2025 INSC 795

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025

[@ SPECIAL LEAVE PETITION (CIVIL) NO.7728 OF 2020]

MACHHINDRANATH S/O KUNDLIK TARADE

DECEASED THROUGH LRS …APPELLANTS

A1: BHAGIRATHIBAI

A2: ASHABAI

A3: BHAUSSAHEB

A4: MEENABAI

VERSUS

RAMCHANDRA GANGADHAR DHAMNE & ORS. …RESPONDENTS

R1: RAMCHANDRA GANGADHAR DHAMNE

R2: ASHOK

R3: CHHAYA BABASAHEB GADHE

R4: NARESHKUMAR BABASAHEB GADHE

R5: BALASAHEB

J U D G M E N T

HSANUDDIN AMANULLAH, J.

Leave granted.

2. The present appeal impugns the Final Judgment and Order dated 15.01.2019[1] in Letters Patent Appeal (hereinafter abbreviated as 'LPA') No.33/1998 in First Appeal No.624/1992 (hereinafter referred to as the 'Impugned Order') passed by the High Court of Judicature at Bombay, Bench at Aurangabad (hereinafter referred to as the 'High Court'), whereby the appeal preferred by the appellants was dismissed and Judgment and Order dated 17.09.1993 [**1994 MhLJ 558**] in First Appeal No.624/1992 passed by the learned Single Judge of the High Court was affirmed. The learned Single Judge differed with the Judgment and Order dated 27.03.1980 in Special Civil Suit No.49/1973 passed by the learned Civil Judge, Senior Division, Ahmednagar (hereinafter referred to as the 'Trial Court') and set aside the decree of possession so granted by the Trial Court.

PARTIES:

3. The appellants before us, along with respondent no.5, are the Legal Representatives (hereinafter abbreviated to 'LRs') of the original plaintiff. Respondent no.1 is the original defendant no.1 and respondents no.2 to 4

[1] Cause Title corrected by the High Court *vide* Speaking to Minutes Order dated 11.09.2019.

are the LRs of the original defendant no.2. Despite valid service of notice, no one has entered appearance on behalf of respondents no.1, 2, and 5. Though, when the matter was heard and judgment was reserved by this Court, learned counsel for respondents no.3 and 4 was not present, however, subsequently, in terms of the Order dated 17.12.2024, a note of written submissions has been filed on their behalf, which is taken on record.

FACTUAL MATRIX:

4. For the sake of convenience and clarity of facts, the parties shall be referred to as per their status/position in the suit. The suit property is agricultural land bearing Survey No.30 situated at Village Kendal Bk., Taluka Rahuri, Ahmednagar, Maharashtra admeasuring 15 Acres and 17 *Guntha* (hereinafter referred to as the 'suit land'). The suit land was the ancestral property of the original plaintiff-Machhindranath. On 20.04.1956, the plaintiff enrolled as a member of the *Kendal Bk. Vividh Karyakari Seva Sahakari Sanstha* Limited (hereinafter referred to as the 'Society'), which, admittedly, is a registered Co-operative Society in terms of the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the 'Act'). Thereafter, the plaintiff obtained a loan from the Society, which was to be repaid by 09.11.1971, and created a charge on the suit

land in favour of the Society. A declaration to this effect was made by the plaintiff on 15.08.1969 and subsequently, Mutation Entry no.3346 came to be recorded on 09.09.1969 mentioning this declaration.

5. As things stood, the plaintiff found himself in a financial crunch and approached defendant no.1 for a loan of Rs.5,000/- (Rupees Five Thousand). Defendant no.1 was none other than the plaintiff's nephew as also his son-in-law. Defendant no.1 extended such loan and as security, the plaintiff executed a Registered Sale Deed dated 02.11.1971 of the suit land in his favour. On the same day, a document styled as '*Ram Ram Patra*' (hereinafter referred to as the 'Reconveyance Deed') was executed by defendant no.1 mentioning that the total value of suit land is around Rs.25,000/- (Rupees Twenty-Five Thousand) and that he would re-convey the suit land on repayment of Rs.5,000/- (Rupees Five Thousand). Mutation Entry no.3520 came to be recorded in the name of defendant no.1 *qua* the suit land on 24.12.1971.

6. On 15.07.1972, defendant no.1 executed a Registered Sale Deed in favour of defendant no.2 in respect of 10 Acres of the suit land for a consideration of Rs.30,000/- (Rupees Thirty Thousand). As a consequence of the said Sale Deed dated 15.07.1972, Survey No.30 came to be divided in two parts. The land sold to defendant no.2 was Survey No.30/1 and the

remaining portion became Survey No.30/2. On knowledge of the Sale Deed executed by defendant no.1 in favour of defendant no.2, the plaintiff approached the Trial Court on 28.02.1973 by filing Special Civil Suit No.49/1973 seeking possession of Survey Nos.30/1 and 30/2 and a direction for re-conveyance of the same along with mesne profits. After the institution of the suit, defendant no.2 filed an application to the Society to strike off its charge on the suit land. *Vide* a Resolution dated 03.04.1973, the Society resolved that the charge would be struck off only after a compromise takes place in respect of the land. However, subsequently, by a Resolution dated 27.08.1973 passed by the Society, the suit land came to be released by the Society from its charge, on account of repayment of the loan by the plaintiff.

7. After considering the evidence placed on record by the parties, the Trial Court held, *vide* Order dated 27.03.1980, that the Sale Deed dated 02.11.1971 was void under Section 48 of the Act and that defendant no.2 had failed to prove that he was a *bonafide* purchaser for value without notice. However, on the question of bar under the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the 'Fragmentation Act'), the Trial Court found that the alienation was in pursuance of the Certificate granted under the Fragmentation Act. In the result, Trial Court passed a decree for

possession of the suit land with direction to defendant no.1 to execute the deed of reconveyance of the suit land in favour of the plaintiff after receiving Rs.5,000/- (Rupees Five Thousand) from him.

8. Against the decree *supra*, defendant no.2 initially approached the High Court of Judicature at Bombay by filing First Appeal No.457/1980, which was later transferred to the Aurangabad Bench and re-numbered First Appeal No.624/1992. The learned Single Judge *vide* Order dated 14.10.1988 remanded the matter to the Trial Court, by framing four additional issues. On remand, the Trial Court considered the four issues with fresh evidence of the parties, and *vide* Order dated 28.04.1989 found that the Society was a registered resource society having majority of its members as agriculturists and that the Society was sub-classified as service resource society. After receipt of the decision of the Trial Court on the four additional issues, the learned Single Judge dismissed the appeal and confirmed the decree of possession. Against this, defendant no.2 filed LPA No.1/1990, which was allowed by a Division Bench and the matter was remanded to the learned Single Judge for fresh reconsideration on all issues. Pursuant thereto, the learned Single Judge reconsidered the evidence and allowed the first appeal thereby setting aside the decree of possession and dismissing the suit brought by the plaintiff. Aggrieved by these findings, the original plaintiff (predecessor-in-interest of the

appellants) filed LPA No.33/1998 before the Division Bench, dismissal whereof has been occasioned *vide* the Impugned Order.

SUBMISSIONS BY THE APPELLANTS:

9. Learned counsel for the appellants submitted that the mandate of Section 47(2) of the Act very specifically creates an embargo on transfer of land in any manner without previous sanction/permission of the Society and as per Section 47(3) of the Act, transfer made in contravention of sub-section (2) is void. Further, the charge of Society was recorded in accordance with Section 48(a) and Section 48(d) of the Act again creates an embargo from alienating the whole or any part of the land specified in the declaration submitted while creating charge under Section 48(a) and further, Section 48(e) declares such alienations in contravention of Section 48(d) as void. Admittedly, the Sale Deed executed on 15.07.1972 by original defendant no.1 in favour of defendant no.2, is without any such sanction and therefore void in terms of Sections 47(3) and 48(e) of the Act. It was canvassed that the subsequent removal of charge by the Resolution dated 27.08.1973 is inconsequential.

10. It was pointed out that defendant no.1 had not contested the suit. It was only the subsequent purchaser/defendant no.2 who did so.

Admittedly, defendant no.2 had no presence at the time of the execution of the Registered Sale Deed dated 02.11.1971 or the reconveyance deed of even date executed between the plaintiff and defendant no.1. Therefore, defendant no.2 cannot falsify the Sale Deed dated 02.11.1971 and his case had to be limited to that of a *bonafide* purchaser for value without notice. The Trial Court specifically observed, on perusal of substantial evidence, that the plaintiff had proved the true nature of the transaction executed on 02.11.1971 and that defendant no.2 was not a *bonafide* purchaser on account of the series of admissions extracted from him during cross-examination.

11. The learned Single Judge, on remand, had set aside the decree by interpreting Sections 47 and 48 of the Act. The evidence of Narsing Sonar (Assistant Registrar, Co-Operative Societies at Rahuri), Karbhari Shete (Chief Secretary of the Society) and Ram Krishna Hapse (Secretary of the Society) has been accepted which proves existence of charge on the date when the Sale Deed dated 15.07.1972 was executed *inter-se* the defendants. Although the learned Single Judge observed that the cooperative societies mentioned in Section 48 of the Act must be protected against defaults in the matter of recoveries, however, significance is given to the release of charge dated 27.08.1973 and it was held that such

release would impliedly restore *status quo ante,* which is legally impermissible.

12. It was submitted that the specific finding of the Trial Court recorded in order dated 27.03.1980 at Paragraph 15 pertaining to defendant no.2 not being *bonafide* purchaser for value without notice, has not been disturbed. This finding had remained unchallenged for absence of any ground in the appeal. Further, findings about the validity of the Sale Deed dated 02.11.1971 had attained finality as they had not been challenged by defendant no.1. The Impugned Order, it was submitted, committed an error in concurring with the learned Single Judge to hold that since the suit land was released from the charge of the Society on 27.08.1973, the same would validate the Sale Deed dated 15.07.1972. It was vehemently argued that the patent error committed by the Impugned Order is in not considering that the prior permissions contemplated under Sections 47 and 48 of the Act were required on the date of the Sale Deed i.e. 15.07.1972 and subsequent release of charge would not have any retrospective effect as such *post-facto* approval is not contemplated in the Act, and thus, is inconsequential.

13. With regard to the Sale Deed dated 02.11.1971, it was submitted that same will have to be appreciated based on the surrounding

circumstances which would include not only the Reconveyance Deed dated 02.11.1971 but also the act of creating charge by Mutation Entry no.3520 on 24.12.1971, which was in teeth of the declaration submitted by plaintiff in terms of Section 48(a) of the Act and the evidence of the office-bearers of the Society. More so for on that date under Mutation Entry No. 3346 dated 09.09.1969, the name of the Society was already mutated with regard to the suit land, but the said Society was neither noticed nor its consent was taken. On consideration of the aforesaid facts, it will be crystalized that the true nature of the Sale Deed dated 02.11.1971 is that of a conditional sale. Reliance was placed on Paragraphs 13, 14 & 21-24 of the decision in ***C S Venkatesh v A S C Murthy*****, (2020) 3 SCC 280**.

14. Lastly, it was submitted that concurrent finding of fact has never been an embargo against the power of judicial review in the nature of Article 136 of the Constitution of India, which in fact invokes the concept of extraordinary civil appellate jurisdiction and the same has been appreciated and reiterated by this Court from time to time and recently in ***State of Rajasthan v Shiv Dayal*****, (2019) 8 SCC 637** wherein it was held that concurrent findings can always be interfered with, when it is pointed out that the finding of fact in question is *de hors* the pleadings and a misinterpretation of the material on record. On these grounds, learned

counsel prayed that the appeal be allowed and for restoration of the Judgment and Order passed by the Trial Court.

SUBMISSIONS BY RESPONDENTS NO.3 AND 4:

15. Learned counsel for the respondents no.3 and 4 submitted that the Impugned Order rightly considered provisions of the law and dismissed the plaintiff's suit. The plaintiff failed to prove that the sale transaction between himself and defendant no.1 was a contract or reconveyance or loan transaction. Further, the plaintiff was conscious and aware about the charge of the Society and having still entered into the Sale Deed dated 02.11.1971 with defendant no.1, cannot be allowed to take the benefit of his own wrong and claim that the sale is void *ab initio* in terms of Sections 47 and 48 of the Act.

16. It was submitted that the plaintiff had not placed on record any evidence to show that the market value of the suit land was higher than Rs.5,000/- (Rupees Five Thousand) in the year 1971. Therefore, the contention of the plaintiff that the suit land was sold for inadequate consideration is unacceptable. Further, the defendants proved the execution of the Sale Deed dated 15.07.1972 by defendant no.1 in favour of defendant no.2 after receipt of consideration of Rs.30,000/- (Rupees

Thirty Thousand). Moreover, the Sale Deed dated 15.07.1972 is a registered document and the endorsement of the Sub-Registrar shows his presence and that consideration of Rs.30,000/- (Rupees Thirty Thousand) was duly received. Hence, validity of the Sale Deed dated 15.07.1972 has been proved.

17. It was submitted that there are concurrent findings in favour of the defendants and there is no perversity in the Impugned Order warranting interference by this Court. On these grounds, learned counsel prayed for dismissal of the appeal.

ANALYSIS, REASONING AND CONCLUSION:

18. Having heard learned counsel for the parties and going through the record, including written submissions as filed by the parties concerned, we find that there are multiple factors requiring consideration. The main issue is as to whether the conveyance of the suit land by the original plaintiff dated 02.11.1971 in favour of defendant no.1 could have been done and, the same having been done, could be sustained in law.

19. On the aforesaid point, there is no dispute with regard to the application of Section 48 of the Act which provides that when on any

immovable property a charge has been created in favour of any society by any member by way of a declaration in pursuance of a loan, then there is an embargo on alienating such property during the subsistence of the charge. In this regard, sub-sections (c), (d) and (e) of Section 48 of the Act are relevant. The concerned Section is extracted hereunder:

> '***48. Charge on immovable property of members, borrowing from certain societies.—****Notwithstanding anything contained in this Act or in any other law for the time being in force—*
> *(a) any person who makes an application to a society of which he is a member, for a loan shall, if he owns any land or has interest in any land as a tenant, make a declaration in the form prescribed. Such declaration shall state that the applicant thereby, creates, charge on such land or interest specified in the declaration for the payment of the amount of the loan which the society may make to the member in pursuance of the application and for all future advances (if any), required by him which the society may make to him as such member, subject to such maximum as may be determined by the society, together with interest on such amount of the loan and advances;*
> *(b) any person who has taken a loan from a society of which he is a member, before the date of the coming into force of this Act, and who owns any land or has interest in land as a tenant, and who has not already made such a declaration before the aforesaid date shall, as soon as possible thereafter, make a declaration in the form and to the effect referred to in clause (a); and no such person shall, unless and until he has made such declaration, be entitled to exercise any right, as a member of the society;*
> *(c) a declaration made under clause (a) or (b) may be varied at any time by a member, with the consent of the society in favor of which such charge is created;*
> *(d) no member shall alienate the whole or any part of the land or interest therein, specified in the declaration made under clause (a) or (b) until the whole amount borrowed by the member together with interest thereon, is repaid in full:*

Provided that, it shall be lawful to a member to execute a mortgage / bond in respect of such land or any part thereof in favour of an Agriculture and Rural Development Bank or of the State Government under the Bombay Canal Rules made under the Bombay Irrigation Act, 1879 or under any corresponding law for the time being in force for the supply of water from a canal to such land, or to any part thereof:

Provided further that, if a part of the amount borrowed by a member is paid the society with the approval of the Central Bank to which it may be indebted may, on an application from the member, release from the charge created under the declaration made under clause (a) or (b), such part of the movable or immovable property specified in the said declaration, as it may deem proper, with due regard to the security of the balance of the amount remaining outstanding from the member;

(e) any alienation made in contravention of the provisions of clause (d) shall be void;

(f) subject to all claims of the Government in respect of land revenue or any money recoverable as land revenue, and all claims of the Agriculture and Rural Development Bank in respect of its dues, in either case whether prior in time or subsequent, and to the charge (if any) created under an award made under the Bombay Agricultural Debtors Relief Act, 1947 or any corresponding law for the time being in force in any part of the State, there shall be a first charge in favour of the society on the land or interest specified in the declaration made under clause (a) or (b), for and to the extent of the dues owing by the member on account of the loan;

(g) and in particular, notwithstanding anything contained in Chapter X of the Maharashtra Land Revenue Code, 1966, the Record of Rights maintained there under shall also include the particulars of every charge on land or interest created under a declaration under clause (a) or (b), and also the particulars of extinction of such charge.

Explanation - For the purposes of this section the expression "society" means; (i) any resource society, the majority of the members of which are agriculturists and the primary object of which is to obtain credit for its members, or (ii) Any society, or any society of the class of societies, specified in this behalf by him State Government, by a general or special order.'

20. From a reading of the aforesaid provision, there is no ambiguity with regard to the import of the Section. Alienation of any such property on which a charge is created in favour of the concerned cooperative society by way of declaration is totally beyond the capacity of the owner/member who has declared it as a charged property, until the amount, for which the charge was created along with the interest, is repaid in full. However, even if a part of the amount due is paid then a society may, on an application moved by the member, release from charge such part of the property, as it may deem proper having regard to the outstanding amount.

21. In the present case, there is no denial to the fact that the charge on the suit land as declared by the plaintiff was prior to the date of him executing the Sale Deed dated 02.11.1971 in favour of defendant no.1. It is also not in dispute that neither the amount for which the charge was created was repaid to the Society either in full or in part nor any such application for part-release was either filed before or accepted by the Society prior to the said sale. Thus, at first glance, it appears to be an open-and-shut case that the said Sale Deed dated 02.11.1971 was void as per Section 48(e) of the Act. Further, the subsequent Sale Deed dated 15.07.1972 by respondent no.1/original defendant no.1 in favour of defendant no.2 on this analogy would also have to be held to be void.

However, we hasten to add that a deeper probe is required as to what extent the theory of the sale being void *ab initio* had to be applied has not been spelt out by the statute and, thus is required to be gone into depending upon the specific and relevant facts and circumstances of each case as also the ancillary background. Therefore, for the time being, the Court would move to the other issue and thereafter take a final view having regard to the overall picture which emerges, for the final disposal of the instant case.

22. Coming to the other issue which is as to whether the subsequent release of the charge created on the suit land by the Society upon receiving the entire dues having been paid by the plaintiff, would give retrospectivity to the said release so as to validate and ratify the Sale Deeds dated 02.11.1971 and 15.07.1972? Under Section 48(d) of the Act, a society has the power to release from charge any part of the land specified in the declaration. Further, Section 48(c) of the Act relates only to variation of the declaration, but by obvious and necessary implication, it would include conclusion/release of the charge itself, in case the entire dues of a society are satisfied by the member who made the declaration. In the present case, the Society had itself resolved to release the charge on the suit land on 27.08.1973. For all practical purposes, the interest of the Society has not suffered.

23. The emphasis of the plaintiff before this Court is that the Trial Court as well as the learned Single Judge had, in the first round of litigation, held in his favour and both the Sale Deeds dated 02.11.1971 and 15.07.1972 were declared void and the suit seeking reconveyance was decreed. This raises another question which needs to be answered i.e., against whom or between whom, if at all, any alienation under Section 48(e) of the Act is applicable for the said acts resulting in the same being void?

24. In this regard, the conduct of the member/person who has under a declaration created a charge upon property in lieu of any loan obtained from a society would be important. Section 48(e) of the Act declares void any transaction by a member-loanee against the society, where he/she alienates such immovable property on which a charge is created under declaration. Thus, the primal purpose is to safeguard the interest of the society which advanced the loan. As a corollary, the right to sue or get a declaration *qua* any alienation made by a loanee rests and is available only to the society in favour of whom the property under a declaration was charged. It would, therefore, not be within the domain of the member-loanee who himself commits a breach to take a stand that the act done by him should be declared void, without the society coming forward before an appropriate forum to set aside such alienation. The law cannot, and does

not, reward a person for his/her own wrongs. In ***Sindav Hari Ranchhod v Jadev Lalji Jaymal*, (1997) 7 SCC 95**, Section 49 of the Gujarat Cooperative Societies Act, 1961, a provision *in pari materia* to Section 48 of the Act, was involved, and the Court observed:

> '***8.*** *In our view, this submission on behalf of the learned counsel for the respondents cannot be sustained. It is true that no relief was claimed by the plaintiffs against the Society but the grievance made by the plaintiffs in substance was of course on behalf of the Society and whether such Society was covered by Section 49 or not and whether such Society had waived its statutory right or not in favour of Original Defendant 1 were all questions which could have been thrashed out only in the presence of the Society which conspicuously was not joined as at least a proper party. It is also pertinent to note that the Society has not challenged these sale deeds executed by Defendant 1 at any time. The plaintiffs also failed to lead evidence for showing how Section 49(1) got attracted on the facts of the present case, despite having full opportunity before the trial court to prove their case on this issue. They could not be given a second innings just for the asking as is done in the impugned order. Consequently the plaintiffs could not legitimately and effectively challenge the sale transactions entered into by their father in favour of the alienees namely Defendants 15 and 10 on the ground of violation of Section 49(1) of the Act. In our view on the facts of the present case, therefore, there was no occasion for the High Court for ordering any remand as on the main issue the plaintiffs had failed, hence the suit ought to have been dismissed against all the defendants instead of only against some of them as ruled by the High Court. Consequently, this appeal is required to be allowed and the plaintiffs' suit against appellant — Defendant 15 also is liable to be dismissed as on merits the plaintiffs had failed to effectively challenge the sale transactions entered into by their father in favour of Defendant 15.*'
>
> (emphasis supplied)

25. In the present case, it is also not in dispute that the Society, in whose favour the charge was created on the land in question, never moved before any forum for enforcing its charge over the suit land or raised any grievance with regard to either of the Sale Deeds. Thus, the situation which emerges is that Section 48(e) of the Act which says that any alienation made in contravention of the provisions of clause (d) shall be void has to be read as directory to the extent that the same can be acted upon only at the instance of the party aggrieved (*viz*. the society concerned) upon whom the right has been created under the statute. In other words, with regard to a transaction, unless the society comes forward to seek its nullification/setting aside, the same would at best be a voidable action and not void *ab initio*. The distinction between '*void*' and '*voidable*' was considered by the Court in ***Dhurandhar Prasad Singh v Jai Prakash University*, (2001) 6 SCC 534**:

> '***16.*** *The expressions "void and voidable" have been the subject-matter of consideration before English courts times without number. In the case of Durayappah v. Fernando [(1967) 2 All ER 152: (1967) 2 AC 337: (1967) 3 WLR 289 (PC)] the dissolution of the Municipal Council by the Minister was challenged. Question had arisen before the Privy Council as to whether a third party could challenge such a decision. It was held that if the decision was a complete nullity, it could be challenged by anyone, anywhere. The court observed at p. 158 E-F thus:*
>
> > *"The answer must depend essentially on whether the order of the Minister was a complete nullity or whether it was an order voidable only at the election of the Council. If the former, it must follow that the Council is still in office and that, if any councillor, ratepayer or other*

person having a legitimate interest in the conduct of the Council likes to take the point, they are entitled to ask the court to declare that the Council is still the duly elected Council with all the powers and duties conferred on it by the Municipal Ordinance."

17. *In the case of McC (A minor), In re [(1985) 1 AC 528 : (1984) 3 All ER 908: (1984) 3 WLR 1227 (HL)] the House of Lords followed the dictum of Lord Coke in Marshalsea case [(1612) 10 Co Rep 68 b: 77 ER 1027] quoting a passage from the said judgment which was rendered in 1613 where it was laid down that where the whole proceeding is coram non judice which means void ab initio, the action will lie without any regard to the precept or process. The Court laid down at AC p. 536 thus: (All ER pp. 912h-i, 913a-b)*

"Consider two extremes of a very wide spectrum. Jurisdiction meant one thing to Lord Coke in 1613 when he said in Marshalsea case [(1612) 10 Co Rep 68 b: 77 ER 1027] Co Rep, at p. 76a:

'… when a court has jurisdiction of the cause, and proceeds inverso ordine or erroneously, there the party who sues, or the officer or Minister of the court who executes the precept or process of the court, no action lies against them. But when the court has not jurisdiction of the cause, there the whole proceeding is coram non judice, and actions will lie against them without any regard of the precept or process….'

The Court of the Marshalsea in that case acted without jurisdiction because, its jurisdiction being limited to members of the King's household, it entertained a suit between two citizens neither of whom was a member of the King's household. Arising out of those proceedings a party arrested 'by process of the Marshalsea' could maintain an action for false imprisonment against, inter alios, 'the Marshal who directed the execution of the process'. This is but an early and perhaps the most-quoted example of the application of a principle illustrated by many later cases where the question whether a court or other tribunal of limited jurisdiction has acted without jurisdiction (coram non judice) can be determined by considering whether at the outset of the proceedings that court had jurisdiction to entertain the

proceedings at all. So much is implicit in the Lord Coke's phrase 'jurisdiction of the cause'."

18. *In another decision, in the case of Director of Public Prosecutions v. Head [1959 AC 83: (1958) 1 All ER 679: (1958) 2 WLR 617 (HL)] the House of Lords was considering the validity of an order passed by the Secretary of State in appeal preferred against judgment of acquittal passed in a criminal case. The Court of Criminal Appeal quashed the conviction on the ground that the aforesaid order of the Secretary was null and void and while upholding the decision of the Court of Criminal Appeal, the House of Lords observed at AC p. 111 thus: (All ER p. 692g-i)*

"This contention seems to me to raise the whole question of void or voidable; for if the original order was void, it would in law be a nullity. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because you cannot continue a nullity. The licence to Miss Henderson would be a nullity. So would all the dealings with her property under Section 64 of the Act of 1913 [Mental Deficiency Act]. None of the orders would be admissible in evidence. The Secretary of State would, I fancy, be liable in damages for all of the ten years during which she was unlawfully detained, since it could all be said to flow from his negligent act; see Section 16 of the Mental Treatment Act, 1930.

But if the original order was only voidable, then it would not be automatically void. Something would have to be done to avoid it. There would have to be an application to the High Court for certiorari to quash it."

19. *This question was examined by the Court of Appeal in the case of R. v. Paddington Valuation Officer, ex p Peachey Property Corpn. Ltd. [(1965) 2 All ER 836: (1966) 1 QB 380: (1965) 3 WLR 426 (CA)] where the valuation list was challenged on the ground that the same was void altogether. On these facts, Lord Denning, M.R. laid down the law, observing at p. 841 thus:*

"<u>It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether.</u> In which case there is no need for an order to quash it. It is automatically null and void without more ado. <u>The other kind is when the</u>

invalidity does not make the list void altogether, but only voidable. In that case it stands unless and until it is set aside. In the present case the valuation list is not, and never has been, a nullity. At most the first respondent — acting within his jurisdiction — exercised that jurisdiction erroneously. That makes the list voidable and not void. It remains good until it is set aside."

20. *de Smith, Woolf and Jowell in their treatise Judicial Review of Administrative Action, 5th Edn., para 5-044, have summarised the concept of void and voidable as follows:*

"Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is ultra vires in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is intra vires it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record."

21. *Clive Lewis in his work Judicial Remedies in Public Law at p. 131 has explained the expressions "void and voidable" as follows:*

"A challenge to the validity of an act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant."

22. *Thus the expressions "void and voidable" have been the subject-matter of consideration on innumerable occasions by courts. The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be*

transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.'

(emphasis supplied)

26. Another aspect of importance is the fact that ultimately, the dues of the Society have been cleared, may be by the plaintiff himself, but the result is that the same has also been followed up by acceptance and release by the Society i.e., the suit land stood released from charge on and with effect from 27.08.1973.

27. Another factual aspect raised by the appellants is that the suit land is highly undervalued as the consideration is only Rs.5,000/- (Rupees Five Thousand) though the same ought to have been Rs.25,000/- (Rupees Twenty-Five Thousand). This contention cannot be given much importance

considering the relationship between the parties i.e., the defendant no.1 being the son-in-law and nephew of the plaintiff. Further, no material to buttress/support the claim of the valuation being Rs.25,000/- (Rupees Twenty-Five Thousand) was ever produced before any of the Courts below. Thus, a bald statement on a purely factual aspect has rightly not been accepted by the Courts. We too do not propose to chart a different course on this.

28. Before, however, forming a final view, this Court is also required to consider the plea of the appellants that on 02.11.1971, after execution of the Sale Deed by the plaintiff in favour of respondent no.1/ defendant no.1, immediately a reconveyance deed under the name and style of '*Ram Ram Patra*' was also executed, which stipulated that upon Rs.5,000/- (Rupees Five Thousand) being repaid by the plaintiff to the respondent no.1/ defendant no.1, he would re-convey the land to the plaintiff. This document would not be of any help to the appellants mainly because cognizance of the same cannot be taken in view of the document not being executed either on stamp paper or registered and, additionally, being in the writing of a different scribe *vis-a-vis* the registered Sale Deed of even date. Moreover, the plaintiff while executing the registered Sale Deed on 02.11.1971 in favour of defendant no.1 has clearly stated that the suit land was free of any encumbrance(s), which, in our opinion, negates the

argument urged that the sale was a conditional sale and not a full-fledged sale.

29. Though neither discussed in any of the Orders nor argued by any party, a serious doubt arises in the mind of the Court inasmuch as it cannot be believed that a valid reconveyance deed would not specify any time-period and also not provide for any escalation in the amount to be returned in lieu of reconveyance i.e., to say that for an indefinite period the land would remain with defendant no.1, but whenever the plaintiff wants, he can ask for its reconveyance by paying merely Rs.5,000/- (Rupees Five Thousand). Besides being iniquitous, this also demonstrates that such term could not have been incorporated, if at all there was a genuine reconveyance deed. Had it really been agreed between the parties that the suit land was to be reconveyed upon the money being returned, the money to be returned would be commensurate with escalation for the period for which it was not returned by providing for some increase, either quantified or by prescribing a rate of interest and most importantly an outward time-limit. These are conspicuous by their absence in the Reconveyance Deed.

30. It is also noteworthy that the plaintiff has nowhere stated that he ever approached defendant no.1 for re-conveying the suit land. The only stand taken was that he was ready to return Rs.5,000/- (Rupees Five

Thousand) and that the Court may pass a decree directing reconveyance for the sum of Rs.5,000/- (Rupees Five Thousand). This itself dilutes the claim inasmuch as the cause of action would arise when the plaintiff asserted that he was ready, willing and offered to pay the amount to defendant no.1, who refused to accept such payment of Rs.5,000/- (Rupees Five Thousand). Absent such averment, no relief can enure to the plaintiff.

31. Apropos the rights of the parties *inter-se*, the Court would only observe that defendant no.2 was a *bonafide* purchaser from respondent no.1/defendant no.1, on the date the Sale Deed was executed on 15.07.1972, for the reason that such transaction was made on the basis of the title which was apparent from the Sale Deed dated 02.11.1971 in favour of respondent no.1/defendant no.1. This would not have given any occasion to defendant no.2 to be cautious or under any impression, much less knowledge, that the property bought by him was encumbered on the date of purchase.

32. Undoubtedly, the present case comes under a unique category where a person on the one hand comes before a Court seeking that his own actions be nullified on the ground that it was void and on the other hand wants relief in his favour, which is consequential to and traceable to

his own wrong. It would not be proper for a Court of law to assist or aid such person who states that the wrong he committed be set aside and a relief be granted *de hors* the wrong committed, after condoning the same. In the present case, the plaintiff cannot be allowed to benefit from his own wrong and the Court will not be a party to a perpetuation of illegality. In ***Ram Pyare v Ram Narain*****, (1985) 2 SCC 162**, a 3-Judge Bench of this Court, in the circumstances therein, did not void a transaction even though the transaction was void being prohibited by law. The principle that no party can take advantage of his/her own wrong i.e. *ex injuria sua nemo habere debet* is squarely attracted. In ***Kusheshwar Prasad Singh v State of Bihar*****, (2007) 11 SCC 447**, it was held:

> '***13.*** *The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.*
> ***14.*** *In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).*
> ***15.*** *In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592] the accused*

army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

> *"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."*

***16.** It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".'*

(emphasis supplied)

33. On an overall circumspection, the learned Single Judge and the Division Bench have not committed any error.

34. In the light of the discussions made and reasons recorded hereinabove, we do not find any merit in the present appeal. Accordingly, the appeal stands dismissed.

35. No order as to costs. I.A. No.42744/2020 is closed.

36. Registry is directed to prepare Decree Sheet accordingly.

…….....J.
[SUDHANSHU DHULIA]

…….....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
JUNE 02, 2025