

Bombay High Court Prabhudeep Singh Mehroke, Power ... vs The Deonar Industrial Premises ... on 7 December, 2004 Author: R Khandeparkar Bench: R Khandeparkar JUDGMENT R.M.S. Khandeparkar, J. 1. In all these petitions, common questions of law and facts arise and therefore they were heard together and are being disposed of by this common judgment. 2. Rule and by consent, the rule is made returnable forthwith in all these petitions. 3. It is the case of the petitioners that the petitioners and 15 others proposed to purchase a land at Deonar for construction of an industrial shed and consequently an area of 7058 sq.metres was purchased from the members of Vaity family and the respondent Nos. 2 to 40 claim to be the present members of the said family. An agreement dated 24-10-1981 came to be executed in that regard consequent to the payment of Rs. 3,26,390/- to the vendors and delivery of the possession of the suit property to the members of the proposed society. Along with the agreement, the vendors also executed power of attorney, authorizing execution of conveyance of the suit property in favour of the proposed society. Thereupon, a society came to be formed and it was registered sometime in the year 1987. Consequent to registration of the society, the suit land was conveyed in the name of the society on 18-8-1989, which was registered on 29-11-1989, which was registered 29-11-1994. Alleging failure on the part of the managing committee of the society to take steps to divide the suit land into plots and to allot them to the members of the society, a dispute was sought to be raised under Section 91 of the Maharashtra State Co-operative Societies Act, 1960, hereinafter referred to as "the said Act", by one Shri Nadarajan being Dispute No. CCI/62/2001. In the said dispute, an order came to be passed on 28-8-2001 on an application for temporary injunction to restrain the society from disposing of, or creating any third party interest, or dealing with the suit land till the disposal of the said dispute. The petitioners, on their part, raised disputes being Dispute Nos. CCI/258, 259 and 260 of 2001 and the same were filed on 5-10-2001 seeking relief for division of the suit land in different plots and allotment thereof to the members. The society, on its part, in its defence filed on 24-12-2001, sought to dispute the claim of the petitioners contending that the suit land was not in possession of the society and further that the original vendors had raised dispute on account of non-payment of part of the consideration. During the pendency of the said dispute case, the society went into liquidation and on application dated 19-8-2002 filed by the petitioners, the Deputy Registrar of the Co-operative Societies by his order dated 2-6-2003 granted permission to the petitioners to proceed with the disputes. Further, by order dated 28-11-2003 the Co-operative Court, while allowing the applications filed by the petitioners, restrained the respondent No. 1-Society from dealing with, or disposing of, or creating any third party interest in the suit land. Simultaneously, one Shri Raphael D'Souza, an Advocate, was appointed as the Court Receiver in respect of the suit land and he was directed to take possession of the suit land and to notify the board at the site about the Court's order and further to submit a report regarding compliance of the order. On 29-12-2003 three applications came to be filed by the respondent Nos. 2 to 40 herein being Miscellaneous Application Nos. 55, 56 and 57 of 2003 and praying for vacating the order dated 28-11-2003 and for dis-

charging the Court Receiver. An interim relief was also prayed for, for direction to the Court Receiver to remove the board displayed at the suit land. On the same day i.e., on 9-12-2003 the respondent No. 41 also filed three applications, namely Application Nos. 52, 53 and 54 of 2003 praying for setting aside of the order dated 28-11-2003, while raising the contentions similar to those which were raised by the respondent Nos. 2 to 40 in their applications. All those applications were contested by the petitioners by filing their replies, contending that the original vendors had already handed over the possession of the suit land to the promoters of the proposed society in the year 1981 and since then the promoters of the society had been in possession of the suit land. By order dated 23-12-2003 the Co-operative Court disposed of all those applications holding that the respondent Nos. 2 to 41 had failed to prove prima facie that they were the owners of the land and, therefore, the prayer for setting aside of the order dated 28-11-2003 as well as in relation to the appointment of the Court Receiver was rejected. The respondent Nos. 2 to 40 being aggrieved by the said order preferred three separate appeals being Appeal Nos. 8, 9 and 10 of 2004 before the Maharashtra State Co-operative Appellate court. So also, the respondent No. 41 filed three separate revision applications being Revision Application Nos. 3, 4 and 5 of 2004 before the said Court. All those appeal and the revision applications after being heard by the lower Appellate Court, came to be disposed of by the impugned order dated 27-1-2004, while allowing the appeals and the revision applications setting aside the order passed by the Co-operative Court on 23-12-2003. Further, three miscellaneous applications came to be filed bearing Misc. Application Nos. 52, 53 and 54 of 2004 by the respondent No. 41 seeking clarification of the impugned order passed on 24-1-2004 and the lower Appellate Court by its impugned order dated 27-1-2004 clarified that there was no delivery note executed or got executed as to the possession and hence the order appointing the Receiver was vacated and the Receiver was directed to remove the board indicating his symbolic possession of the suit land. Hence, the present petitions. 4. While challenging the impugned orders, the learned Advocate for the petitioners submitted that the lower Appellate Court erred in interfering with the order passed by the Co-operative Court ignoring the material piece of evidence on record regarding the lawful possession of the suit land with the respondent No. 1-Society consequent to purchase thereof and the sale deed in respect thereof being duly registered and there being no material placed on record disclosing lawful possession of the suit land with the respondent Nos. 2 to 40 or the respondent No. 41 after the execution of the conveyance of the suit land in favour of the society. It is his further contention that the lower Appellate Court also failed to take note of the fact that even it was not the case of the Liquidator before the lower Court that possession of the suit land was not with the society and that the property was not with him even after the liquidation proceedings of the society had commenced and it was for the first time before this Court that the Liquidator has filed an affidavit in that regard. The lower Appellate Court also failed to take note of the contention of the petitioners that the Liquidator was in collusion with the respondent Nos. 2 to 41. It is also sought to be contended that the Courts below erred in entertaining the

respondents' grievance without they being joined as the parties to the proceedings. It is also sought to be contended that the lower Appellate Court ought to have considered that in the facts and circumstances of the case, there was no case made out for interference with the order directing appointment of the Court Receiver in relation to the suit land. Reliance is sought to be placed in the decisions in the matter of Narayan Chandra Garai and Ors. v. Matri Bhandar Pvt. Ltd. and Ors. and Sreedhar Chaudhury v. Nilmoni Chaudhury and Ors., reported in 1925 Calcutta 681. 5. The learned Advocate for the respondent No. 1 submitted that in view of the affidavit filed by the Liquidator, it is absolutely clear that the possession of the suit land was not with the society and, therefore, there is no case for interference in the impugned orders. The learned Advocate for the respondent Nos. 2 to 40 submitted that since the material fact regarding the filing of the suit by the society and the unsuccessful attempt therein to obtain injunction against those respondents was suppressed from the Court while obtaining the order relating to injunction as well as the appointment of court Receiver, as also was the suppression of the documents which disclosed revocation of the conveyance in favour of the respondent No. 1-Society and the execution of valid document conveying the land in favour of the respondent No. 41, and therefore there was a clear case of fraud being played upon the lower Court in obtaining the order of injunction and the appointment of Receiver and the same having been brought to the notice of the Court, it was obligatory upon the court to vacate the order obtained by the petitioners by playing fraud and as the trial Court had failed in its obligation, the lower Appellate court has exercised its discretion in that regard and therefore no fault can be found with the impugned orders. He has also further submitted that the materials placed on record by the respondents clearly disclose that the possession of the suit land was with the respondent and it was lawfully delivered to the respondent No. 41, and in those circumstances, the order appointing Receiver by dispossessing the person in lawful possession was clearly in illegal exercise of jurisdiction by the trial Court and, therefore, the lower Appellate Court having interfered with such illegal order, there is no case for interference in the impugned orders in exercise of writ jurisdiction. He has further submitted that the order having been obtained by playing a fraud, it is a nullity for all purposes and the point that the order is a nullity can be raised in any proceedings by the aggrieved person without himself being joined as a party to the proceedings. Reliance is sought to be placed in the decisions in the matter of United India Insurance Co. Ltd. v. Rajendra Singh and Ors., , S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and Ors., , Indian Bank v. Satyam Fibres (India) Pvt. Ltd., and Om Prakash Navani and Anr. v. Herebert Joseph Pereira and Ors., reported in 2003 (3) All M.R. 67. The learned Advocate for the respondent No. 41, while reiterating the arguments canvassed on behalf of the respondent Nos. 2 to 40, has further submitted that the respondent No. 41 has already carried out construction activities since long in the suit land and the photographs produced in that regard clearly reveal the stage at which the construction has reached. He has further submitted that the respondent No. 41 being in lawful possession of the suit land by virtue of a lawful agreement executed with the

owners of the land, the trial Court had clearly erred in seeking to dispossess the respondent No. 41 by appointing the Court Receiver and, therefore, no fault can be found with the order passed by the lower Appellate Court setting aside such an illegal order. Reliance is sought to be placed in the decisions in the matter of Prahlad Pd. Modi and Anr. v. Tikaitni Paldani Kumar and Anr., , Thavasimuthu Nadar and Ors. v. Balaguruswami Nadar and Ors., reported in AIR 1923 Madras 304, and Parvathi Chellamma and Anr. v. Hussan Pillai Mohammed Abdul Kahder and Ors., reported in AIR 1973 Kerala 208. In short, the defence of the respondents is that there being a fraud played upon the Court while obtaining the order of injunction and appointment of Court Receiver, such an order being a nullity on that count, even though the respondents were not joined as the parties to the proceedings, nothing prevented the said respondents from bringing to the notice of the Court below the facts in relation to the fraud played upon the Court by the petitioners and in those circumstances, the order having been passed by the lower Appellate Court, the same do not warrant interference in writ jurisdiction. 6. Undisputedly, the proceedings before the Co-operative Court are pursuant to the dispute raised in terms of Section 91 of the said Act. Therefore, the Co-operative Court is seized of the matter in exercise of the powers conferred upon it under Section 91 of the said Act. It is well-settled that the Co-operative Court can entertain disputes under Section 91 when the dispute pertains to the subject relating to the management or the business of the society, apart from the subjects like the constitution or election of the committee and its office bearers and the conduct of the general meetings. Besides, such disputes shall be between the parties enumerated under Clauses (a) to (e) of Sub-section (1) of Section 91. Such parties are essentially to be the society and its members or a surety for a member or some other society or the liquidator of the society. A stranger to the management or business of the society does not find place in the list of the persons who could be the parties to such proceedings under Section 91. Undisputedly, the matter in question was brought before the Co-operative Court by way of a dispute raised in terms of Section 91 of the said Act. Obviously therefore, such proceedings cannot be sought to be interfered by the persons who are strangers in terms of Section 91 of the said Act. Considering the same, the petitioners would be justified in contending that the Courts below could not have entertained the grievance of the respondent Nos. 2 to 41 in the matter. However, the contention which is sought to be raised by the respondents is to the effect that even in such cases once it is revealed that there was a fraud played by the party in obtaining a relief and more particularly an equitable relief, it would be the duty of the Court to look into the grievance and to pass an appropriate order and viewed from this angle, it is the contention of the respondents that the lower Appellate Court having considered the grievance of the respondents on having disclosed the fraud played by the petitioners and passed the impugned orders, no fault can be found therewith. 7. The Apex Court in S.P. Chengalvaray Naidu's case (supra) has held that a litigant who approaches the Court is bound to produce all the documents executed by him which are relevant to the litigation and if he withholds a vital document in order to gain advantage on the other side, then he would be guilty

of playing fraud on the Court as well as on the opposite party. It has also been held that it is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of the law and such a judgment/decreed - by the first Court or by the highest Court - has to be treated as a nullity by every Court, whether superior or inferior and it can be challenged in any court, even in collateral proceedings. That was a case where one Jagannath was working as a clerk with Chunilal Sowear and had purchased at the Court auction the property in dispute. Chunilal had obtained a decree and the Court sale was made in execution of the said decree and he said purchase by Jagannath was on behalf of Chunilal, the decree-holder. By a registered deed dated 25-11-1945 Jagannath had relinquished all his rights in the property in favour of Chunilal. Meanwhile, judgment-debtor in the suit had paid all the decretal dues to the decree-holder Chunilal. In view of receipt of the decretal amount, Chunilal was no more entitled to have the property which was purchased in the Court auction. Without disclosing that he had executed the release deed in favour of Chunilal, Jagannath filed a suit for partition of the same property and obtained a preliminary decree. During the pendency of the suit the appellants before the Apex Court came to know that Jagannath had no locus standi to file the suit because he had already relinquished all his rights in respect of the property in dispute in favour of Chunilal. In those facts, while dealing with the question as to whether in those facts and circumstances, Jagannath could be said to have obtained the preliminary decree by playing fraud on the Court, it was held that:- "The courts of law are meant for imparting justice between the parties. One who come to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walk of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation." 8. The ruling of the Apex Court in S.P. Chengalvaraya Naidu's case discloses that if a party approaching the Court withholds a vital document from the Court with the intention of obtaining advantage over the opposite party and obtains order from the Court, certainly nothing prevents the aggrieved party from bringing the said fact to the notice of the Court and the Court in that regard to pass an appropriate order. However, it is also to be noted that the observations or the rulings, whether it is of the Apex Court or the High Court, are to be understood in the facts of the case coupled with the points for consideration which arise in the case and the judicial pronouncement on those points. An observation in a judgment cannot be read in isolation and ignoring the facts and the points for consideration which arise in the matter. All the observation which have been made by the Apex Court in the above referred case are in the facts where the party had clearly played fraud, in the sense, that inspite of the fact that the party very well knew that he had no subsisting right in the property, he had approached the Court for partition of that property falsely claiming right therein. It was clearly to the knowledge of Jagannath that he had released all

his rights in the suit property in favour of Chunilal by a registered release deed dated 25-11-1945, yet a suit was sought to be brought thereafter claiming co-ownership right in the suit property. Even otherwise, considering the law at the relevant time, which did not prevent benami transactions, it was apparent that Jagannath, who was a clerk with Chunilal, had purchased the property for and on behalf of and on account of Chunilal in the Court auction and this fact was to the knowledge of Jagannath. It was, therefore, obvious that Jagannath had obtained the preliminary decree by playing fraud upon the Court. 9. In *Indian Bank's* case (supra), the Apex Court had in fact reiterated the well-settled law that no judgment of the Court can be allowed to stand if it is obtained by fraud, as a fraud unravels everything. It was observed that:- "Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that court." At the same time, it was also observed that:- "Forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts." Obviously therefore, though the respondents are justified in contending that fraud, if played while obtaining an order, may in a given case justify even the recalling of such an order by the Court, the fraud should be clearly established with necessary evidence in that regard. 10. Bearing in mind the ruling about the Court's power to recall the order which is obtained by playing fraud and reverting to the facts of the case in hand, it is the contention of the respondents that the petitioners had suppressed the facts relating to the suit which was filed by the respondent No. 1 against the various other respondents, without any success, and further that it was withdrawn without any relief being obtained therein and that the same discloses that the possession of the suit land was not with the society, besides that, there was already a declaration executed by the vendors revoking the conveyance of the property in favour of the society and all these facts were suppressed from the Co-operative Court while obtaining the order of injunction and the appointment of Court Receiver, and that the same were brought to the notice of the Court by the respondents along with their applications for vacating the orders. It is also submitted that though the declaration was unilateral by the vendors, it was followed by the mutation proceedings under the Maharashtra Land Revenue Code and the petitioners were parties to those proceedings and yet those facts also were suppressed from the Court. All these contentions are sought to be countered on behalf of the petitioners while submitting that the respondent No. 1-Society is the lawful owner pursuant to the registered deed and the unilateral declaration does not create any right in favour of the vendors nor it nullifies the conveyance executed in favour of the respondent-Society. It is also submitted that there were already liquidation proceedings and the Liquidator was appointed for the society and obviously, therefore, the property was in possession of the Liquidator, and yet the Liquidator had not come forward to dispute the said contention nor had filed any affidavit denying the claim of the petitioners about the possession of the land being with the society. It is also submitted that right from the beginning it was the contention

of the petitioners that the management of the society is in collusion with the respondent Nos. 2 to 41 and that, therefore, the petitioners were compelled to raise the dispute under Section 91 of the said Act. 11. It is not in dispute that the vendors did execute the agreement for sale in relation to the suit land on acceptance of consideration of Rs. 3,26,390/- on 24-10-1991 and simultaneously delivered the possession of the suit property to the promoters of the society/respondent No. 1. It is also not in dispute that there was a conveyance executed and registered in favour of the respondent No. 1-Society on 18-8-1989. It is, however, disputed that the said deed was executed by some persons who claimed to have power of attorney to convey the same in favour of the society. All said and done, the fact remains that the property was lawfully conveyed in favour of the promoters of the proposed society under agreement of sale coupled with the delivery of possession and on acceptance of the total consideration for such sale, with authority to convey the title in favour of the society on its registration. 12. Undisputedly, the document which conveys the rights in the immovable property worth more than one hundred rupees is required to be registered in terms of Section 17(1)(b) of the Registration Act, 1908. In terms of Section 47 thereof, a registered document operates from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. Further Section 50 provides that every document of the kinds mentioned in Clauses (1), (b), (c) and (d) of Section 17, Sub-section (1), shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not. Section 7 of the Transfer of Property Act which provides that every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force. Obviously, a person is empowered to transfer a property or to dispose of the property to the extent he has interest in the property to be transferred. In terms of Section 8 of the Transfer of Property Act, 1882 unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Considering all these provisions of law along with Section 53-A of the Transfer of Property Act, and considering the conveyance registered in relation to the suit land on 18-8-1989 in favour of the society obviously it will result in the passing of all the ownership rights and all the interest and rights of the owners in the suit land in favour of the person in whose favour the property was conveyed. So also, though it was sought to be disputed that the conveyance was executed by the power of attorney holders in favour of the society, undisputedly, unless it is shown that the power of attorney which was validly granted by the owners of the property at the time of execution of the agreement for sale and delivery of possession of the property on receipt of total consideration in the year 1981

was obtained by playing fraud, or that it was revoked or cancelled before 1989, the deed of 1989 prima facie will have all the legal effects and consequently the society would be the lawful owner in possession of the suit land since 1989. However, the contention of the respondents is that there was a declaration executed by the vendors revoking the said conveyance of the property and that was duly registered, besides that the power of attorney was also revoked. On the other hand, it is the contention of the petitioners that such a declaration was an unilateral act and does not bind the petitioners and the revocation of the power of attorney was much after the execution as well as registration of the sale deed of 1989. 13. As already observed above, any document relating to the transfer of any immovable property worth more than one hundred rupees required to be compulsorily registered in terms of the provision comprised under Section 17(1) of the Registration Act. In case of failure to register such compulsorily registerable document, the consequences contemplated under Section 49 of the Registration Act follow. It provides that no document required by Section 17 or by any provision of the Transfer of Property Act to be registered shall affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. The proviso thereto enables such an unregistered document to be received in evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, or as evidence of any collateral transaction not required to be effected by registered instrument. 14. Bearing in mind the above provisions of law, it is to be seen whether the declaration which has been executed by the vendors revoking the conveyance of 1989 would result in nullifying the conveyance of the suit land in favour of the persons in whose favour it was transferred and the subsequent sale conveyance of 1989 in favour of the respondent No. 1-Society. It is needless to say that a sale of immovable property which involves the transfer of ownership in exchange of a price, paid or agreed to be paid, is a contract between two or more parties. Considering the provision of Section 53-A of the Transfer of Property Act r/w Sections 17 and 49 of the Registration Act, such a transfer, when the property is worth one hundred rupees or more, needs to be by a registered document. Once such a document is executed, it would take effect in terms of Section 47 of the Registration Act r/w Section 8 of the Transfer of Property Act and would result in extinguishment of the title of the vendors to the property sold and consequently it would result in cessation of rights of the vendors in such property which is transferred and creation of title, interest and the rights in respect thereof in favour of the vendee. Considering the same, after such transfer, any unilateral act on the part of the vendors would not affect such a concluded contract of sale nor it would result in cessation of rights of the vendee, already acquired consequent to execution and registration of the sale deed. In order to nullify the effect of such a transaction, obviously a proper agreement between the parties and the documentation in that regard in accordance with the provisions of law would be necessary, unless there is an order or decree in that regard duly obtained from a competent Court. Not a single provision of law could be brought to the



notice which could affect the rights accrued to the vendee on a valid deed of sale being executed and registered. The contention that a unilateral declaration revoking such a deed on being registered would nullify the effect of such a duly registered sale deed is totally devoid of substance. I am fortified in this view by the decisions of the Orissa as well as Andhra Pradesh High Courts. In *Michhu Kuanr and Ors. v. Raghu Jena and Ors.*, and *Badgu Venkata Durga Rao and Anr. v. S. Lakshmi*, reported in 2001 AIHC 1890, it was held that once by the registered deed, title passes to the vendee, the subsequent deed of cancellation by the vendor unilaterally does not nullify the effect of the already completed sale nor it has effect of cancellation of registered sale deed, and therefore cannot affect the title of the vendee in the property sold. Considering the provisions of law and applying the same to the factual matrix of the case, therefore, it prima facie shows that apart from the unilateral act on the part of the vendors, and that too, after registration of the sale deed which was executed after receipt of full consideration price and delivery of possession, there is no lawful document executed and duly registered nullifying the conveyance of the suit land in favour of the respondent No. 1-Society, nor there is any order by the competent Court declaring the agreement for sale of 1981 or the sale deed of 1989 to be of no effect or invalid. In these circumstances, can it be said that non-disclosure of such a unilateral declaration of revocation of the sale deed amounts to a fraud upon the Court? 15. Undisputedly, the petitioners were not parties to the said declarations. However, it is the contention of the respondents that the petitioners were fully aware of the same in view of the mutation proceedings initiated thereupon. As already observed above, any conveyance of the immovable property worth more than one hundred rupees is required to be registered to create a lawful right therein in favour of the transferee. So also to nullify the effect of a registered and lawful document creating right in immovable property in favour of the transferee, there requires to be a lawful valid document executed by the parties and duly registered or a judicial pronouncement in that regard, and in the absence of either of the things, if a document is sought to be unilaterally executed, and even if it is sought to be registered, that by itself will not create any right in favour of the person seeking to claim a right under such document. Being so, ignoring such a document while bringing the case before the Court, if such document cannot affect the rights of the parties, by itself cannot be construed as an attempt to mislead the Court or playing a fraud upon the Court. Certainly, it may amount to non-disclosure of a fact. Mere non-disclosure of every fact cannot be construed as an intentional suppression of a fact. Besides, it has to be a suppression of material and relevant fact for the decision. The non-disclosure of a fact which is neither relevant nor could affect the decision in the matter be said to amount to playing fraud upon the Court in obtaining the order of the Court. Once it is revealed that the document in question did not create any right in favour of any of the parties to the proceedings or even in favour of a third party, merely because such a document was not disclosed by the parties to the Court while obtaining an order of injunction or any other equitable relief, the non-disclosure of such a document cannot be construed to be an act of fraud upon the Court. Therefore, the contention of the respon-

dents that by suppressing the said document of declaration, the petitioners had played fraud upon the Court while obtaining the order of injunction and/or appointment of Receiver cannot be accepted. 16. As regards the fact of filing of the suit by the society and withdrawal thereof without obtaining the relief of injunction, undisputedly, the same was disclosed by the petitioners. Once the fact was disclosed by the petitioners and assuming that such fact could have been a very relevant factor to deny the relief asked for by the party, if the Court passes the order ignoring such fact, it may amount to an improper exercise of jurisdiction by the Court but certainly it cannot be contended that the party concerned had played a fraud upon the Court. Failure to exercise jurisdiction or improper exercise of jurisdiction by the Court cannot be attributed to the acts of the parties unless the suppression of material facts or the act of misleading the Court has contributed in improper exercise of jurisdiction by the Court. Mere non-consideration of a relevant fact may amount to improper exercise of jurisdiction by the Court deciding the matter but that cannot be attributed to the act of the parties nor it can be said to be a fraud played upon the Court by the party. 17. It was also sought to be contended that the property was in fact conveyed in favour of the respondent No. 41 and the possession was with the respondents for the purpose of cultivation as well as that the respondent No. 41 had carried out certain construction therein. Indeed, the photographs produced by the respondents before this Court do disclose some construction having been carried out in some part of the property and some area being utilised for cultivation. If the photographs really and actually relate to the property in question, then these facts can amount to improper appreciation of the evidence on record but certainly it cannot be said to be a fraud played by the petitioner in the matter. 18. In the back ground of all these circumstances, the contention of the respondents that there was a fraud played by the petitioners and that therefore no fault can be found with the orders passed by the lower Appellate Court is to be rejected being totally devoid of substance. 19. I have referred to the issue regarding the alleged fraud at the outset, as rightly submitted by the learned Advocate for the respondents, in case of fraud being established, the question of interference in the impugned orders, even though bad in law they may be, in exercise of writ jurisdiction cannot arise. However, once it is revealed that there was no fraud played at all, as sought to be urged, it is necessary to consider whether there was justification for the lower Appellate Court to interfere in the order passed by the Co-operative Court. 13th December, 2004 20. Having held that the records do not disclose fraud being played by the petitioners in the matter of order passed by the Co-operative Court appointing Receiver, it would be necessary to ascertain whether the petitioners have made out a case for interference in the impugned orders in the sense that the impugned orders disclose unwarranted interference by the Co-operative Appellate Court in the order passed by the Co-operative Court. Before considering this point, however, it would be necessary, even at the cost of repetition, to take a note of certain undisputed facts. The agreement for sale of the suit property was executed by members of the Vaity family on 24-10-1981 in favour of the promoters of the proposed society. Simultaneously, the power of attorney was also executed on

the same day in favour of these promoters. On the strength of the said power of attorney and in furtherance of the agreement dated 24-10-1981 a sale deed dated 18-8-1989 came to be executed by those promoters of the proposed society in favour of the respondent No. 1 and the said sale deed, after removal of the objections, was registered on 29-11-1994. The respondent Nos. 1 to 40 issued a public notice on 9-5-1995 cancelling the power of attorney which was executed on 24-10-1981 and the said notice was published in the newspaper "Free Press Journal". A deed of declaration to the effect that the sale deed dated 18-8-1989 has been revoked and cancelled came to be executed on 18-12-2002, the respondent Nos. 1 to 40 executed an agreement for development of the suit property with M/s. Anjaneya Estates who, in turn, executed a deed of assignment dated 8-7-2003 in favour of the respondent No. 41. The mutation entries which were carried out in the revenue records pertaining to the suit property in favour of the respondent No. 1 pursuant to the sale date 8-10-1989 were sought to be objected by the respondent Nos. 1 to 40 in the year 1995 and their objection was upheld by the revenue authorities. The matter was carried in appeal whereupon the matter was remanded to the revenue authorities for reconsideration of the matter. Being aggrieved, the respondent No. 1 carried the matter in revision application, without any success. On remand, the revenue authorities confirmed their earlier order upholding the objections filed by the respondent Nos. 1 to 40 and the said order came to be passed in the year 2003. There was a suit filed by respondent No. 1 for injunction against some of the owners of the suit property in the year 1994 being Suit No. 5558 of 1994 which came to be withdrawn on 30-1-1997. There were also other proceedings under Section 145 of the Criminal Procedure Code as well as writ petition in this Court. Both were disposed of without there being any conclusive order passed in those proceedings. 21. A perusal of the records, and particularly the impugned orders, disclose that the revisional and appellate Authority while observing that at the time of visit of the Receiver, the respondents were found in actual possession, has held that they are in possession of the suit property de facto and that the Co-operative Court could not decide about de jure possession and the issue like validity of cancellation of conveyance and the agreement for sale being beyond the scope of Section 91 of the said Act, as those issues are to be dealt with by the Civil Court and considering the long standing possession of the respondents that the respondent No. 41 having obtained the possession of the respondents that the respondent No. 41 having obtained the possession from the owners with due process of law, the respondent No. 1 is not entitled to take possession after the lapse of a long time from the date of conveyance in its favour and further that the Chairman of the respondent-society having made a statement that the respondent Nos. 2 to 40 are in possession, the Receiver could not dispossess them and therefore the respondents were justified in complaining against the order passed by the Co-operative Court. The order passed by the Co-operative Court disclose findings to the effect that there is a dispute between the members of the respondent-society on one hand and the original land owners on the other in relation to the suit property, the documentary evidence discloses acknowledgement of receipt of consideration for the sale of the suit property by the owners, handing

over of the possession of the suit property as also assurance for indemnification in case of claims by minors as also execution of the power of attorney. There is no evidence on record to show that the respondent-society had reverted the possession of the suit land to the vendors by creating any legal document or otherwise and that consequent to the date of sale, the right of ownership stood transferred to the purchaser-society and that the registered document cannot be cancelled merely at the discretion of one of the parties to the document. It is further held that the title of the property cannot be divested to the vendors by mere execution of the deed of cancellation by the vendor and therefore the respondent Nos. 2 to 40 failed to prove that they were lawful owners of the suit property. It is also held that there is no dispute between the parties that the possession receipt was issued in the name of the society by the vendors and that in the circumstances it would be proper to continue the Receiver till the disposal of the dispute. 22. The above findings by the Courts below, the materials placed on record and exhaustive reference to the materials by both the sides, undoubtedly reveal that apart from the deed of sale dated 18-8-1989 registered on 29-11-1994, there is no other lawfully executed document on record in relation to the title to the suit property by the owners thereof in favour of any other person. Undoubtedly, there was a publication of revocation of the power of attorney by notice dated 9-5-1995. Referring to the same it was sought to be argued that the power of attorney having been revoked, it was not permissible for the promoters to execute the sale deed. However, once it is apparent that such revocation was subsequent to the execution of sale deed, such revocation cannot have retrospective effect so as to nullify the effect already performed by a person under the lawful authority given to him. Attention was also drawn by the learned Advocate for the petitioners to Section 202 of the Indian Contract Act and the other provisions regarding the rights of an agent. The said Section provides that where the agent has himself an interest in the property which forms subject matter of the agency, the agency cannot, in the absence of an express contract be terminated to the prejudice of such interest. Illustration (a) of the said section is to the effect that: “(a) A gives authority to B to sell A’s land, and to pay himself, out of the proceeds, the debts due to him from A, A cannot revoke this authority, nor can it be terminated by his insanity or death”. Undisputedly the persons to whom the power of attorney was given were the promoters of the respondent No. 1-society and also the members of the society. Obviously therefore, they were directly interested in the entire transaction as well as in the suit property and the power of attorney was essentially to complete the transfer of title in the suit property and the power of attorney was essentially to complete the transfer of title in the suit property in favour of the proposed society as the agreement for sale executed in the year 1981 by the owners in favour of the promoters was essentially to enable the promoters to convey the property in favour of the proposed society pursuant to its formation and admittedly the society was formed in the year 1987. That being so, the revocation of the power of attorney on 9-5-1995 cannot affect the validity of the sale dated 8-8-1989. 23. It was also sought to be contended that there was a deed of declaration executed on 18-12-1995 by vendors cancelling the sale deed dated

18-8-1989 as well as power of attorney dated 24-10-1981. As already observed above, said deed was unilateral deed to which neither the respondent-society nor the promoters, in whose favour agreement dated 24-10-1981 was executed, were parties. Such unilateral declaration cannot nullify the legal effects of the duly executed and registered sale deed. That being so, unilateral declaration dated 18-12-1995 would not nullify either the sale deed dated 18-8-1989 or the power of attorney executed in 1981. 24. The net result of the above discussion is that for all the purposes the sale deed dated 18-8-1989 stands valid and lawful till this date. There has been no declaration known to law which can affect the validity and legal effect of such a sale deed nor there is any declaration by the Court that the said sale deed is invalid. 25. Apart from the sale deed dated 18-8-1989, the agreement for sale dated 24-10-1981 discloses receipt of consideration for conveyance of the suit property, and the same discloses delivery of possession and conveyance of title of the suit property in favour of the respondent No. 1. There is already a letter acknowledging the delivery of possession of the suit property, executed consequent to the execution of the agreement and the power of attorney dated 24-10-1981. All these documents have been referred to by the Co-operative Court in its judgment and taking into consideration the same, it was held that prima facie the ownership rights and the possession of the suit property are with the respondent No. 1-society. As against this, the revisional and appellate Court has merely referred to the issue of actual possession without considering the issue regarding the right to possess. Further, the finding regarding the actual possession has been arrived at based on two observations viz., that at the time of visit of Receiver, the respondent Nos. 2 to 40 were in actual possession and secondly, that the Chairman of the Society has made a statement that the said respondent Nos. 2 to 40 are in possession of the suit property. A plain reading of the impugned judgments nowhere disclose reference to any other material so as to arrive at the said finding regarding possession in the impugned orders. It is, however, pertinent to note that as regards the observation about the Receiver finding the respondent Nos. 2 to 40 in actual possession, there is absolutely no discussion regarding report of the Receiver or any other material on record. It is elementary to say that when a judicial or quasi judicial authority arrives at a finding, it has to analyse the materials on record and on the basis of such analysis has to arrive at the finding. The point as to whether a party is in actual possession or not is purely a question of fact. That being so, it was necessary for the concerned authority before observing that the visit by Receiver disclosed the actual possession with the respondent Nos. 2 to 40 to ascertain from the materials on record whether such a finding would be sustainable. In case of the Receiver's report, it was necessary to ascertain as to when the Receiver had visited the property, what were the facts noted by him at the time of his visit, to what extent those facts are corroborated by the other materials on record, etc. However, the appellate and revisional Court has not applied its mind to that aspect of the matter. In the absence of such analysis, the finding would disclose arbitrary exercise of jurisdiction by the concerned authority and that itself would suffice interference in such an order and setting aside of such finding in exercise of the powers under Article 227 of the

Constitution of India. 26. The analysis of the records to ascertain the factual position was necessary on account of specific finding by the Cooperative Court that the documentary evidence on record discloses actual delivery of possession of the suit property to the promoters of the proposed society on execution of agreement dated 1981 and there being no other document disclosing reversion of possession by promoters or the society in favour of the owners of the suit property. Once documentary evidence in relation to the immovable property discloses valid conveyance of the title to the property along with deliver of possession, thereafter the person, none other than the vendor himself, disputing the possession of the person lawfully holding such possession, has to establish his claim by cogent evidence in support of his claim. The lower Appellate Court has nowhere referred to any such material while jumping to the conclusion regarding actual possession being disclosed with the erstwhile owners at the time of visit of the Receiver. 27. Even as regards the visit by the Receiver in order to enable the Court to arrive at a finding that it disclosed the possession of a particular party to the proceeding, it was necessary for the Court to refer to the facts which were noted or perceived by the Receiver at the time of his visit which could justify the conclusion regarding actual possession with such a party. The finding regarding the possession of the property is to be based on the analysis of the materials by the Court deciding the matter and it cannot allow the opinion of the Receiver to substitute the same. The lower Appellate Court has totally failed in its exercise of jurisdiction in this regard. That being so, and the finding having been arrived at without any basis being disclosed for the same by the lower Appellate Court, such a finding cannot be sustained. 28. As regards the observation that the Chairman of the respondent-society has made a statement that the respondent Nos. 3 to 40 are in possession, undisputedly there has been allegations against the management of the society to be favouring other respondents to deny the lawful claim of the members of the society. In the background of the said allegation, before relying upon any such statement of the Chairman of the Society, it was necessary to ascertain from the records whether the Court can rely upon such a statement of the Chairman. Besides, as already observed above, the issue relating to possession is an issue of fact, to be decided by taking into consideration the entire materials on record. A mere statement by the Chairman in relation to possession of the property cannot rebut the conclusion which follows from a valid sale and a lawful sale deed in relation to the suit property coupled with the letter by the owners confirming delivery of possession of the suit property. Besides once such possession is confirmed to have been delivered to the promoters and further by promoters to the society, it was necessary as to what extent the statement of the Chairman can be accepted without disclosure of reversion of possession by the society to the owners. No such attempt has been made by the Court below before accepting the statement by the Chairman as a gospel truth and that too, in the circumstances when there was a clear allegation of collusion between the Chairman of the Society and the erstwhile owners of the suit property. Hence the said observation is also not sufficient to uphold the finding by the lower Appellate Court about the factum of possession of the suit property. 29. It was, however,

sought to be contended that irrespective of faulty reasonings, if no fault can be found with the findings-arrived at, it would not justify interference in the impugned orders under writ jurisdiction and therefore attention was drawn to various facts like filing of a suit by the Society, withdrawal thereof, proceedings regarding mutation entries in the revenue records pertaining to the suit property, execution of the agreement for development by the erstwhile owners in favour of Anjaneya Estates and for the assignment of rights thereunder by Anjaneya Estates in favour of the respondent No. 41. It is to be noted that the revenue authorities cannot decide the issue of title. Mutation entry does not confer right or title to the property (vide: *Smt. Sawarni v. Smt. Inder Kaur and Ors.*, and *Suman Verma v. Union of India and Ors.*, 2004 AIR SCW 5490). It is well-settled that the entries in revenue records are for the purpose of benefit of the Government to identify a person or persons from whom the revenue for the property can be recovered. Undoubtedly entries disclosing occupation of the property in revenue records will have presumptive value. But such presumption is always rebuttable by cogent evidence. The whole basis on which the right is claimed by the respondent No. 41 is the agreement of assignment of right by Anjaneya Estate who claim to have acquired the right to property on execution of the agreement for development by the respondent Nos. 2 to 40 on 4-10-2002. It is settled principle that even an execution of agreement for sale coupled with delivery of possession does not convey title to the property in favour of the transferee. The provisions of Section 53-A of the Transfer of Property Act merely gives protection to the transferee against any illegal acts on behalf of transferor contrary to the terms of agreement under which the possession is delivered in favour of the transferee on being agreed to convey the title in favour of the transferee. If any decision in that regard is required, one can refer to a recent decision of the Apex Court in the matter of *Rambhau Namdeo Gajare v. Narayan Bapuji Dhotre*, . That being so, by no stretch of imagination mere execution of agreement for development dated 4-10-2002, in the face of execution of sale deed dated 18-8-1989 and registered on 29-11-1994 can be said to have created any right in favour of the respondent No. 41 consequent to the agreement dated 8-7-2003 detrimental to the rights of respondent No. 1 which it had acquired pursuant to the lawful sale deed dated 18-8-1989. This coupled with the letter of delivery of possession and in the absence of any evidence, either documentary or otherwise, disclosing reversion of possession to the erstwhile owners the respondent Nos. 2 to 40 coupled with the fact that there was persistent resistance to the objection raised by the erstwhile owners to mutation of entries in favour of the respondent No. 1 and its members, would reveal that presumption, if any, even had arisen on account of mutation of entries in favour of the respondents, same stood rebutted. Besides all these documents which are sought to be relied upon are after publication of notice revoking the power of attorney. There is nothing on record to disclose that till 9-5-1995 there was any resistance by any of the erstwhile owners to the society or the petitioners in exercise of their right of ownership in relation to the suit property. 30. From the above discussions, therefore, it is revealed that inspite of the materials on record disclosing prima facie right to and pos-

session of the suit property with the respondent-society, the lower Appellate Court had jumped to the fanciful conclusion regarding de facto possession of the suit property with the other respondents. 31. It is elementary principle of law that possession follows the title. The Courts protect possession when it is lawful and settled possession. A person can be said to be in a settled possession if he is shown to be in possession of the property continuously over a period of time without any objection on the part of the lawful owner or a person having been lawfully inducted continues to be in possession even after termination of such permission without any action being taken for his eviction in the manner known to law. In the case in hand, it was clearly revealed to the Court that the possession of the suit property was lawfully settled in favour of the promoters of the society and thereafter under a sale deed by the promoters to the society, till May 1995 the possession continued with the society without any disturbance or objection. It is nobody's case that during the said period possession was reverted to the erstwhile owners. It is also not the case of the respondents that even thereafter there was reversion of possession in favour of the erstwhile owners. Undoubtedly attempts were made to object to the mutation of entries, the suit was contested, the agreement for development was executed, but all these acts were subsequent to April, 1995. However none of these acts disclose taking over of actual possession of the suit property from the society or its promoters. once it was revealed that lawful possession was delivered to the promoters and subsequently by the promoters to the society, in the absence of proper documents or materials on record disclosing lawful reversion of possession in favour of the erstwhile owners, the obvious conclusion which could be drawn in relation to the claim of possession would be that it is a claim without cogent materials in support of such claim, besides no right being disclosed by the erstwhile owners to be in possession of the suit property. In the absence of right being disclosed nor there being a settled possession disclosed in favour of the respondent Nos. 2 to 41, one fails to understand how the claim of mere de facto possession would be sufficient to interfere with the orders passed by the Co-operative Court which apparently disclosed cogent materials in support of the finding of possession as well as justification for the appointment of Receiver. 32. Undisputedly, inspite of the documentary evidence disclosing continuous lawful possession in favour of respondent No. 1, the erstwhile owners chose to initiate proceedings before the revenue authorities and even executed the agreement for development of the suit property with the third party. These facts apparently disclose dispute sought to be raised by the erstwhile owners in relation to the suit property after the execution of the sale deed. In such a situation, certainly, the appointment of the Receiver could not have been found fault with, as such acts on the part of respondents could lead to breach of peace in the area as also may encourage illegalities and therefore in order to maintain status quo in the suit property and to avoid all further complications, the proper remedy being appointment of Receiver and the same having been issued by the Co-operative Court, there was absolutely no justification for interference therein by the lower Appellate Court. There was a clear prima facie case made out for appointment of Receiver in the facts and circumstances of the case and hence apparently interference by the



lower Appellate Court was clearly unwarranted. 33. Referring to various photographs and the observation by the Receiver about certain cultivation being found in some part of the suit property, it was sought to be argued that factually the property is not in possession of the society. Merely because some cultivation was seen or some structure was seen to have been constructed on some part of the property, that itself would not be sufficient to arrive at the conclusion at this stage about cessation of rights of the society which it had acquired pursuant to sale deed dated 18-8-1989 nor regarding acquisition of lawful rights either in the form of ownership or in the form of possession to the suit property by the other respondents. The parties will have to lead necessary evidence in that regard and till then it is necessary to maintain status quo. Undoubtedly even if certain portion of the property is utilized for cultivation and if the Receiver finds so, the Receiver is fully entitled to allow the persons who are cultivating the property to continue to do so till appropriate decision of the Court in the matter. But that would not create any right in favour of even the cultivator of the suit property. Any such cultivation will be subject to final decision in the proceedings before the Court. It is, however, to be noted that even in the Receiver's report there is no reference to any cultivation. 34. The finding of the lower Appellate Court that the validity of the sale deed or revocation of the power of attorney or execution of the lawful declaration regarding cancellation of sale deed is beyond the scope and jurisdiction of the Co-operative Court as the issue involved is to be decided by a Civil Court that cannot be found fault with but at the same time fact remains that the statutory provisions referred to above disclose that once a sale deed is lawfully executed and registered with regard to the property which is the subject-matter of such deed in favour of the Transferee and wherever such sale deed is produced it is a duty of the Court and other authorities to give due credence to it and also to give effect to it till and until such sale deed is lawfully cancelled or declared to be illegal. That being so, once a sale deed is lawfully executed and registered and the sale deed is produced before the Co-operative Court, such a Court cannot refuse to give due credence to such a deed. At the same time, in the absence of any statutory provisions disclosing validity of unilateral declaration cancelling the sale deed, neither the Court nor any authority can give any credence to any such declaration. That being so, ignoring the sale deed and relying upon all irrelevant and non-corroborated materials, besides arriving at the finding contrary to the materials on record, the lower Appellate Court has clearly acted illegally in allowing the appeals and the revision applications filed by the respondents. Therefore the impugned orders passed by the appellate revisional authorities cannot be sustained. 35. It was also sought to be argued that the respondents could not have raised the objection before the Co-operative Court as they are neither parties to the proceedings nor they form any of the persons enumerated under Section 91. Undoubtedly as observed above, no stranger can seek any relief from the Co-operative Court nor can raise dispute under Section 91. However, in the case in hand, the respondents merely sought to raise third party objections to the order passed by the Co-operative Court on the basis that it was affecting their rights. Certainly for a limited purpose to ascertain whether the Court's order has resulted in prejudice to third

party, it cannot be said that the Courts, including the Co-operative Courts, are helpless. Undoubtedly the Courts will have no jurisdiction to give any declaration regarding third party rights nor to adjudicate upon their rights but certainly contentions can be looked into to ascertain whether the order passed by the Co-operative Court was a matter which could have been dealt with by the Co-operative Court without affecting the third party rights and whether the dispute can be adjudicated upon without causing prejudice to any third party. But in any case the point in this regard was not raised by the petitioners either before the Co-operative Court or before the lower Appellate Court. That being so, it is too late in the day for the petitioners to contend illegality on the part of Court below for having entertained the objection on behalf of the respondents. 36. Various decisions were sought to be relied upon contending that the appointment of the Receiver was unwarranted. In *T. Krishnaswamy Chetty v. C. Thangavelu Chetty and Ors.*, it was held that the Receiver should not be appointed if it would result in dispossessing the defendant who is in de facto possession of the suit property. In *Prahlad Pd. Modi and Anr. v. Tikaitni Faldani Kumari and Anr.*, it was held that when third party is in possession of the suit property having bona fide paramount title is affected by appointment of Receiver in a suit relating to that property he has two remedies, either to place the claim before the same Court who has appointed the Receiver, or to institute a regular suit. In *Thavasimuthu Nada and Ors. v. Balaguruswami Nadar and Ors.*, reported in AIR 1923 adras 304 it was held that when Receiver has been appointed, a third party whose property is being interfered with under a claim by a Receiver, he may apply to the Court for necessary redressal. As regards the decision in *T. Krishnaswamy Chetty's* case (supra) is concerned, it was a case where the defendant to the suit was in de facto possession and suit itself was filed for possession and other reliefs. The *Thavasimuthu Nadar's* case (supra) was on the subject of right of third party "whose property" was sought to be interfered with pursuant to the appointment of Receiver. So also in *Prahlad Pd. Modi's* case (supra), it was a case where the third party in possession had "bonafide paramount title". In the case in hand, as already observed above, there is no document produced on record by the respondent Nos. 2 to 41 either by revealing lawful subsisting title to the property or right to be in possession of the suit property. That being so, none of the above decisions are of any help to the respondents to justify the impugned orders. 37. In *Sreedhar Chaudhury v. Nilmoni Chaudhury and Ors.*, reported in 1925 Calcutta 681, it was held that in case where adverse interest is claimed by the parties to the proceedings, appointment of Receiver is always permissible. In fact, in such a situation it is always desirable. 38. Reliance was also placed by the learned Advocate for respondents in the matter of *Parvathi Chellamma and Anr. v. Hussan Pillai Mohammed Abdul Khader and Ors.*, reported in AIR 1973 Kerala 208 wherein it was held by the learned single Judge of the Kerala High Court that power conferred on the Court to remove any person from possession and/or custody of the property under the Clause (b) of Sub-rule (1) or Rule 1 of Order 40 of the Code of Civil Procedure does not extend to strangers in possession of the

property to which the parties to the suit do not have a present right to possession in view of the provisions contained in Sub-rule (2) Rule I of Order 40 of Code of Civil Procedure. Therein the lower Court had found the petitioners before the Court were persons entitled to possession of the property and they were in actual possession and further that the order appointing Receiver in so far as it related to disputed item was wrong and therefore it had vacated to that extent. Considering the same it was held that in those facts only right and proper course to the aggrieved party was to approach the District Judge who had confirmed the said order and the appeal was allowed on totally untenable ground. The decision considering the facts of the case in which it was granted, is of no help to the respondents to justify the impugned orders. 39. Needless to say that all the observations made hereinabove are prima facie observations for the purposes of decision in the matter of consideration of the issues raised in the petition against the impugned orders passed by the lower Appellate authority. The matter will have to be decided on merits and till that time the parties are required to maintain status quo in relation to the suit property while the Receiver to continue to be in charge thereof. In the result, therefore, the petitions succeed. The impugned orders are quashed and set aside and the order passed by the Co-operative Court on 23-12-2003 along with its earlier order appointing Receiver is hereby confirmed till the final disposal of the proceedings before the Co-operative Court. The rule is made absolute accordingly with no order as to costs.