

**\* THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR**

**+ Application No.488 of 2012 in**  
**Application No.519 of 2009 and**  
**Application No.24 of 2024**  
**in/and**  
**C.S.No.7 of 1958**

% 09.01.2025

# Between:

Sahebzadi Sultan Jahan Begum  
D/o.Nawab Moinuddowla Bahadur & others

Appellants

Vs.

Nawab Zahir Yar Jung Bahadur  
S/o.Late Nawab Moinuddowla & others

Respondents

! Counsel for Appellants : Mr.Deepak Misra  
(in Appl.No.24 of 2024)  
N.M.Krishnaiah  
(in Appl.No.488 of 2012)

^ Counsel for Respondents : Mr.Naga Srinivas Rao (R.1)  
Mohammed Sarshar Ahmed (R.21)  
Manjari S Ganu (R.118 and R.126)  
(in Appl.No.24 of 2024)  
Shyam Sundar Rao Burgula (R.20)  
(in Appl.No.488 of 2012)

<GIST:

> HEAD NOTE:

? Cases referred

1 2018 SCC OnLine Hyd 284 = 2018 (5) ALT 645 (DB)

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**  
**AND**  
**THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR**

**Application No.488 of 2012 in**  
**Application No.519 of 2009 and**  
**Application No.24 of 2024**  
**in/and**  
**C.S.No.7 of 1958**

**COMMON ORDER:** *(Per the Hon'ble Sri Justice N.V.Shraavan Kumar)*

**Brief facts in C.S. No.7 of 1958:**

One Smt. Sultana Jahan Begum, D/o. Late Nawab Moinuddula Bahadur had filed O.S. No.130/1 of 1953 for partition and separate possession of the Matruka properties specifically shown in the schedules appended to the plaint, on the file of the City Civil Court, Hyderabad, which was later transferred to the file of the High Court and numbered as C.S. No.7 of 1958.

2. In the aforesaid civil suit, parties to the suit filed memorandum of compromise. An application, namely Application No.126 of 1958, was filed praying this Court to record compromise and pass a preliminary decree in terms of compromise and to appoint M/s. Raja Kishandas and Nawab Saleem Khan as Commissioners / Receiver with the powers set out in the memorandum of compromise. Accordingly, a preliminary decree was passed on

06.04.1959. Thereafter, the said persons were appointed as Commissioners / Receivers to manage the affairs of suit properties initially for a period of one year and later the term was extended.

3. Thereafter, the Commissioners / Receivers have effected the partition of the lands as per the schemes and filed their report dated 20.12.1965 and affidavit dated 20.09.1966 in Application No.205 of 1966 with the following distribution statements:

A and F	Immovable properties
E	Shares and Securities
B	Exclusive property of Defendant No.1
C	Son of D1 Nawabzada Laeequddin Khan
D	Son of D1 Nawabzada Qutubuddin Khan
<b><u>Schedule A comprised of 254 items:</u></b>	To plaintiff items 2, 13, 14, 15 (as per the Decree) and also Fareed Villa.
4 Items	
128 items	Sold from time to time as per Court order
2 items	8 and 24 sold with consent in 276/60 dated 10.02.1961, 138/61, 146/61 and 70/62 on 19.11.1962

26 items	(Inclusive of F schedule) were partitioned as per order in Application 335/62
11 items	Lands given on Nuzool
<u>25 items*</u>	<u>(Maktha lands) (not released by the Revenue Department)</u> <u>As per para 4*g( of the Preliminary Decree</u>
50 items	Barracks at Jahanuma (valued as per Court order dated 13.12.1963 in Application No.335 of 1962)
1 item	(Item No.4) several building and land as Shamshabad
1 item	Item 25 at Aurangabad (no records available)
8 items	No 6 Akbar Bagh, Toli Chowki, and 26 Bahdood Nagar
Item 27	Total Kunta (Agricultural lands in possession of Tenants subject matter of litigation with Revenue Department)
Items 230 to 254 of 'A' schedule 1 item	Item 10 Moosa Ram Bagh possession taken over by Receiver
<b><u>'E' Schedule:</u></b>  1 Cash and Securities	Items 1 to 4 and 11 and 12 of the value of Rs.12,60,733/- (in the custody of Finance Department, Government of Andhra Pradesh.
2 Cash and Securities	Item 5 to 9 of value of Rs.4,07,800/-
3 Cash and Securities	Nizam State Railway Shares of Rs.78,000/- + Dividend 320/- (handed over to Receiver by Defendant No.1)

4. The Commissioners / Receivers in their report in para 7 have categorically stated that 25 items of properties are Makta lands, which are subject matter of litigation in the Revenue Department. It is further stated as per para 4(g) of the preliminary decree, in case the said 25 items of properties are restored or released in favour of Asman Jahi Paigah, the arrears of income, future income, compensation or sale proceeds derived from the said properties shall be distributed among defendants (2 to 22) in the proportion of 2.35 to each son and 1/35 to each daughter. It is also mentioned in the report that the said 25 items of properties have not yet been restored or released and that they cannot be valued or partitioned. The Commissioners / Receivers have attached a statement marked as 'V'. Therefore, the Commissioner-cum-Receivers could not file report about the release of items 230 to 254 of 'A' Scheduled which are in the custody of the Revenue Department.

5. Thereafter, a final report has been filed in the form of an affidavit dated 22.12.1969 in Application No.228 of 1969 in which prayer has been made to pass a final decree

in terms of the Report, allotting the shares in items 1 to 229 only. Thereafter an Application No.88 of 1970 was filed to relieve the Commissioners-cum-Receiver from the Receivership in view of the conclusion of the proceedings. This Court thereupon passed orders in Application No.228 of 1969 on 13.02.1970 accepting the Report of the Receivers directing the Registry to draw a final decree in the suit and also passed orders discharging the Receiver by an order dated 10.06.1971 in Application No.88 of 1970.

6. It is to be noted here that in para 1(d) of the Application filed under Order XXIII Rule 3 of CPC and the memorandum of compromise, the parties have declared as follows:

“Para 1(d) “that as per the provisions of Abolition of Jagir Regulation No.69 of 1358 and (Jagir) Commutation Regulation 25 of 1358 F, the commutation amount or Jagir income may be received by each of the parties herein as heretofore, and their legal heirs under personal law, the Defendant No.2 as Amir-e-Paigah receiving two-fifth and the Plaintiff

and remaining Defendants receiving  
the remaining three-fifth.”

7. In para 4(g) of the order dated 06.04.1959, it is recorded that the Receiver cum Commissioners will have power to sell the said properties by way of public auction and exercise all powers necessary for affecting the division of the same between defendants Nos.2 to 12 and 14 to 22 each son getting 2/33 and each daughter getting 1/33 share in the properties of schedule ‘A’ **except** items 230 to 254 of this schedule and the items of properties allotted to the plaintiff. That the defendants Nos.2 to 22 will get their share namely each son getting 2/35 and each daughter getting 1/35 from the arrears of income, future income, compensation or commutation or sale proceeds of the items 230 to 254 of schedule ‘A’ detailed under the head of “Makhtas”, in case the same are restored or released in favour of Paigah Asman Jahi. In the Application filed under Order XXIII Rule 3 of CPC for recording Memorandum of Compromise, the said para 4(g) have also been incorporated in the terms of compromise and the same had

become part and parcel of the Memorandum of Compromise.

8. A Division Bench of this Court by order dated 20.12.2022 has appointed Mr.Mohd. Bande Ali, Retired District Judge and Mr. K.Ajith Simha Rao, Retired District Judge, as Receiver-cum-Commissioner for submission of report post drawal of preliminary decree to enable the Court to draw up the final decree. Thereafter, the new set of aforesaid Receiver-cum-Commissioner have filed a report dated 06.07.2023 to the effect of memorandum of compromise and preliminary decree.

9. In the said report they have concluded that the entire litigation originated from the alleged execution of Assignment Deeds and the orders passed thereon and would submit that the properties in Item Nos.232 to 254 of Schedule 'A' of the preliminary decree have not been restored or released in favour of Paigah Asman Jahi. Resultantly the schemes of partition of the properties covered under Item Nos.232 to 254 of Scheudle 'A' of the preliminary decree in C.S. No.7 of 1958 prepared and



submitted by the Receiver-cum-Commissioner is of no help to the parties to claim any right or title and possession if any delivered to them under execution proceedings in respect of such properties by virtue of any final decree which came to be passed on the basis of Assignment Deeds and the consent of the Assignors.

10. Further, the properties covered by Items No.230 to 254 of Schedule 'A' detailed under the head of "Makhtas" were not partitioned as per para 1(d) and 4(g) of the terms of compromise memo and as per para 1(d) and 4(g) of the preliminary decree dated 06.04.1959 and as per para 7 of the report dated 20.12.1965 and Affidavit dated 20.09.1966 of Receivers-cum-Commissioners (Nawab Saleem Khan and Govindas Mehta) filed in Application No.205 of 1965 and as per para 11 Affidavit dated 22.12.1969 in Application No.228 of 1969 wherein it was submitted that the properties covered by Items No.230 to 254 of Schedule 'A' detailed under the head of "Makhtas" were not partitioned. The Receiver cum Commissioner further submit that in the absence of any relief of restoration in favour of the Paigah Asman Jahi, division of

the respective shares in the properties covered under Items No.230 to 254 of Schedule 'A', the plaintiff and the defendants cannot make any claim or ownership of the suit properties and has finally concluded that the draft final decree as per the order dated 13.02.1970 in Application No.228 of 1969 in the suit in respect of Items 1 to 229 of Schedule 'A' and Schedules 'B', 'C', 'D', 'E' and 'F' of preliminary decree to be engrossed on stamp papers giving a quietus to the suit in C.S. No.7 of 1958.

11. This Court on 07.07.2023 noted that Mr. Mohd. Bande Ali and Mr. Ajithsimha Rao, Receivers-cum-Commissioners have submitted report and directed that the report be furnished to the learned counsel for the parties enabling them to file their objections to the report. Thereafter, objections were filed, from time to time, and vide order dated 26.07.2024, this Court directed the Registry to list the matter for final hearing.

**Brief facts in Appl.No.488 of 2012:**

12. Application No.488 of 2012 has been filed seeking to direct the receiver-cum-commissioner to handover the

possession of land admeasuring Ac.1.25 guntas in schedule A and Ac.1.30 guntas in schedule B, in Survey No.57 1/8/A of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District to the applicants in Application No.488 of 2012 in view of the final decree dated 30.12.2011 passed in Application No.519 of 2009 in C.S.No.7 of 1958.

13. The applicants in Appl.No.488 of 2012 submit that as per the preliminary decree, the vendors/predecessors in title were allotted the land in Sy.No.57 of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District. The petitioners have purchased the application Schedule 'A' land to an extent of Ac.1-25 gts., and application Schedule 'B' land admeasuring Ac.1-30 gts., in Sy.No.57/1/8A of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District which is in item No.252 of Schedule A annexed to the preliminary decree dated 06.04.1959 from the legal representatives of defendant Nos.2 to 12 and 14 to 22 in the suit, who were impleaded as per the orders in Appl.No.73/2000 dated 02.02.2000 through Document dated 06.01.2006. It is further submitted that this Court was pleased to pass final decree

by an order dated 30.12.2011 and the same was engrossed on stamp paper after payment of the required stamp duty and the final decree was passed in favour of the petitioners. It is further submitted that the possession of the property covered under the final decree has to be delivered to the final decree holders by the Receiver cum Commissioner. Therefore, the petitioners pray this Court that the Receiver cum Commissioner be directed to hand over the possession of the land to the petitioners and other decree holders.

**Brief facts in Appl.No.24 of 2024:**

14. Application No.24 of 2024 has been filed to pass a final decree in favour of the petitioners herein in terms of the Memorandum of Compromise dated 29.12.2013 to an extent of Ac.0-32 gts., in Sy.No.57 of Shamshiguda Village, Balangar Mandal, Ranga Reddy District being item No.252 of Schedule A annexed to the preliminary decree in C.S.No.7 of 1958 which was allotted to defendant No.14 as per the scheme of partition submitted by the receivers-cum-commissioners and approved as per the orders passed in Appl.No.495/2009 in C.S.No.7/1958 and direct the

receiver-cum-commissioner to confirm the possession of the petitioners by handing over possession of the final decree schedule land to the petitioners.

15. In the affidavit filed in support of Application No.24 of 2024, it is stated that some of the shareholders in the suit have executed Agreement of Sale cum General Power of Attorney dated 21.07.2003 which was registered on 09.04.2013 in favour of petitioners and possession of land was handed over to the petitioners to an extent of Ac.1-37 gts., in Sy.No.57 of Shamshiguda Village. Later, as per the report of the Receiver-cum-Commissioner, the said land was fallen to the share of defendant No.14 and hence the said defendant who is one of the party to the Agreement of Sale cum General Power of Attorney had agreed to pass final decree *vide* Memorandum of Compromise dated 29.12.2013, in favour of petitioners to an extent of Ac.0-32 gts., and the petitioner may be declared as absolute owner of the schedule property i.e., Ac.9-32 gts., in Sy.No.57 of Shamshiguda Village, which was described and dealienated in the map attached to the compromise decree dated 29.12.2013, as such the present

application in Appl.No.24 of 2024 was filed by the applicants for passing of final decree in respect of the land allotted to defendant No.14 under Section 146 of Civil Procedure Code, 1908. The applicant also filed an application for impleadment in the suit as the purchaser of the land allotted to defendant No.14 and sought for passing of final decree in their favour in respect of land to an extent of Ac.0-32 gts., in Sy.No.57 of Shamshiguda Village, Balanagar mandal, Ranga Reddy District in terms of compromise decree dated 29.12.2013.

16. The applicants in Application Nos.495 of 2008, 505 and 508 of 2013 have filed the objections to the report submitted by the Commissioner dated 12.03.2009 and have sought rejection of the report of the Commissioner. The applicants in the aforesaid applications seek a direction to the receiver to abide by the report of the Commissioner dated 12.03.2009 which was accepted by this Court on 17.07.2009, in respect of the land situated in Survey No.57 of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District and to confirm the final decree dated

30.12.2011 passed in Application No.519 of 2009 in favour of the objectors/applicants.

17. In order to appreciate the grievance of the applicants in Application Nos.495 of 2008, 505 and 508 of 2013, reference to relevant facts need mention which are stated infra. The subject matter of these applications is makthas bearing item Nos.230 to 254 of Schedule A annexed to the preliminary decree situated in Shamshiguda Village, Balanagar Mandal, Ranga Reddy District. According to the applicants in the said applications, the aforesaid makthas were not taken over by the Government and were the personal property of Nawab Ali Janab Mir Kabir Mohammed Fakruddin Khan Bahadur. A civil suit namely C.S.No.7 of 1958 was filed seeking partition of properties of Asman Jahi Paigah. In the aforesaid civil suit, on the basis of the compromise arrived at between the parties, a preliminary decree was passed on 06.04.1959. The relevant extract of the preliminary decree is as under:

“4(g). For the purpose of affecting the distribution of properties among the persons

entitled thereto the Commissioners/Receivers will have powers to sell the said properties by public auction and exercise all powers necessary for effecting the division of the sale between defendant Nos.2 to 12 and 14 to 22 each son getting 2/33 and each daughter getting 1/33 in the properties of Schedule A except items 230 to 254 of this Schedule and items of properties allotted to the plaintiff. The defendant Nos.2 to 22 will get their share, namely, each son getting 2/35 and each daughter getting 1/35 from the arrears of income future income, compensation or commutation or sale proceeds of the items 230 to 254 of Schedule A detailed under the head of “Makthas” in case of the same are restored or released in favour of Paigah Asman Jahi.”

18. The subject matter of these applications pertain to land bearing Survey No.57 of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District, which is included in Annexure A annexed to the preliminary decree.

19. A Division Bench of this Court by an order dated 15.10.2008 passed in Application No.495 of 2009 directed the receiver-cum-commissioner to submit a report by



dividing the land situated in Survey No.57 by metes and bounds between the sharers as per their entitlements in the preliminary decree. The receiver-cum-commissioner submitted report before this Court on 12.03.2009. A Division Bench of this Court by an order dated 17.07.2009 accepted the report. Thereafter, the objectors in Application No.488 of 2012 filed an application namely Application No.519 of 2009 for passing a final decree. The same was allowed on 30.12.2011. Thereupon, a final decree was drawn. The relevant extract of the final decree reads as under:

“That this Hon’ble court passed a preliminary decree in partition Civil Suit C.S.No.7 of 1958 for division and distribution of private personal property of Asman Jahi Estate dated 6-4-1959.

That Mrs. Shahabzadi Sulthan Jahan Begum, D/o Nawab Moinuddowlah Bahadur (Plaintiff in C.S.No.7 of 1958) filed a suit for partition of the vast properties of Asman Jahi Paigah.

That the properties land in survey Nos.1 to 57 to an extent of 326 acres situated at Shamshiguda Village, Balanagar Mandal, Ranga Reddy district being item No.252 in

Schedule-A of C.S.No.7 of 1958 are matruka properties of late Nawab Moinuddowlah Bahadur the properties were divided amongst the defendant Nos.2 to 12 and 14 to 22 item No.252 of the preliminary decree or the Matruka Properties of late Nawab Moinuddowlah Bahadur. The properties were divided amongst the defendant Nos.2 to 12 and 14 to 22.

That as per the preliminary decree dated 6-4-1959 in Civil Suit No.7 of 1958 the defendant Nos. 2 to 12 and 14 to 22 each son is entitled to get  $\frac{2}{35}$ th share and each daughter is entitled to get  $\frac{1}{35}$ th share of the items 230 to 254 of schedule A and as per the entitlement the land to an extent of Ac. 1.25 guntas in Schedule A and Ac.1.30 guntas of Schedule-B, item No. 252 of the Schedule the defendant Nos. 15,12,14,8,19,20,21 and 22, Legal representatives of defendant Nos.3,4,5,6,7,9,10 and 11 under document dated: 06.01.2006 sold the land to the applicants.

That as per the directions of this Hon'ble court, the Advocate Receiver(s) -cum- Commissioner(s) was appointed and directed the Receiver(s) to submit a report by dividing the lands situated in survey No.57 by metres

and bounds between the sharers as per their entitlement as per the preliminary decree the report of advocate Receiver(s) along with the plan was accepted and approved by this court on 17.07.2009.

That the applicant herein submitted the documents before the Receiver(s) at the time of filing of the Report and requested them to allot the land to predecessors of title to an extent of Ac.3.15 guntas in survey No.57 of Shamshiguda and also stated that they are in possession and enjoyment of the land by virtue of the Registered deed of sale transaction the same was recorded in the Report, the division was made between the original sharers that the applicants herein have purchased the land to an extent of Ac.3.15 guntas in Shamshiguda Village and also entitled for passing of the final decree.

That the applicants herein have purchased the land to an extent of Ac. 1.25 guntas in Schedule A and land to an extent of Ac. 1.30 guntas in Schedule - B of Survey No. 57/1/8 of Shamshiguda Village which is item No.252 of Schedule-A annexed to the preliminary decree dated 6-4-1959 from the

L.Rs of the defendant under Registered document dated: 06.1.2006.

That the predecessors of applicant vendors were allotted the land in survey No.57 (part), the applicants herein are entitled to a final decree in respect of the application schedule A&B land to an extent of Ac.1.25 and Ac.1.30 guntas in survey No.57 Shamshiguda Village, Balanagar Mandal, Ranga Reddy District.

This court doth order and decree as follows:-

1. That this application be and hereby is allowed and a final decree is passed for the applicants for the application schedule land.
2. That the applicants be and hereby are entitled for final decree.

a. to an extent of Ac. 1.25 guntas,  
Schedule - A. in survey No. 57/1/8/A  
of Shamshiguda Village, Balanagar  
Mandal, Ranga Reddy District.

bounded by

North:	60' wide Road
South:	Sy. No. 57/1 part
East:	Sy. No. 57/1 part
West:	Sy. No. 57/1 part

b. to an extent of Schedule-B land  
admeasuring Ac. 1.30 guntas in  
Survey No. 57/1/8 of Shamshiguda  
Village, Batanagar Mancal, Ranga  
Reddy District  
bounded by

North: 50' wide Road

South: Survey No 57/1 part

East: Survey No. 57/1 part

West: Survey No. 57/1 part

3. that a fee of Advocate (s) - Receiver (s)-  
cum-Commissioner(s) is fixed at 2% of the basic  
Value depicted in the basic value Register,  
which shall be payable at the time of delivery  
possession.

4. that the final decree be engrossed on the  
requisite stamp papers as per the boundaries,  
and the final decree be issued after engrossed  
of stamp papers.

Note: In pursuance of the order of the Hon'ble  
High Court of A.P. vide order dated: 30.12.2011  
in Appln No. 519 of 2009 in C.S No. 7/58 the  
requisite Stamp duty of Rs. 81000/- is to be  
paid and the same was paid by way of Stamp  
Papers (20 X 100) valued at Rs. 2,000/- for the  
purpose of engrossment of final decree and an

amount of Rs.58,750/- dated: 09.02.2012 and Rs. 20,250/-dated: 15.02.2012 was deposited in the account of Registrar (Judicial), High Court of A.P. in A/c No. 52005821812 in S.B.H. High Court Branch, Hyderabad.”

20. The final decree holders have deposited the required stamp duty and the final decree was engrossed on the stamp paper. The final decree was registered as document bearing No.13236 of 2014, dated 31.10.2014, by the Joint Sub Registrar, Ranga Reddy District.

21. A Division Bench of this Court by an order dated 02.01.2023 passed in Application No.9277 of 2017 and batch appointed new receiver-cum-commissioner to submit a detailed report on the basis of which a final decree may be drawn. In pursuance of the aforesaid order, the receiver-cum-commissioner has submitted a report on 06.07.2023. The commissioner recorded their conclusions in paragraph 98 to 101.2 which are extracted below for the facility of reference:

“98. In the facts and circumstances mentioned in the foregoing paras, it becomes abundantly and evidently clear that, the entire litigation

originated from the alleged execution of Assignment Deeds and the orders passed thereon would not and should not empower the parties who litigated the cause tracing their title to the alleged execution of Assignment Deeds. I am therefore led to the irresistible conclusion that the result of such litigation gets vitiated by reason of the admitted incompetency and powerlessness of the plaintiff and defendants in CS.No.7 of 1958 to deal with Item Nos.232 to 254 of Schedule 'A' of the Preliminary Decree in CS.No.7 of 1958 to deal with the properties covered under Item Nos. 232 to 254 of Schedule 'A' of the Preliminary Decree since the said properties have not admittedly been restored or released in favour of Paigah Asman Jahi.

99. Resultantly the schemes of partition of the properties covered under Item Nos. 232 to 254 of Schedule 'A' of the Preliminary Decree in CS.No.7 of 1958 prepared and submitted by the Receiver-cum- Commissioner is of no help to the parties to claim any right or title and possession if any delivered to them under execution proceedings in respect of such properties by virtue of any final decree which came to be passed on the basis of Assignment Deeds and the consent of the Assigners.

100. The net result is that the order dated 13.2.1970 in Application No.228 of 1969 accepting the report of Receivers cum Commissioners dated 20-9-1969 filed in Application No.205 of 1965 and directing the Registry to draw Final Decree in the suit is final and that there cannot be any more final decrees in the suit in CS No.7 of 1958 and final decrees passed thereon shall not vest the parties with any right and interest over the properties covered by Items 230 to 254 of Schedule 'A' detailed under the head of "Makhtas" for the following reasons at the cost of reiteration: -

a. That the properties covered by Items 230 to 254 of Schedule 'A' detailed under the head of "Makhtas" were not and have not been released or restored in favour of Paigah Asman Jahi;

b. That the properties covered by Items 230 to 254 of Schedule 'A' detailed under the head of "Makhtas" were not partitioned as per para 1(d) and 4(g) of the terms of compromise memo and as per para 1(d) and 4(g) of the preliminary decree dated 06.04.1959 and as per para 7 of the report dated 20.12.1965 and Affidavit dated 20.09.1966 of Receivers-cum-Commissioners



(Nawab Saleem Khan and Govindas Mehta) filed in Application No.205/1965 and as per para 11 Affidavit dated 22.12.1969 in Application No.228/1969;

c. That in the absence of any order of release or restoration of the said properties in favour of Paigah Asman Jahi, and in the absence of any order of the Court for the division and allotment of respective share in the properties covered by Items 230 to 254 of Schedule 'A' detailed under the head of "Makhtas" plaintiff and defendants cannot make and could not have made any claim of ownership over the said properties since they were not vested with any right, title and possession enabling them to execute assignment deeds in favour of 3<sup>rd</sup> parties; and thereby allowing the 3<sup>rd</sup> parties to create fuss and waste the precious time of the Hon'ble Courts.

101. Therefore, I am of the considered opinion that the Registry has to be directed to draft final decree as per the order dated 13.02.1970 in Application No.228 of 1969 in the suit in respect of Items 1 to 229 of Schedule 'A' and Schedules 'B' 'C' 'D' 'E' & 'F' of preliminary decree and to engross the same on stamp

papers and thereby giving a quietus to the suit in CS.No.7 of 1958.

101.2 The Plaintiff and Defendants/their Legal Representatives in case of death of any of the parties cannot file any application in CS.No.7 of 1958 in respect of Items 230 to 254 of Schedule 'A' detailed under the head of "Makhtas" and that they have to lay their claim if any before the competent authority.”

Thereafter, the matter was adjourned for receiving objections on the report of the Receiver cum Commissioner dated 06.07.2023.

## **22. OBJECTIONS TO THE REPORT DATED 06.07.2023:**

(i) The final decree holders in Application No.839 of 2013 have filed objections stating that in a partition suit, the duty of the Receiver is to divide the suit schedule properties between the sharers in accordance with the share/sharers fixed in the preliminary decree. It is also stated that there is no warrant to the Receiver entrusting or suggesting the works to the Receiver and he himself filed the present report by stating that the lands are not available for partition without verifying the subsequent

orders and the proceedings and also the memos issued by the concerned CCLA. The Objector reiterated the submissions made in the affidavit and further stated that all the proceedings and orders were not taken into consideration by the Receiver as such the report is liable to be quashed on the following grounds:

(a) That powers of Receiver in a partition suit is only to divide the suit schedule properties between the sharers fixed in the preliminary decree but in the present case the receiver went beyond the jurisdiction and filed report stating that the lands are not available for partition.

(b) The judicial orders passed by this Court and the orders passed by the Hon'ble Supreme Court cannot be nullified or modified by the report of the Receiver and hence the present report is liable to be discarded.

(ii) Mohammed Sarshar Ahmed, learned counsel has filed objections to the report of the Receiver cum Commissioner on behalf of defendant No.21 in C.S.No.7 of 1958 i.e., respondent No.21 in Appl.No.24 of 2024. The main objections are that the report is based on wrong compromise and that the report would unsettle the things

which have historical significance and no proper research was done and the report erroneously discussed as to how the rights in a compromise decree gets transmitted to the assignees and in the partition suit no title can be gone into.

*[Comments: The applicants have not specifically stated in their objections as to how their rights would be defeated.]*

(iii) Objections were also filed on behalf of legal representatives of defendant Nos.2 to 12 and 14 to 22 in the preliminary decree in C.S.No.7 of 1958 to the report of Receiver cum Commissioner. The objectors contend that the Receiver cum Commissioner went beyond jurisdiction and filed the report stating that the lands are not available for partition and that the receiver has also not taken the subsequent orders passed in the suit or the statutory authorities and the proceedings issued by the CCLA stating that they have not taken over the subject lands and hence the question of release does not arise. It is also stated that it is just and necessary to set aside the report and declare the suit schedule property in item Nos.230 to 254 are available for partition and to direct the Receiver cum

Commissioner to file the metes and bounds division report so as to enable the parties to file final decree applications.

(iv) Similarly, objections were filed to the report of Receiver cum Commissioner by the final decree holders in Appl.No.519 of 2009. The objectors would submit that as per preliminary decree dated 06.04.1959 in C.S.No.7 of 1958, the lands situated at Shamshiguda Village in schedule 'A' (item No.252) are self purchased by predecessors of Nawab Moin-ud-dowla Bahadur under registered sale deed dated 27<sup>th</sup> Jamad-us-Sani 1221 Hijri whose name was recorded in the possessor and pattadar columns in Khasra Pahani for the year 1954-55 and accordingly taxes are paid in respect of the lands in Shamshiguda Village. However, proceedings are pending before the Board of Revenue at the time of entering into compromise and at the time of passing of preliminary decree, the compromise decree was passed subject to release by Board of Revenue and in view of the orders dated 14.12.1959 passed by Board of Revenue, the Shamshiguda Village was found to be private patta and these makthas were never taken over by the Government

and the said lands are available for partition and the final decree passed earlier may be confirmed in favour of the final decree holders.

(v) Similarly, objections were filed by defendant Nos.2 to 12 and 14 to 22 in the preliminary decree in C.S.No.7 of 1958 to the report of Receiver cum Commissioner stating that the material facts of the case on record were not at all dealt by the Receiver cum Commissioner to give an unbiased report which should help the Court to come to a proper decision based on facts and legality.

(vi) The objections filed by defendant Nos.2 to 12 and 14 to 22 in the preliminary decree in C.S.No.7 of 1958 were adopted by third party impleaders in Review Petition in I.A.No.1 of 2020 and I.A.No.3/2020 in L.P.A.No.1 of 2018 and C.A.No.33 of 2017 in C.S.No.7 of 1958.

### **23. SUPPORTING SUBMISSIONS TO THE REPORT DATED 06.07.2023**

An application in I.A.No.1 of 2025 has been filed by the petitioners/applicants in Application Nos.1 of 2021 and 5 of 2020 in Application No.837 of 2013 in C.S.No.7 of

1958. The said application was filed in support of the report of Receiver cum Commissioner by stating that the report of the Receiver cum Commissioner has brought true facts and the fraudulent methods applied by the persons who claimed the lands mentioned in Schedule 'A' of the Preliminary decree granted in C.S.No.7 of 1958 when these lands mentioned from 230 to 254 were specifically prohibited from partition as per 4(g) of the preliminary decree granted in C.S.No.7 of 1958. It is further stated that paragraph No.5 of the report of Receiver cum Commissioner clearly brought out the facts that two Receiver cum Commissioners who were appointed during the proceedings of C.S.No.7 of 1958 stated that Maktas mentioned in Schedule 'A' from 230 to 254 were under litigation with the Revenue Department as per para 4(g) of the preliminary decree of the report. It is further submitted that if the properties mentioned at Sl.Nos.230 to 254 are restored or released, the arrears of income, future income, compensation or sale proceeds derived from the said properties shall be distributed among defendant Nos.2 to 22 in the proportion of 2/35 to each son and 1/35 to each

daughter and that the said 25 items of properties have not been restored or released and that they cannot be valued or partitioned at this stage. As such the Receiver cum Commissioner could not file report about the release of item Nos.235 to 254 of 'A' Schedule which are in the custody of Revenue Department. Eventually it is submitted that if the lands in Shamshiguda Land was not released in favour of Paigah Asman Jahi, no partition decree can be passed on the said land.

**SUBMISSIONS:**

24. Mr.Vedula Srinivas, learned Senior Counsel representing Mr.N.M.Krishnaiah, learned counsel for the applicant in Application No.488 of 2012 has submitted that the entire issue revolves around the preliminary decree and the properties are private properties of Asman Jahi Paigah. The said properties are under the control of Jagir Administration. However, it is not necessary to adduce any documents. He would submit that subsequently the properties have been resumed and they are available for partition. The learned Senior Counsel would submit that the final decree has already been passed in favour of the objectors in Application No.488 of 2012. In pursuance of



the final decree dated 30.12.2011 passed in Application No.519 of 2009 in C.S.No.7 of 1958, the receiver-cum-commissioner be directed to handover possession of the land admeasuring Ac.1.25 guntas in schedule A and Ac.1.30 guntas in schedule B, in Survey No.57 1/8/A of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District under Order XXI Rule 35 read with Section 151 of the Code of Civil Procedure, 1908. Per contra, the receiver-cum-commissioner would submit that these properties are not available for partition and no proof of document in support of paragraph 4(g) of the preliminary decree is filed to show that the aforesaid properties have been released and that these applications are filed after 40 years.

25. Mr.Vedula Venkat Ramana, learned Senior Counsel for the applicants in Application Nos.495 of 2008, 505 and 508 of 2013 would submit that the receiver is appointed under Order XX Rule 18 of CPC for division of the property covered by the preliminary decree by metes and bounds. It is contended that the receiver neither discharges any judicial power nor any adjudicatory power. It is argued that receiver cannot submit a report whether a

particular item is available for partition. The receiver is required to submit a scheme of partition. It is submitted that by submitting a report dated 06.07.2023, the Receivers/Commissioners have exceeded the scope of their appointment and have submitted their opinions. In this connection reference has been made to paragraphs 98 and 99 of the report submitted by the receivers. It is urged that the report of the commissioner amounts to review of the preliminary decree without issuing notice to any of the parties. It is also submitted that the report submitted by the Commissioners dated 06.07.2023 has to be rejected. It is for the State Government to point out the provision under which the property is required to be released and whether the same has been released. It is contended that the conferment of jurisdiction is a legislative function and it cannot be conferred with the consent of the parties. It is therefore prayed that this receivers be directed to abide by the report already filed, which has been accepted by this Court in respect of the land situated in Survey No.57 of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District and confirm the final decree dated 30.12.2011

passed in Application No.519 of 2009 in favour of the objectors. It is contended that the report submitted by the receiver cum commissioner be rejected and liberty be granted to final decree holders to take recourse to such remedies as are available to them in law for seeking possession. Our attention has also been invited to order dated 30.12.1977 passed in File No.NA2/284/77 by the Commissioner of Survey Settlement – Inam and it has been contended that lands mentioned in item Nos.230 to 254 have been released. In support of the aforesaid submissions, reliance has been placed on the decision of the Supreme Court in **Jagmittar Sain Bhagat v. Director, Health Services, Haryana**<sup>1</sup>.

26. Mr.Sunil B.Ganu, learned Senior Counsel for respondent Nos.116 and 128 in Application No.24 of 2024 has adopted the submissions made by Mr. Vedula Venkataramana, learned Senior Counsel for the applicants in Application Nos.495 of 2008 and 505 and 508 of 2013. He would submit that the receiver cum commissioner appointed by this Court has not taken into account the order dated 30.12.1977 passed by the Commissioner of Survey Settlement – Inam

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<sup>1</sup> (2013) 10 SCC 136

and therefore, the aforesaid report does not deserve acceptance. Mr.J.Prabhakar, learned Senior Counsel for the applicant in Application No.24 of 2024 has adopted the submissions made by Mr. Vedula Venkataramana, learned Senior Counsel for the applicants in Application Nos.495 of 2008 and 505 and 508 of 2013. Mr.A.Venkatesh, learned Senior Counsel for respondent Nos.12 and 21 in Application No.24 of 2024 and for final decree holders in application No.1409 of 2003 has adopted the submissions made by Mr. Vedula Venkataramana, learned Senior Counsel for the applicants in Application Nos.495 of 2008 and 505 and 508 of 2013. Learned counsel for the objectors/final decree holders in application No.439 of 2013 had also adopted the submissions made by Mr. Vedula Venkataramana, learned Senior Counsel for the applicants in Application Nos.495 of 2008 and 505 and 508 of 2013. Mr.Naga Srinivas Rao, learned counsel for respondent Nos.1 to 11, 13 to 20, 22 to 258 in I.A.No.9227 of 2014 (I.A.No.24 of 2014) submitted that all final decrees have been obtained by playing fraud. It is contended that the lands mentioned in item Nos.232 to 254 of the

preliminary decree have not been released and the same are not covered under the preliminary decree and by efflux of time no rights are created. Therefore, the receiver cum commissioner cannot assign the aforesaid lands in favour of any party. In support of his submissions, reliance has been placed on a decision of the Division Bench of this Court in **S.Tirupathi Rao vs. M.Lingamaiah**<sup>2</sup>. Mr.T.K.Sridhar, learned counsel for the legal representatives of defendant No.4 in the suit and for respondent No.4 in application No.24 of 2024 submitted that the report dated 06.09.2023 submitted by the receiver cum commissioner in so far as it pertains to lands mentioned in Sl. Nos.232 to 254 is required to be rejected. Learned counsel further submitted that the receiver cum commissioner appointed by this Court ought to have appreciated that the final decree cannot be passed in application Nos.1409 of 2013 and 837 of 2013 as the unregistered assignment deeds were executed and a title in respect of the immovable property cannot be passed on the basis of the unregistered document. Therefore, the

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<sup>2</sup> 2018 SCC OnLine Hyd 284 = 2018 (5) ALT 645 (DB)

application seeking final decree at the instance of the applicants in application Nos.1409 of 2013 and 837 of 2013 is not maintainable and it is also pointed out that the receiver cum commissioner has cursorily prepared the report and ought to have examined the issue in greater detail as the Government is in possession of some of the lands covered under the preliminary decree.

27. Mr.Imran Khan, learned Additional Advocate General appearing on behalf of the State would submit that all the lands are vested in the State on account of Jagir Abolition Act and State is not a party to the compromise and would refer to clause 4(g) of the preliminary decree dated 06.04.1959 from which it is evident that the defendant Nos.2 to 22 have been held entitled to the properties mentioned at item Nos.230 to 254 of Schedule 'A' annexed to the preliminary decree, in case the same are restored or released in favour of Asman Jahi Paigah. He would further submit that in the instant case, admittedly, there is no material to indicate that the properties mentioned at serial No.230 to 254 of Schedule 'A' to the preliminary decree have been restored or released in favour

of Asman Jahi Paigah and would submit that there was no formal release order and in view of the same, the compromise decree cannot be a foundation for further adjudication. He would further refer to the orders passed by the Commissioner of Survey dated 14.12.1959. The said judgment arises against File No.A2/147/2016 pertaining to 29 self acquired properties and in the said judgment, Commissioner of Survey Settlement – Inam in respect of villages mentioned as 16 makthas i.e., Bahadur Ali had allowed any other semblance of applicability in respect of self acquired villages and the same has been restored back to Paigah Azam indicated in the order. Learned Additional Advocate General would further submit that the said proceedings are incorrect and the said order is not marked and even in the said order no details of the villages are given and the said documents were not marked and no evidence was led to that effect. He would further submit that as far as Shamshiguda Village is concerned, Government is in possession and even subsequent to the order of release, no entries have been made in the revenue records and the applicants have no locus to file objections

and the assignment deeds cannot be looked into and do not have any weightage and supports the report of Receiver cum Commissioner dated 06.07.2023. Learned Additional Advocate General would further submit the judgment of the Division Bench in O.S.A.Nos.58 to 66, 68 to 72 of 2002 and O.S.A(SR).Nos.235, 288, 231, 284, 239, 227, 214, 218, 222, 243, 514, 518 and 522 of 2003 dated 10.06.2003 supports the report of the Receiver cum Commissioner. The relevant portion of the said judgment is extracted hereunder for better understanding and appreciation of the case:

“The assignment deeds, prima facie in our considered opinion are inadmissible in evidence for the reason that the documents are hit by Section 17 of the Registration Act. The right title and interest in immovable properties specified in the assignment deeds are sought to be transferred in favour of the assignees.

In another clause in one of the assignment deeds dated 16.09.2000 it is declared "that the assignors have doth hereby assign and transfer their rights, interest and title acquired by them in respect of schedule mentioned property morefully described in the schedule of the



property and the assignment deed is to be read in consonance with memo of understanding entered separately for this purpose". The said memorandum of understanding is not made part of the record. Such covenants mutually agreed between the parties cannot, in any manner, whatsoever take away or adversely effect the right, title and interest of third parties.

The cases on hand, in our considered opinion, require a thorough probe for which purpose Jagir Administrator and Secretary. Finance Department, Government of Andhra Pradesh who were earlier parties in C.S No.7 of 1958 are required to be impleaded... The District Collector, Ranga Reddy District and as well as the District Collector, Hyderabad are also required to be impleaded inasmuch as many of the localities and villages situated in these districts are sought to be included for the first time after 40 years into the compromise decree dated 06.04.1959. This has resulted in causing any amount of prejudice adversely affecting the rights of the individuals in possession and the orders virtually came as a bolt from in a blue as far as they are concerned.

In our considered opinion, this is not a case where any of the parties can be permitted to be represented by general

power of attorney holder without making proper enquiry into the genuineness of the general power of attorney deeds. We have noticed as to how and in what manner certain interpolations are made in the applications and parties are added after filing the applications into the Court.

Since we propose to set aside the orders passed by the learned single Judge and remit the matter for recording evidence, we do not propose to record any further findings. Whatever we have noticed leaves us not only with an unpleasant feeling but we are shocked to realise the depth and magnitude of misrepresentations and manipulations that are apparent even to a naked eye.

We must observe that we are not impressed by the submissions made by the learned senior counsel appearing on behalf of respondents 102 and 103 in O.S.A Nos. 64, 65 and 66 of 2002 that the only remedy available to the appellants herein is to get their claims adjudicated by filing necessary applications under Order 21 Rule 97 CPC since a preliminary decree had already been passed by this Court in terms of compromise. Even orders have been passed by this Court to accept the report of the Commissioners/Receivers and accordingly orders have been passed for

preparation of final decree- This Court is seized of the whole of the proceedings in either case. Whether a final decree has been passed or not. (Underlining is by me for drawing attention)

Even if such applications are required to be filed under Order 21 Rule 97 CPC they have to be filed only in this Court.

There cannot be any dispute with the proposition of law in view of the authoritative pronouncement of the Supreme Court. But in the instant case each of the applications filed in the Court are integrally connected with each other. We have already seen the grand design and the scheme prepared to get villages after villages, included in the preliminary decree passed about more than 40 years ago. We have also seen the nature of the assignment deeds and the parties thereto and the nature of dispute with regard to signatures on the said documents. We have also found that the copies of the general power of attorney deeds are not filed into the Court. It is not clear from the record as to who were the parties that were present before the Court. In none of the applications the decree holders and the legal representatives have filed any vakalat authorising any advocate to represent in the proceedings. Even without ordering any notice some advocate without any

vakalat represented the parties in the proceedings. The whole thing is shrouded in mystery and the proceedings themselves are conceived in sin.

Various contentions have also been urged by the learned counsel for the appellants attacking the order passed by the learned single Judge. In view of our considered opinion that the matter requires a further enquiry for which purpose both documentary, and oral evidence is required to be recorded, we are not inclined to go into those contentions. The questions are left open.

For the aforesaid reasons, the impugned orders are set aside. The matter is remitted to the learned single Judge for disposal in accordance with law for which purpose evidence is to be recorded: The parties are accordingly permitted to lead such evidence as they may consider it necessary. In support of their claim."

28. Mr.Vedula Venkatramana, learned senior counsel would further submit that subsequent to the preliminary decree, reports were accepted and third parties have filed applications and receivers were appointed and partitioned the properties which are not been covered in the part of the

receivers report and the entire report is based on information gathered from the third party letters and the receivers cannot disturb the final decrees. He would further submit that the receiver believed the information from the third parties to be true and the entire report appears to be in the form of a judgment.

29. Mohd.Bande Ali, Receiver cum Commissioner, per contra, would submit that subsequent to the release order of the Commissioner of Survey Settlement and Inam confirming the release of the 29 Maktha Villages in favour of Moinuddowla Bahadur i.e., to the sharers in C.S.No.7 of 1958 by allowing the appeal filed by the legal heir of Moinuddowla Bahadur against the orders dated 29.12.1976 disallowing the claim for 16 villages dated 30.12.1977, no document has been filed to the extent of release order pertaining to the properties mentioned in Schedule 'A' in item Nos.230 to 254 and in case of such release, petitioners have to file an application for passing of fresh preliminary decree and the subject documents need to be marked as per Indian Evidence Act, 1872. He would further contend that third parties cannot approach for

passing final decree and a fresh preliminary decree has to be passed and Government has to be made a party to the extent of item Nos.230 to 254 of Schedule 'A' property. Even otherwise, as per the release order of Board of Revenue, it is not clear insofar as to the extent of list of properties mentioned in item Nos.230 to 254.

30. Mr.Sunil B Ganu, learned senior counsel appearing on behalf of respondent Nos.18 and 126 in Appl.No.24 of 2024 has filed additional objections to the report dated 06.07.2023 stating that on culmination of Inam and succession enquiry instituted by the Government concerning Paigah Asman Jahi, the office of the Commissioner of Survey, Settlement and Land Records (CSSLR) had issued Muntakhab No.3 on 14.02.1983 as confirmed in Proceedings Reference No.NA2/147/69 dated 11.06.1985 giving the list of all the villages which are vested in the Government. Admittedly Shamshiguda is not included in the said list. The said fact that Shamshiguda being excluded from Muntakhab No.3 is also confirmed by the Government of Telangana *vide* Communication dated 25.11.2022 wherein it was mentioned that appeal filed by

legal heirs of Paigah Asman Jahi was partially upheld by the Board of Revenue in F.No.NA2/147/69 dated 29.12.1976 and the said proceedings would establish that the property does not form part of Atiyat grants, as it is a non-jagir/private land. Learned senior counsel would further submit that land in Sy.No.57 of Shamshiguda Village to an extent of Ac.92-22 gts., has also been mutated in favour of respondent Nos.118 and 126 by the Government by issuing proceedings dated 12.04.2023 and 13.04.2023 respectively. In case of any doubt about the enforceability of the documents, respondent Nos.118 and 126 are ready to lead evidence in accordance with law.

31. We have considered the submissions made on both sides and have perused the record.

**32. The following points falls for consideration:**

1) What would be the effect and implication of order dated 30.12.1977 passed by the Commissioner of Survey Settlement – Inam in the present case?

- 2) What would be the effect of the previous report submitted by the receiver cum commissioner, which has been accepted by this Court?.
- 3) Whether the report of the present receiver cum commissioner can be rejected in respect of the cases, where final decree has been passed?
- 4) The scope of powers of the receiver cum commissioner as held in - ***Shree Ram Urban Infrastructure Limited vs. Court Receiver, High Court of Bombay [(2015) 5 SCC 539]*** and its applicability to the present case.
- 5) What would be the effect of the final decree dated 30.12.2011 passed in Application No.519 of 2009 in C.S.No.7 of 1958, has to be considered.
- 6) Whether the parties can be granted liberty to take recourse to the remedy to the extent of claiming possession in respect of the property, which may be covered by the final decree.

33. At this juncture, it is relevant to refer to a judgment of the Division Bench of this Court in Contempt Appeal No.33 of 2017 and Letters Patent Appeal No.1 of



2018 wherein by a common judgment dated 16.08.2018 this Court allowed the said Appeal. The said order discloses the manner in which the issues were dealt and the relevant portion of the said judgment is extracted for the facility of reference:

*“38. The claim of the 1st respondent in his writ petition in W.P.No.1729 of 2009 was that the decree holders under the preliminary decree dated 06-04-1959 in C.S.No.7 of 1958 assigned their rights in his favour and in favour of others on 01-10-2002, in respect of land of an extent of Ac.143.00 guntas, forming part of Survey Nos.1 to 37, 39 to 43 and 45 to 49 of Raidurg village, Serilingampalli Mandal, Ranga Reddy District; that the deed of assignment was accepted by this Court by an order dated 09-10-2002 in Application No.1146 of 2002 and that thereafter this Court passed an order on 26-12-2003 in Application Nos.1144 to 1147 of 2002 and Application No.1409 of 2003.*

*39. It may be interesting to note that what was claimed by the 1st respondent herein, in his Application No.1409 of 2003 was to pass a final decree in C.S.No.7 of 1958, in respect of land in Survey No.46, measuring about Ac.84.30 guntas in Raidurg village, Serilingampalli Mandal, Ranga Reddy District. In the prayer portion in Application No.1409 of 2003, the 1st respondent indicated that the land in Survey No.46 is to be correlated to Item-*

*234 of Schedule-A. But Schedule-A in entirety has been extracted by us in the preceding paragraph. Item-234 of Schedule-A as contained in the decree dated 06-04-1959 merely stated Maktah Raidurg. Neither any survey number, nor the extent of land nor even boundaries were indicated in Item-234. In addition, the common heading given to items-230 to 254 was LIST OF MAKTAS (UNDER APPEAL WITH REVENUE BOARD).*

*40. In fact, it is stated in the judgment rendered on 06-04-1959 in C.S.No.7 of 1958 that it was a preliminary-cum-final decree. Clause 4(g) of the decree made it clear that the Commissioners-cum-Receivers were entitled, for the purpose of effecting the distribution of properties among the persons entitled thereto, to sell all the properties except Items-230 to 254 in Schedule-A. The decree in respect of Items 230 to 254, was made subject to the restoration or release of the same by the Government in favour of Paigah Asman Jahi.*

*41. In the light of such a clear cut exclusion, in the decree itself and also in the light of the fact that item-234 in Schedule-A did not contain any survey number, description, or extent of land, we do not know how the 1st respondent herein could have sought a final decree in respect of S.No.46 to the extent of Ac.84.30 guntas.*

*42. In addition, the judgment in the suit very clearly indicated that the State Government, which*

*was impleaded as the 48th defendant, was given up and that the suit was dismissed as against the State Government.*

*43. But without reference to all this, the 1st respondent managed to get an assignment in his favour, recorded by an order dated 09-10-2002 in Application No.1146 of 2002 and also got a final decree on 26-12-2003 in Application No.1409 of 2003. This shows that the orders dated 09-10-2002 and 26-12-2003 were obtained completely by fraud. At the cost of repetition, it should be pointed out,--*

*a) that the 1st respondent managed to get a deed of assignment executed in his favour by the decree holders in C.S.No.7 of 1958, despite the fact that clause 4 (g) of the decree did not enable even the Commissioner-cum-Receiver to sell the land till the lands were released and restored by the Board of Revenue;*

*b) that the 1st respondent managed to identify a non-descript property and get a final decree in his favour, in the sense that when the original decree merely described Item 234 of Schedule-A as Maktah Raidurg, the 1st respondent included the whole village of Raidurg and identified Survey No.46 in the village; and*

*c) that despite the fact that the suit was dismissed as against the State Government, the 1st respondent sought to compel the revenue authorities to recognize his title, even without showing whether or not, the Board of Revenue ultimately released the Maktah property in favour of the decree holders.*

44. As we have stated earlier, there was no decree against the Government, as the suit itself was dismissed against the Government. Therefore, the 1st respondent herein could not have executed the decree against the Government in a civil court. Consequently, the Government were not bound to effect mutation in the revenue records, thereby forfeiting any claim that they may have, to the property. On a final decree obtained in the above fashion, in relation to a property, which could not be described in the plaint schedule, the 1st respondent obtained a direction in W.P.No.1729 of 2009. This is fraudulent. Since fraud vitiates all solemn acts, the 1st respondent cannot seek to enforce such a final decree through the machinery available to this court in the contempt jurisdiction.

45. The learned senior counsel appearing for the 1st respondent highlighted the abortive attempts made by the Government of Andhra Pradesh to implead itself as a party to the Civil Appeal in C.A.No.1121 of 2008 filed by a third party and the dismissal of the appeal filed by the Government of Andhra Pradesh in OSA (SR) No. 2116 of 2011. Therefore, he contended that the Government of Andhra Pradesh is now bound by the final decree.

46. But, we do not think so. First of all there was no decree as against the Government of Andhra Pradesh. The judgment dated 06-04-1959 passed in C.S.No.7 of 1958, which we have extracted above,

*shows that the suit was dismissed as against the Government of Andhra Pradesh. Once a suit is dismissed as against a party at the stage of preliminary decree, we do not know how a final decree will bind the party. In fact, the Government appears to have been ill-advised to file OSA (SR) No.2116 of 2011 with a delay of 2633 days, without realizing that there was no preliminary decree against the Government. In such circumstances, the dismissal of the delay condonation petition filed by the Government of Andhra Pradesh cannot make the Government of Andhra Pradesh a judgment debtor.*

*47. As we have pointed out earlier, the Contempt Case out of which the present appeals arise, were born out of the alleged failure of the Tahsildar to implement the orders of this Court in Application No.1146 of 2002, as directed by this Court in W.P.No.1729 of 2009. The affidavit in support of W.P.No.1729 of 2009, which contains the basis of the claim of the 1st respondent, shows that the averments therein are actually castles in the air. In paragraph 2 of his affidavit in support of W.P.No.1729 of 2009, the 1st respondent claimed that C.S.No.7 of 1958 was filed by one Smt. Saheb Jahi Sultan Jahan Begum, in respect of the matruka properties including the land admeasuring Ac.209.00 guntas in Survey Nos.1 to 49, situated in Raidurg village, Serilingampalli Mandal, Ranga Reddy District, listed at S.No.234 in Schedule-A of the plaint. But Item 234 in Schedule-A to the plaint*

*did not contain (i) either the extent of land, (ii) or the survey number, (iii) or the boundaries and (iv) or any other measure of identification of the property. In addition, this Item-234 was part of a list of several properties from S.Nos.230 to 254 listed under the caption LIST OF MAKTAS (UNDER APPEAL WITH REVENUE BOARD). Therefore, the very foundation of the claim of the 1st respondent in W.P.No.1729 of 2009 was illusory.*

*48. In paragraph 2 of his affidavit in support of W.P.No.1729 of 2009, the 1st respondent also claimed that a preliminary decree was passed by this Court and the decree holders executed a deed of assignment in his favour, in respect of the land of an extent of Ac.143.00 guntas forming part of Survey Nos.1 to 37, 39 to 43 and 45 to 49.*

*49. But clause 4 (g) of the decree reads as follows:*

*(4) that the Commissioners-Receiver shall,--  
(a)..(b)..(c)..(d)..(e)..(f)..*

*(g) for the purpose of effecting the distribution of the properties among the persons entitled thereto, the Commissioners-Receiver shall have powers to sell the said properties by public auction and exercise all powers necessary for effecting the division of the same between among defendants 2 to 10 and 14 to 22, each son getting 2/33 and daughter getting 1/33 share in the properties mentioned in Schedule-A except Items-230 to 254 of this schedule and the*

*items of properties allotted to the plaintiff, defendant Nos.2 to 22 will get their share namely each son getting 2/35 and each daughter getting 1/35 from the arrears of income, future income, compensation or commutation or sale proceeds of the items 230 to 254 of Schedule-A detailed under the head of Maktas in case the same are restored or releasing in favour of Paigah Asman Jahi.*

*50. Therefore, there could not have been an assignment, by the decree holders, especially when the Commissioners-Receiver themselves were restrained from dealing with these items.*

*51. Once the entire foundation upon which the claim of the 1st respondent is built, is found to be shallow, illusory and fraudulent, all the orders built upon such foundation, should fall like a pack of cards. We have not heard of an entire village without any description including survey number and extent being cited as one of the items in a suit for partition and we have certainly not heard of parties alienating indeterminate shares pursuant to a preliminary decree, which also did not cover these items.*

*52. It must be pointed out that there are lot of applications, writ petitions, Original Side Appeals, Miscellaneous Petitions, etc., arising out of C.S.No.7 of 1958, which are still pending in a huge batch of cases. It is only due to the fact that the entire batch has been specially assigned to this Bench, that we*

*have been able to take judicial notice of all the above facts including the averments in the plaint, the judgment in the suit and the list of properties that formed the subject matter of the suit. We are conscious of the fact that the learned Judge, against whose orders the present appeals have been filed, did not have the benefit of the records in C.S.No.7 of 1958. But we have had the benefit of the records in that suit, since all matters relating to the said suit have been assigned specially to this Bench by the orders of the Honble Chief Justice.*

*53. It is quite unfortunate that public interest was sacrificed in this case, with a series of orders being passed in C.S.No. 7 of 1958 in favour of the 1st respondent from the year 2002, without reference to the original records in C.S.No.7 of 1958. It is this series of orders, which led to a chain, with one leading to the other and the other leading to a third and so on and so forth which has eventually left the Government in total wilderness. The Government against whom the suit was dismissed, at the instance of the plaintiff, has now become a major judgment debtor. The lis between the owners and the Government was left undecided in the suit and the mere division of the property now in dispute (Item 234) was made subject to the orders of the Board of Revenue. If that is so, no Court can compel the Government to give up their rights and sacrifice the huge extent of about 100 acres in a prime locality in favour of third parties to the detriment of*



*public interest. Hence, the Letters Patent Appeal and the Contempt Appeal are liable to be allowed. Accordingly, they are allowed and the order of the learned Judge set aside.”*

34. Aggrieved by the common judgment in Contempt Appeal No.33 of 2017 and L.P.A.No.1 of 2018 dated 16.08.2018, the respondent therein filed a Special Leave Petition in SLP (Civil) No.24646-24647/2018 and the same was dismissed *vide* order dated 29.10.2018. Thereafter, the respondent therein filed Rev.I.A.No.1 of 2020 in L.P.A.No.1/2018 and Rev.I.A.No.3 of 2020 in C.A.No.33 of 2017 seeking review of judgment dated 16.08.2018. A Division Bench of this Court disposed of the said review applications *vide* order dated 27.04.2022 by dismissing L.P.A.No.1/2018 by confirming the order of learned Single Judge in C.C.No.217/2014 in W.P.No.1729 of 2009 dated 04.10.2017.

35. Challenging the said order of Division Bench dated 27.04.2022, Mr.S.Tirupathi Rao, respondent therein filed Special Leave Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the said appeal

and restored the Contempt Appeal along with Letters Patent Appeal *vide* judgment dated 22.07.2024.

**ANALYSIS AND CONCLUSION:**

36. On a perusal of the paragraph 4(g) of the preliminary decree dated 06.04.1959, it is evident that the defendant Nos.2 to 22 were entitled to the properties mentioned at item Nos.230 to 254 of Schedule 'A' annexed to the preliminary decree, in case the same are restored or released in favour of Asman Jahi Paigah. In the instant case, admittedly, there is no material to indicate that the properties mentioned at serial No.230 to 254 of Schedule 'A' to the preliminary decree have been restored or released in favour of Asman Jahi Paigah. It is pertinent to note that as per para 4(g) of the preliminary decree dated 06.04.1959, the Commissioners-cum-Receiver have the power to sell the property by way of public auction and exercise all powers necessary for effecting the division of the sale between the defendants No.2 to 12 and 14 to 22. Accordingly, each son would get 2/33 and each daughter would get 1/33 in the properties of Schedule 'A' except items 230 to 254 of the Schedule and items of properties

allotted to the plaintiff. The defendant Nos.2 to 22 will get their share, namely, each son getting  $2/35$  and each daughter getting  $1/35$  from the arrears of income future income, compensation or commutation or sale proceeds of the items 230 to 254 of Schedule 'A' detailed under the head of "Makthas" in case of the same are restored or released in favour of Paigah Asman Jahi.

37. In the case on hand, the scope of the Commissioners-cum-Receiver is to divide the extent of shares as specified in the para 4(g) to the extent of arrears of income future income, compensation or commutation or sale proceeds of the said items 230 to 254 of Schedule 'A'. It is to be noted that the scope of the preliminary decree in which such compromise recorded is only for the purpose of receiving income subject to the condition that they are restored or released in favour of the Paigah Asman Jahi. However, the parties have created documents pertaining to the villages listed in the schedule without there being inclusion of any lands in items 230 to 254 which is in contravention to the compromise recorded in the preliminary decree. As such, there cannot be any scope to

parties to file any application under preliminary decree dated 06.04.1959 in C.S. No.7 of 1958 seeking recognition and acceptance etc., of any assignment deed and for passing of any final decree in C.S. No.7 of 1958.

38. Learned counsel for the final decree holders in Appl.No.519 of 2009 has filed Additional Material Papers wherein a copy of the order of Commissioner of Survey Settlement – Inam releasing Maktha lands dated 30.12.1977 was enclosed. However, no document has been filed to the extent of release order pertaining to the lands in Schedule ‘A’ item Nos.230 to 254 mentioned in the preliminary decree. At this juncture, it is necessary to verify the list in ‘A’ Schedule of the preliminary decree. In the preliminary decree dated 06.04.1959, list of Maktas (under appeal with Revenue Board) are mentioned which are as follows:

230. Maktah Bahadur Ali

231. Maktah Ootapalli

232. Maktah Shivarampalli

233. Maktah Balapoor

234. Maktah Raidurg

- 235. Maktah Sough Bowli
- 236. Maktah Somajiguda
- 237. Maktah Nawab (Sahah)
- 238. Maktah Mama Hamukunta
- 239. Maktah Bagh Kakgud
- 240. Maktah Hajialigud
- 241. Maktah Permit Shah Guda
- 242. Maktah Muzhar Guda
- 243. Maktah Bagh Mecca ahmoo
- 244. Maktah Amjad Nagar
- 245. Maktah Mohammed Nagar
- 246. Maktah Sangi Guda
- 247. Maktah Ali Sahab
- 248. Maktah Chitaguda
- 249. Maktah Yellakur
- 250. Maktah Yerwagua
- 251. Maktah Kol Bowli
- 252. Maktah Shamshiguda
- 253. Maktah Rai Samand E
- 254. Maktah Roshan Bowli

39. It is also striking to note that though the orders were passed by the Commissioner of Survey Settlement – Inam on 30.12.1977, the so called release of Makta lands was brought to the notice of this Court for the first time during the hearing of applications filed for passing of final decree and delivery of possession of those lands which have not been included in item Nos.230 to 254 of Schedule ‘A’ of preliminary decree. It is also pertinent to note that learned senior counsels appearing on behalf of the objectors placed heavy reliance on the said release order dated 30.12.1977. However, no proof of release of Makta lands pertaining to item Nos.230 to 254 is filed. It is also to be noted that when the order was passed way back in the year 1977, the concerned parties ought to have taken steps to include the extent of lands released if any, in item Nos.230 to 254 in Schedule ‘A’ of preliminary decree. The submissions in respect of such lands in item Nos.230 to 254 were made at the time of hearing objections to the report of receiver cum commissioner dated 06.07.2023.

40. As such, the submissions made on behalf of the objectors are unsustainable and in that view of the matter,

it can safely be concluded that no lands are available for partition in item Nos.230 to 254 of Schedule 'A' attached to the preliminary decree. In the absence of preliminary decree for item Nos.230 to 254 in Schedule 'A', no final decree could have been passed. Therefore, reports filed earlier are without proper verification, are fictitious and the same are treated as nullity and are hereby rejected. Accordingly point Nos.1, 2 and 3 are answered against the objectors.

41. With regard to point No.4, the scope and powers of the receiver cum commissioner as held in ***Shree Ram Urban Infrastructure Limited (supra)***, the Hon'ble Supreme Court held that Court Receiver can hold the properties as *custodia legis* and can act in a manner as reasonable prudent trustees and such action on the part of the Court Receiver is nothing but for preservation of the property in question. In the case on hand, the Receiver, in his report reported that there was no property available for partition in item Nos.230 to 254 of Schedule 'A' of preliminary decree, and submitted that the applications filed for delivery of possession, in respect of properties

which stood deleted from 'A' Schedule of the preliminary decree in terms of para 1(d) and para 4 (g) of the Application under Order 23 Rule 3 of C.P.C., and other applications requires no further adjudication. It is to be noted that since no property is available as per item Nos.230 to 254, the judgment of Hon'ble Supreme Court (cited supra) is not applicable to the facts of the present case. Accordingly, point No.4 is answered.

42. Having considered the rival submissions made by learned senior counsel on both sides and submissions of receiver cum commissioner, since the lands are not available physically, the parties may seek their appropriate remedy as available under law. Accordingly point Nos.5 and 6 are answered.

43. In view of observations made in preceding paragraphs, the relief sought for in Appl.No.488 of 2012 and Appl.No.24 of 2024 cannot be granted and are accordingly dismissed. However, liberty is granted to the applicants therein to avail appropriate remedy as available under law.



44. The report of the receiver cum commissioner dated 06.07.2023 is hereby accepted to the extent of its implication of release order of Commissioner of Survey Settlement – Inam dated 30.12.1977 and the observations opined by the receiver cum commissioner are hereby discarded. Though, a preliminary decree has been passed on 06.04.1959 based on a compromise decree, the litigation went in respect of non-existing properties for the last 66 years. In view of the observations made in the foregoing paragraphs and to put a quietus to the suit of the year 1958, we deem it appropriate to formally close C.S.No.7 of 1958. Needless to state that this order shall not have effect in respect of any proceeding pending before the Hon'ble Supreme Court.

45. Registry is directed to draft a final decree as per the order dated 13.02.1970 in Application No.228 of 1969 in the suit in respect of item Nos.1 to 229 of schedule 'A' and Schedules 'B' 'C' 'D' 'E' and 'F' of preliminary decree and to engross the same on stamp papers.

46. Mohd Bande Ali and Mr.Ajitsimha Rao, receivers cum commissioners appointed by this Court *vide* common order dated 02.01.2023 are hereby discharged as receivers cum commissioners.

**In the result:**

Civil Suit No.7 of 1958 is closed.

Application Nos.488 of 2012 and 24 of 2024 are dismissed.

Applications pending, if any, shall be decided in the light of the observations made above.

However, there shall be no order as to costs.

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**ALOK ARADHE, CJ**

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**N.V.SHRAVAN KUMAR, J**

Date: 09.01.2025

**Note: LR copy to be marked.**

Mrm/LSK\*