2023 STPL(WEB) 4 SC
SUPREME COURT OF INDIA

(V. RAMASUBRAMANIAN AND PANKAJ MITHAL JJ.)

M/S TRINITY INFRAVENTURES LTD. & ORS. ETC.

Appellants

VERSUS

M.S. MURTHY & ORS. ETC.

Respondents

Civil Appeal Nos. 4049-4053 of 2023(Arising Out of Slp (C) Nos.2373-2377 of 2020) With Civil Appeal NO. OF 2023 (ARISING OUT OF SLP (C) NO.24098 OF 2022) CIVIL APPEAL NOS. OF 2023 (ARISING OUT OF SLP (C) NOS.8884-8887 OF 2022) CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO.2203 OF 2022) CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO.256 OF 2022) CIVIL APPEAL NOS. OF 2023 (ARISING OUT OF SLP (C) NOS.8888-8891 OF 2022) CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO.1584 OF 2022) CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO.980 OF 2022) CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO.8872 OF 2022) CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO. OF 2023) (ARISING OUT OF DIARY NO. 19266 OF 2022)-Decided on 15-6-2023

Decree by Fraud : Allegations of fraud, require special pleadings in terms of Order VI, Rule 4 CPC.

JUDGMENT

V. Ramasubramanian, J. -Permission to file special leave petitions is granted in Diary No.19266 of 2022.

2. Delay condoned.

3. Leave granted.

4. Aggrieved by a common judgment rendered by the Division Bench of the High Court for the State of Telangana in a batch of intra-Court appeals, confirming the judgment of the learned Single Judge of the High Court in a batch of applications in a civil suit, various parties including the State of Telangana and some third parties have come up with these civil appeals.

5. We have heard Shri Gopal Sankarnarayanan, learned senior counsel appearing for one set of parties who are the appellants herein (and who claim to be the assignees of the decree), Shri B. Adinarayana Rao, Shri Chander Uday Singh, Shri Ranjit Kumar, learned senior counsel and Shri Santosh Krishnan, learned counsel appearing for parties who obstructed the execution of the decree (claim petitioners) and who succeeded before the High Court, Shri C.S. Vaidyanathan, learned senior counsel appearing for the State of Telangana and Shri V.V.S. Rao, Shri Hemendranath Reddy and Shri K.S. Murthy, learned senior counsel appearing for third parties and Shri Dushyant Dave, learned senior counsel appearing for an Asset Reconstruction Company which has filed an application for intervention.

Background Facts:

6. Hyderabad was a Princely State until it came to be annexed to the Union of India on 18.09.1948 through police action which came to be popularly known as “Operation Polo.” HEH the Nizam was

its Ruler till then. While outsourcing is something which we have now come to be familiar with only in the twentieth century, HEH the Nizam seems to have adopted the practice of outsourcing even defence services more than 200 years ago. It seems that the Nizam had the practice of granting certain lands to people for the purpose of supply and maintenance of Armed Forces. The lands so granted came to be known as "Paigah Estate." The dispute on hand relates to a Paigah granted to a person by name Khurshid Jah and the grant came to be known as Khurshid Jah Paigah. To understand the nature and sweep of the dispute on hand, it may be relevant to take a peep into history.

7. It appears that one Mir-Qamar-ud-din Khan (who was given the title Asaf Jah) was one of the feudal chiefs of the Moghuls and was the Governor of Deccan from 1713 to 1721. Later he proclaimed independence and founded the Asaf Jahi dynasty in Hyderabad.

8. As stated by Gribble in his "History of Deccan", Asaf Jah brought with him a number of followers, both Mohammadens and Hindus, who were attached to his person and fortunes. To the Mohammedan nobles, he granted Jagirs or estates on military tenure and employed them as his Generals. The Hindus were employed principally in the administrative work in the departments of revenue and finance. To them also he granted Jagirs as remuneration for their services and all these Jagirs whether granted for civil or military purposes came to be regarded as hereditary.

9. Distinguished among the Muslim followers was Mohammed Abul Khair Khan, a member of a noted family which had settled for some generations in Oudh and afterwards in Agra. He had rendered meritorious services in battles and was the recipient of several favours and honours at the hands of the Nizam. He was eventually made a "Commander of 6000 horsemen", with the title of "Imam Jung". He died in 1751 A.D. His son, Abul Fateh Khan, who followed in the footsteps of his father, soon rose to great prominence. His services also got rewarded and his estate swelled up by reason of fresh grants and sanads.

10. Eventually, in or about the year 1198 H. (1784 A.D.) the Jagirs roughly coinciding with what sometime thereafter were called the Paigah Estates, were granted to him by Nizam Ali Khan under a Perwana. On his death, a fresh grant of the same estate and of about the same area was made in 1205 H. to his son, Fakhruddin Khan, who was a minor then. This grant seems to have been made as Paigah grant.

11. In fact, the term 'Paigah' as used in the Parwan of 1198, and 1205 H. connotes an estate granted for maintenance of the army. Abul Fateh Khan indeed expressly undertook to maintain a regular number of troops at a definite cost. In 1253 H. on the application of Fakhruddin Khan, a regular sanad was granted. That sanad is the foundation of the title of the Paigah family. The nature of the grants evidenced by this sanad would show that these grants were burdened with obligations to maintain Paigah troops for the services of the Nizam.

12. Fakhruddin Khan, however, died in 1863 A.D. He was succeeded by his eldest surviving son, Rafiuddin Khan, who was co-Regent of the Hyderabad State along with Sir Salar Jung during the minority of the late Nizam Mir Mahboob Ali Khan. On the death of Rafiuddin Khan, disputes arose about the family properties between Rashiduddin Khan, his brother, and Motashim-ud-Daula and Bashir-ud-Daula (Sir Asman Jah) the two sons of Sultanuddin Khan, another brother of Rafiuddin Khan. Before these quarrels were settled, Motashim-ud-Daula and Rashiduddin Khan died. Eventually in 1882 A.D., an award was made by Sir Salar Jung, between Asman Jah on the one side and Rashibuddin Khan's two sons, Khurshid Jah and Vikar-ul-Umara on the other, as a result of which certain estates called Paigah Taluqas were awarded to Asman Jah. The remaining Paigah Taluqas of the family were divided between Khurshid Jah and Vikar-ul-Umara as a result of the award of Mr. Ridsdale. There was a partial division of the family property in 1878 A.D. also. As a result of these arrangements, the original Paigah Estate become divided into three separate estates known as the Asman Jahi Paigah, Khurshid Jahi Paigah and Vikar-ul-Umrahi Paigah.

13. Thereafter, Asman Jah, Khurshid Jah and Vikar-ul-Umara remained in possession of their respective Paigahs until their deaths. These Paigah grantees, were not the absolute owners of the estates. In fact, the Jagirs in Hyderabad State were neither in the nature of Zamindaries of Madras State nor of Taluqdaris of U.P. While proprietary rights vested in the Zamindars of Madras and Taluqdars of Oudh, the Jagirdars in Hyderabad were entitled only to the usufructs of revenue from the estate for life. The grant, in law, on the death of Jagirdar would revert to the Crown and would be made as a fresh grant to the new Jagirdar. The Paigah estates with which this case is concerned, was no exception to this. In fact, since they were burdened with the obligation to maintain Paigah troops, they were liable to be resumed by the Nizam if he so willed. The Nizam could as well commute the military burden into an equivalent money payment and require such payment on pain of resuming the Paigah Jagir. He was, at any time entitled to state that he does not require troops but requires money in their stead.

14. Besides, Paigahs like Jagirs were inalienable and impartiable save with the consent of the Nizam. Therefore, the above-mentioned partitions required the consent of the Nizam. In fact, several partitions which took place, obviously had the implied consent of the Nizam. On 12th Rajab 1337 H. (12-4-1919) the Nizam appears to have ordered that the Paigah Jagirs were not to be further divided.

15. But the fact that the Paigah Jagirs as they stood at that time were not to be physically divided, did not prevent such members of the family as are legally entitled thereto, from dividing the shares of the income of the Jagirs.

16. A special feature of the Paigah, as also of Jagirs and Inams in Hyderabad State was that possession of the estate was given to a single person as the Paigah holder (in case of Paigahs) who, in addition to his own shares, was entitled in respect of the management, a specific share in the income of the estate and this right was called Haqe Inthezam or right of management. The junior members were entitled to their shares after deducting the Haqe Inthezam and other administrative expenses. There used to be others also known as Guzaryats.

17. The Paigah Estate included some Zat Jagirs as distinct from the Paigah taluks granted from time to time. They too were eventually merged in the Paigah estates. The holder of the Paigah was called Amir. Though the holder was the Amir, the heirs of the original grantees, as in the case of any other Jagirs, were entitled to their respective shares in the revenue, by inheritance, of course, after deducting the share of the Amir and also the administrative expenses. The Amir had a special share of his own to support his position as the head and manager of the Paigah and its representative towards the Nizam and the public. This share was previously unascertained. That was the reason why until the death of Sir Khurshid Jah and the other respective holders of the Paigah, the Amirs were practically the only persons to be considered and they could take for themselves what part of the income they thought fit.

18. In order to remedy the injustice caused by such arbitrary and capricious way of appropriation of the income, several committees came up with proposals. Sir Brain Egerton's Committee proposed among other things that the Amir should be allowed to take 1⅟2 annas in the rupee of the gross income of the Paigah. The Reilly Commission proposed that Amir should take a definite portion of the net, instead of the gross income of the Paigah. In fact, in respect of Jagirs there was also a Farman of 1340 H that the manager should be allowed 4 annas in the rupee of the net income.

19. Sir Khurshid Jah died on Rabi-al-Thani, 1320 H (July, 1902) leaving behind him surviving, two sons, by name Imam Jung and Zafar Jung as his only recognised legitimate heirs. As already stated, any grant of Jagir, on the death of the grantee would lapse to the Crown and a fresh grant could be made to any of the heirs of the previous grantee. The Nizam had ample powers to resume the Jagirs or to appoint any person, be he the eldest son or not, as the Amir or make any other arrangements.

20. On the death of Sir Khursid Jah, no Amir was appointed by the Nizam in relation to that Paigah until 1345 H (February, 1927) and no member of the family was put in complete charge of the Paigah.

Nawab Zafar Jung, under a Farman issued a few weeks after the death of Sir Khurshid Jah, was put in charge of the Khurshid Jahi Paigah as a mere supervisor and trustee to carry on the ordinary routine work and was directed to take the Nizam's orders on all important matters and to account for the income and expenditure of the estate.

21. The administration of this Paigah estate, as in the case of other Paigahs in which similar arrangements were made, did not fare better and in fact all these estates ran into huge debts. A Controller General of Paigah Affairs called Sadr-Ul-Moham of the Paigahs was appointed by the Nizam to undertake complete control and management of the three Paigahs under his orders. This step proved successful and the able and efficient management of the committee helped to build up appreciable reserves for each of the Paigah estates after wiping out the huge debts.

22. It was then that Lutfuddaula was appointed Amir under the Farman dated 29th Rajjab, 1345 H (2-2-1927) A.D. During the interval, the properties left by Khurshid Jah were not permitted to be divided, though claims were advanced by his two sons and by their children.

23. In connection with the claims made by various heirs, the Nizam appointed as many as three Royal Commissioners: (1) The Egerton Committee (2) The Glancy Commission and (3) The Reilly Commission.

24. After a careful consideration of these reports, a Farman was issued on 17th January, 1929 (5th Shahban 1347 H.) The Nizam stated therein that in regard to the Paigah, he held a three-fold capacity (i) as the Ruler of the State (ii) as the head of Sarf-i-khas and (iii) as the patron of the Paigah family.

25. In Para 2 of the General Orders of the Farman, he directed that "whatever property had hitherto been acquired or articles purchased or buildings constructed out of the income of the Paigahs will be considered the property of the Paigahs and not that of any individual, and it will not be liable to division like Mathruka property".

26. In Order II the Nizam directed that one-third of the gross income should be appropriated for the administrative charges of the Jagir, and the second-third would constitute the Manager's share i.e., the Paigah Amir's share and the remaining one-third shall form the share of the other heirs, i.e., the shareholders of the Paigah.

27. In Order III Para 9, he further directed that the precious stones, jewellery and rare articles, which, in accordance with the principles laid down in Para 2 of the Farman are the property of the Paigah from olden times, or have been purchased with money belonging to the Paigahs will remain with the Paigah Amir in trust. Paigah Amir shall not have the right to sell, pledge, or give them to any person, but they can be lent for temporary use to members of the Paigah family after obtaining the Nizam's sanction from time to time, provided the Amir holds himself responsible for their safety and careful use. In Order III Para 2, the Nizam directed that if there is any property left as intestate property of any Paigah, the distribution thereof shall also be settled by the Committee appointed by the Farman.

28. The Nizam stated in Order III, Para 2 that at the time of Sir Khurshid Jah's death, his two sons Imam Jung and Zafar Jung were his only heirs, who, if alive then, would have been entitled to one half share each of third part of the gross income, and that since both are dead and the number of their survivors were large and regarding some of them (especially among Zafar Jung's heirs) there was difference of opinion as to the legality of certain marriages and the legitimacy of some children, a Committee had to be appointed for the distribution of the third part of the gross income of the Khurshid Jahi Paigah among the heirs of Khurshid Jah's two sons.

29. This Committee was presided over by Nawab Mirza Yar Jung, the then Chief Justice of Hyderabad and they submitted their report on 17th January, 1929. This Committee, known as the Paigah Committee, gave a definite finding that Nawab Khurshid Jah left no property which was not acquired or purchased out of the Paigah income within the meaning of Para 2 of the preliminary

portion of the Farman. Thus, what was left by Sir Khurshid Jah were (1) the properties or articles purchased or buildings constructed out of the income of the Paigahs and (2) precious stones, jewellery and rare articles which, in accordance with the principles laid down in the Farman are the property of the Paigahs from olden times, or have been purchased with money belonging to the Paigahs which are held by the Paigah Amir in trust as heirlooms of the Paigah family. Distribution of these two classes of properties, including their accretions, could not be made, in view of the Farman, amongst the heirs of Nawab Sir Khurshid Jah, as they were held indivisible, impartible and inalienable. The Amir Paigah was only a supervisor and trustee for these properties.

30. Twenty years after this report, the political atmosphere changed and the Jagirs and the Paigahs were abolished by means of the Jagir Abolition Regulations (Hyderabad Regulation No. 69 of 1358 F) with effect from 15.08.1949. The Jagirs and the properties connected with the Jagirs were taken over by the Jagir Administrator and the Jagirdars were declared entitled only to the commutation amount. The other properties and estates unconnected with the Jagirs, however, were allowed to remain with the Jagirdars.

31. In the year 1955-56, a lady by name Dildar-Un-Nissa Begum, who was one of the lineal descendants of Khurshid Jah filed a suit in O.S.No.41 of 1955-56 on the file of the City Civil Court, Hyderabad, claiming (i) that the Estate left behind by Nawab Khurshid Jah was a Mathruka Estate; and (ii) that she is entitled to 29/2944 share. It must be mentioned at this stage that the fight in O.S. No. 41 of 1955 as it was originally instituted, was actually between the surviving heirs of Nawab Zafar Jung on the one hand and the surviving heirs of Nawab Imam Jung on the other hand. (Nawab Zafar Jung and Nawab Imam Jung were the sons of Khurshid Jah). To be precise, the surviving heirs of Nawab Zafar Jung were arrayed as, (i) the plaintiff; and (ii) defendant Nos. 1-35 and 44-49. Similarly, the surviving heirs of Nawab Imam Jung were arrayed as defendant Nos. 36-42 and 50. Defendant No.43 was the Jagir Administrator of the Government of Hyderabad. It may also be mentioned here that at the time of the institution of the suit, there were only 43 defendants with the Jagir Administrator being the last, namely defendant No.43. However, subsequently the number of defendants swelled to unmanageable proportions both on account of the death of the original defendants one after the other and various other factors which we shall see later.

32. The reliefs sought for in the suit were as follows:-

> "The Plaintiff therefore prays that a preliminary decree be passed:-
>
> (a) directing that the properties detailed in Schedule IV which are in the possession of the part as detailed therein and the other (b) category properties detailed in para (12) above which are in the possession of defendant No. 43 and all other properties whatsoever that may be found to belong to the Mathruka of the late Nawab Khurshid Jah be divided by metes and bounds and plaintiff be given her 29/2944th share therein;
>
> (b) appointing, a Commissioner-Receiver to take charge of the said properties and divide the same between persons who are legitimately entitled thereto;
>
> (c) directing the Defendants Nos 1 to 43 to account for all mesne profits and income accruing in respect of the said Mathruka properties upto the date of suit and there after during the pendence of this suit; and
>
> (d) restraining the defendants from changing, alienating on encumbering any of the aforesaid properties in any manner during the pendency of this suit. If any properties of the Mathruka estate have been alienated by any of the defendants the same be debited to their share or ordered to be recovered from them if it is in excess of their share.
>
> The plaintiff further prays that appropriate orders be passed for payment plaintiff costs out of the Mathruka Estate.

And such further and other reliefs be granted and orders be passed which this Hon'ble court may deem fit."

33. For reasons which are not immediately decipherable, the said suit filed in the City Civil Court, Hyderabad was withdrawn by the High Court and transferred to itself for being tried and disposed of. This withdrawal and transfer could have happened (only a presumption) either in terms of Clause 13 of the Letters Patent or in terms of Section 24(1)(b)(i) of the Code of Civil Procedure, 1908 *[Hereinafter referred to as "CPC"]*. It must be remembered that until the High Court was renamed as the High Court of Andhra Pradesh in November, 1956 under the States Reorganisation Act, 1956, the High Court was the High Court of Hyderabad. The suit as it was originally filed was in the year 1955-56, but the withdrawal and transfer took place in the year 1958 and the suit was re-numbered as CS No.14 of 1958.

34. Since the genesis of the present dispute should be traced to the plaint in CS No.14 of 1958, it is necessary to extract the main part of the plaint as such. Therefore, paragraphs 6 to 17 of the plaint read as follows:-

"6. After the death of Nawab Khurshid Jah in 1320-H, neither the Paigah Estate nor the Mathruka was permitted to be divided through claims were advanced by his two sons and later by their children. The reason for not permitting the division of the Paigah Estate or the Mathruka of Nawab Khurshid Jah appears to be that His Exalted Highness the Nizam was against further partition and wanted to preserve this ancient family as a whole and preserve its integrity, and grandeur. This is evident from the two Farmans of His Exalted Highness dated 11th Rajab 1337H, Corresponding to 8th Khurdad 1328 Fasli and 5th Shaban 1347 H, corresponding to 15th Isfandar 1338 Fasli (17. 1.1929). Copies of the said two Farmans are herewith filed and marked II and III.

7. In connection with the claims of various heirs His Exalted Highness the Nizam appointed as many as three Royal Commissions namely:

(1) The Egerton Committee,

(2) Glancey Commission, and

(3) Railey Commission

After considering the Reports of these three Commissions, His Exalted Highness issued the last mentioned Farman dated 17-1-1929, (marked III supra) with a view to preserve the Paigah Estate and perpetuate the Paigah Family.

8. In para 2 of the above-said Farman dated 17-1-1929 (marked III) His Exalted Highness the Nizam directed as follows:-

"Whatever property has hitherto been acquired or article purchased or building constructed out of the income of the Paigahs will be considered the property of the Paigahs and not that of any individual, and it will not be liable to division as an inheritance (Mathruka)"

9. H.E.H the Nizam further directed as per the said Farman in Order III Para 9 thereof as follows:-

"Precious Stones, Jewellery, and rare articles which in accordance with the principles laid down in the above (Farman para 2) are the property of the Paigahs from olden times, or have been purchased with money belonging to the Paigahs, will remain with

the Paigah Amir in Trust as heirlooms of Paigah family. The Paigah Amir shall not have the right to sell, pledge, or give them to any person. They can however be lent for temporary use to members of the Paigah family, after obtaining my sanction from time to time, provided the Amir holds himself responsible for their safe and careful use."

10. In order III, Para (2) of the Farman (marked III supra) H.E.H. the Nizam referred to another and third class of property and directed as follows:-

> "If there is any property left as intestate property (Mathruka) in any Paigah the distribution thereof shall also be settled by the same Committee"

The Committee referred to in the portion of the Farman extracted above is Nawab Mirza Yar Jung Committee whose report was submitted on 9th April 1929. H.E.H. the Nizam accepted the said report and issued a Farman accordingly. In the said report of Mirza Yar Jung Committee, a definite finding was given that it was not proved by claimants that Nawab Khurshid Jah left any property which was not acquired or purchased out of the Paigah income within the meaning of para (2) of the preliminary portion of the Farman.

11. By reason of the finding of the Mirza Yar Jung Committee negativing the existence of any Mathruka acquired or purchased from sources other than paigah income there were only two categories of Mathruka property of Nawab Khurshid Jah viz,

> (a) properties or articles purchased or buildings constructed out of the income of the Paigah,
>
> (b) Precious stones, Jewellery and rare articles purchased with money belonging to the Paigah and held in trust by Paigah Amir as heirlooms of Paigah family.

12. As per Firman dated 5th Shaban 1347 H (17-1-1929-A.D), H.E.H. the Nizam prevented the distribution of the two classes of Mathurka properties aforesaid and lists of properties belonging to category (a) including all accreations and additions thereto, so far as plaintiff is aware are set out in the schedule herewith filed and marked IV and IV(a) are of the approximate value of O.S.Rs.652058-2-0 and they are in the possession of persons referred to in the said schedule. The plaintiff is not aware of the extent and value of precious stones, jewellery and rare articles referred to in category (b) mentioned in para 11 above. The last mentioned properties which ought to have been in the possession of the Defendant No.1 as Amir Paigah were left for safe-custody in the Government Treasury during the days of police action and subsequently passed into the custody of Jagir Administrator the Defendant No. 43 herein. The plaintiff tentatively values the said properties mentioned in Category (b) aforesaid at O.S. Rupees one lakh and claims her legitimate share therein after the full extent and value thereof are ascertained.

13. The Jagirs in Hyderabad State including Paigah having been abolished by Jagir Abolition Regulation No. 69 of 1358 F, with effect from 15th August 1949 the Said Firmans precluding the partition of the aforesaid two categories of Mathruka properties, ceased to be operative and plaintiff became entitled to claim her legitimate share of Mathurka Estate of the late Nawab Khurshid. Jah viz, her 29/2944th share which she tentatively values at the aggregate sum of O.S. Rs 7408-1-1 as detailed in the Schedule IV and IV(a) para 12 referred to above of the aggregate tentative value of O.S. Rs. 752058-20.

14. The cause of action for this suit arose at Hyderabad-Dn, On 15th August 1949 when the Jagir Abolition Regulation came into force and the Firmans of H.E.H. the Nizam preventing the partition of the suit properties ceased to be operative. The suit is in time, in any event, as the bulk of the properties in Schedule IV And IV(a) are immovable properties and the other

properties in category (b) And referred to in para 13 were held by the Defendant No. 1 the Amir Paigah In trust and are now with Defendant No.43. Further the 14th and 15th August 1955 were holidays on account of Sunday and Independence Day.

15. The plaintiff values this suit claim tentatively for purpose of court-fees and jurisdiction at O.S.Rs. 7405-1-1, the same being the value of her share of the properties detailed in Schedule IV and IV(a), para 13 above and plaintiff pays a Court-fee of O.S Rs. 562-7-0, and undertakes to pay such additional court-fee, if any, after the divisible properties are ascertained and their correct values are fixed.

16. The plaintiff submits that the Schedule IV and the values stated therein are by no means exhaustive or complete and similarly the values of precious stones and jewellery are equally approximate and tentative. It is possible that there may be other Mathruka properties also which are divisible between the parties. The plaintiff claims her legitimate share of 29/2944th in whatever properties that may be found to belong to the Mathruka of the late Nawab Khurshid Jah and undertakes to pay the appropriate court-fee.

17. This Hon'ble court has the jurisdiction to try this Suit as the bulk of the immovable properties the subject matter of this partition are situated in Hyderabad city and all the Defendants except Defendant No.36 reside in Hyderabad City."

35. Interestingly, the plaint was amended first in the year 1957 and paragraph 17A was inserted, more by way of response to the written statement filed by defendant No.1 in respect of the properties mentioned at Serial Nos.29 and 30 of Plaint Schedule IV. Subsequently, the plaint was amended twice in the year 1958 so as to insert paragraphs 17B, 17C and 17D. These amendments resulted in the impleadment of some additional defendants in the suit, including the State of Andhra Pradesh and the State of Mysore as defendant Nos. 53 and 55 respectively.

36. These paragraphs 17A, 17B, 17C and 17D of the plaint are extracted as follows:-

"17A. According to para 7 of the written statement the defendant No.1 has asserted that the Matruka properties mentioned in the list enclosed with plaint at serial No.29 and 30 of schedule No.4, Zamutanpur Ramdhan Chowdry and Najeeb Bagh are in the possession of Misbahuddin Khan and Ghousuddin Khan, by Virtue of right. This assertion has been made by the defendant No.1, the Legal and sharia guardian of both the said minors. This plaintiff does not Admit the contention of ownership of both the above said sons of the Defendant No.1. The names of both of them have been included among the array of defendants. Thus the plaintiff is entitled to sue and both the above said sons of the defendant No.1 are liable to answer (the para 17A is added as per order dated 20.9.57)

17B. That the plaintiff has come to know through the written statement of the defendant No.1 that the properties mentioned in items Nos.37 & 40 of schedule 4 and Nos 13 to 15 of the schedule 4A are in the possession of the state of A.P. As these form the suit properties the state of A.P. is a proper and necessary party to the suit. This hon'ble court has accorded permission to implead the said state as defendant, so it is impleaded as a party by way of amendment. This defendant had no right whatsoever to possess the said properties, as the said defendant is liable to pay mesne profit of the same also and the plaintiff is entitled to them. Hence the plaintiff is entitled to sue and the defendant is liable to be sued. Notice u/s 80 CPC has been issued to the said defendants. Having received the same the defendant has not given any reply thereof in spite of the fact that two months have elapsed since the receipt thereof.

17C. That as per written statement of the defendant No.1 Bal Raj, the defendant No.54 is in possession of the Bagh Hussain Shah Vali, which is a suit property, so, he is impleaded as a party and he is liable to pay mesne property also. Amended as per order dated 25.1.58.

17D. that the plaintiff has come to know through the written statement of the defendant no.1, that the properties in items No. 35 & 36 of the schedule IV item No.16 of schedule IVA (immovable) are in the possession of the state of Mysore. As these are a part of the suit properties, the state of Mysore is a proper and necessary party, to the suit, this Hon'ble court has accorded permission to implead the state as defendant. So it is impleaded as a party by way of amendment. This defendant has no right whatsoever to possess the said properties, so the said defendant is liable to pay mesne profits also to plaintiff according to a share, she is entitled to. Hence the plaintiff is entitled to sue the said defendant and the defendant is liable to be sued. Notice u/s 80 cpc had been issued to the said defendant of two months time passed after the receipt thereof, but no convincing reply was given to the plaintiff. (amended as per orders dated 4.10.58)."

37. In the year 1961, some of the parties to the suit entered into a compromise. The parties who entered into the said compromise were plaintiff Nos. 1 and 2 and defendant Nos.1, 5, 6, 7, 9, 11-14, 16-34, 35, 36, 37, 40-42, 44, 45, 46, 48, 49-52, 56-62, 90-94, 97, 99 and 100. It must be recorded at this stage that there was only one plaintiff at the beginning namely Dildar-Un-Nissa Begum. But subsequently, defendant No.38 got transposed as plaintiff No.2 and that is how there were two plaintiffs.

38. The parties who entered into a compromise filed an application in Application No.264 of 1961 under Order XXIII Rule 3 CPC, for recording the compromise and passing a preliminary decree. The reliefs sought in Application No.264 of 1961 make an interesting reading and hence they are extracted as follows:-

"Application under Order 23, rule 3, Civil Procedure Code, praying that in the circumstances stated in the memorandum of compromised filed herewith the High Court may be pleased

1) to pass a preliminary decree in terms of the compromise after deciding the contentions questions mentioned in paras 18 and 19 of the compromise and the rights of those who have not joint the compromise.

iii) to pass a final decree in favour of defendants Nos. 1, 51, 52 and 42 to the extent of properties given to their exclusive shares as mentioned in paras 4, 7, 9 and;

IV) to appoint Shri Hafeez Ahmed Khan Retired Sessions Judge, Advocate, residing at Fateh Sultan Lane, Nampally, Hyderabad as Receiver-cum-Commissioner with the powers set out in the memo of compromise and to proceed with the case against the other defendants"

39. It appears that the defendant Nos. 1, 2, 5 to 18, 21 to 29, 33, 34, 36 to 43, 47, 49 to 55, 77, 78 and 95 to 97 filed their written statements. The other defendants did not file any written statement. Defendant Nos. 3, 4, 19, 29 to 32, 35 and 48 were set ex parte.

40. On the basis of the pleadings, the Court framed as many as 50 issues. Some of the issues also had sub issues.

41. But after trial, the Court struck off issue Nos.14(e) and 21.

42. During trial, six witnesses were examined on behalf of the plaintiff. Eleven witnesses were examined on behalf of defendant No.1. One witness was examined on behalf of each of the defendant Nos.2, 8, 10, 15, 17, 41, 43, 47, 56 to 62, 86 and 87 and 88. Two witnesses were examined on behalf of defendant Nos.12 and 13, defendant Nos. 48 and 49 and defendant No.97. Six witnesses were examined on behalf of defendant No.39 and four on behalf of defendant No.53.

43. On the side of the plaintiff, 30 documents were marked as Exhibits P.1 to P.30. Defendant No.1 produced 52 documents which were marked as Exhibits D.1(1) to D.1(52). Other defendants also marked some documents.

44. Eventually, the learned Judge of the High Court sitting as a Trial Judge, passed a judgment and decree on 28.06.1963, both in the suit and in the application under Order XXIII Rule 3 CPC. The operative part of the judgment which contained the decree intended to be passed, comprised of two portions, one relating to the defendants who were not parties to the compromise and the other relating to those who were parties to the compromise. The operative portion of the judgment is extracted as follows:

> "The result of the above discussion is that the suit of the plaintiffs in relation to the defendants other than the parties to the compromise shall be decreed in the following terms:-
>
> (1) That the properties.
>
> > (a) Mentioned in plaint schedule IV as also detailed in list 'A' forming annexure to Application No.37/59, excepting items 26, 29, 30, 34, 35 and 36 and houses bearing municipal Nos. 28 and 29 in item No.22 of the Schedule;
> >
> > (b) Khurshid Bagh at Lallaguda;
> >
> > (c) The oil paintings, chandeliers and furniture is Baradari.(Item No.1 in schedule IV) and Ligampalli Garden (Item No.27) referred to in the first part of Schedule IV-B, the number and the value of which shall be determined in the final decree proceedings;
> >
> > (d) The fire arms and weapons and their sale proceeds, referred to in part-II of Schedule IV-b, the number and value of which shall be decided in the final decree proceedings as per the decision under issues 16 and 18.
> >
> > (e) The articles in Part III, sub-item I of schedule IV-b, as detailed in Exe.P-10 and P-12 taken over by the Jagir Administrator and deposited in the Bank.
> >
> > (f) The gold coins referred to in sub-item II of Schedule IV-b which are taken under Ex.P-9 by the Jagir Administrator; and
> >
> > (g) The jewellery as contained in Ex.P-8 and inventory prepared by the Receiver are properties coming from Khurshid Jah's time, covered by para-2 of the Firman Ex.P-30 dated 5th Shabban, 1347 H. and Order 3 Clause 9 of the same Firman and are liable to be partitioned among the surviving legal heirs of late Nawab Khurshid Jah;
>
> (2) That properties items 37 and 40 in Schedule IV will also be available for partition only in case they happen to be released by the Government;
>
> (3) That plaintiff No.1 and defendants 1 (since dead) to 35, 44, to 49, 51, 52, 56 to 62, 90, 94, 98, 100 and 102 to 112 are the heirs through Zafar Jung in the line of succession of Khurshid Jah, and plaintiff No.2 and defendants 36, 37, 39 to 42, 50, 97, 99 and 113 to 118 are the heirs through Imam Jung, in the line of succession of Khurshid Jah, as detailed in Annexure II to the judgment;
>
> (4) That in the aforesaid properties as also those included in Annexure IV to the Judgment, defendant No.1 being dead, his legal representatives 51, 52 and 102 to 112 are entitled to a 1/3rd share; and in the remaining 2/3rds, the surviving legal heirs in the line of Imam Jung are entitled to one half and the surviving legal heirs in the line of Zafar Jung, excluding

defendants 51, 52, 102 to 112 to the other half, and their individual shares are as detailed in Annexure III to this judgment.

(5) That Mr. P. Ram Shah, Advocate of this Court, is appointed Commissioner and he shall partition the same subject to the directions contained in this judgment and to such further directions as may be given from time to time by this Court;

(6) That the Commissioner shall take accounts from the heirs of defendant No.1 and submit his report on the following matters;

> (a) The income and savings from the suit property during the period defendant No.1 was in management as Amir Paigah, from 1950 upto the date of his death 26-11-1961, as per the decision on issue No.37;
>
> (b) The sale proceeds of items 51 to 53 of Schedule IV realized by defendant No.1;
>
> (c) The excess expenditure alleged to have been met by defendant No.1 to the extent of one lakh of rupees referred to in the judgment in connection with issue No.40;
>
> (d) Expenses incurred by defendant No.1 for repairs, extensions and improvements in Bagh Lingampally (item No.27) as per the decision on issue No.22;

(7) The Commissioner while partitioning the property shall also take into account the amounts from defendants 9, 10, 11, 14, 15, 16, 18, 19, 21, 22, 24, 25, 30, 31, 32, 40, 42, 48, 49, 62, and 93 as per Annexure V towards damages caused by them to the suit properties, in determining the extent of their share;

(8) The defendants 86-88 being alienees in relation to shops bearing Municipal Nos.III C-113 to 120, which is a portion of item No.45; house bearing municipal No.20-3-842 situate at Shah Gunj comprising 420 sq.yds; house bearing No.2-2-722 and tinshed bearing No.2-2—723 situate at Shibli Gunj (both known as Rath Khana) ; and Baggi Khana, bearing Municipal No.2-3-184 situate at Shibli Gunj, the equities of these alienees may be worked out so far as possible by setting apart the alienated properties to the share of the alienor, defendant No.10, if that can be done without injustice to the other sharers.

The remuneration of the Commissioner is tentatively fixed at Rs.600/- per month.

The plaintiffs will be entitled to the costs from out of the assets.

Court fee shall be collected as and when the properties are valued and partition is being effected.

So far as the parties to the compromise are concerned, a decree shall follow in terms of the compromise, excluding such terms as relate to appointment of and directions to Receiver and Commissioner and also terms regarding the properties which have been held to be the properties of defendants 2 and 39, viz., item No.26 and house Nos. 28 and 29 in item No.22 in Schedule IV; and so far as item No.34 of Schedule IV is concerned, that property as also the sale proceeds connected thereto shall be available for partition amongst the parties to the compromise, only after setting apart the due shares of defendants 2 to 4, 10, 47, 94 and 98 as the heirs of Zafar Jung, which work out at double the shares entered in Annexure III.

While allotting the shares to the parties to the compromise, equities of alienees, defendants 119, 120 and 121 as also of defendant No.77 may be worked out as far as possible by setting apart the alienated properties to the share of the respective alienors as directed in the judgment under issues 41 and 49.

The Commissioner appointed under para(5) of this order shall partition the property and carry out the terms of the compromise subject to the directions contained in the judgment and such other directions as may be given from time to time.

The expenses incurred in the execution of commission shall be met out of the assets."

45. There were five annexures to the judgment. Annexure-I contained the list of heirs in the line of succession of Khurshid Jah and the shares to which they were entitled. Annexure-II contained the list of surviving legal heirs in the line of succession of Khurshid Jah and their respective heirs. Annexure-III indicated the amount of each share of the respective sharers. Annexure-IV contained the list of immovable properties which were held to be Mathruka of late Khurshid Jah. In fact, Annexure IV to the judgment was actually the reproduction of Plaint Schedule IV except those not decreed. Annexure-V contained the list of properties damaged and the extent of damage caused by the respective parties.

46. It must be mentioned here that the suit CS No.14 of 1958 on the file of the present High Court for the State of Telangana is not merely a strange and curious case but is one which continues to baffle both the legal and the jural fraternities, for more reasons than one, both right and wrong. One of the curious aspects of this case was the description of the immovable properties listed in Plaint Schedule IV. Though a copy of the original plaint has been filed before us as part of the paper books, it does not contain the Schedules. However, Annexure-IV to the judgment dated 28.06.1963 in support of the preliminary decree, contains a reproduction of Plaint Schedules IV, IV (a) and the items described in Lists A, A-2, A-3 and A-4 of Application No. 37/59. The same will provide the reader a fair opportunity to understand as to how innumerable items of immovable properties were sought to be described in the Plaint Schedules. Hence, we are constrained to reproduce the same as follows:

"

Annexure IV List of immovable properties which are held to be Matruka of late Khurshid Jah			
S.No.	Item No. shown in plaint schedule	Description	Name of Mahalla or place
1	2	3	4
	Plaint Schedule IV		
1.	1.	Kotika Bangala also called Bara Dari, House No.III C-3-1060.	ShahGunj
2.	2.	Isharat Mahal, House No.III C-3-1	"
3.	3.	Divan Khana, House No.III – C-3-1040	"
4.	4.	Chota Mahal No.1, House No.II C-3-140.	"
5.	5.	Naya Mahal House No.III C-3-1053/13	"
6.	6.	Khana Bagh with buildings House No.III C-3-139.	"
7.	7.	Deodi Imam Jung House No.III-C-3-1059 and 1066	"

8.	8.	Nawazish Mahal House No.III-C-3-123/5.	”
9.	9.	Khurshid Mahal House No.IIIC-3-123/1	”
10.	10.	Fareed Bagh with building portion House No.IIIC-3-123/3 and 123/4	”
11.	11.	Nubarak Mahal House No.III C-3-1059/12.	ShahGunj
12.	12.	Kotar Ka Makan, Military Guard Quarters. House No. III C-3-121	”
13.	13.	Khas Mahal House Nos. IIIC-3-1059/3 IIIC-3-1059/4 IIIC-3-1059/6 IIIC-3-1059/7 IIIC-3-1059/9	”
14.	14.	Kotora Hauz, III C-3-1040	”
15.	15.	Bangala Nagpanchmi. II C-3.	”
16.	16.	Mahal Sara III C-3-1059/2	”
17.	17.	Chotal Mahal (No.2) III C-3-1059/1	”
18.	18.	Jile Khana III C-3-1059/8	”
19.	19.	Chpala Khana, III C-30-1059/10	”
20.	20.	Club Ka Makan III C-3-1059/11	”
21.	21.	Behind Ishrath Mahal House No.III C-3-1	”
22.	22.	Deodi Bahadur Jung House Nos.C-3-27	”
23.	23.	Deodi Ghousuddin Khan. III C-3-23.	”
24.	24.	Kutub Khana III C-3-nil	”
25.	25.	Chinni Khana III C-3-1040/1	”
26.	26. & 27	Lingampally Garden, containing a large building and a few small quarters, area 53 acres within the compound wall and 77 acres outside the wall. Survey No.200; village Lingampally, Taluk Garbi, Dist. Hyderabad within city municipal limits, No.A-9-1138.	Mohalla Lingampalli on old road University Adikmet.
27.	28.	Waheed Bagh adda Makai, two small plots sliced out of Lingampally garden area outside the wall containing a small old building and huts rented out to	Mohalla Chikkadpally

		tenants, area 2¼ acres. Survey No.200.	
28.	31.	Sarurnagar garden building and garden with compound wall area 3 acres	Village Sarurnagar taluk Sharki.
29.	32.	— do — area 2 acres	”
30.	33.	Hussain Shah Wali garden building in ruins garden enclosed with compound wall. Survey No.38 area 8 acres.	Village Hussain Shahwali Taluk Garbi
31.	37*	Hafizpet patta lands, compact area of 1333 acres.	Hafeezpet Taluk Garbi
32.	38	Hydernagar patta lands. Compact area of 1210 acres.	Hydernagar Taluk Garbi
33.	39	Hafeezpur, compact area of 2684 acres.	Hafeezpur
34.	40*	Ghansi Mian Gude patta lands, compact area 743 acres.	Ghansimianguda
35.	41	Shops 21 numbers, Bazar, Shamoul Umra, Muncipal Nos.III C-3-1031 to 1033, 1036 to 1038, 1047 to 1050.	Mohalla Shamsulumra
36.	42	Shops 6 numbers Umda Bazar IIIS-549 to 554	Mohalla Umdabazar Near Dood Bowli
37.	43	Shops 9 number Dood Bowli III C-2- to 8 1155 and 1156.	Mohalla Dood Bowli Darwaza
38.	44	Shops 32 numbers Bazar Shibli Gunj, III C-3-125 to 137, 151 to 159, 146 and 147.	Mahalla Shibli Gunj
39.	45	Shops 34 numbers Bazar Khurshid Gunj III C-3-89 to 120, 722 and 752.	Mohalla Khurshid Gunj
40.	46	House 1 number III C-3-938	Shah Inayat Gunj.
41.	47	” number III C-3-841	Khurshid Gunj.
42.	48	” number III C-3-184	Khurshid Gunj.
43.	49	” number III C-3	Shah Inayat Gunj.
44.	50	House 1 number III with a spacious compound.	Lallaguda
45.	51	Burhanpur lands survey No.333 102 acres (outside Hyderabad Estate)	Umagir Village Burhanpur Dist. Madhya Pradesh
46.	52	Poona lands (outside Hyderabad State)	Opp. Boat Club in Poona
47.	53	Khandala house (Outside Hyderabad State)	Khandala Bombay State.
	Plaint Schedule IV-a-		
48.	1	Malkaram patta lands.	Malkaram Tq. Shahbad
49.	2	Hasmatpet Patta Lands	Hasmatpet Taluk, Garbi

50.	3	Dilwarguda ” ”	Sultanpur Tq. Kalabar, Dist. Medak
51.	4	Sahebguda ” ”	Vill.. Sahebgud Taluk Ibrahimpatnam
52.	5	Kaderabad ” ”	Kaderabad Taluk Ibrahimpatam
53.	6	Gaddi Annaram (Malla Bundum)	Gaddi-Annapuram taluk Sharqi
54.	7	Makta Mohd. Bux Khan.	
55.	8	Lallaguda, Patta Lands.	Lallguda Tq. Sharqi
56.	9	Nachwaram ”	Nachwaram Tq. Sharqi
57.	10	Bagh Saheb Jan garden enclosed with a compound wall.	Phisalbanda Zafar Naga, Hyderabad
58.	11	Gulbagh garden land.	Near old within municipal limits
59.	12	Daricha Bohra open plot of land.	Near Hussain ialam
	Properties mentioned in list ‘A’ in Appln. No.37/59. List ‘A’		

60-	1	Plot No.1 about 4272 sq. yds. Boundaries: North estate house occupied by KulsumBi, tenant S, E and , W: roads.
61.	2	Plot No.2 5206 sq. yds. Boundaries : North house occupied by Zulfiqar Ali Khan S : Estate house and Vacant land E. Sajanlal’s house W: road.
62.	3	Plot No.3, 872 sq. yds. Boundaries: N: Vacant land of this estate: S: road, E: Sajanlal's house and W: estate house.
63.	4	Plot No.4, 1250 sq. yds. Boundaries : N : Vacant land of this estates, S: ditto: E - estate house occupied Zulfiqar Khan and W: Road.
64.	5	Plot No.5, 578 sq. yds. Boundaries: N: Vacant land of this estate, S : ditto E: road, W: estate house occupied by Fakruddin Khan, tenant.
65.	6	Plot No.6, 1556 sq. yds. Boundaries : N : vacant land of this estate and house occupied by Fakruddin, tenant: S: -do-. occupied by Kulsumbi East: Road and West : estate house occupied by Abdul Ali tenant.

66-	7	Plot No.7, 1522 sq. yds.: Boundaries : N : road, Tiled house of this estate : E: cement road, W. road.	
67.	8	Plot No.8, 734 sq. yds.. Boundaries : N: Tiled house of this estate, S: Sajanlal's house: E: cement road and W: house occupied by Zulfeqar Ali, tenant.	
	List 'A' – 2:		
68.	32	Shop No.III C-184 named estables	Khurshid gunj
69.	33	" III C-722 named Rathkhana	"
70.	34	" III C-723 named Adda Jhatka	"
71.	35	Double-storeyed house No.III C-752	"
	List 'A' – 3:		
72.	1	HQ house III C-121	Shibligunj Bazar
73.	2	Band room III C-122	"
74.	3	Nawasish Mahal IIIC-123/4	Shibligunj Bazar
75.	17	Room No. III C-150	"
76.	27	" III C-149	"
77.	28	" III C-843	"
78.	29	" III C-842	"
79.	32	" III C-999	"
80.	33	Fallen land about 4250 sq.yds. Boundaries: N: Hq. house and road: S: Nawazish Mahal E: room of this estate: W: (torn).	
	List 'A-3 contd.		
81.	34.	Fallen land 400 sq.yds. Boundaries: No. road, S: Khana Bagh, E: road: W: fallenland.	
82.	35.	" 220 sq.yds. Boundaries: estate's house named kitchen, S: road, E: Kitchen's Gate : W: rooms of this estate.	
	List 'A-4.		
83.	3	Fallen room No.103.	Shamsul Umra
84.	5	Bungalow No.2	"
85.	7	Mulgi No.1041	"
86.	12	Bungalow No.1051	"
87.	13	Mulgi No.1052	"
88.	14.	" 1053	"
89.	15.		Vacant land Opp: Jile Khana gate, 150 sq. yds. Boundaries: N: Mosque and road, S: Kishenlal's House, E: cement road and W: Kishenlal's house.
90.	16.		Katora House named Sadar Mahabibi in Possession of Jagir Administrator
91.	17.		Land of 3 fallen shops.

92.	18.	Fallen house with land in Lalaguda, No.12/1-514, Khrushid Bagh at Lallaguda.”

47. After the preliminary decree dated 28.06.1963, some of the parties to the suit transferred their undivided shares in the suit scheduled properties in favour of (i) the Nizam and (ii) another person by name Nawab Khasim Nawaz Jung. These two persons were impleaded as defendant Nos. 156 and 157 respectively. It may be recalled at this stage that when the suit was originally filed, there were only 43 defendants. At the time when arguments were advanced in the suit, the number of defendants went up to 119 and when the preliminary decree was passed, the number of defendants became 135. It increased further after the decree and the Nizam and Nawab Khasim Nawaz Jung came to be impleaded as defendant Nos.156 and 157, after they purchased the undivided shares to the extent of 80% from the decree-holders.

48. After three years of the preliminary decree, the Advocate Commissioner-cum-Receiver filed an application in Application No. 268 of 1966 to take over possession of the lands, including the land in Survey No. 172 at Hydernagar village, which was part of Item No.38 of Plaint Schedule IV. No counter was filed by the respondents. Though the Plaint Schedule and the preliminary decree did not mention specific Survey number(s) in Hydernagar, the Receiver claimed in his report that he studied the Revenue Records/Pahani Patriks/Khasra Pahanis and found that Survey No. 145 (220.10 acres), Survey No. 163 (175.06 acres), and Survey No. 172 (196.20 acres), were all situated at Hydernagar, and were part of Item No.38 Schedule IV of the plaint.

49. In the meantime, HEH the Nizam (defendant No. 156) vide a registered sale deed dated 23.02.1967, sold his undivided half share in favour of F.E. Dinshaw Ltd., which later became M/s. Cyrus Investments Pvt. Ltd.[*For short, “Cyrus”*] This transfer was recognized, and consequently, Cyrus was impleaded as defendant No. 206 in the suit CS No.14 of 1958.

50. The High Court vide order dated 24.03.1967, passed in Application No. 268 of 1966, directed the District Collector, Hyderabad (who was in possession of the properties on behalf of the State Government) to deliver possession of the properties to the Receiver on two grounds namely: (i) that the State Government was a party to the preliminary decree; and (ii) that the property in question was declared to be “Mathruka” property.

51. Thereafter, the Receiver vide Application No. 73 of 1970 in CS No. 14 of 1958, submitted a scheme of partition with respect to the suit schedule movable and urban immovable properties. The High Court vide order dated 29.01.1971 accepted the scheme, and directed the Receiver to also submit a scheme with regard to the suit schedule agricultural lands.

52. The Commissioner-cum-Receiver then filed a curious application in Application No. 139 of 1971 in CS No. 14 of 1958 seeking orders as to whether he should prepare a scheme of partition with regard to claims only (but not actual physical land). This was on the ground that the Government as well as third party-protected tenants were in actual possession of the suit schedule agricultural lands. An explanatory note was attached to the application stating that the Collector, who was ordered to hand over the possession of Hydernagar lands, was raising an objection that it is Government land.

53. By order dated 16.09.1972 passed in Application No.139 of 1971, the High Court allowed the Receiver to partition only the claims in terms of value of the lands as the lands were not in possession of the shareholders.

54. Accordingly, the Receiver submitted a scheme of partition on 03.12.1972, distributing only the claims with regard to survey numbers including Survey Nos.145, 163 and 172 of Hydernagar.

55. The Receiver then filed Application No. 19 of 1973 in CS No. 14 of 1958, impleading only the State of Andhra Pradesh as a party, praying for a direction to the Collector to hand over the possession of Survey Nos.145, 163 and 172 of Hydernagar village. None of the parties who were likely to be dispossessed were made parties to this application.

56. The High Court allowed Application No. 19 of 1973, vide order dated 05.07.1974 directing the Government to give symbolic possession of lands measuring acres 220 guntas 18 in Survey No. 145 and measuring acres 175 guntas 6 in Survey No.163 to the Receiver. Insofar as the other lands are concerned, the High Court recorded that the Government is not in a position even to give symbolic delivery and hence the Receiver was directed to take steps available in law for taking possession from the actual occupants of the lands including the land in Survey No. 172, Hydernagar village.

57. Since the parties were unable to agree upon allotment of share of the lands, the High Court vide order dated 31.01.1976, passed in Application No. 139 of 1971, referred the matter to the District Collector under Section 54 of the CPC for division and allotment to the sharers. The District Collector directed the Revenue Divisional Officer[*For short, "RDO"*], Chevella to partition the schedule lands. The RDO, Chevella divided and allotted the lands in Survey Nos.163 and 145 of Hydernagar village to the sharers in different extents, but no such exercise was undertaken in respect of Survey No. 172.

58. Insofar as the land in survey No.172 was concerned, it was found that Faisal Patti for 1978-79 had been issued by the Mandal Revenue Officer, Balangar, Ranga Reddy District mentioning 25 sub-divisions in Survey No. 172 made during the tenure of the Paigah. The names of 24 persons [including Boddu Veeraswamy, Ruquia Begum, Waris Ali and Ghani Shareef] who were allegedly given Pattas prior to 1948 by the Nizam/his Revenue Secretariat were also mentioned in the said Faisal Patti.

59. The Receiver therefore filed a report, on which the Court passed an order dated 12.06.1981 in Application No. 139 of 1971. The Court noted that the Receiver's report was with respect to partition of all other survey numbers other than Survey No. 80 of Hafizpet and Survey No.172 of Hydernagar. The Court directed the copy of the report to be published.

60. Upon coming to know of the steps so taken by the Receiver, the State Government filed an application in Application No. 44 of 1982 in CS No. 14 of 1958 seeking amendment of the preliminary decree to delete Item Nos.35 to 38 and 40 of Schedule IV, contending that the decree was not in consonance with the judgment. This application was dismissed by the High Court vide order dated 18.12.1982.

61. At this stage, Nawab Khasim Nawaz Jung (defendant No.157) and Cyrus (Defendant No. 206) filed several applications before the High Court in CS No. 14 of 1958, including Application No. 266 of 1983. The relief sought in Application No. 266 of 1983 was "to issue an order for handing over possession of Survey No. 80 of Hafeezpet village, measuring 48,477.5 cents (about 484 acres) and Survey No.172 of Hydernagar measuring 19,650 cents (about 196.5 acres) to defendant Nos. 157 and 206 and for directing the Receiver-cum-Commissioner to execute the warrant of possession through City Civil Court and put defendants 157 and 206 in possession of Survey No. 80 of Hafeezpet and Survey No. 172 of Hydernagar respectively". The sole respondent to the application, namely the Receiver reported "no objection." None of the persons in possession of the lands in Survey No. 172 through Pattas were impleaded as parties to the Application No. 266 of 1983. The High Court vide order dated 20.01.1984 allowed the application, directing the Receiver-cum-Commissioner to hand over possession of the land in Survey No.80 of Hafeezpet and Survey No. 172 of Hydernagar to Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No. 206) by executing a warrant of possession through the City Civil Court and putting Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No. 206) in possession. It is stated by the parties that though High Court issued warrant of possession to the Receiver, the same could not be executed (probably because the lands were in possession of third parties).

62. Eventually, the High Court, vide order dated 16.11.1984 passed in Application No.276 of 1984 in CS No. 14 of 1958, discharged the Receiver on the ground that he had not submitted a scheme for distribution despite a specific earlier order dated 27.10.1984 to this effect and directed the Receiver to hand over the records to the Deputy Registrar of the High Court by 01.12.1984.

63. Pursuant to the said order, the Receiver handed over the charge of his office to the Deputy Registrar of the High Court, thereby ending the role of the Receiver in CS No.14 of 1958 with regard to land in Survey No. 172. The net result is that the order and the warrant dated 20.01.1984 stood unimplemented or unexecuted by the Receiver.

64. Thereafter, Cyrus (defendant No.206) and Nawab Khasim Nawaz Jung (defendant No.157) executed a Deed of Assignment on 29.11.1995 in favour of M/s Goldstone Exports Pvt. Ltd.[*For short, "Goldstone"*] to the extent of 98.10 acres in Survey No.172, Hydernagar. On the basis of this assignment, Goldstone filed four Applications namely, (i) Application No. 992 of 1995 for recognition of the assignment of the rights to land of the extent of acres 98.10 guntas in Survey No. 172 at Hydernagar village; (ii) Application No. 993 of 1995 for impleading them as parties to the suit; (iii) Application No.994 of 1995 for modification of the order passed on 20.01.1984 in Application No. 266 of 1983 by substituting the names of the petitioners and directing delivery of possession of the land of the extent of half share out of acres 196.20 guntas in Survey No.172, Hydernagar; and (iv) Application No. 995 of 1995 for a direction to the revenue authorities to enter their names in the concerned records.

65. In the aforesaid applications, only the Assignors i.e., Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206) were impleaded as parties. Third parties who were in possession as per the Faisal Patti of 1978-79 were not impleaded as respondents in these applications.

66. These applications, I.A. Nos.992, 993, 994 and 995 of 1995 were allowed unopposed, by the High Court by order dated 28.12.1995.

67. Thereafter, Goldstone and others filed an execution petition in E.P. Nos.3 of 1996 under Order XXI Rule 35 CPC before the District Court, Ranga Reddy District seeking delivery of Item No. 38 of Plaint Schedule IV (survey No. 172 of Hydernagar) pursuant to the preliminary decree dated 26.08.1963 in CS No.14 of 1958. The Assignors namely, Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No. 206) alone were arrayed as respondents- judgment-debtors in the said execution petition. Third parties in actual physical possession were not impleaded.

68. The District Court, Ranga Reddy District passed an order dated 29.03.1996 in E.P. No. 3 of 1996 directing the Bailiff of that Court to deliver land of the extent of 98.10 acres in Survey No. 172 to the petitioners in E.P. No. 3 of 1996, in accordance with the assignment recognised by the High Court and in pursuance of the order dated 28.12.1995 passed in Application No. 994 of 1995. The Bailiff of the Court then submitted a report dated 19.04.1996 stating that there was no resistance from the judgment-debtors and that he had delivered the possession of the land to Goldstone.

69. Upon coming to know of the same, several persons who were in possession of portions of the land in Survey no. 172, Hydernagar, filed separate applications seeking various reliefs. They may be tabulated for easy appreciation as follows:

Application Number	Filed by	Provision of law under which filed	Prayer in the application
585 of 2002	34 persons	Order 21, Rule 97 to 101 r/w section 151, CPC	To adjudicate and allow their claim to the extent of Acres 5.28 gts in Survey No.172/10

708 of 2002	2 persons	Section 151, CPC	To adjudicate and allow their claim to the extent of 722 sq.yards forming part of Acres 5.28 gts in Survey No.172/10
1318 of 2003	34 persons	Section 47 r/w Order 21, Rule 58 CPC	To adjudicate their claim and direct re-delivery of possession
1319 of 2003	105 persons	Order 21, Rule 99 r/w section 151	To direct symbolic redelivery of possession
1320 of 2003	14 persons	Order 21, Rule 97 r/w section 151 CPC	To recall the warrant dated 29.03.1996 in E.P. No. 3 of 1996

70. The District Court, Ranga Reddy District refused even to entertain the above applications on the ground that it cannot go beyond the mandate of the High Court issued in Application No 994 of 1995.

71. Aggrieved by the refusal of the District Court even to entertain their applications, a society by name Sri Sathya Sai Cooperative Housing Society Ltd. filed a revision petition in C.R.P. No. 4921 of 1996 before the High Court. Some members of another society by name Set-win Employees Housing Cooperative Society and 33 members of Sri Satya Sai Co-operative Housing Society Ltd. filed

❖ OSA Nos.10, 11 and 20 of 1996 questioning the High Court's order dated 28.12.1995 in Application No. 994 of 1995; and

❖ OSA No.19 of 1996 against the High Court's orders in another Application No. 963 of 1995 in C.S.No.14 of 1958 pertaining to another E.P. No.4 of 1996.

72. A Division Bench of the High Court allowed those original side appeals by order dated 06.11.1996 and:

❖ Directed the District Court, Ranga Reddy Dist. to entertain and dispose of the claim petitions on merits;

❖ Directed the restoration of possession of the land to the claim petitioners and to hear their objections before passing any orders in the E.P(s).

73. A similar order was passed in C.R.P. No.4921 of 1996 directing the District Court, Ranga Reddy District to register and dispose of the claim petitions on merits.

74. Challenging the said orders, Goldstone Exports and others filed,

❖ S.L.P. (C) Nos.8787-8789 of 1997 challenging the High Court's order dated 06.11.1996 in OSA Nos.11 and 20 of 1996; and

❖ S.L.P. (C) No. 23706 of 1996 against the orders in OSA No. 10 of 1996 (pertaining to Application No. 994 of 1995 and E.P. No. 3 of 1996).

75. By order dated 14.08.1997, this Court allowed all those SLPs and remanded OSA Nos.10, 11 and 20 of 1996 back to the High Court. This was the first order of remand.

76. In the interregnum, Goldstone and 15 others filed Application No. 517 of 1998 in CS No.14 of 1958 praying for passing a final decree, impleading the LRs of Nawab Khasim Nawaz Jung (defendant No. 157) with regard to 98.10 acres in Survey No.I72 of Hydernagar village on the ground

that they have been delivered possession of the property by the District Judge, Ranga Reddy District on 17.04.1996 pursuant to the direction of the High Court dated 28.12.1995 in Application No.994 of 1995. This application was allowed by the High Court by order dated 24.04.1998 and a final decree came to be passed in favour of Goldstone, recording that possession of the property measuring acres 98.10 guntas in Survey No. 172, Hydernagar village (Item No.38 of Schedule-IV) had been delivered to them by the Bailiff of the Court of the District Judge, Ranga Reddy District on 17.04.1996 in E.P. No. 3 of 1996. Perhaps this must be the first order of its kind, in the history of a partition suit, where a final decree came to be passed after the execution of the preliminary decree and taking delivery of possession of the property.

77. Within a few months of the passing of the final decree, the original side appeals remanded back from this Court were taken by the Division Bench of the High Court and they were dismissed by order dated 10.11.1998. It was held therein that the claim petitions were not maintainable and that the claimants therein were claiming rights through the parties to the decree in CS No.14 of 1958. In effect, it was held that the claims of the obstructionists are through some of the judgment-debtors and that therefore applications under Rule 97 or 99 of Order XXI are not maintainable, at the instance of the judgment-debtors, or persons claiming through them.

78. The order of the High Court dated 10.11.1998 became the subject matter of challenge before this Court in Civil Appeal Nos.7983 of 2001 with Civil Appeal Nos.7984-85 & 7986-88 of 2001. These appeals were allowed by this Court by a decision dated 23.11.2001, reported in NSS Naryana Sarma vs. M/s Goldstone Exports Private Ltd.[*(2002) 1 SCC 662*] This Court took the view that the claim petitions were very much maintainable, as the claim petitioners were claiming rights independently under the provisions of the Jagir Abolition Regulations.

After so holding, this Court remanded the matter back to the High Court for a fresh consideration of the claim petitions. This Court directed that the petitions filed by the appellants before this Court (in that case) had to be placed before a Single Judge for consideration.

79. Accordingly, all the applications including Application No.994 of 1995 were placed before L. Narasimha Reddy, J., (as he then was). The learned Judge framed as many as 11 issues and 2 additional issues as arising for consideration in all those applications.

80. Eventually, the learned Judge disposed of all the applications by an order dated 26.10.2004, whose operative portion, extracted hereunder, is self-explanatory:

> "68. For the foregoing reasons;
>
> (a) Application No.994 of 1995 is dismissed.
>
> (b) Application Nos.585 and 708 of 2002, and 1318 to 1320 of 2003 are allowed.
>
> (c) The petitioners pleaded throughout that the land in question was vacant. It has already been found that the filing of E.P. in the Court of District Judge, Ranga Reddy District and the various steps taken therein are contrary to law. Hence, the alleged delivery of possession in favour of the petitioners, is held to be symbolic.
>
> (d) The respondents are found to be holding title and possession of the lands covered by the respective sale deeds in their favour. Inasmuch as the delivery of possession was only symbolic, that too as regards vacant land, it shall be open to them to remain in possession of the said land. The petitioners do not have ony right. title and interest in respect of the land. which constituted the subject matter of E.P.No.3 of 1996.

(e) In case there is any resistance from the petitioners as to the right of the respondents to remain in possession of the land, the District Court, Ranga Reddy shall direct re-delivery of possession of such land to the respondents, if an application is filed for this purpose.

(f) It shall be open to the petitioners to take such steps as are open to them in law, in relation to the assignment of rights in their favour."

81. Aggrieved by the said order of the learned Single Judge dated 26.10.2004, the assignees of decrees filed a batch of appeals in OSA Nos. 52 to 59 of 2004. By a common order on 23.06.2006 the Division Bench of the High Court allowed the appeals holding that the claim petitioners failed to establish their independent right, title and interest much less possession of whatsoever nature.

82. Against the order dated 23.06.2006, the claim petitioners filed appeals in C.A.Nos. 3327-3331 of 2014 before this Court. When the appeals came up for hearing before this Court, it was noticed by this Court that one of the Judges of the Division Bench (Justice B. Seshasayana Reddy) which passed the order impugned therein, had earlier passed an order, while he was a District Judge, Ranga Reddy District in favor of the claim petitioners. Therefore, all the counsel representing various parties conceded before this Court that the common judgment of the Division Bench dated 23.6.2006 in the OSAs be set aside and the matter remanded back once again. Accordingly, this Court allowed the appeals by order dated 05.03.2014 and set aside the order of the Division Bench of the High Court dated 23.06.2006 and remanded the OSAs back to the High Court.

83. After the order of remand, the original side appeals were listed for hearing before a Division Bench of the High Court along with several applications. On 14.03.2018, the Division Bench of the High Court passed an order merely categorizing all pending appeals and applications arising out of CS No.14 of 1958 into 14 types and directing the parties to get ready for arguments in all those appeals and applications from the next date of hearing.

84. Though it was not a decretal order, but was one for house- keeping so that the hearing of all appeals and applications could proceed in a structured way, the said order was challenged by the legal heirs of Nawab Khasim Nawaz Jung and Goldstone/Trinity before this Court in S.L.P. (Civil) Diary No. 40990 of 2018. The grievance projected by these persons against the order of the High Court dated 14.03.2018 was that by categorizing the appeals and applications for hearing, the High Court was likely to reopen even the appeals already disposed of.

85. This Special Leave Petition was disposed of by this Court on 16.11.2018 at the stage of admission itself, without ordering notice to the respondents. The order reads as follows:

"Delay condoned.

Mr. Gopal Shankarnarayan, learned counsel, submits that the High Court is likely to reopen even those second appeals, which had already been disposed of.

The apprehension of. is based on the following observation made by the High court in the impugned order : -

"All the writ petitions falling under category-XIII and XIV will be taken up for hearing from 10th April 2018 on a day- today basis on a specific understanding that the learned Government Pleader will get ready to argue the writ petitions from 10th April 2018 onwards. For the purpose of convenience, the cause list will be printed as such without any modification, since the learned counsel appearing on all sides today have had the benefit of the memo filed by the Receivers-cumCommissioners and it is up to them to come prepared with respect to the cases that fall under these categories."

It is made clear that the execution will pertain only to those writ petitions which have otherwise survived on account of the remand.

In view of the above, the Special Leave Petition is disposed of."

86. Not satisfied with the above disposal, the above Special Leave Petition was brought up for hearing once again on 28.11.2018 upon being mentioned for a clarification. On such mentioning, this Court passed an order on 28.11.2018 to the following effect:

> "The operative portion of the order dated 16.11.2018 is modified to the following extent (with underlying modifications}
>
> "It is made clear that the adjudication will pertain only to those writ petitions and appeals {OSAs} which have otherwise survived on account of the remand,"
>
> Rest of the order shall remain as it is."

87. Thereafter, the Division Bench of the High Court took up all the original side appeals and disposed of the same by a common judgment dated 20.12.2019. The operative portion of the order of the Division Bench reads as follows:

> "414. In the result:
>
> (a) OSA NOs. 54, 56, 57, 58 of 2004 are dismissed and the common order of the learned single Judge dt.26.10.2004 in claim petitions Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application Nos. 1320 of 2003 filed under Or.21 Rule 97-101 CPC in E.P.3 of 1996, is affirmed;
>
> (b) It is declared that the claim petitioners/ respondents in the O.S.A.s have established their right, title and interest in the properties claimed by them in the claim petitions/ Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application Nos. 1320 of 2003.
>
> (c) We declare that appellants have failed to establish that the land in Hydernagar village (including Sy.No.172 therein) is Matruka property of Khursheed Jah Paigah, from whom they were claiming under the preliminary decree;
>
> (d) We declare that the land in Hydernagar village was Jagir land, but prior to 1948, pattas were granted to cultivating ryots under the Khursheed Jah Paigah like Ruquia Begum, Waris Ali, Ghani Shareef, Boddu Veeraswamy and other deemed pattedars by the Revenue Secretariat of HEH the Nizam in 1947. So title to this land passed on to the said cultivating ryots prior to 1948 itself and they validly conveyed title to the claim petitioners. This land therefore did not vest in the State Government after the Hyderabad Jagir Abolition Regulation, 1358 Fasli came into operation.
>
> (e) Though there is no remand of OSA No.59 of 2004 by the Supreme Court to this Court, the order dt.23.6.2006 in the said OSA is declared to be passed by a coram non Judice and to be a nullity and consequently we hold that it is not binding on any body including the claim petitioners in Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application No. 1320 of 2003; we also hold that the entire order is void including all findings/observations made in it including the finding that claim petitioners did not prove their title to lands in their occupation;
>
> (f) We declare that the preliminary decree dt.28.6.1963 in CS No.14 of 1958 as regards the lands in Hydernagar village is obtained by practicing fraud both on the Court as well as on the

claim petitioners and other occupants of lands in the said village and is declared void ab initio.

(g) We declare that the order dt.20.1.1984 in Application No.266/1983 and order dt.28.12.1995 in Application no.994/1995 passed by this Court are orders obtained by the applicants therein by playing fraud both on the Court and on the claim petitioners and also to be collusive in nature. Consequently they cannot be allowed to be executed against the claim petitioners and third parties.

(h) We declare that the order dt.24.4.1998 passing Final decree in Appln. No.517 of 1998 in CS No.14 of 1958 is null and void and it is further declared that there is no Final decree with regard to the Ac.98- 10 gts in Sy.No.172 of Hydernagar village, Ranga Reddy District of Item 38 of Schedule IV.

(i) We declare that the order of the District Judge, Ranga Reddy dt.29.03.1996 in E.P.No.3 of 1996 in C.S.No.14 of 1958 as well as the bailiff report dt.19.04.1996 executing the warrant dt.29.03.1996 are non-existent and to be null and void, and the appellants are precluded from placing any reliance on them in any proceeding against the claim petitioners or against any third party.

(j) We direct the appellants to forthwith restore to the claim petitioners in Application No.585 of 2002, Application No.708 of 2002, Application No.1319 of 2003 and Application No. 1320 of 2003 lands claimed by the claim petitioners in Sy.No.172 of Hydernagar village (which were taken from them pursuant to the Bailiff report dt.19.4.1996 in E.P.No.3 of 1996) and the appellants are further injuncted from interfering with their possession and enjoyment of the said land.

(k) The following implead applications are dismissed.

1. I.A.No. 1 of 2014 in OSA No.54 of 2004

2. I.A.No.2 of 2014 in OSA No.54 of2004

3. I.A.No.2 of 2019 in OSA No.54 of 2004

4. I.A.No.3 of 2019 in OSA No.54 of 2004

5. I.A.No.1 of 2014 in OSA No.56 of 2004

6. I.A.No.2 of 2014 in OSA No.56 of 2004

7. I.A.No.2 of 2019 in OSA No.56 of 2004

8. I.A.No.3 of 2019 in OSA No.56 of 2004

9 I.A.No.2 of 2014 in OSA No.57 of 2004

10. I.A.No.3 of 2019 in OSA No.57 of 2004

11. I.A.No.5 of 2019 in OSA No.57 of 2004

12. I.A.No.2 of 2014 in OSA No.58 of 2004

13. 1.A.No.2 of 2019 in OSA No.58 of 2004

14. I.A.No.2 of 2014 in OSA No.59 of 2004

15. I.A.No.3 of 2014 in OSA No.59 of 2004

16. I.A.No.4 of 2014 in OSA No.59 of 2004

17. I.A.No1 of 2017 in OSA No.59 of 2004

18. LA.No.2 of 2017 in OSA No.59 of 2004

19. I.A.No.1 of 2018 in OSA No.59 of 2004

20. I.A.No.2 of 2018 in OSA No.59 of 2004

21. I.A.No.2 of 2019 in OSA No.59 of 2004

22. I.A.No.3 of 2019 in OSA No.59 of 2004

23. 1.A.No.5 of 2019 in OSA No.59 of 2004

24. I.A.No.4 of 2019 in OSA No.59 of 2004

(k) The appellants shall pay costs of Rs.10,000/- to each of the respondents in the OSAs 54, 56-58 of 2004 /claim petitioners/applicants in Application No.585 of 2002, Application No.708 of 2002, Application - No.1319 of 2003 and Application No. 1320 of 2003."

88. Before coming to the above conclusions, the Division Bench recorded certain findings. The Bench held that the appellants therein (who are the appellants herein) failed to establish that the land in Hydernagar village is Mathruka property of Khurshid Jah Paigah and that the preliminary decree dated 28.06.1963 as regards the lands in Hydernagar village was vitiated by fraud. The Division Bench further held that the orders obtained in Application No.266 of 1983 and Application No.994 of 1995 are also vitiated by fraud and hence cannot be executed against the claim petitioners and third parties. Even the final decree passed on 24.04.1998 in Application No.517 of 1998 with regard to acres 98.10 guntas in Survey No.172 of Hydernagar was held by the Division Bench to be a nullity.

89. Insofar as applications for impleadment made by various parties in OSA Nos.54 and 56 to 58 of 2004 were concerned, they were dismissed by the Division Bench on the ground that third parties cannot get impleaded in a claim petition filed by somebody else and that any one claiming a right to property should have filed a separate claim petition. Insofar as the impleading applications in OSA No.59 of 2004 were concerned, the Division Bench felt that there was no remand of OSA No.59 of 2004 and that therefore, applications for impleading in an appeal not remanded by the Supreme Court cannot be allowed.

90. Challenging the common order dated 20.12.2019 passed by the Division Bench of the High Court for the State of Telangana, several parties have come up with the appeals on hand. The parties who have come up against the impugned judgment include those, (i) who are assignees of the decrees and who wanted the decree to be executed and possession handed over to them; (ii) whose applications for impleadment in OSA Nos.54 and 56 to 58 of 2004 have been dismissed; (iii) whose applications for impleadment in OSA No.59 of 2004 have been dismissed; (iv) who are concerned about the other half of the land in Hydernagar (Item No.38 of the Plaint Schedule IV), but who have suffered a collateral damage on account of the preliminary decree being held void ab initio; (v) defendant No.58 in the suit, who was not a party before the High Court, but who claims that the extent of land in Survey No.172 of Hydernagar village to which she became entitled, is now affected by the preliminary decree being held void; and (vi) the State of Telangana.

91. To put it in simple terms, (i) persons whose intra-Court appeals were dismissed by the High Court; (ii) persons whose applications for impleadment were dismissed by the High Court; (iii) persons who were not party before the High Court but whose rights in respect of the other part of Survey No.172, or other items of properties, are perceived to be affected by the impugned judgment; and (iv) the State Government, have come up with the appeals. The non-parties have come up with applications for leave to file Special Leave Petitions and those applications have already been allowed.

92. Apart from the appeals, there were also a few applications for impleadment, which may have to be addressed separately. Therefore, for the purpose of clarity, we shall divide this judgment into nine parts, as detailed hereunder:

Part-I -- will contain the meaning of certain peculiar words and expressions used throughout.

Part-II -- will contain details about who is pitted against whom in this battle.

Part-III -- will contain details as to how (i) the appellants; (ii) claim petitioners; and (iii) the State Government are claiming title to the very same property.

Part-IV -- will deal with the issues arising for consideration in this batch of appeals (including the appeals filed by the State of Telangana).

Part-V -- will deal with the claims of those whose impleadment applications were dismissed by the High Court but whose cases are similar to that of the claim petitioners.

Part-VI -- will deal with appeals by non-parties to the impugned judgment challenging one portion of the impugned judgment.

Part-VII – will deal with I.A. No. 118143 of 2022 filed by Mohd. Mustaffuddin Khan and others (legal heirs of defendant No.52) seeking to intervene in the appeal arising out of SLP (Civil) No. 8884 of 2022.

Part-VIII -- will deal with I.A. No.112090 of 2022 filed by an Asset Reconstruction Company.

Part-IX -- will deal with I.A. No. 36422 of 2023 filed by Durga Matha Co-operative House Building Society Ltd.

Part-I:

Decoding certain words and expressions

93. Before we proceed further, it may be necessary to decode certain words and expressions used in these proceedings from the beginning.

If not, they will continue to haunt and frighten the reader. Therefore, a glossary is presented as under:

(i)	Matruka :	The property, both movable as well as immovable left by a deceased muslim is called Matruka[*(2001) 8 SCC 599 titled "Jamil Ahmad and Others vs. Vth Addl. Distt. Judge, Moradabad and Others"*].
(ii)	Paigah :	This is a Persian (or Farsi) word which is used to denote pomp and rank. The word is also translated to mean "right- hand man" or "footstool".

(iii)	Paigah Grant :	It is an estate granted for the maintenance of the Army.
(iv)	Amir :	The holder of Paigah is called the "Amir".
(v)	Jagir :	1. Literally, the place of taking. An assignment to an individual of the government share of the produce of a portion of the land. There were two species of jaghires; one, personal, for the use of the grantee; another, in trust for some public service, most commonly the maintenance of troops. [Whart.] 2. Annual allowance ordered by the Ruler of an erstwhile State to be paid to the junior members of his family is not 'jagir'[*(1987) 1 SCC 52 titled "Himmatsinghji v. State of Rajasthan".*]. 3. Both in its popular sense and legislative practice, the word "jagir" is used as connoting State grants which conferred on the grantees rights "in respect of land revenue[*AIR 1955 SC 504, 520, 521: (1955) 2 SCR 303 titled "Thakur Amar Singhji v. State of Rajasthan"*]". But the word "Jagir" is defined in Regulation 2(f) of the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulations, 1358 Fasli to include a Paigah, Samsthan part of a jagir, village Mukhta, village Agrahar, Umli and Mukasa, whether granted by a Ruler or a Jagirdar, and as respects the period commencing on the date appointed for a jagir under Section 5, means the estate there-to-fore constituting a jagir;
(vi)	Jagirdar :	This expression is defined in Regulation 2(h) of the aforesaid Regulation to mean the person who immediately before the date appointed under Section 5 was the holder (qabiz) of a jagir and includes the Amir of a Paigah and the Vali of a Samasthan.
(vii)	Makta/Makhta :	The law Lexicon with Maxims authored by Sumeet Malik (published by Eastern Book Company, First Edition, 2016) indicates that this word is available in Hindustani, Telugu, Marathi and Gujarati. This word means "A contract, an agreement for work, rent, rate, a fixed rate or rent".

Part-II:

Who is fighting whom?

94. Unlike the routine run-of-the mill matters that come up before this Court where there are usually two parties to the disputes, there are several parties to the dispute on hand. On the one hand we have persons claiming title to the property on the basis of a preliminary decree and final decree in a suit for partition. On the other hand, we have persons (who were claim petitioners before the Executing Court) who claimed independent title on the basis of pattas granted to their predecessors, after the abolition of Jagir. We also have the State of Telangana staking a claim to the property in entirety on the ground that the property had vested in them long time ago. Interestingly, those who claim title on the basis of the preliminary and final decrees in the partition suit, were initially prepared to give up their claim to a portion of the property which is in the occupation of those who are before the Executing Court as obstructionists/claim petitioners. But the claim petitioners have taken a tough stand, exhibiting a willingness to do or die. But insofar as claim of the State Government is concerned, both the decree holders as well as the claim petitioners stand united in their opposition. Apart from these three sets of main contestants, there are also others including (i) those who are afraid of the potential of the impugned judgment to harm their interest in respect of other properties covered by the decrees in the civil suit; and (ii) an Asset Reconstruction Company to whom the mortgage of one of the properties has been assigned along with the debt.

95. For the purpose of easy appreciation, we shall refer to the parties as (i) decree holders and assignees of the decrees; (ii) claim petitioners who were parties before the High Court; (iii) claim petitioners whose impleadment applications were dismissed by High Court; (iv) third parties; and (v) State Government.

Part-III:

How do the different parties to the dispute claim title?

96. Persons who challenge the impugned judgment fall under three categories, namely, (i) the assignees of decrees; (ii) claim petitioners whose impleadment applications have been dismissed by the High Court; and (iii) the State Government.

The basis of the claim of the assignees of decrees

97. The parties to the suit, the decree holders and the assignees of the decrees (Cyrus/Gold Stone/Trinity) claim title to the land of extent of about 98 acres in Survey No.172 of Hydernagar primarily on the basis:

(i) that it was the Mathruka property of Khurshid Jah;

(ii) that Dildar-Un-Nissa Begum sought partition of this property along with other properties on the basis that it was inheritable;

(iii) that in the judgment and preliminary decree passed on 28.06.1963 the Court had adjudicated that the property was a Matruka property;

(iv) that even the proceedings before the Nazim Atiyat and the Muntakhab issued thereafter confirm the entire village of Hydernagar as Inam Altamgha in the name of Khurshid Jah;

(v) that Inam Altamgha is hereditary and transferable;

(vi) that pursuant to the preliminary decree, Receiver-cum-Commissioner appointed by the Court sought directions from the Court to the Collector to hand over possession of the land by filing an application in IA No.268 of 1966;

(vii) that on 23.02.1967, HEH Nizam (defendant No.156) sold his decretal rights to Cyrus (defendant No.206) by way of a registered sale deed;

(viii) that on 24.03.1967 Application No.268 of 1966 was allowed by the High Court directing the Collector to deliver possession to the Receiver;

(ix) that on 05.11.1970 the High Court passed an order in the application filed by Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206) for partition of the property into half amongst themselves holding that immediately after allotment of shares, D-157 and 206 may exercise their choice and move the commission to take steps in this regard;

(x) that on 15.03.1972, the Receiver-cum-Commissioner filed a memo before the Court specifically in regard to Item No.38-Hydernagar stating that he has verified the records available in Tehsil Office and the pahani patrikas and found that the patta has been shown in the name of Nawab Himayath Nawaz Jung (Ameer-E-Paigah) in respect of the lands in Survey Nos. 145, 163 and 172 of Hydernagar village to a total extent of 591.36 acres and that Survey No.172 is found to be 196 acres, 20 guntas;

(xi) that on 03.12.1972, the Receiver-cum-Commissioner prepared a scheme of partition for agricultural lands mentioned in List I, including Hydernagar and a person-wise (Statement 1) and survey-wise (Statement 1A) scheme of partition for Hafizpet and Hydernagar were prepared;

(xii) that on 28.03.1973, the Special Deputy Collector, Hyderabad filed a counter stating that Survey No.172 was grazing land and not cultivable land;

(xiii) that on 05.07.1974, the Court allowed Application No.19 of 1973 and directed the Government to hand over symbolic possession of the lands situated in Survey Nos. 145 and 163 of Hydernagar village measuring Acres 220 guntas 18 and Acres 175 guntas 6 respectively to the Receiver;

(xiv) that in so far as other lands were concerned, the Court recorded in its order dated 05.07.1974 that the Government was not even in a position to hand over symbolic possession and that therefore it is for the Receiver-cum-Commissioner to take such steps as are available in law;

(xv) that the Court vide order dated 31.01.1976 referred the matter to the Collector for partition and allotment of shares under Section 54 CPC, but the Collector never submitted a report in respect of Survey No.172;

(xvi) that on 09.04.1980, the Receiver-cum-Commissioner addressed a letter to the Collector stating that despite the Court's order dated 31.01.1976, the Collector had not taken any steps to divide the lands in Hydernagar, but on the other hand Taluq Office had granted pattas in the names of several persons, forcing the Receiver to file a contempt petition against Wasim-e-Jamabandi and to seek cancellation of pattas;

(xvii) that on 05.08.1983, the application filed by Nawab Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206) for deletion of names of plaintiff Nos.1 and 2 and other defendants and substitute them in their place (due to sale of their decretal rights) was allowed;

(xviii) that in 1983, the Receiver-cum-Commissioner submitted a report stating that as per the scheme of partition, Nawab Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206) are entitled to receive possession of the entire Survey No.172 Hydernagar as it was allotted to persons who have sold their decretal rights to them and that Survey No.172 does not need to be partitioned and possession can be given to Nawab Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206);

(xix) that on 20.01.1984, Application No.266 of 1983 filed by Nawab Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206) seeking possession was allowed and the Receiver-cum-Commissioner was directed to hand over the possession and a warrant for possession was also issued;

(xx) that the Receiver-cum-Commissioner in his report dated 13.07.1984, noted that the entirety of 196.20 acres of Survey No.172 has been allotted to Nawab Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206) pursuant to the sale of decretal rights by all parties who were allotted lands in Survey No.172 in the scheme of partition;

(xxi) that in 1991, since Nawab Khasim Nawaz Jung (defendant No.157) and Cyrus (defendant No.206) held whole of the 196.20 acres in Survey No.172, they came to an internal arrangement to assign their respective rights and for Cyrus' share, 10 plots were to be allotted to 16 petitioners;

(xxii) that on 29.11.1995, Cyrus (defendant No.206) executed Assignment Deeds in favour of Goldstone and others for their half share in Survey No.172 of Hydernagar and Nawab Khasim Nawaz Jung (defendant No.157) executed Assignment Deed in favour of Nazeer Baig and others; and

(xxiii) that the petitioners thus came to hold full rights over the land measuring 98.10 acres in Survey No.172.

The basis of the claim of the claim petitioners

98. The case of the claim petitioners was:

(i) that their predecessors were the original cultivators of the land in Survey No.172 of Hydernagar village;

(ii) that they became pattadars for the extents of land under their cultivation by operation of law, namely Rules 2 and 3 of the Rules Relating to Grant of Pattadari Rights in Non-Khalsa Villages;

(iii) that thereafter a Zamina Sethwar was also issued to that effect in 1947 itself with tonch map and Pote numbers by sub-dividing Survey No.172 into Survey Nos.172/1 to 172/25;

(iv) that the original Sethwar was obtained by the Collector from the State archives and forwarded to the Tehsildar (West), Hyderabad for recording the same in the revenue records vide the letter dated 19.05.1979, as evidenced by Faisal Patti;

(v) that the portions of the land in Survey No.172 were developed into a colony of residential plots by Cooperative Housing Societies and that the claim petitioners bought individual housing plots from the Cooperative Housing Societies; and

(vi) that the claim petitioners thus became the owners of individual plots.

The basis of the claim of the State of Telangana

99. The claim of the State is:

(i) that Khurshid Jah left no Mathruka property at the time of his death in 1902;

(ii) that he only had Paigah/Jagir property at that time;

(iii) that such Jagir property vested in the State by virtue of Jagir Abolition Regulations, 1949;

(iv) that these facts were confirmed by the Paigah Committee through the then Chief Justice of Hyderabad-Mirza Yar Jung in 1929;

(v) that the determination by the Paigah Committee is conclusive and binding on the parties;

(vi) that the findings of the Paigah Committee were further confirmed by the royal prerogative of Nizam, as seen from Farman;

(vii) that it is settled law that all Jagir lands vest in the State and they are inalienable and non-heritable, as opined by two Constitution Benches of this Court in Raja Ram Chandra Reddy vs. Rani Shankaramma[*AIR 1956 SC 319*] and Sikander Jehan Begum vs. Andhra Pradesh State Government[*AIR 1962 SC 996*] and two other decisions of this Court in State of Andhra Pradesh (Now State of Telangana) vs. A.P. State Wakf Board[*2022 SCC OnLine SC*

159] and Mohd. Habbibuddin Khan vs. Jagir Administrator, Government of Andhra Pradesh[*(1974) 1 SCC 82*];

(viii) that the State was made party to the suit as defendant No.53 only after defendant No.1 filed a written statement indicating that Item Nos.37 to 40 of the Plaint Schedule IV were taken over by the State;

(ix) that as held by this Court in Rangammal vs. Kuppuswami[*(2011) 12 SCC 220*], a suit for partition is not a suit for declaration or determination of title;

(x) that the findings recorded as though the properties are Mathruka properties, were a product of collusion on the part of the defendants who originally opposed the suit but who later entered into a compromise;

(xi) that as held by the High Court in the impugned judgment, the preliminary decree itself was vitiated by fraud and hence no findings recorded therein can be relied upon;

(xii) that even the proceedings before the Atiyat Court were not with respect to declaration of title but only for the apportionment of shares in the compensation;

(xiii) that the State in fact paid compensation; and

(xiv) that the land which vested in the State by virtue of Jagir Abolition Regulations, cannot be gifted away either to the decree holders or to the claim petitioners.

Part-IV:

Issues arising for consideration

100. A careful consideration of the judgment of the learned Single Judge and that of the Division Bench impugned herein and a consideration of the rival contentions, would show that the following issues arise for our consideration: -

(i) Whether the Division Bench of the High Court was right in declaring that the preliminary decree dated 28.06.1963 was vitiated by fraud and consequently null and void, especially when there was no pleading and no evidence let in?

(ii) Whether the concurrent findings of the Single Judge and the Division Bench of the High Court that Khurshid Jah did not leave behind any Mathruka property, goes contrary to the finding recorded in the Judgment and preliminary decree that has attained finality?

(iii) Whether the finding recorded in the judgment and preliminary decree that the lands in Hydernagar are Mathruka property is binding upon third parties?

(iv) What is the scope of the enquiry under Order XXI Rules 97-101, CPC ?

(v) Whether the claims of the claim petitioners stood established? and

(vi) Whether the State of Telangana has any legitimate claim and whether any such claim would still survive after a series of setbacks to the State Government in the Court room?

Issue No. (i) and (iv):

(i) Whether the Division Bench of the High Court was right in declaring that the preliminary decree dated 28.06.1963 was vitiated by fraud and consequently null and void, especially when there was no pleading and no evidence let in? and

(iv) What is the scope of the enquiry under Order XXI, Rules 97-101, CPC ?

101. As rightly contended by Shri Gopal Sankarnarayanan, learned senior counsel for the assignees of decrees, no one pleaded that the preliminary decree was vitiated by fraud. Allegations of fraud, as rightly contended, require special pleadings in terms of Order VI, Rule 4 CPC.

102. In fact, the impugned judgment of the Division Bench arose out of a challenge to the judgment of the learned Single Judge dated 26.10.2004. In paragraph 19 of his judgment, the learned Single Judge framed certain issues as arising for consideration. Paragraph 19 of the judgment of the learned Single Judge reads as follows:

"19. On the basis of the pleadings of the parties, the following issues and additional issues have been framed in all the applications:

1) Whether the land covered by S.No.172 of Hydernagar village is the matruka property of late Nawab Kursheed Jha Paigah?

2) Whether the Nizam administration has been prohibited by means of Farman by the Nizam prior to the abolition of inams from transferring the land in favour of any persons?

3) Whether the lands in question are inam (Jagir) lands and stand vested in the Government after the abolition of inams (jagirs)?

4) Whether the patta was granted in favour of Boddu Veera Swamy and others in 1947?

5) Whether the alleged pattas said to have been executed in favour of Boddu Veeraswamy and others are genuine documents or not?

6) Whether the claimants have been in possession and enjoyment of the property since the time of Boddu Veeraswami (grant of pattas)?

7) Whether the claim is barred by limitation?

8) Whether the judgment and decree in C.S. No.14 of 1958 is binding on the petitioners/claimants?

9) Whether the claimants have any right, title and interest over the property in question?

10) Whether the claim petition is barred by limitation in view of the remand order of the Supreme Court?

11) to what relief?

Additional Issues:

1) Whether the alleged delivery of possession on 17.4.1996 is not valid illegal and has no legal effect, since, final decree has not been engrossed on proper stamp paper and property has not been divided by metes and bounds?

2) Whether the claimants have otherwise protected their title by adverse possession?

> No issues were framed in Appln. No.994 of 1995. However, issues referred to above will cover the controversy in that application also."

103. As may be seen from the above issues, fraud was not one of the issues framed nor was there any finding recorded by the learned Single Judge about fraud. But the Division Bench read such a finding into the order of the learned Single Judge.

104. In addition, the Division Bench, while dealing with the scope of the enquiry under Order XXI Rules 97 to 101 CPC, went into the question (from paragraph 149 onwards) as to whether the issue of fraud, if raised in a claim petition, can be gone into by the Executing Court. After referring to the decision of this Court in National Textile Corporation (Maharashtra South) Ltd. vs. Standard Chartered Bank[*(2000) 10 SCC 592*] and the decisions of the Bombay and Calcutta High Court, the High Court held in the impugned judgment that an issue of fraud, if raised in a claim petition, can be gone into by the Executing Court. After so holding, the High Court first came to the conclusion that the report of the Bailiff dated 19.04.1996 as though possession of the land was taken, was fraudulent. After so holding in paragraph 203, the High Court opined in paragraph 208 that if fraud is borne out from the record of the Court itself, there is no necessity for a separate and specific pleading. To come to the said conclusion, the High Court drew inspiration from the decision of this Court in Lachhman Dass vs. Jagat Ram and Others[*(2007) 10 SCC 448*], wherein this Court held that where collusion between the parties is apparent on the face of the record, the absence of specific pleading was immaterial. The High Court then proceeded to hold that specific boundaries and survey numbers of the properties were not indicated in the Plaint Schedule but the Receiver curiously identified those properties and that when the land in Survey No.172, Hydernagar was in the possession of third parties/pattadars for a long time, from a period prior to 1948, the attempt of the plaintiff to get a decree behind their back was fraudulent and that therefore the preliminary decree as regards the lands in Hydernagar village was void ab initio. The High Court also found that there was suppression of facts in Application Nos. 994 of 1995 and 266 of 1983 and that such suppression was sufficient to uphold the plea of fraud.

105. But the difficulty with above finding of the High Court is that none of the parties to the preliminary decree challenged the same on the ground that it was vitiated by fraud. Though persons obstructing execution and making claims in terms of Order XXI, Rules 97 to 101 CPC are also entitled to attack the decree on the ground of fraud, such claim petitioners are obliged to make pleadings as to how fraud is borne out by the records.

106. We must remember that persons obstructing or resisting the execution of a decree for possession may fall under different categories. An obstructionist may be one claiming to have been put in lawful possession by one of the parties to the decree itself. An obstructionist may also be a person claiming independent title in himself.

107. In fact, an application under Order XXI Rule 97 CPC is to be filed by the decree-holder (or purchaser in execution of the decree), as can be seen from the statutory provision. Order XXI Rule 97 reads as follows:

> "97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.
>
> (2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

108. In contrast, an application under Order XXI Rule 99 is to be filed by the person dispossessed of immovable property, by the holder of a decree for possession.

109. Though by virtue of Rule 101 of Order XXI, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 shall be determined by the Executing Court and not by a separate suit, any order passed under Rule 101 is subject to the result of a suit where the obstructionist seeks to establish a right.

110. Rules 101 and 104 read as follows:

> "101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.
>
> 104. Order under rule 101 or rule 103 to be subject to the result of pending suit.—Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property."

111. It may be of interest to note that while Rule 101 allows the Executing Court to decide all questions including questions relating to right, title or interest in the property, Rule 103 creates a deeming fiction that the orders so passed under Rule 101 shall be deemed to be a decree.

112. Despite Rules 101 and 103, the order passed under Rule 101 is made, under Rule 104, subject to the result of any pending suit.

113. In the case on hand, the obstructionists do not claim title under any one of the parties to the litigation. They set up independent title in themselves. What was filed by Dildar-Un-Nissa Begum was only a suit for partition. In a suit for partition, the Civil Court cannot go into the question of title, unless the same is incidental to the fundamental premise of the claim.

114. Take for instance a suit filed for partition by a member of the Hindu Undivided Family. If one of the coparceners or an alienee from such coparcener, claims independent title to one of the properties bought in his individual name, it may be open to the Court while trying the suit for partition to decide whether such a property belongs exclusively to the defendant. To this limited extent, examining the title of a party to the suit schedule property is permissible even in a suit for partition.

115. But in a simple suit for partition, the parties cannot assert title against strangers, even by impleading them as proforma respondents. The strangers who are impleaded in a partition suit, may have nothing to say about the claim to partition. But they may have a claim to title to the property and such a claim cannot be decided in a partition suit.

116. Realising this difficulty, it was contended by Shri Gopal Sankarnarayanan, learned senior counsel for the appellants that the suit was not just a suit for partition simpliciter, but a suit for declaration that the properties are Mathruka properties of late Nawab Khurshid Jah. He drew our attention in this connection to the relief sought in paragraph 18(a) of the plaint.

117. At the cost of repetition, we shall extract the relief sought in paragraph 18(a) of the plaint once again as follows:

> "directing that the properties detailed in Schedule IV which are in the possession of the party as detailed therein and the other (b) category properties detailed in para (12) above which are

in the possession of defendant No.43 and all other properties whatsoever that may be found to belong to Mathruka of the late Nawab Khurshid Jah be divided by metes and bounds and plaintiff be given her 29/1944th share therein."

118. Since the relief sought in paragraph 18(a) of the plaint refers to paragraph 12 of the plaint, we may have to take a look at paragraph 12 of the plaint. Paragraph 12 of the plaint (extracted elsewhere) states that as per Farman dated 17.01.1929, the Nizam prevented the distribution of two classes of Mathruka properties and that the list of properties purchased out of the income of the Paigah, detailed in Schedule IV and IVA are of the approximate value of Rs.6,52,058-2-0.

But in paragraph 13 of the plaint, the approximate aggregate tentative value of the suit schedule properties is mentioned as O.S. Rs.7,52,058-20. The value of the plaintiff's share namely 29/2944th share, is arrived at in paragraph 13 as O.S. Rs.7,408-1-1.

119. The way in which the suit claim has been valued and court-fee paid, demonstrates very clearly that it was not a suit for declaration of title to any property. It was only a suit for partition. All the suit schedule properties have been valued at a particular rate and court-fee was paid on the value of the share, of which the plaintiff was seeking partition. If it was a suit containing a prayer for declaration of title, the court-fee was liable to be paid on the whole value of the property and not on the share sought to be partitioned.

120. Therefore, we are of the view that the preliminary decree dated 28.06.1963 could not have determined the claim to title made by the legal heirs seeking partition, as against third parties. Any finding rendered in the preliminary decree, that the properties were Mathruka properties liable to be partitioned, was only incidental to the claim of the legal heirs and such a finding will not be determinative of their title to property as against third parties.

121. In fact, we have already noted that as many as 50 issues were framed for trial in the suit. But all these 50 issues were found in the judgment and preliminary decree to revolve only around 10 broad points, both of fact and of law. Those 10 points read as follows:

"The questions at issue arising in the suit revolve round the following ten broad pointes both of fact and of law.

I. Whether Nawab Khurshid Jah left any property of the description covered by para 2 of the Farman Ex. P 30 dated 5th Shahabad, 1347 (corresponding to 17-1-1929) and Or.3 clause 9; and what is its extent.

II. Whether that property is liable to be divided amongst the surviving legal heirs in the line of his succession?

III. Whether the claim for such division is within time?

IV. Who are various heirs?

V. What are the respective rights of those heirs, including the rights of the Amir Paigah who has been in possession of these properties?

VI. Is defendant No.1 liable for rendition of accounts and mesne profits, as claimed?

VII. Whether any of the defendants have cause damage or destruction to the Matruka property as alleged by the parties, if so, what is their extent?

VIII. Whether they or any of them made any alienation; to what extent, and how the equities in case of transferees on record be adjusted?

IX. Whether the suit is bad for misjoinder of parties or causes of action.

X. Whether the court-fee paid is correct."

122. None of the above 10 points relate to the assertion of the claim of third parties (except the Government) to title to the properties.

123. Therefore, the manner in which the judgment and preliminary decree dated 28.06.1963 were sought to be used, abused and misused by parties to the proceedings as well as non-parties who jumped into the fray by purchasing portions of the preliminary decree and seeking to execute them through Court, defeating the rights of third parties, is what has prompted the Division Bench of the High Court to hold that the preliminary decree is vitiated by fraud. Though we may not go to that extent, we would certainly hold that, (i) what was a simple suit for partition; and (ii) the incidental finding recorded that the properties were Mathurka properties, have been used by parties and non-parties to assert title to the properties against strangers. This was definitely an abuse of the process of law.

124. There are two more aspects which highlight the abuse of the process of law in this case. They are as follows:

(i) The preliminary decree for partition was passed on 28.06.1963; the Executing Court passed an order on 29.03.1996 in E.P. No. 3 of 1996 directing the Bailiff of the Court to deliver possession of the land in Survey No. 172 of Hydernagar to the decree holder; and thereafter a final decree was passed in Application No. 517 of 1998 on 24.04.1998. Normally a final decree follows a preliminary decree and execution follows the final decree. But strangely, the final decree followed execution, in this case.

(ii) The order passed by the Executing Court on 29.03.1996 in E.P. No. 3 of 1996 directing the Bailiff of the Court to deliver possession of the land in Survey No. 172 of Hydernagar was a specimen of a unique kind. It may be recalled that an application was taken out by the Receiver-cum-Commissioner way back in 1973, in Application No. 19 of 1973, praying for a direction to the Collector to hand over possession of the lands in Survey Nos. 145, 163 and 172 of Hydernagar. On this application, the High Court passed an order on 05.07.1974, directing the Government to hand over symbolic possession of the lands situate in Survey Nos. 145 and 163 of Hydernagar village measuring acres 220 guntas 18 and acres 175 guntas 6 respectively to the Receiver. But insofar as other lands were concerned (i.e., Survey No. 172), the Court recorded in its order dated 05.07.1974 that the Government was not even in a position to hand over symbolic possession and that therefore it is for the Receiver-cum-Commissioner to take such steps as are available in law. In other words, even symbolic possession of the land in Survey No. 172 was not possible in the year 1974, but actual possession became possible in the year 1996 after the decrees were sold by way of assignments. We do not know what magic was played by Goldstone, like a philosopher's stone[*A mythical substance supposed to change any metal into Gold or Silver or to cure all diseases and prolong life indefinitely.*], to make this miracle possible.

125. It is on record that taking advantage of the finding rendered in the judgment and preliminary decree dated 28.06.1963, several assignments of the decree had taken place and the assignees have made several applications seeking a final decree as well as possession of part of the properties described in the suit schedule, on the basis of compromise entered into with the assignors of the decree. The number of final decree applications disposed of by the High Court so far and the number of final decree applications now pending on the file of the High Court bear ample testimony to a gross abuse of the process of law, which has prompted the High Court to brand the preliminary decree as vitiated by fraud and consequently null and void. In fact, we may take judicial notice of the fact that during 2017-19, the High Court constituted a Special Division Bench to hear and dispose of hundreds

of such final decree applications filed on the basis of alleged compromises between few parties. Most of them are still pending.

126. Technically the High Court may not be right, in the true legal sense, in branding the preliminary decree as vitiated by fraud. But the fact remains that insofar as third parties to the family of Khurshid Jah (and those claiming under them) are concerned, the preliminary decree is nothing more than a mere paper, as those third parties have had nothing to do with the claim for partition, though they have had a legitimate claim to title to the properties, described in the suit schedule. Therefore, we would only say and hold on question Nos. (i) and (iv) that the judgment and preliminary decree dated 28.06.1963, though may not be vitiated by fraud, are certainly not binding upon third parties like the claim petitioners and the Government who have set up independent claims. We also hold that in an enquiry under Order XXI, Rules 97 to 101, CPC, the Executing Court cannot decide questions of title set up by third parties, who assert independent title in themselves. Marina Beach (in Chennai) or Hussain Sagar (in Hyderabad) or India Gate (in New Delhi) cannot be included as one of the items of properties in the Plaint Schedule, in a suit for partition between the members of a family and questions of title to these properties cannot be allowed to be adjudicated in the claim petitions under Order XXI, Rules 97-101, CPC.

127. Insofar as the Government is concerned, heavy reliance is placed by the learned senior counsel for the appellants on the fact that the State of Andhra Pradesh was impleaded as defendant No.53 and that they have not only filed the written statement but also examined four witnesses and that therefore the claim of the Government is sealed.

128. It is true that Item Nos.35 to 40 of Plaint Schedule IV were taken up for consideration in the judgment in support of the preliminary decree, under Issue Nos.13(c) and 14(a). It is also true that the Court considered the evidence of DWs 26 and 32 to 34. Eventually, the Court came to the conclusion (in the judgment in support of the preliminary decree) that while Item Nos.38 and 39 had admittedly come from Khurshid Jah's time, there was no evidence that they were taken over by the Government at the time of integration. Not stopping at that, the Court recorded a finding in the judgment and preliminary decree that the mere denial of defendant No.1 would not defeat the plaintiffs' claim. Such a finding was recorded in the teeth of a categorical stand taken by defendant No.1 that Item Nos.38 and 39 are in the possession of the State Government.

129. In fact, all the parties before us admitted that in one portion of the property there is a building housing the Hyderabad Metro Water Works and Sewerage Board. We do not know how despite such an admission, the Government can be said to be an interloper and a meddler.

130. As we have stated elsewhere, it can be seen from the Plaint Schedule IV which was made part of the judgment and decree dated 28.06.1963, that the property which is the subject matter of the litigation on hand, finds a place at Serial No.32 of Annexure IV to the judgment and decree and it corresponds to Item No.38 of Plaint Schedule IV. The description of this property in the Plaint Schedule IV reads as follows:-

> "Hydernagar patta lands. Compact area of 1210 acres"

131. What was included as Item No.38 of Plaint Schedule IV and enlisted at Serial No.32 of Annexure IV to the judgment and decree, did not contain (i) either the survey numbers of Patta lands; or (ii) the boundaries of the land. Column No.4 of the table in Annexure IV to the judgment and decree, contains details of the name of Mahalla or place. As against Hydernagar Patta lands, what was indicated in Column No.4 was "Hydernagar Taluk: Garbi". Nobody knew and nobody cared to find out before the delivery of the judgment dated 28.06.1963 as to whether Hydernagar was a village or Taluk and whether the whole of Hydernagar comprised of land, only of the total extent of 1210 acres or something more. If the total extent of land available in Hydernagar was only 1210 acres, it would have been mentioned in the Plaint Schedule as "the whole of Hydernagar". On the other hand, if what

was included was only part of Hydernagar, the survey numbers and boundaries ought to have been mentioned. But it was not done.

132. In fact, the judgment in support of the preliminary decree contains a conundrum. The Court first recorded that 50 issues arose for consideration in the suit. Out of the 50 issues originally framed for consideration, Issue No.14(a) concerned Item No.38 (Hydernagar) specifically. This issue reads as follows:-

> "14(a). Are the properties mentioned in Items 37 to 40 of Schedule IV, the maktas and inam properties and, if so, whether the civil court has no jurisdiction in relation to the same?"

133. The above Issue No.14(a) which directly concerned Item No.38 of Plaint Schedule IV, was taken up by the learned Judge along with Issue No.13(c), which related to Item Nos. 35 and 36, in which certain office buildings in the possession of the Government were in existence.

134. On these two issues, namely Issue Nos. 13(c) and 14(a), which were taken up together, the learned Judge rendered the following findings:-

> (i) that Item Nos. 35 and 36 are office buildings at Shahbad and Bhalki, taken over by the Government after the Jagir Abolition Regulations and that after the States Reorganisation, these buildings came to be located within the territorial limits of Mysore State and that they had been handed over to the Government of Mysore;
>
> (ii) that since these properties have vested with the Government by virtue of the provisions of the Jagir Abolition Regulations, the parties were not entitled to claim the same as Khurshid Jah's Mathruka;
>
> (iii) that Item Nos.37, 38 and 40 are within the territorial limits of the district of Hyderabad and Item No.39 is in the district of Nalgonda;
>
> (iv) that no claim was set up by the Government in relation to Item Nos.38 and 39 and the witnesses do not say that they were Makta lands or that they were taken over by the Government;
>
> (v) that as regards Item No.40, the title was in doubt;
>
> (vi) that therefore Item Nos.35, 36, 37 and 40 must be deleted from the Plaint Schedule IV;
>
> (vii) that Item Nos.37 and 40 will be available for partition in case the Government released the same as a result of enquiry;
>
> (viii) that enquiry into Inams or maktas is certainly not within the exclusive jurisdiction of the Civil Court; and
>
> (ix) that therefore, Issue No.14(a) must be answered in the affirmative and Issue No.13(c) against the plaintiff.

135. The entire discussion on Issue Nos.13(c) and 14(a) shows that the Trial Court did not actually record a clear finding as to how Item No.38 of Plaint Schedule IV belonged to the family and became liable for partition. The entire discussion revolved around Item Nos.35 to 40. By a process of elimination, the Court first deleted Item Nos.35 and 36, on the ground that they were taken over by the Government after Jagir Abolition Regulations and that those properties had vested with the State of Mysore. Then the Court deleted Item Nos.37 and 40 on the ground that the title to the same was in suspension and that the answer to the question would depend upon the decision of the concerned Authorities. After thus eliminating Item Nos. 35, 36, 37 and 40, the Court simply jumped to the

conclusion that Item Nos. 38 and 39 were available for partition. This was despite the fact that even according to defendant No.1, these items were in the possession of the Government. The logic that the Court applied to Item Nos.35 and 36 were not applied to Item Nos.38 and 39.

136. What is interesting is the way in which Issue No.14(a) was framed and the way it was answered. At the cost of repetition, we will

137. extract Issue No.14(a) which reads as follows:-

> "14(a). Are the properties mentioned in Items 37 to 40 of Schedule IV, the maktas and inam properties and, if so, whether the civil court has no jurisdiction in relation to the same?"

The answer to this question was rendered by the Court as follows:

> "Issue No.14(a) must be answered in the affirmative."

138. If Issue No.14(a) is answered in the affirmative, all the properties in Item Nos. 37 to 40 are Maktas and Inam properties and the Civil Court has no jurisdiction. This is the conundrum presented by the preliminary decree. Therefore, the holders of the preliminary decree and their assignees and purchasers cannot claim that the Government had already become a persona non grata.

139. Therefore, in fine, we hold on Issue No. (i) that the judgment and preliminary decree dated 28.06.1963, though may not be vitiated by fraud, are certainly not binding upon third parties like the claim petitioners as well as the Government who have set up independent claims and that whatever was done in pursuance of the preliminary decree was an abuse of the process of law. We also hold on Issue No. (iv) that in an enquiry under Order XXI, Rules 97 to 101, CPC, the Executing Court cannot decide questions of title set up by third parties (not claiming through or under the parties to the suit or their family members), who assert independent title in themselves. All that can be done in such cases at the stage of execution, is to find out prima facie whether the obstructionists/claim petitioners have a bona fide claim to title, independent of the rights of the parties to the partition suit. If they are found to have an independent claim to title, then the holder of the decree for partition cannot be allowed to defeat the rights of third parties in these proceedings.

Issue Nos. (ii) and (iii)

> (ii) Whether the concurrent findings of the single Judge and the Division Bench of the High Court that Khurshid Jah did not leave behind any Mathruka property, goes contrary to the finding recorded in the Judgment and preliminary decree that has attained finality? and
>
> (iii) Whether the finding recorded in the Judgment and preliminary decree that the lands in Hydernagar are Mathruka property are binding upon third parties?

140. The answer to Issue No.(iii) is not very difficult to be found. While dealing with Issue Nos.(i) and (iv), we have already held that any finding relating to title to a property, recorded in a simple suit for partition cannot be binding on third parties. The same would hold good even in relation to the finding in the preliminary decree that most of the suit schedule properties were Mathruka properties. Making this clear let us go back to Issue No.(ii).

141. Issue No.(ii) arising before us is as to whether the finding recorded by the learned Single Judge in Application No.994 of 1995 and the finding recorded by the Division Bench in the impugned judgment that Khurshid Jah did not leave behind any Mathruka property is contrary to the finding recorded in the preliminary decree that has attained finality?

142. For finding an answer to this question, let us first go back to the judgment in support of the preliminary decree and see if at all the Trial Judge came to the conclusion that most of the suit properties left behind by Khurshid Jah were Mathruka properties.

143. In the judgment in support of the preliminary decree, the Trial Judge framed two issues as Issue Nos.7(a) and 7(b). Issue No.7(a) was as to whether the suit property detailed in Plaint Schedules IV, IVA and IVB were the Mathruka properties of Khurshid Jah. Issue No.7(b) was about the effect of the conclusions reached by Mirza Yar Jung Committee in this behalf.

144. In the judgment in support of the preliminary decree, the discussion under Issue Nos. 7(a) and 7(b) begins on a correct note to the effect that for a success in the case, the plaintiffs have to prove that the property was the property left behind by Khurshid Jah. It is also noted at the very beginning of the discussion that the Mathruka property of Zafar Jung and Imam Jung is distinct from the Mathruka of Khurshid Jah. Interestingly, the judgment in support of the preliminary decree records that while considering Issue No.7(a) it would be necessary to consider other connected issues, such as Issue No.8(a) which dealt with a settlement made by Khurshid Jah; Issue No.9 which dealt with the claim of defendant No.1 to be the sole owner of certain items of properties; Issue Nos.10 and 11 which dealt with the ownership of two items and four items of property, respectively; Issue No.12 which dealt with the claim of defendant No.1 to specific items of properties; and Issue No.20 which dealt with the claim of defendant No.1 to be in adverse possession.

145. Therefore, the discussion on Issue Nos.7(a) and 7(b) were divided by the Trial Judge into separate parts, with the first part dealing with Issue Nos.8(a), 11 and 12 and the next part dealing with Issue Nos.9 and 20 along with Issue Nos.7(a) and (b).

146. By combining all these issues with Issue Nos. 7 (a) and (b), the Trial Judge seems to have simply lost his way out, resulting in no direct finding on Issue Nos.7(a) and 7(b).

147. The findings recorded by the Trial Judge under the heading “Issues 7(a) and 7(b) covering Issues 8(a) and 8(b), 9, 11, 12 and 20” are as follows:

> (i) that there were two documents, one of partition and another of gift marked as Exhibits D.1(6) and D.1(29), relied upon by defendant Nos.1 and 2;
>
> (ii) that under these documents, Khurshid Jah made a disposition of all his properties;
>
> (iii) that in one of the recitals contained in the document, he directed that the immovable properties divided among his two sons shall remain in his possession and at his disposal;
>
> (iv) that this recital gave the document, the colour of a Will;
>
> (v) that the second document was in the nature of a codicil;
>
> (vi) that under Muslim law, a testamentary disposition can be made in respect of not more than 1/3rd of the properties;
>
> (vii) that if the disposition is in favour of an heir, it is invalid unless consented to by the other heirs;
>
> (viii) that one of the heirs of Khurshid Jah did not give his consent and hence the Will was of no avail;
>
> (ix) that according to the testimony of DW-25 (Vittal Rai, an old employee of the Paigah), after the death of Khurshid Jah, the property of the Paigah was kept under the supervision of Zafar Jung who was never designated as Amir Paigah;

(x) that after the death of Zafar Jung, the whole property of Khurshid Jah was taken over by the Court of Wards, which managed the same till 1338 F;

(xi) that after Farman of 1338F, all the properties were declared as properties belonging to the estate of Khurshid Jah;

(xii) that till the abolition of Paigah the properties were managed by the Committee Intezami Paigah;

(xiii) that Exhibit P.7(a) relates to lands and maktajat;

(xiv) that they were Hashmatpet, Hafeezpet, Hydernagar, etc;

(xv) that the documents Exhibit P.2(a), P.3(a), P.4(a), P.6(a) and P.7(a) were all copies of the statements of income and expenditure obtained from the Central Records Office;

(xvi) that the claim of defendant No.1 that under Exhibits D.1(6) and D.1(29) the properties belonging to Khurshid Jah were gifted away and partitioned, cannot be accepted;

(xvii) that the property left by Khurshid Jah was never partitioned and they continued to be in possession of successive Amir Paigah;

(xviii) that till the abolition of Paigahs, these properties were managed by the Committee of Amir Paigahs;

(xix) that the estate of Khurshid Jah, for some time prior to the abolition of the Jagirs, was put under a Special Court of Wards;

(xx) that though under Exhibit D.1(3) dated 25.04.1950, the estate was directed to be released under a Farman, the supervision of the estate nevertheless continued under orders of the Chief Minister of Khurshid Jah Paigah;

(xxi) that merely because the Government handed over the estate to Himayat Nawaz Jung, in recognition of his right as Amir Paigah, he cannot be deemed to be the exclusive owner; and

(xxii) that defendant No.1 cannot possibly set up title to Item No.1 of Plaint Schedule IV against any other defendant who comes in the line of succession of Khurshid Jah.

148. In the preceding paragraph, we have summarised all the findings recorded by the Trial Judge under Issue Nos.7(a) and 7(b) taken up together with Issue Nos.8(a) and 8(b), 9, 11, 12 and 20. In fact, the discussion on Issue Nos. 7(a) and 7(b) starts at internal page No.198 of the certified copy (photocopy) of the judgment dated 28.06.1963 and it goes up to internal page No.224. In all these 27 pages, the word 'Mathurka' appears perhaps only in one place namely page No.212 and that too as a statement made by one of the witnesses to the effect that Mathruka was never partitioned between Zafar Jung and Imam Jung.

149. In other words, no finding was ever recorded by the Trial Judge in his judgment dated 28.06.1963 that the properties left behind by Khurshid Jah were Mahtruka properties. Therefore, the contention as though there was such a finding and that the finding has attained finality and that the impugned Judgment goes contrary to such a finding, is wholly misconceived.

150. The portions of the judgment dated 28.06.1963 relied upon by the appellants to show that the properties were held to be Mathruka properties left by Khurshid Jah, were all not findings recorded under Issue Nos. 7(a) and 7(b). They were either part of the pleadings or part of the findings recorded

under Issue No. 6(b), which related to the report of the Mirza Yar Jung Committee with particular reference to who constituted the surviving legitimate heirs. Therefore, the reliance placed by the appellants on some portions of the judgment dated 28.06.1963, to say that the property was held to be Mathruka, is misplaced.

151. For claiming that the suit properties were Mathruka properties, reliance is placed by the appellants also upon:-

- The sanad dated 03.12.1877;

- GOMS No.1106 dated 06.06.1959 issued by the State of Andhra Pradesh ordering an Inam Enquiry;

- The orders passed by the Nazim Atiyat Court first on 11.09.1959 and then on 30.10.1968; and

- The Muntakhab issued by the Commissioner on 14.02.1983.

152. But we do not know how the appellants are placing reliance upon these documents in support of the contention that the properties left behind by Khurshid Jah are Mathruka properties. If we have a look at the chronology of events, it may be seen that the sanad relied upon by the appellants merely state as follows:-

> "It is stated that Nazra (i.e. the Farm Land) of Hafiz Peth and Mazra (i.e. the Farm Land) of Hydernagar, as per the old boundaries, out of Sivar (i.e. Limits) of village Miyanpur of the said Parganna Sarka and of the said Sba with the Nahasil i.e., the Land Revenue assessment of Rupees One thousand one hundred and thirty four and annas ten, given in lieu of Mazna Timmaeepalli of Sivar of Village Amir Khanguda of Pargana.
>
> Ibrahimpatan which has been included in "Khalsa" i.e., in Government lands and the Land of Khurshid Nagar which has gone under Railway Road, both of which had belonged to Khurshid Jah as his purchased ones (i.e. being his 'Zar Kharid i.e. purchased lands) and 'Kharij' 'Jama' i.e. excluded from Government demand. Hence from the commencement of the year 1286 Fasli were determined under the heading 'Inam Altamgha' and Kharij" Jama' (i.e. excluded from Government demand) in the name of the said Bahadur i.e. Khurshid Jah Bahadur and his descendants and successor without the condition of Asami i.e. without naming anyone particularly, along with the remission of 'Chowth' etc items. You, by contracting the Naib of the said Bahadur i.e. the Deputy of Khurshid Jah Bahadur, should continue to make payment of the due amount of revenue assessment, in time and at the season. Treating this to be a strict order i.e., 'Takeed' in this matter, action be taken as stated above."

153. The sanad merely states that the Government lands and land of Khurshid Nagar were acquired for the Railway Road and that the acquired land was the purchased land of Khurshid Jah. If on account of the said statement, the land has to be construed as Mathruka, we do not know how and why after the death of Khurshid Jah these lands also went into the hands of Paigah Committee. In any case, these are the questions which could not have been decided by the Court in a suit for partition.

154. The order of the Nazim Atiyat dated 30.10.1968 and the Muntakhab issued by the Commissioner on 14.02.1983 could not have been produced before the Trial Judge in CS No.14 of 1958, as these documents came into existence after the judgment and preliminary decree dated 28.06.1963.

155. It must be remembered that the entire basis of the claim of the appellants is that as per the preliminary decree these properties were Mathruka properties. But the same is not borne out by the

findings recorded by the Trial Judge in 27 pages of his judgment dated 28.06.1963 on Issue Nos. 7(a) and 7(b).

156. Much was sought to be made, out of the finding recorded by the Nazim Atiyat Court that the lands in Hafeezpet and Hydernagar included at Serial Nos.380 and 381 in the notification as per Appendix 'F' to the order of Nazim Atiyat was Inam-al-Tamgha. The annexure to the order of the Nazim Atiyat describes what Inam-al-Tamgha is. It reads as follows:-

> "1. The villages of S.No.380 and No.381 have been verified as "INAM AL-TAMGHA" in the name of Khurshid Jah Bahadur as per "KAIFIYAT-I-JAGIRDARAN" of 1296H.
>
> The word "Tamgha" means "Royal Charter." In the documents used for grant of Jagir or Inam to the Jagirdars or anyone else, there used to be a checklist of information about the Jagir/Inam/Grant, to describe its nature, labelled as "Type of Jagir/Inam/Grant" of land. The Jagir granted to Nawab Khurshid Jah Bahadur was "Inam-al-Tamgha", granted to him either in recognition of his services or in lieu of any Jagir/land or plot of land acquired by the Govt. out of his personal property for any specific purpose like laying of road/railway line or construction of any public facility etc."

157. As we have stated elsewhere, the order of the Nazim Atiyat was not before the Trial Judge. The Trial Judge did not record a finding that it was Inam-al-Tamgha. In any case, it was only a suit for partition.

158. Even if we assume that it was Inam-al-Tamgha, then a question arises as to whether the same stood abolished after the advent of the Hyderabad Abolition of Inams Act, 1955 (Act No.VIII of 1955) *[for short "1955 Act"]*. This Act defines the word "Inam" under Section 2(1)(c) to mean the land held under a gift or a grant made by the Nizam or by any Jagirdar, holder of a Samsthan or other competent grantor and continued or confirmed by virtue of a Muntakhab or other title deed, with or without the condition of service. Therefore, if at least the order of Nazim Atiyat and the Muntakhab had come into existence before the preliminary decree and they had been produced as exhibits in the suit, the Trial Judge could have had an opportunity to apply his mind to find out the effect of the 1955 Act on Inam-al-Tamgha.

159. Since everyone focused attention only on Hyderabad Jagir Abolition Regulations, 1948 and a contention was raised that the personal properties of the Jagirs were exempt under Section 18, no one ever examined the impact of 1955 Act. Even if the property in question escapes the guillotine under the Jagir Abolition Regulations, it may meet its fate under the 1955 Act.

160. Therefore, we hold on Issue Nos.(ii) and (iii) that the Single Judge as well as the Division Bench (in the impugned judgment) were right in holding that the properties were not established to be Mathruka properties. The effect of the order of the Nazim Atiyat was not examined by the Trial Judge. In any case, such an examination had to be done independently and not in a partition suit, keeping in view, the 1955 Act and various subsequent enactments relating to agricultural land reforms and urban land ceiling.

Issue No.(v):

Whether the claims of the claim petitioners stood established?

161. It was contended by Shri Gopal Sankaranarayanan, learned senior counsel for the appellants that the claim petitioners (obstructionists to the execution) could not produce a single scrap of paper to show how they derived the title to the portions of land in Survey No.172 of Hydernagar.

162. But the said contention does not appear to be wholly correct. Paragraph 58 of the order of the learned Single Judge dated 26.10.2004, a portion of which is extracted in the impugned judgment of

the Division Bench, states that these claim petitioners had filed originals or certified copies of the pattas granted in favour of their predecessors-in-title. From paragraph 59 up to paragraph 61, the learned Single Judge dealt with Issue No.4 as to whether patta was granted in favour of Boddu Veeraswamy and others. He also dealt with additional Issue No.2 as to whether the claimants have otherwise perfected title by adverse possession. The learned Single Judge recorded that Boddu Veeraswamy and others were granted pattas in the year 1947 and that since these documents were more than 30 years old, no further proof of these documents was necessary in view of Section 90 of the Evidence Act,1872. The learned Single Judge also recorded that there was ample evidence in the form of sethwar, faisal patti, jamabandi, tax receipts and proceedings before various authorities. Eventually, the learned Single Judge concluded in paragraph 61 of his judgment that even if the documents relied upon by the claimants are found to be defective, the possession of the claimants have become adverse to the appellants herein.

163. Assailing the said finding, it was contended by Shri Gopal Sankaranarayanan, learned senior counsel for the appellants that the presumption under Section 90 will apply only when an original document is produced and only after it is proved that it has come from proper custody.

164. But the Explanation under Section 90 makes it clear that no custody is improper if it is proved to have had a legitimate origin or the circumstances of the particular case are such as to render such an origin probable.

165. In any case, the learned Judge was not dealing with a title suit. Assuming that the claim petitioners could not produce documents to prove flow of title, they were admittedly in possession and they were sought to be dispossessed through the District Court, Ranga Reddy District.

166. When the entire claim of the appellants that the properties were Mathruka properties inheritable by the legal heirs had failed, the question of executing a decree on the strength of the plea that the property is a Mathruka property does not arise.

167. It was argued by the learned senior counsel for the appellants that the High Court wrongly relied upon sub-sections (2) and (3) of Section 86 of the Hyderabad Land Revenue Act, 1317 F. (1907 A.D.) to provide pattadar status to the claimants. It was pointed out by the learned senior counsel that sub-sections (2) and (3) of Section 86 were omitted by the A.P. Adaptation Order, 1957.

168. But the above argument does not advance the cause of the appellants. The moment the claim of the appellants that it was a Mathruka property fails, the appellants lose their claim to property. It is only after they establish successfully their claim to title, that the burden shifts on the claimants.

169. An original Map of Hydernagar verified by the Survey and Land Records Department was sought to be produced before us to show that the land in Survey No.172 could not have been sub-divided into 24/25 parts in the year 1978-79, as contended by the claim petitioners. But this Map, secured recently, was not before the learned Single Judge or the Division Bench. Therefore, we cannot look into the same to test the correctness of the impugned judgment.

170. Moreover, the argument that Survey No.172 could not have been sub-divided into 24/25 parts in the year 1978 is a self-defeating one. While setting up a claim to title, some of the appellants and their predecessors relied upon a report of the Receiver-cum-Commissioner and an order passed by the Trial Judge in Application No.139 of 1971 dated 31.01.1976. It was under this document that defendant Nos.50, 51 and 52 as well as defendant No.116 claimed title to some portions of the land sub-divided in Survey No.172. It is true that Cyrus/Goldstone/Trinity did not rely upon the order in Application No.139 of 1971. They claim title from defendant Nos.157 and 206 but their claim could be traced only to the scheme of partition prepared by the Receiver-cum-Commissioner. It was either based upon the division purportedly made by the Revenue Divisional Officer under orders of the Collector in terms of Section 54 CPC or on the basis of the scheme submitted by the Receiver-cum-Commissioner. Defendant Nos. 51 and 52 are the legal heirs of defendant No.1. The appellants

Cyrus/Goldstone/Trinity could not have had any claim, but for the purchase of 80% of undivided shares by HEH the Nizam, later impleaded as defendant No.156. Therefore, it is clear that the predecessors of the appellants rely upon these very sub-divisions, but the appellants negate the same. Thus, the appellants are guilty of approbating and reprobating.

171. The predecessors of the appellants have had knowledge that faisal patti were recorded in the name of the claim petitioners in 1978 itself. Even the Receiver was aware of this, as seen from the letter written by the Receiver on 09.04.1980 to the Collector. Yet the Receiver informed the Court that possession of the land in Survey No.172 could be granted to defendant Nos.157 and 206. The report of the Receiver-cum-Commissioner in this regard and the order passed thereon by the Court dated 20.01.1984 for handing over possession, is shocking, in the light of the fact that the Receiver himself recorded in his letter dated 09.04.1980 that faisal patti stood in the name of the claim petitioners. Therefore, it is too late in the day for the appellants to question as to how the claim of the claim petitioners stood established. We accordingly answer this issue No. (v) in favour of the claim petitioners.

Issue No.(vi) :

Whether the State of Telangana has any legitimate claim and whether any such claim would still survive after a series of setbacks to the State Government in the Court room?

172. In paragraph 244 of the impugned judgment, the High Court recorded a finding that pattas were granted to cultivating Ryots prior to 1948 and that therefore the land did not vest in the State Government after the Hyderabad Jagir Abolition Regulations. The High Court went on to hold further that the Revenue Department of the subsequent State Government accepted these pattas as genuine and implemented the sethwar issued in 1947 and faisal patti issued in 1978-79.

173. Following the aforesaid finding, the High Court declared in paragraph 414(d) that the land did not vest in the State Government after the Hyderabad Jagir Abolition Regulations. Aggrieved by such a finding and conclusion, the State of Telangana originally came up with an application in I.A. No. 75869 of 2022 to implead themselves as parties to SLP (Civil) Nos. 2373-2377 of 2020. But subsequently, the State has filed an independent appeal in SLP (Diary) No. 19266 of 2022. Therefore, the application for impleadment is unnecessary and hence it is dismissed.

174. Coming to the appeal filed by the State of Telangana, it is seen from the impugned judgment that the State was not a party before the Division Bench of the High Court. Therefore, the aforesaid findings are not binding upon the State of Telangana. In fact, the State of Telangana need not have filed any appeals against the impugned judgment, as the declaration in paragraph 414(d) should be understood as a finding with regard to the claim of the claim petitioners qua the appellants.

175. Since the State of Telangana has come up with appeals, the appellants (decree holders) as well as the claim petitioners have taken advantage of the same to launch an attack on the State on the ground that the State has lost its claim at least in three earlier rounds and that therefore they cannot be given one more life. It was pointed out that the State moved an application way back in 1982 for amendment of the preliminary decree and for the deletion of Item Nos. 35-38 and 40 of Plaint Schedule IV, but the same was dismissed by the High Court by an order dated 18.12.1982. The appeal filed by the State in OSA No.1 of 1985 was dismissed on 24.12.1999. The special leave petition filed against the same was withdrawn on 05.05.2000 with liberty to file a regular appeal against the preliminary decree. But the appeal so filed in the year 2000 against the preliminary decree was dismissed on the ground of delay of 38 years. The said order was confirmed by this Court. Therefore, it is contended that the fate of the claim of the State should be sealed at least now.

176. But we must remember that what is sauce for the goose must be a sauce for the gander. If in a suit for partition, the title to a property cannot be decided in favour of the parties claiming partition qua strangers, the same logic would apply even to the claim petitioners qua the State Government. As

rightly contended by Shri C.S. Vaidyanathan, learned senior counsel for the State, lot of issues remain unresolved in this regard. There was no occasion for the Court so far, to consider the effect of the 1955 Act. Assuming that the claim petitioners had title to a portion of the land in Survey No.172 of Hydernagar (roughly working out to about 11 acres out of a total of acres 196.20), the question as to who holds title to the remaining part of the land will still remain at large, if the assignees of the decree go out. If the appellants have no title to the rest of the lands on account of the Jagir Abolition Regulations and if the claim petitioners have title only to one portion of the land on account of the pattas granted prior to 1948, there must be somebody who owns the remaining extent of land. Assuming that somebody else owns the land, the effect of agricultural land reforms and urban land ceiling enactments were still there to be considered.

177. But as we have stated earlier, we are not deciding the title to land in these proceedings. Therefore, all that we would hold in answer to Issue No. (vi) is that the finding recorded in paragraph 244 and the conclusion reached in paragraph 414(d) of the impugned judgment, is not binding on the State Government.

Part-V:

Appeals by persons whose impleadment applications were dismissed by the High Court, but whose cases are similar to that of the claim petitioners

178. As many as 24 impleadment applications were dismissed by the Division Bench of the High Court in the impugned judgment, on the ground, that no third party can implead in a claim petition filed by somebody else and that the only remedy of such parties is to file separate claim petitions.

179. All the 24 impleadment applications fall under different categories namely:

(i) those claiming to be in possession of a portion of the land representing the half share purportedly purchased by Cyrus/Goldstone/Trinity in Survey No.172 of Hydernagar;

(ii) those who claim to be in possession of a part of the land in the other half of Survey No.172 of Hydernagar;

(iii) those who claim to be in possession of lands in other survey numbers;

(iv) the Asset Reconstruction Company which claims to be the mortgagee; and

(v) those who filed applications for impleadment in OSA No.59 of 2004.

180. Out of the aforesaid categories of persons whose impleadment applications were dismissed, the case of the Asset Reconstruction Company has been dealt with by us in the next part of the judgment.

181. Insofar as the other persons whose impleadment applications were dismissed are concerned, we do not know why they consider themselves to be affected by the impugned judgment. In paragraph 414(e) of the impugned judgment, the Division Bench of the High Court has held the entire order of the previous Bench dated 23.06.2006 to be void as a consequence of this Court setting aside the same on the principle of coram non judice. In paragraph 414(f), the High Court had declared the entire preliminary decree as regards the lands in Hydernagar village (not confined to any particular survey number) as void ab initio. In paragraph 414(g), the order dated 20.01.1984 in Application No.266 of 1983 and the order dated 28.12.1995 in Application No.994 of 1995, have been held to be inexecutable not only against the claim petitioners but also against third parties. In paragraph 414(h), the High Court has declared even the final decree to be null and void. In paragraph 414(i), the order dated 29.03.1996 in EP No.3 of 1996 passed by the District Court and the Bailiff's Report dated 19.04.1996 have been held to be non-existent and null and void not only as against the claim petitioners but also as against any third party. In other words, despite the dismissal of the

impleadment applications, the High Court has protected the interest of persons against whom the decree is sought to be executed. In any case, those persons who have identical claim as the obstructionists, who have filed independent appeals against the impugned judgment will have the benefit of the judgment. But the benefit of this judgment will not inure to (i) those third parties claiming title under any of the parties to CS No.14 of 1958 and (ii) those claiming to have decrees or assignment of decrees in CS No. 14 of 1958.

Part-VI:

Appeals by non-parties to the impugned judgment, challenging only one portion of the impugned judgment

182. A few individuals, namely Sameena Kausar and four others, all of whom are the daughters of late Mirza Mazahar Baig, have come up with separate appeals against the judgment in OSA Nos.54, 56, 58 and 59 of 2004, challenging (as per paragraph 1 of the Civil Appeals) only that part of the impugned judgment found in paragraph 414(f), by which the Division Bench of the High Court declared the preliminary decree to be vitiated by fraud.

183. Similarly, one Sahebzadi Hameedunnissa Begum, wife of late Nawab Ghousuddin @ Mohd. Ghouse Mohiuddin Khan, has come up with a separate appeal challenging the decision in OSA No. 54 of 2004. As seen from paragraph 1 of the Civil Appeal, this appellant also challenges only that portion of the impugned judgment found in paragraph 414(f).

184. The appellants in these appeals were not parties to the impugned judgment of the High Court. Their claim is that defendant No.52 in the suit was one Nawab Ghousuddin @ Mohd. Ghouse Mohiuddin Khan. His wife Sahebzadi Hameedunnissa Begum was defendant No.58. Ghousuddin Khan was the son of the first defendant. It is the case of the appellants that Ghousuddin Khan (defendant No.52) was allotted land of the extent of acres 62.02 guntas in Survey No.172 of Hydernagar by the orders of the High Court in Application No.139 of 1971 and Application No. 185 of 1973. According to the appellants, the Government accepted the report of the Nazim Atiyat Court dated 30.10.1968 and issued Muntakhab No.4 of 1983 dated 14.02.1983 declaring that Ghousuddin Khan and his two brothers were entitled to 2/5 share in Hydernagar village. Thereafter, Ghousuddin Khan (defendant No.52) gifted the land of the extent of acres 60.00 guntas in favour of Mahaboob Baig, as seen from the confirmation document dated 19.12.1978. Sameena Kausar and others (appellants in four Appeals) are the granddaughters of Mahaboob Baig. They, along with other legal heirs of Mirza Mahaboob Baig claim to have inherited the land of the extent of acres 60 in Survey No.172 of Hydernagar. Thereafter, they also sold away acres 30 out of the total extent of acres 60.00 to M/s. Jayaho Estates.

185. To put in a nutshell, Sameena Kausar and four others, who are the appellants in four appeals, claim title to the land of the extent of acres 60.00 in Survey No.172 of Hydernagar, by virtue of a gift made by Ghousuddin Khan (defendant No.52). Sahebzadi Hameedunnissa Begum who is the appellant in one appeal was defendant No.58 in the suit. All these appellants are aggrieved, by the declaration contained in the impugned judgment that the preliminary decree is vitiated by fraud and hence null and void.

186. Interestingly, paragraph No.1 of the Civil Appeals filed by these persons expressly states that the appeals are confined only to a challenge to paragraph No. 414(f) of the impugned judgment. But in the course of arguments, Shri V.V.S. Rao, learned senior counsel appearing for the appellants also assailed paragraph Nos. 414(c) and 414(d) of the impugned judgment. In paragraph 414(c), the High Court declared that the appellants before the High Court had failed to establish that the land in Hydernagar village was the Mathruka property of Khurshid Jah. In paragraph No.414(d), the High Court declared that the land in Hydernagar village was Jagir land, but prior to 1948 pattas were granted to cultivating Ryots and that therefore title to the land passed on to the cultivating Ryots before 1948 itself.

187. But as we have observed elsewhere, the High Court was compelled to hold that the preliminary decree was vitiated by fraud, due to certain circumstances. The way in which a very innocuous suit for partition was converted into a suit on title, the way in which tens of hundreds of final decrees came to be passed solely on the basis of compromises entered into between few of the parties, the way in which portions of the decree were assigned and/or sold to third parties, the way in which directions were obtained from the High Court to the Revenue Authorities for effecting mutation, the way in which possession was claimed to have been taken, through or otherwise than through execution proceedings even before the passing of the final decree, demonstrated that the process of law was abused and misused. Today the position is that any property in the city of Hyderabad and some parts of Telangana can be traced to some property included in Plaint Schedule IV. Plaint Schedule IV included villages and villages without survey numbers and boundaries. Even today, lot of final decree applications are pending in respect of portions of properties described in the suit schedule. Any number of compromises, any number of final decrees and any number of executions have taken place in CS No. 14 of 1958. As rightly contended by Shri C.S. Vaidyanathan, learned senior counsel appearing for the State what started off as a civil suit (CS) actually turned out to be a civil scandal. Instead of building castles in the air, the parties thereto were actually building castles out of CS No.14 of 1958.

188. The contention of Shri V.V.S. Rao, learned senior counsel is that the preliminary decree has already attained finality, with the State of A.P. filing an application for deletion of Item Nos.35 to 38 and 40 of Plaint Schedule IV, from the preliminary decree. The said application was dismissed on 18.12.1982. The appeal arising out of the same in OSA No.1 of 1985 was dismissed on 24.12.1999. Though the State filed a Special Leave Petition, the same was withdrawn on 05.05.2000, but with liberty to go back to the High Court. On the basis of the liberty so granted, the State again filed an appeal in OSA SR No.3526 of 2000 against the preliminary decree. But the same was dismissed by the Division Bench of the High Court on 07.02.2001. The Special Leave Petition arising out of the same in SLP (C) Nos.10622-23 of 2001 was dismissed by this Court on 16.07.2001. Therefore, it is contended by Shri V.V.S. Rao, learned senior counsel that a preliminary decree which had attained finality, cannot be challenged subsequently, as held by this Court in Venkata Reddy vs. Pethi Reddy[*AIR 1963 SC 992*]. The learned senior counsel also drew our attention to the observation made in Narayan Sarma (supra) that no appeal having been made against the preliminary decree, it had attained finality.

189. But as we have pointed out earlier, the judgment and preliminary decree dated 28.06.1963 and whatever happened subsequent thereto, were not in accordance with, (i) the procedure to be followed in a partition suit; and (ii) the scope of enquiry in a suit for partition.

190. A careful look at the way in which the proceedings in CS No.14 of 1958 progressed would show that the High Court followed a separate Code for itself and not the Code of Civil Procedure, 1908.

191. It must be remembered that Order XX Rule 18 of the Code of Civil Procedure, 1908, lays down a procedure to be adopted by a Court while passing a decree in a suit for partition. There are two sub-rules to Rule 18 of Order XX. As per the first sub-rule, the Court passing a decree for partition may direct the partition or separation to be made by the Collector or any gazetted subordinate deputed by him, if the decree relates to an estate assessed to the payment of revenue to the Government. This shall be done, after first declaring the rights of several parties interested in the property. Under the second sub-rule, the Court may, if it thinks that the partition and separation cannot be conveniently made without further enquiry, pass a preliminary decree declaring the rights of several parties and giving such further directions as may be required, if the decree relates to any other immovable property not covered by sub-rule (1).

192. Obviously, the preliminary decree passed on 28-06-1963 in CS No.14 of 1958 did not belong to the category indicated in Order XX Rule 18 (1). It belonged to the category mentioned in Order XX Rule 18 (2).

193. As to what should be done in such cases, is provided in Order XXVI Rule 13 of the Code. Order 26 Rule 13 provides that where a preliminary decree for partition has been passed, in any case not covered by Section 54 {and Order XX Rule 18 (1)}, the Court should issue Commission to such a person as it thinks fit, to make partition and separation according to the rights as declared in such a decree. The Commissioner so appointed should conduct an enquiry, divide the property into as many shares as may be and allot such shares to the parties, awarding wherever required and authorized, such sums to be paid for the purpose of equalizing the value of the shares, under Order XXVI Rule 14 (1). The Commissioner should then file a report into Court under sub-rule (2) of Rule 14 of Order XXVI. The Court may give an opportunity to the parties to file objections to the report and thereafter confirm, vary or set aside the recommendations made in the report of the Commissioner. After this is done by the Court, a decree should be passed by the Court under Order XXVI Rule 14 (3) of the Code.

194. Therefore, in a case of partition and separate possession not covered by Section 54 of the Code, a preliminary decree is first passed in terms of Order XX Rule 18 (2) of the Code, a Commissioner is appointed in a subsequent proceeding under Order XXVI Rule 13 and on the basis of his report, a final decree is passed under Order XXVI Rule 14 (3) of the Code. Thereafter, the possession of such property, if it is an immovable property, is taken by executing such final decree in terms of Order XXI Rule 35 of the Code.

195. Therefore, the question of specific immovable properties or specifically identified portions of immovable properties getting allotted to any person merely holding a preliminary decree with respect to an undivided share does not arise. A preliminary decree in a suit for partition merely declares the shares that the parties are entitled to in any of the properties included in the plaint schedule and liable to partition. On the basis of a mere declaration of the rights that take place under the preliminary decree, the parties cannot trade in, on specific items of properties or specific portions of suit schedule properties. Since there are three stages in a partition suit, namely (i) passing of a preliminary decree in terms of Order XX Rule 18(2); (ii) appointment of a Commissioner and passing of a final decree in terms of Order XXVI Rule 14 (3); and (iii) taking possession in execution of such decree under Order XXI Rule 35, no party to a suit for partition, even by way of compromise, can acquire any title to any specific item of property or any particular portion of a specific property, if such a compromise is struck only with a few parties to the suit.

196. In fact, Sameena Kausar and others stake claim to the land of the extent of acres 60.00 in Survey No.172 of Hydernagar, on the basis of a gift made by defendant No.52. Even admittedly, Sameena Kausar and others have sold half of that land way back in 1997 to M/s Jayaho Estates. Yet Sameena Kausar and others have come up with appeals.

197. Be that as it may, a look at the Memorandum of Oral Gift dated 19.12.1978 executed by Ghousuddin Khan (defendant No.52) shows that the said document purports to be a record of the oral gift (hiba) already made on 10.10.1978. This Memorandum of Oral Gift declares that the donor have also delivered possession of the gifted property to the donee. Interestingly, this Memorandum of Oral Gift does not contain a Schedule of property, but contains very strangely, the boundaries alone. It will be useful to extract the last part of this Memorandum of Oral Gift dated 19.12.1978. It reads as follows:-

> “Today on 19th December 1978 I have confirmed the oral gift made on 10th October 1978 in favor of the Donee and executed this Memorandum of gift in presence of the following witnesses.
>
> Hence these few words are written by me as a MEMORANDUM OF GIFT so that it may remain as an authority and used at time of need.
>
> Dated : 19th December 1978.

Boundaries:

North: Nizampet village

South: Bombay High way

East: Hydernagar village,

West: Survey No. 28 land of Jeelani Begum.

Sd/-Donor Ghouse Mohiuddin Khan.

Sd/- witness Sd/- witness"

198. It is true that in the body of the Memorandum, the donor claims to be the owner in possession of the land measuring acres 60 in Survey No.172 of Hydernagar. But Survey No.172 of Hydernagar has land of a total extent of acres 196.20. The claim of defendant No.52 to acres 60 out of the total extent, is on the basis of an order purportedly passed first on 31.01.1976, in Application No.139 of 1971. But the only order passed in this application is to the effect that the parties have not been able to agree upon the allotment of shares and that therefore, the matter had to be forwarded to the Collector under Section 54 CPC. But all of a sudden, a final report filed by one P. Narasimha Rao Receiver/Commissioner, surfaces, allegedly on the basis of a compromise decree in Application No.185 of 1973. In the table contained in the said final report, Survey No.172 is shown to have been sub-divided into 25 different parts bearing Survey Nos.172/1 to 172/25. What is shown therein to have been allotted to defendant No.52 were the following: 62.13 G

Survey No.	Allotted to D-52	Out of
172/8	0.2 G	9 Acres 39 Guntas
172/9	10.02 G	10 Acres 02 Guntas
172/17	7.08 G	7 Acres 08 Guntas
172/18	10.00 G	10 Acres 00 Guntas
172/19	10.07 G	10 Acres 07 Guntas
172/20	9.34 G	9 Acres 34 Guntas
172/21	5.04 G	5 Acres 04 Guntas
172/22	5.38 G	5 Acres 38 Guntas
172/23	5.00 G	5 Acres 25 Guntas

199. Interestingly, the order passed in Application No.139 of 1971 is dated 21.01.1976. If pursuant to the said order, Survey No.172 had been sub-divided and different parcels of land in various sub-divisions of Survey No.172 stood allotted to defendant No.52, the Memorandum of Gift dated 19.12.1978 should have contained all these sub-divisions of survey numbers and a proper description. Without giving the sub-division numbers of Survey No.172 and without describing different parcels of land as per the allotment allegedly made by the Advocate Commissioner, the Memorandum of gift proceeds to mention mere boundaries. Interestingly, Northern boundary is stated to be Nizampet village, Southern boundary is stated to be Bombay Highway and Western boundary is stated to be Survey No.28 belonging to Jeelani Begum. Therefore, the entire claim made by persons claiming under defendant No.52, appears to be a hoax.

200. In fact, Shri V.V.S. Rao, learned senior counsel attempted to trace the title of the appellants, to the report of the Nazim Atiyat Court and the Muntakhab issued by the Commissioner of Survey, Settlements and Land Records. But as we have already pointed out, the suit was not one for title.

201. Interestingly, the appellants in these appeals represented by Shri V.V.S. Rao, learned senior counsel, also attack the claim made by Goldstone/Trinity, on the ground that the sale deed dated 23.02.1967 executed by Nizam through his Constituted Attorney C.B. Taraporwala in favour of F.E. Dinshaw Company is not valid. The contention in this regard is that though the Nizam executed a power of attorney on 17.11.1962, he became seriously ill and his condition deteriorated on 22.02.1967 and that he was put on oxygen. The sale deed by his power agent was prepared on 23.02.1967. The Nizam passed away on 24.02.1967. But the sale deed was presented for registration by Taraporwala on 17.03.1967. Therefore, according to the appellants, the sale made by the Agent after the termination of his agency under Section 201 of the Indian Contract Act is wholly invalid.

202. If what the appellants say is true, no marketable title could have passed on from Nizam to Cyrus to Goldstone. Therefore, it is not merely those claiming under defendant No.52 but also Cyrus/Goldstone/Trinity, should sink together.

203. Appearing along with Shri V.V.S. Rao, learned senior counsel, for some of the appellants, it was contended by Shri K.S. Murthy, learned senior counsel that Hydernagar village came to be declared as a grant village and that it was covered by Altamagha which is a Royal decree. The learned senior counsel also drew our attention to the Inam enquiry and the order of the Revenue Board and the Muntakhab.

204. But as we have stated earlier, what was in hand was a suit for partition and all parties have not only created confusion but also started fishing in troubled waters.

205. Shri V.V.S. Rao, learned senior counsel also appears for another set of appellants, namely Fareeduddin Khan and two others, who have come up with a challenge to the impugned judgment. These appellants claim title to the land of the extent of acres 30.00 in Survey No.145/2, acres 62.00 in Survey No.145/1 and acres 30.00 in Survey No.163/3 of Hydernagar village. There are three appellants in these four appeals arising out of SLP (C) Nos.8888-8891 of 2022. But appellant No.2 has sold the land of the extent of acres 42, out of the total extent of acres 62 in Survey No.145/1 to a Co-operative Housing Building Society. Appellant No.3 claims to have sold the entire extent of acre 30.00 in Survey No.163/3 of Hydernagar village to third parties.

206. We do not know how persons can sell identified parcels of land purportedly allotted to them, out of undivided shares of land in a partition suit in which final decrees and Receiver's reports galore.

207. The argument of Shri V.V.S. Rao, learned senior counsel on behalf of these appellants who claim to be the legal heirs of defendant No.1, is that in a dispute arising out of claim petitions under Order XXI Rules 97 to 101 CPC relating to land in Survey No.172, the High Court could not have set at naught the transactions relating to Survey Nos.145 and 163. The declaration that the preliminary decree is vitiated by fraud, has affected the claim of these appellants to other lands in Survey Nos. 145 and 163 and hence these appellants have come up with a limited challenge to the impugned judgment.

208. All that we can say in response to this argument is that if parties can hoodwink the Court and take the Court on a detour up to Mysore (two suit schedule properties were located in Mysore) and make a simple suit for partition into a suit for all kinds of disputes, the Court alone cannot stick to the boundaries.

209. In view of the above, all the appeals arising out of SLP (C) Nos.8884-8887 of 2022, SLP (C) Nos.8888-8891 of 2022 and SLP (C) No.24098 of 2022 are liable to be dismissed. Accordingly, they are dismissed.

Part-VII :

I.A. No. 118143 of 2022 in SLP (C) No. 8884 of 2022

210. This application has been filed by Mohd. Mustafauddin Khan and another seeking intervention in the appeal arising out of SLP (C) No.8884 of 2022 filed by Sameena Kausar and others.

211. The applicants herein are the legal heirs of Mohd. Ghousuddin Khan, who was defendant No.52 in the suit. The applicants claim that defendant No.52 was allotted land of the extent of acres 62 in Survey No.172 of Hydernagar. Interestingly, they assail the very sale deed dated 30.08.1964 under which HEH the Nizam allegedly bought the decretal rights over the said property. According to the applicants, defendant No.52 never sold his share in favour of HEH the Nizam and Khasim Nawaz Jung. They also contend that the sale was not supported by any consideration and that in any case the sale is void for want of permission under Sections 47 and 48 of the Andhra Pradesh (Telangana Area) Agricultural Lands Act, 1950.

212. Another interesting aspect brought to light by these applicants is that HEH the Nizam died even during the pendency of the application for impleadment in Application No.109 of 1966 and that therefore everything that happened pursuant to the impleadment were null and void.

213. Unfortunately, the date on which HEH the Nizam was impleaded as defendant No.156, is not brought on record before us. But it is on record that he died on 24.02.1967. Before his death, his power agent namely, Taraporwala seems to have executed a sale deed in favour of Dinshaw Company (later Cyrus). However, the sale deed was presented for registration after the death of the Nizam. Therefore, we are not in a position to verify the correctness of the contention that defendant No.156 (Nizam) died even before he was impleaded as a party to the suit. If what the applicants say is true, then they may be right in the contention that whatever was done in the name of the dead person is null and void.

214. But for want of particulars regarding the date of the order impleading HEH the Nizam as defendant No.156, we are not pronouncing our final word on this aspect. Suffice to note for the present that in view of the dismissal of the appeals filed by Sameena Kausar and others, this intervention application is liable to be dismissed without getting into the merits of their contention.

Part-VIII

I.A. No.112090 of 2022 in Special Leave Petition (C) Nos. 2373-2377 of 2020

215. This application has been taken out by an Asset Reconstruction Company, by name M/s Rare Asset Reconstruction Ltd. (formerly Raytheon Asset Reconstruction Pvt. Ltd.). They seek to implead themselves as parties to the Special Leave Petitions, on the ground that a company by name of M/s MBS Jewellers Pvt. Ltd. availed certain credit facilities from the Punjab National Bank, Andhra Bank (now Union Bank of India) and Indian Overseas Bank and that as security for due repayment of the loans, third parties created an equitable mortgage by deposit of title deeds relating to plot No.10 in Survey No.172 measuring acres 196.20 guntas in Hydernagar village. The third parties who created such equitable mortgage were M/s India Telecom Finance Corporation Ltd., M/s Sai Anupama Agencies Pvt. Ltd, M/s Keerti Anurag Investments Pvt. Ltd., M/s Jayasree Agencies Pvt. Ltd., M/s Sai Keerti Constructions Pvt. Ltd., M/s Sai Pavan Estates Pvt. Ltd. and M/s Greater Golkonda Estates Pvt. Ltd. According to the Asset Reconstruction Company, the deposit of title deeds took place on 25.03.2009. The total amount due to the consortium of banks was around Rs.550 crores. It appears that the banks filed applications before DRT, Hyderabad and these applications are pending. Therefore, the Asset Reconstruction Company claims that if the mortgagors suffer an order from this Court, it is the public money belonging to the banks that will eventually suffer.

216. Shri Dushyant Dave, learned senior counsel appearing for the Asset Reconstruction Company contended that irrespective of the dispute between private parties, it is public money which is at stake. The learned senior counsel drew our attention to several provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), in support of his contention

that even the jurisdiction of the Civil Court is barred and that the provisions of these two enactments will override all other enactments.

217. But there are two major obstacles for the Asset Reconstruction Company which is the applicant in this I.A. The first is that this Asset Reconstruction Company actually filed I.A.No.3 of 2019 in OSA No.54 of 2004; I.A.No.3 of 2019 in OSA No.56 of 2004 and I.A.No.4 of 2019 in OSA No.59 of 2004 before the High Court. All these applications for impleadment were dismissed by the High Court by the order impugned in these appeals. Other persons who filed similar impleading applications which were also dismissed by the High Court, have come up with independent appeals against the entire impugned judgment. This is because the order dismissing their impleadment applications is part of the operative portion of the whole impugned judgment. Therefore, the Asset Reconstruction Company ought to have filed independent appeals against the dismissal of their impleadment applications by the High Court. They cannot now have a piggy-back ride on the appeals filed by others.

218. The second difficulty that the Asset Reconstruction Company has, is that six different companies created an equitable mortgage by deposit of title deeds. As per the averment contained in Para 2 of I.A.No.110290 of 2022, the deposit of title deeds happened on 25.03.2009. What is said to have been deposited are the certified copies of the final decree in Application No.517 of 1998 in CS No.14 of 1958 dated 24.04.1998.

219. We do not know how a final decree in a partition suit and that too in a notorious suit like CS No.14 of 1958 could have been taken to be a document of title which can be accepted by way of equitable mortgage. In any case, the deposit of title deeds is said to have taken place on 25.03.2009. By this time, the order of the learned Single Judge (L. Narasimha Reddy, J.) dated 26.10.2004 allowing the claims of the obstructionists had come into existence. Though the said order of the learned Single Judge dated 26.10.2004 was set aside by the Division Bench by an order dated 23.06.2006, the said order of the Division Bench had become the subject matter of the civil appeals even at that time. These civil appeals were eventually allowed by this Court by an order dated 05.03.2014. We do not know how during this interregnum period, the Banks could have accepted this property as security, despite the same being the subject matter of a serious long drawn litigation.

220. In any case, the applications for impleadment made by the Asset Reconstruction Company have been dismissed by the High Court by the order impugned in these appeals. Without challenging the same, the Asset Reconstruction Company cannot seek to implead themselves in the appeals filed by the third parties and the mortgagors. Therefore, I.A. 110290 of 2022, is dismissed.

Part-IX:

I.A. Nos.36417, 36419 and 36422 of 2023 in Special Leave Petition (C) Nos.2373-2377 of 2020

221. These applications praying respectively for, (i) leave to get impleaded; (ii) impleadment; and (iii) directions, have been filed by a Cooperative Housing Society by name M/s Durga Matha House Building Construction Co-operative Housing Society Ltd. This Society is seeking to get impleaded and is also praying for appropriate directions, in the appeals arising out of SLP (C) Nos.2373-2377 of 2020.

222. The averments contained in these interlocutory applications, in brief are,

(i) that by virtue of a sale deed dated 23.02.1967, HEH the Nizam sold his undivided half share in the land of the extent of acres 175.06 in Survey No.163 of Hydernagar to Cyrus and Nawab Khasim Nawaz Jung;

(ii) that the sellers and the purchasers were impeladed as defendant Nos.156, 157 and 206 respectively in CS No.14 of 1958;

(iii) that Nawab Khasim Nawaz Jung (defendant No.157) died leaving behind him surviving, his wife and daughter (defendant Nos.334 and 335);

(iv) that the Receiver-cum-Commissioner and the Revenue Divisional Officer authorized by the District Collector to divide the land under Section 54 CPC, effected division and filed a survey map and memo on 03.03.1981 before the High Court in Application No.139 of 1971;

(v) that as per the memo, the land in Survey No.163 of Hydernagar was allotted to defendant Nos.157 and 206 in half shares, as per the orders of the High Court dated 08.07.1983 in Application No.31 of 1982;

(vi) that those defendants thereafter executed several deeds of assignments and sale deeds in favour of third parties including the applicant-Society;

(vii) that the applicant-Society got an assignment of land of the extent of acres 50.00 by the Assignment Deed dated 18.04.1987 from Nawab Khasim Nawaz Jung and another extent of acres 16.00 under another Assignment Deed of the year 1989;

(viii) that the applicant-Society thus became the owner and also took over possession of land of the extent of acres 66 in Survey No.163 of Hydernagar;

(ix) that when some individuals claiming to be the occupants of some part of the land started interfering with the possession of the applicant-Society, the Society filed a civil suit for bare injunction;

(x) that the said suit was tried along with another suit filed by another Cooperative Society similarly placed, by name IDPL Employees Cooperative House Building Society Ltd.;

(xi) that by a common judgment dated 16.11.2005, both the suits were dismissed by the Trial Court;

(xii) that the first appeals arising out of the same are now pending;

(xiii) that after the impugned judgment of the High Court, one of the respondents in those first appeals have taken out an application for rejection of the appeal of the applicant-Society on the ground that the entire preliminary decree has been held by the impugned judgment to be vitiated by fraud;

(xiv) that upon coming to know of the impugned judgment dated 20.12.2019, the applicant-Society filed a petition for review before the High Court;

(xv) that in the meantime, the applicant-Society also came to know about this Court being seized of the appeals arising out of the very same impugned judgment; and

(xvi) that therefore, the applicant-Society is compelled to approach this Court by way of an application for impleadment and application for directions, so that their rights relating to the land in Survey No.163 of Hydernagar are not affected.

223. Shri Hemendranath Reddy, learned senior counsel appearing for the applicant herein contended:

(i) that the High Court went overboard in holding the preliminary decree to be vitiated by fraud, after the same had attained finality in several proceedings, including those initiated by the State Government;

(ii) that on the basis of the division made by the Revenue Divisional Officer, in terms of Section 54 CPC and on the basis of the report of the Receiver-cum-Commissioner, the land was identified, sub-divided and possession handed over;

(iii) that mutation was effected way back in 1989, but when it was cancelled, the applicant filed writ petition and got the mutation restored;

(iv) that even the land grabbing proceedings ended in favour of the applicant;

(v) that all the appeals that the Division Bench of the High Court was dealing with, in the impugned judgment, concerned only the land in Survey No.172 of Hydernagar.

(vi) that by declaring the preliminary decree to be vitiated by fraud, the High Court, under the impugned judgment has struck a severe blow to settled issues which have attained finality; and

(vii) that the High Court could not have declared the preliminary decree to be vitiated by fraud, when there were no pleadings with regard to fraud and that by the order impugned in these appeals, the High Court has created a cloud over the rights of third parties over other parcels of land, when those third parties like the applicant herein were not even parties to the impugned judgment.

224. Shri Hemendranath Reddy, learned senior counsel appearing for the applicant herein also relied upon another judgment of the Division Bench of the High Court dated 30.03.2021 passed in Writ Petition No.20707 of 2018 (batch), wherein the Division Bench clarified that the findings relating to fraud in the impugned judgment, were confined only to land in Survey No.172.

225. We have carefully considered the submissions of Shri Hemendranath Reddy. But we are unable to agree with his contentions for the following reasons:

(i) Even according to the learned senior counsel, the finding recorded in the impugned judgment that the preliminary decree is vitiated by fraud, was confined only to the land in Survey No.172 of Hydernagar. According to the learned senior counsel, this position was clarified by another Division Bench (presided over by the same Presiding Judge who authored the impugned judgment) in its judgment dated 30.03.2021 in Writ Petition No.20707 of 2018 (batch). In paragraph No.169 of the said judgment dated 31.03.2021, the subsequent Division Bench recorded as follows:

> "169. Whatever observations were made by this Court in Shahanaz Begum (10 supra) were specifically made only in the context of the special facts in relation to Sy.No.172 of Hydernagar Village only, and they cannot be read out of context by the respondents and made applicable to land in Hafeezpet Village as well."

Therefore, we do not know why the applicant-Society is before us;

(ii) In any case, the procedure adopted by the applicant-Society before us, is unknown to law. As we have pointed out in the beginning, the applicant-Society has come up with three applications, praying respectively (i) for leave to get impleaded; (ii) to implead in appeals arising out of SLP (C) Nos.2373-2377 of 2020; and (iii) for appropriate clarification that the observations in the impugned judgment are not applicable to the land in Survey No.163. In other words, what the applicant-Society wants us to do, is to clarify a judgment of the High Court. We do not know under what provision of law this Court can clarify the judgment of a High Court through an application taken out in a pending appeal, especially in a matter of this nature. By filing these applications in the appeals filed by their predecessors-in-title, the

applicant-Society is either trying to piggyback ride on their vendors or to wriggle their predecessors in title, out of trouble. This cannot be permitted; and

(iii) In any event, the applicant-Society has admittedly filed a petition for review of the impugned judgment on the ground that the same cannot affect their rights in Survey No.163. Therefore, it is not open to the applicant-Society to come up before us and that too in the form of an application for direction. Hence these three IAs deserve to be dismissed. Accordingly, they are dismissed.

CONCLUSION

226. In the light of the above discussion:

(i) All the appeals arising out of SLP(C) Nos.2373-2377 of 2020 filed by Trinity Infraventures Ltd. and others are dismissed. Consequently, I.A. No. 75869 of 2022 filed by State of Telangana is dismissed.

(ii) All the appeals arising out of SLP(C) Nos.8884-8887 of 2022 filed by Sameena Kausar and others are dismissed. Consequently, I.A. No. 118143 of 2022 is dismissed.

(iii) All the appeals arising out of SLP(C) Nos.8888-8891 of 2022 filed by Fareeduddin Khan and others are dismissed.

(iv) All the five appeals arising out of SLP(C) Diary No.19266 of 2022 filed by the State of Telangana and another are dismissed with the observation that the finding given in paragraph 244 and the conclusion recorded in paragraph 414(d) of the impugned judgment, are not binding upon the State Government.

(v) The appeal arising out of SLP (C) No.24098 of 2022 filed by the legal representative of Sahebzadi Hameedunnissa Begum is dismissed.

(vi) The appeals arising out of SLP (C) No.2203 of 2022 filed by T. Pandri Natham and others; SLP (C) No.256 of 2022 filed by K. Sudhan Reddy and others; SLP (C) No.1584 of 2022 filed by G. Aruna Kumari and others; SLP (C) No.980 of 2022 filed by G. Rama Krishna Reddy and others; SLP (C) No.8872 of 2022 filed by K. Pardha Saradhi and others who have purchased individual plots of land from Satya Sai Co-operative Housing Society Ltd., are dismissed with the observation that despite the dismissal of their impleadment applications by the High Court, they stand protected due to the preliminary decree and final decree being declared void and also due to the usage of the words “third parties” in paragraph 414(g) and 414 (i).

(vii) I.A. No.112090 of 2022 in the appeals arising out of SLP(C) Nos.2373-2377 of 2020 filed by the Asset Reconstruction Company is dismissed, without prejudice to the rights available to the Asset Reconstruction Company to proceed against the borrowers and the mortgagors in accordance with law.

(viii) I.A. Nos.36417, 36419 and 36422 of 2023 filed by Durga Matha House Building Construction Co-operative Housing Society Ltd., in the appeals arising out of SLP(C) Nos.2373-2377 of 2020 are dismissed.

The parties are directed to bear their respective costs.
