contention of the applicants needs to be considered and adjudicated upon in the instant application is that as to whether the Judgment and decree passed in C.S. No. 14 of 1958 are non est having been passed by playing fraud upon the Court inasmuch as fraud in any form once is sought to be played upon the Court, it umravels everything and no Judgment of a Court, can be allowed to stand if it had been obtained by fraud. Indeed, that has been held so by the Queens Bench in Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702 . That being the principle and since fraud affects the very solemnity of the Judgment, no Judgment can be allowed to stand once it is found that it is an outcome of fraud. In that view of the matter, although it has not been specifically prayed for inter alia in the instant

application that the Judgment and decree passed in suit C.S. No. 14 of 1958 are vitiated by fraud and consequently become non est, since incidentally it has been raised by praying for the other relief as enumerated hereinabove, the contention, in my considered view, merits consideration and adjudication.

29. In the other Application No. 1071 of 2006 the applicants seek to come on record in C.S. No. 14 of 1958 so as to enable them to raise objections in the final decree proceedings. C.S. No. 14 of 1958 ended in a preliminary decree long, long back. Either the plaintiffs or the defendants therein who have been declared as entitled to a share under the preliminary decree have not yet filed any final decree petition which is pending adjudication. If such a final decree petition is filed and pending, it is an altogether different aspect that as to whether the applicants can seek to come on record therein or not. Inasmuch as the suit C.S. No. 14 of 1958 has been disposed of long back and a preliminary decree has been passed, I am of the considered view that the applicants or as a matter of that anybody else cannot seek to come on record in a suit or proceeding which has already been adjudicated. True, when a preliminary decree has been passed in the suit filed for partition, the decree is not complete inasmuch as something more is got to be done pursuant to the decree and after the partition of the properties by metes and bounds in accordance with the directions contained in the preliminary decree is completed, the decree becomes complete. I am reinforced in my above view by a four Judge bench Judgment of the Apex court in Venkata Reddi and Others Vs. Pothi Reddi, which held inter alia in para 6 thus:

A decision is said to be final when, so far as the court rendering it is concerned, it is unalterable except by resort to such provisions of the CPC as permit its reversal, modification or amendment. Similarly, a final decision would mean a decision which would operate as res judicata between the parties if it is not sought to be modified or reversed by preferring an appeal or a revision or a review application as is permitted by the Code. A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplate the making f two decrees a preliminary decree and a final decree-the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon its being executable. The legislature in its wisdom has though that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made the decision of the court arrived at the earlier stage also has a finality attached to it. It would be relevant to refer to Section 97 of the CPC which provides that where a party aggrieved by a preliminary decree does not appeal from it, he is precluded from disputing its correctness in any appeal which may be preferred from the final decree. This provision thus clearly indicates that as to the matters covered by it, a preliminary decree is regarded as embodying the final decision of the court passing that decree.

Notwithstanding the fact that since a final decree application which is got to be filed has not yet been filed and, therefore, the preliminary decree passed in the suit C.S. No. 14 of 1958 is not complete, no application by any person who is not a party to the preliminary decree seeking to come on record in the suit can be entertained since there is no pending proceeding.

30. In fact in Khan Bahadur C.B. Taraporwala and Another Vs. Kazim Ali Pasha and Others, a learned single Judge of this Court in para 14 of his Judgment held that an application under Order 1, Rule 10 of the Code was maintainable. An application for addition of parties was also held to be maintainable under Order 22, Rule 10 of the Code. In fact, that Judgment came to be rendered directly in C.S. No. 14 of 1958.

31. However, a Division Bench of this Court in S.A. Khan v. Special Deputy Collector AIR 1973 A.P. 298 took a different view thus:

The use of the words "at any stage of the proceedings" in Sub-rule (2) of Rule 10 in Order 1 shows that the power can be exercised only when the proceedings are alive and still pending. Hence, once the adjudication itself of all the disputes in the case is over, this provision cannot be made use of by any party.

Yet another Division Bench of this Court in R.A. Narasinga Rao v. Chundur Sarada AIR 1976 A.P. 226 took a different view. In para 7 it was held thus:

On these facts, it must be held that on 6-4-1971 when the Executive Officer filed the said applications, the suit was still pending. The suit will be disposed of only with the passing of the final decree which was not done by that date and hence a petition under Order 1, Rule 10 C.P.C. was maintainable.

That was a case where the suit O.S. No. 124 of 1969 was filed for declaration that the trust deed dated 24-4-1944 was a sham and nominal transaction and not binding on the plaintiff; for specific performance of the suit agreement; and for possession of the plaintiff''s half share with a direction to the first defendant to effect division of the properties into three equal shares by metes and bounds. The suit was decreed ex parte on 28-1 -1971. I.A. No. 433 of 1971 was filed by the second defendant in the suit for setting aside the ex parte decree. While that application was pending, I.A. Nos. 939 and 940 of 1971 were filed by the Executive Officer of the trust to implead himself as party defendant as well as to set aside the ex parte decree respectively. All the three interlocutory applications were taken up together and all of them ended in dismissal after a full-fledged enquiry. C.M.A. No. 379 of 1973 was filed against the dismissal of the application seeking to set aside the ex parte decree, C.R.P. Nos. 127 and 128 of 1974 were filed against the orders passed in the other applications. The applications in I.A. Nos. 939 and 940 of 1971 were opposed on the ground that since the suit had been disposed of, the Court had no jurisdiction to implead a new party and under Order 9, Rule 13 of the code only a party to the decree could apply for setting aside the ex parte decree and, therefore, those two applications were not maintainable. It was sought to be contended before the Court

that although the provisions of Order 9, Rule 13 of the Code were not applicable, u/s 151 of the Code, the Court was entitled to invoke its inherent powers where the express provisions in the Code were inapplicable. On the above facts, eventually the Division Bench of this Court held that an application under Order 1, Rule 10 of the Code was maintainable. The latter Division Bench of this Court did not notice the earlier Division Bench Judgment. Having regard to the legal position that a preliminary decree passed by the Court is final notwithstanding the fact that a decree which would be executable is a final decree and the suit in cases where it is required to be decreed preliminarily and finally, could be regarded as fully and completely decided only after final decree is made. Section 97 of the Code is germane in this context and needs to be looked into. The provision mandates that a person aggrieved by a preliminary decree fails to appeal qua the said decree shall be precluded from disputing its correctness in any appeal which may be preferred qua the final decree. While passing a preliminary decree in a suit for partition, the Court indisputably adjudicates the rights of the parties thereto, although a final decree is expected to be passed after effecting the actual division of properties by metes and bounds, the adjudication of the rights of the parties made earlier thereto under the preliminary decree is conclusive in between the parties to the suit inter se. The position of subsequent assignees after the preliminary decree stands on a different footing than the position of the parties who are transferees pendente lite or preceding the decree. The transferees pendente lite axe proper parties for a complete adjudication of the matter once for all and effectively. The assignees of the rights under the preliminary decree are certainly not transferees pendente lite. The assignee or the subsequent purchaser of the rights under the preliminary decree can invoke the provisions of Section 146 of the Code inasmuch as he is stepping into the shoes of the decree holder/assignor. By invoking Section 146 of the Code, in my considered view, he can as well file an application for passing a final decree. So as to enable him to file such final decree application it is not necessary for him to come on record under Order 1, Rule 10. When a specific provision is there in the Code in Section 146 which enables the subsequent purchaser or assignee, as the case may be, to take up a proceeding, the provisions of Order 1, Rule 10 cannot be invoked since there is no pending proceeding although it is said that in a suit for partition, the decree is not complete till a final decree is passed for the reasons hereinabove discussed.

32. Section 94 of the Code mandates that in order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed, make such other interlocutory orders as may appear to the Court to be just and convenient. Under the Rules prescribed under the Code, Order 1 of the first Schedule deals with the parties to the suit. Rule 10 thereof postulates the addition of parties or striking out the parties. Rule 10 specifically reads that if a suit has been instituted in the name of a wrong person, at any stage of the suit if the Court is satisfied that such institution is under a bona fide mistake, the Court may order any other person to be

substituted or added as plaintiff on such terms as it thinks just. Similarly, the Court may at any stage of the proceedings on an application filed by either of the parties to the suit, may order that the name of the party who is improperly joined whether as plaintiff or defendant be struck out, or the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Court is necessary in order to enable it to effectively and completely adjudicate upon all the questions involved in the suit, be added. On such addition, plaint shall have to be amended. The addition of a party who is not a necessary party is obviously required to avoid multiplicity of proceedings and for effective and complete adjudication of the matter and to settle all questions involved in the suit. But all this is in a pending suit or proceeding.

33. Admittedly, the suit C.S. No. 14 of 1958 has been adjudicated effectively by determining the rights of the parties who are parties to the suit. No more fresh direction is required. What is left to be decided in the suit is not the determination of rights and liabilities of the parties but pursuant to the preliminary decree the division of the properties by means of metes and bounds so as to complete the decree. Therefore, no adjudicatory process is left undecided once a preliminary decree has been passed. For the above reasons, a party cannot seek to come on record after adjudication by passing a preliminary decree in a suit for partition claiming right over the properties except invoking the remedies of amendment of the judgment and decree, appeal and review. As can be seen from the quintessential case of the applicants, they are assailing the very right of the parties to the suit for adjudication by passing a decree for partition. According to the applicants the lands in dispute along with the other lands which are the subject matter of partition in the suit C.S. No. 14 of 1958 are not partitionable, more significantly the lands in dispute in the instant application situate in Hafeezpet village inasmuch as they are Inam lands and the applicants are the tenants who are entitled to the protection under the Abolition of Inams Act. Therefore, the decree is bad on more than one reason as discussed hereinabove. Such a contention, therefore, cannot be permitted to be raised by allowing the parties to come on record inasmuch as a preliminary decree has been passed. It is an altogether different aspect, as discussed hereinabove, if they are allowed to come on record on the final decree petition to be filed by any of the parties to the preliminary decree questioning their right for partition but the specific relief sought for in the instant application by the applicants is to bring them on record at this stage in the suit C.S. No. 14 of 1958, in my considered view, such application is mis-conceived and cannot be allowed.

34. Admittedly, Hafeezpet House Building Welfare Association filed Application Nos. 294 and 296 of 2003 along with others seeking to aside the order dated 17-11-1998 passed by this Court in Application No. 1613 of 1998 and for recalling the order passed in Application No. 779 of 1997 in C.S. No. 14 of 1958. Those applications were allowed by a learned single Judge of this Court by his order dated 26-8-2004.

Appeals filed qua the said order in O.S.A. Nos. 52 and 53 of 2004 were allowed and thereby the Application Nos. 294 and 296 of 2003 stood dismissed. It is not denied that the applicants in the instant application are members of Hafeezpet House Building Welfare Association when specifically averred inter alia in para 3 of the reply filed to the counter of the second respondent. Therefore, there has been no gainsaying that the applicants are the members of Hafeezpet House Building Welfare Association. When the Association wanted to come on record under Order 1, Rule 10 of the Code in C.S. No. 14 of 1958 and it lost its claim, the instant application by the applicants seeking the very same relief cannot be entertained. In that view of the matter also, the Application No. 1071 of 2006 shall have to be dismissed.

35. Apropos the question of fraud, it may be reiterated at the outset that it has been mentioned as one of the grounds eventually to seek the relief of declaration that Hafeezpet is an Inam land and the applicants are the tenants lawfully entitled to the property in dispute. There has been no prayer in the application for recall of the Judgment passed in C.S. No. 14 of 1958 insofar as survey No. 78 of Hafeezpet is concerned. The integral case of the applicants, to reiterate the same at the cost of repetition, is that they are the owners having sought to purchase the same under various agreements of sale from their vendors who are protected tenants; and that the land in dispute is a land in Inam village coming within the purview of the Jagirs Administration and later under the provisions of the Abolition of Inams Act and, therefore, the Civil Court has no jurisdiction to entertain the suit C.S. No. 14 of 1958; and that the decree passed in C.S. No. 14 of 1958 is vitiated by the fraud played upon the Court by not bringing to the notice of the Court about the important sanads by both the parties to the suit. It is obvious, therefore, that the applicants in their attempt to get the necessary relief of declaration and the relief of perpetual injunction, is seeking to assail that part of the Judgment and decree in C.S. No. 14 of 1958 pertaining to Hafeezpet village is concerned. The reliefs sought for, for the reasons hereinabove discussed, cannot be entertained by means of interlocutory application and no Court can pass the necessary relief of declaration as prayed for in the instant interlocutory application when a properly constituted suit has not been filed. The whole claim of the applicants that they are the owners of the land in dispute cannot, therefore, be adjudicated legitimately in the instant application. Any attempt to do so by discussing the merits of the case with reference to the documents now filed on either side would be nothing short of a futile effort inasmuch as eventually this Court cannot adjudicate the rights of the parties in the instant application. Therefore, even the question as to whether fraud has been played upon the Court needs also no adjudication inasmuch as it is an integral part of the case of the applicants who claim the reliefs of declaration as discussed hereinabove and as this Court cannot grant the relief sought for by the applicants-. The main effort on the part of the applicants seems to be in assailing the Judgment and decree in C.S. No. 14 of 1958 is eventually to declare that they are the lawful

tenants, entitled to the property and consequently to direct their names to be entered as pattadars/owners of the land in dispute in the respective revenue records. When such a relief cannot be granted in favour of the applicants, it is of no consequence as to whether the decree in C.S. No. 14 of 1958 has been obtained by playing fraud upon the Court or not inasmuch as the applicants are interested vitally in getting their title adjudicated upon independent of the result in the said suit which may not bind them since they are not parties thereto. It is nothing short of an incidental approach on the part of the applicants in their ultimate effort to get the necessary declaration that they are the owners of the land in dispute. Therefore, in my considered view, that there is no need to go into the question as to whether fraud has been played upon the Court which renders the Judgment in C.S. No. 14 of 1958 as non est in consequence of such an alleged fraud.

36. Even otherwise, according to the applicants, the plaintiffs and the defendants in the suit including the State Government failed to bring to the notice of the Court the two important sanads so as to ultimately show that the lands situate in Hafeezpet village are Inam lands and they cannot be subject matter of partition between the parties inter se in the suit and Civil Court has no jurisdiction to deal with those lands. In the process, according to the applicants, the two important sanads and the Judgments of Revenue Courts in Exs. A-58 and A-59 have not been filed into the Court or even the pendency of the enquiry before the Revenue Courts has not been brought to the notice of the Court. In that way, according to the applicants, a fraud has been played upon the Court. In view of the said contention, it is to be seen as to whether in fact a fraud has been played upon the Court. Apart from the plaintiffs and the other contesting defendants in the suit, who are the private parties, the State is vitally interested in bringing to the notice of the Court that the lands situate in Hafeezpet village are Inam lands and they stood vested in the State and, therefore, the suit in C.S. No. 14 of 1958 for partition cannot be maintained. There has been no allegation of any collusion in between the plaintiffs and the State. However, the fact remains that State which has been arrayed as defendant No. 53 in the suit, carried the matter upto the Apex Court had initiated several proceedings to see that the Judgment in C.S. No. 14 of 1958 is set aside or held to be not binding upon the State and eventually failed and the matter has thus attained finality. Having due regard to the fact that the defendant No. 53 in the suit, namely, the State vehemently fought the litigation upto the Apex Court legal, by no stretch of the imagination, it can be said that the State Government colluded with the plaintiffs in the suit in C.S. No. 14 of 1958. Therefore, in the absence of any such allegation of collusion in between the plaintiffs and the State, who are parties to the suit in C.S. No. 14 of 1958, even if the important documents are not brought to the notice of the Court, can it be said that a fraud has been played upon the Court by both the parties is the moot question.

37. The expression "fraud" is defined u/s 17 of the Indian Contract Act, which reads as under:

17. "Fraud" defined. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract

(1) The suggestion, as to fact, of that which is not true, by one who does not believe it to be true;

(2) The active concealment of a fact by one having knowledge or belief of the fact;

(3) A promise made without any intention of performing it;

(4) Any other act fitted to deceive;

(5) Any such act or omission as the law specially declares to be fraudulent.

Explanation:-- Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that; regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

38. A bare perusal of the above provision shows that there must be an intention to deceive, is a vital consideration for bringing the fact as fraudulent act. Silence on the part of the State by itself cannot be construed as an element of fraud. By keeping silent about the pendency of the enquiry before the Revenue Courts, no deception can be said to have been played upon the plaintiffs in C.S. No. 14 of 1958 by the State. It is no doubt true that he who is in possession of best evidence including the State, notwithstanding the burden, shall produce the same before the Court. Failure on the part of the State in not producing the best evidence which is in its possession cannot be said to be the result of fraud sought to be played upon the Court. The State gains nothing by such an act. On the other hand, the State will be the loser. Therefore, the facts and circumstances of the case do not warrant the contention that the State played fraud upon the Court in having failed to bring to the notice of the Court about the important sanads and the pendency of the revenue enquiry before the Revenue Courts so as to show that the lands situate in Hafeezpet village are Inam lands coming squarely within the exclusive domain of the Revenue Courts but not the Civil Court. Having due regard to the definition of the word "fraud" and the circumstances of the instant case, it cannot be said that the State Government played fraud upon the Court. Even if the plaintiffs purposefully omitted to bring to the notice of the Court that the lands in dispute i.e., the lands situate in Hafeezpet village are Inam lands since the State Government is very much party to the suit, it cannot be equally said that the plaintiffs tried to play fraud upon the Court. The voluminous subsequent litigation fought by the State upto the Apex Court level to see that the Judgment and decree passed in C.S. No. 14 of 1958 are set aside, certainly excludes the element of fraud as is sought to be canvassed by the applicants now in the instant case. Above all, it is not as though the Civil Court was

not alive of this contentious issue whether the lands in dispute are Inam lands coming within the jurisdiction of the Revenue Courts or not.

39. Issues No. 14 (a) and 14 (b) framed by this Court in C.S. No. 14 of 1958 are very much germane for consideration in the context. They read as under:

14 (a) Are the properties mentioned in items 37 to 40 of Schedule 4 the Maktas and Inam properties and if so, whether the civil Court has no jurisdiction in relation to the same?

14 (b) Whether the properties items 1 to 13 and 14 of Schedule 4-A, Maktas, were amalgamated under the Jagir Abolition Regulation, and property item No. 5 was kept under the supervision of Tahsil? What is its effect?

These two issues were adjudicated by the Court. Issues No. 13 (c) and 14(a) were discussed together. Adverting to the evidence adduced on the point on either side, eventually his Court had come to the conclusion thus:

Thus it would appear that Harizpet Makta was originally taken over by the Government, it was subsequently released by the Government in favour of the Amit Paigah as Arazi Makta and later, on the abolition of the Inama, the revenue of it was kept under suspense account. That means that the title is held in suspense and it would depend upon the decision of the concerned authorities.

At the end of the same para it is held thus:

Thus properties items 35, 36, 37 and 40 of the Schedule IV must be deleted from the Schedule as suit property. Items 37 and 40 will be available for partition in case the Government as a result of enquiry releases the same. Enquiry into Inams or marktas is certainly not within the exclusive jurisdiction of civil Court. Issue No. 14(a) must be answered in the affirmative and Issue No. 13(a) against the plaintiff.

40. It is obvious from the above excerpts that this Court was alive of the fact that it has no jurisdiction in respect of the land which is an Inam land. That is the reason why item No. 37 of Schedule-IV which admittedly pertains to the land situate in Hafeezpet village including the land in dispute in the instant application was directed to be deleted from the Schedule and it was held further that they would be available for partition only when the government, as a result of the enquiry, releases the same. When the decree so directs, I am of the considered view that there is no substance in the contention that fraud has been played upon the Court. The Court in fact has not adjudicated as to whether item No. 37 of Schedule-IV of the suit was an Inam land or not an Inam land. It was left to the decision of the authorities and the decree was made as conditional one directing its availability only in the event that property is released by the State in accordance with law after making the necessary enquiry. If it is the decision of the Court allowing that land also to be partitioned along with other lands, perhaps there would have been some substance in the contention that on account of the failure on the part of the State the Judgment could

not be delivered effectively by the Court. Notwithstanding the inaction if any on the part of the State, on account of the contention raised by the first defendant in the suit, the Court framed specifically an issue and answered the issue directing the land in dispute to be released from the Schedule with a further direction to make it available for partition only when the State Government released the same. In the first instance that there has been no specific decree for partition of the land in dispute, therefore, on that ground the contention that a fraud has been played upon the Court would not sustain at all.

41. The other contention that there has been no decree in the suit insofar as the land in dispute situate in Hafeezpet village is concerned and, therefore, the decree shall have to be set aside, cannot, for that reason itself, be countenanced. When there is no preliminary decree about the land in dispute, there is no need to set aside the decree either on the ground of fraud or on any other ground. As discussed hereinabove, any attempt on the part of this Court in trying to adjudicate the contentious issue as to whether the land situate in Hafeezpet village which has been shown as item No. 37 of the Schedule-IV appended to the plaint are Inam lands and as to whether the applicants in the instant application are the purchasers from the protected tenant, would be contrary to the provisions of the Special Relief Act and the Court Fees Act. As discussed hereinabove, such an attempt cannot certainly be made in the instant application since it is not a suit. Therefore, it is not advisable, nay legitimate, to discuss about the various documents now filed on either side so as to buttress their view point that it is an Inam land or a matruka land and that it was available for partition or not. Although the documents now filed on either side have been received and marked as exhibits, they merit no discussion since the contentious issue cannot be adjudicated in the instant application.

42. At the bar several Judgments of the Apex Court have been cited so as to show the effect of fraud. There can be no quarrel with the proposition that fraud vitiates every solemn act and any order or decree obtained practising fraud is a nullity. Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ; Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., ; Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others, ; Hamza Haji Vs. State of Kerala and Another, ; Jai Narain Parasrampuria (Dead) and Others Vs. Pushpa Devi Saraf and Others, ; and A.V. Papayya Sastry and Ors. v. Government of A.P. and Ors. 2007 (3) SCJ 871 : 2007 (2) Sup. 837.

43. However, one question needs to be dealt with here. Whether the instant application filed u/s 151 of the Code can be entertained so as to recall a Judgment, on the ground of fraud, rendered by a competent Court having jurisdiction to do so. Sri N. Subba Reddy, learned senior counsel appearing for the applicants, represents that once it is satisfied that a fraud has been played in consequence whereof a Judgment was delivered by the Court, it becomes a plain obligation of the Court to recall its own Judgment either in collateral proceedings or by exercising inherent

jurisdiction. In Indian Bank''s case (referred to 7 supra) in paras 22 and 23 it has been held thus:

22. The judiciary in India also possesses inherent power, specially u/s 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court''s business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order.

44. From the above excerpted paras, it is obvious that the Apex Court seeks to distinguish between ''a fraud played on a party to the suit'' and ''a fraud played upon the Court''. In the former case, the affected party shall be directed to file a separate suit for setting aside the decree obtained by fraud and in the latter case, the Court by exercising its inherent jurisdiction recall its order. In that view of the matter, when there is an allegation that a fraud has been played upon the Court by either parties to the suit, an application u/s 151 of the Code can be maintained to recall the order. But, here in the instance case, it has not been satisfactorily shown before this Court that a fraud in fact has been played by both the parties to the suit including the State Government, in having obtained the decree in C.S. No. 14 of 1958. Therefore, the instant application seeking to set aside the Judgment and decree passed in C.S. No. 14 of 1958 on the ground of fraud cannot be sustained.

45. For the above reasons, Application No. 145 of 2007 fails and is dismissed. Similarly, Application No. 1071 of 2006 for the above reasons also fails and is dismissed. But under the circumstances, no separate order as to costs.