

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO. 33 OF 1998

IN

FIRST APPEAL NO. 624 OF 1992

WITH

CIVIL APPLICATION NO. 2631 OF 1998

Machhindranath s/o Kundlik Tarade,
died through L.Rs.

1-a) Bhagirathibai w/o Machhindra Tarade
(widow),
age 49 years, occ. Household,
R/o Brahmani, Tq. Rahuri,
Dist. Ahmednagar

1-b) Ashabai w/o Machhindra Shete
(daughter),
age 32 years, occ. Household,
R/o Rahuri, Tq. Rahuri,
Dist. Ahmednagar

1-c) Bhaussaheb s/o Machhindra Tarade
(son),
age 30 years, occ. Agril.,
R/o Brahmani, Tq. Rahuri,
Dist. Ahmednagar

1-d) Meenabai w/o Ramchandra Dhamne
(daughter),
age 26 years, occ. Household,
R/o as above

...Appellants

[Original Plaintiff]

VERSUS

1] Ramchandra Gangadhar Dhamne,
aged 25 years, occ. Agril.,
R/o Brahmani, Tq. Rahuri,
Dist. Ahmednagar

2] Narayan Kisan Gadhe,
died through L.Rs.

2-A] Ashok s/o Narayan Gadhe,
aged 52 year, occ. Agril.,

2-B] Chhaya Babasaheb Gadhe,
age 40 years, occ. Agril.,
R/o Kanagar, Tq. Rahuri,
Dist. Ahmednagar
[Nos.1 & 2 Orig.Defendants]

3] Nareshkumar Babasaheb Gadhe,
age 20 years, occ. Education ...Respondents

...

Mr. V.D.Hon, Senior Advocate
with Mr. D.P.Dawalkar
i/b Mrs. C.S.Deshmukh, Advocate for Appellants
Respondent no.1 served.
Mr. D.K.Kulkarni, Advocate for Respondent nos. 2-A, 2-B
and Resp. no.3

...

CORAM : T.V.NALAWADE
AND
SUNIL K.KOTWAL, JJ.

DATED : JANUARY 15, 2019

ORAL JUDGMENT [Per Sunil K.Kotwal, J.]

This Letters Patent Appeal is directed against the judgment and order, passed by the learned Single Judge of this Court, in First Appeal No. 624 of 1992. Appellant is original plaintiff in Special Civil Suit No. 49 of 1973. Respondent no.1 is original defendant no.1 and respondent no.2 is original defendant no.2. For the sake of convenience, hereinafter the parties are referred in accordance with their status in the suit.

2. Facts, leading to institution of this appeal, are that the plaintiff filed suit for possession of Survey No.30, area 15 acre 17 gunthas

(New Gat Nos. 84 and 85), situated at village Brahmni (hereinafter referred to as, 'the suit land').

3. The case of the plaintiff, in brief, is that because he was facing financial crises, he borrowed loan of Rs.5,000/- from defendant no.1 and as security for that loan executed registered sale deed of the suit land in favour of defendant no.1 on 2.11.1971. Defendant no.1 agreed to execute reconveyance deed of the suit land after receiving repayment of Rs.5,000/- from the plaintiff. However, subsequently defendant no.1 had changed mind and in collusion with defendant no.2 executed bogus sale deed in favour of defendant no.2 on 14.7.1972 of 10 acre area out of the suit land. While giving effect to this sale deed, the land sold to defendant no.2 was given Survey No. 30/1 and remaining portion was given Survey No. 30/2.

Contention of the plaintiff is that on the date of execution of both sale deeds, the plaintiff being member of Kendal (Bk.) Vividh Karyakari Seva Sahkari Society Limited (hereinafter referred to as

'the cooperative society') was indebted to that cooperative society and for the loan borrowed by plaintiff charge of the loan of society was created on the suit land. Therefore, above said both the sale deeds were void in view of prohibition contained in Section 48 clauses (d) and (e) of the Maharashtra Cooperative Societies Act, 1960. Therefore, under both the sale deeds, no title is conferred upon either defendant no.1 or defendant no.2. So also, the said sale transaction was bad under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Accordingly, the plaintiff prayed for possession of the suit land from the defendants.

4. The suit claim was countered by defendant no.2 by filing written statement Exhs. 24 and 39.

Contention of defendant no.2 is that the plaintiff validly sold out the suit land to defendant no.1 for the consideration of Rs.5,000/- and out of that land, defendant no.1 had purchased 10 acre land from defendant no.2 for the consideration of Rs.30,000/-. Therefore, defendant

no.2 is absolute owner of Survey No. 30/1 admeasuring 10 acre and the plaintiff has no right to claim possession of the same. Defendant no.2 has denied the other contentions of the plaintiff and contended that the suit is filed by plaintiff in collusion with defendant no.1, who is son-in-law of the plaintiff, in order to grab 10 acre land in possession of defendant no.2.

Next contention of defendant no.2 is that he had spent huge amount towards development of suit land including sinking well. So also, he is bona fide purchaser of the suit land, who had no notice of charge of the loan of cooperative society on the suit land. He had also denied that the plaintiff was member of the cooperative society and he was indebted to that society on the date of execution of sale deeds. The charge was invalid, as same was not registered. It was contended that the sale deeds were not against the public policy and those would be deemed to be void only against the society, but not in between the plaintiff and defendant nos. 1 and 2. The plaintiff cannot take advantage of his own wrong.

5. Defendant no.1 was proceeded ex-parte, as he remained absent despite service of suit summons.

6. After considering the evidence placed on record by both the parties, the Trial Court passed the decree for possession of the suit land, with direction to defendant no.1 to execute deed of reconveyance of the suit land in favour of the plaintiff after receiving Rs.5,000/- from him.

7. Against that decree, defendant no.2 initially preferred First Appeal No. 457 of 1980, wherein initially four issues were referred to the trial Court for its finding. After receipt of the decision of the trial Court on those additional four issues, First Appeal No. 457 of 1980 came to be dismissed. Against that order, defendant no.2 preferred Letters Patent Appeal No. 1 of 1990, which was allowed and First Appeal No. 457 of 1980 was remanded to the Single Judge of this Court for re-consideration. Accordingly, after re-considering the correctness of finding given by the trial Court against all the issues, the Single Judge allowed

the appeal and dismissed the suit claim. Against that judgment present Letters Patent Appeal arises.

8. Heard Shri V.D.Hon, learned Senior counsel for the appellant and Shri D.K.Kulkarni, learned counsel for respondent nos. 2-A, 2-B and respondent no.3. Nobody appeared on behalf of respondent no.1, though served.

9. Learned Senior counsel for the appellant agitated only two issues before this Court. His first objection is that on the date of execution of sale deed by the plaintiff in favour of defendant no.1 on 2.11.1971 (Exh.88) and on the date of execution of sale deed by defendant no.1 of 10 acre land out of the suit land in favour of defendant no.2 on 14.7.1972 (Exh.90), the plaintiff was indebted to the cooperative society and charge of that loan was created on the suit land under declaration dated 15.8.1969 (Exh.153).

His next submission is that as the charge of the loan of the society was created on suit land, under Section 47 (2) (3) of the Maharashtra

Cooperative Societies Act, 1960 (hereinafter referred to as, 'the Cooperative Societies Act'), both the impugned sale deeds are void-ab-initio. He has also drawn our attention to Section 48 (d), (e) of the Cooperative Societies Act and submits that before executing the above said both the sale deeds, prior permission of the cooperative society was not obtained and during existence of charge of the loan of the society on suit property, both the sale transactions are void even under Section 48 (e) of the Cooperative Societies Act.

According to learned Senior counsel, as the sale deed executed by the plaintiff in favour of defendant no.1 and sale deed executed by defendant no.1 in favour of defendant no.2 is void-ab-initio, defendant nos. 1 and 2 cannot acquire any title in the suit land. Therefore, the plaintiff is entitled to recover possession of the suit land on the basis of his title. To substantiate his contention, he has drawn our attention to mutation entry No. 3270 (Exh.85) and mutation entry No. 3346 (Exh.86), which show that in the past the plaintiff had borrowed loan from the cooperative societies.

Next submission of the learned Senior counsel for the appellant is that sale deed, dated 2.11.1971 (Exh.88) of the suit land was executed by the plaintiff in favour of defendant no.1 as a security for hand loan of Rs.5,000/-. He submits that therefore on the same day defendant no.1 executed unregistered agreement of reconveyance in the style of "Ram Ram Patra" (Exh. 150). According to the learned senior counsel, as the suit land was sold out to defendant no.1 by the plaintiff for meager consideration of Rs.5,000/-, in view of execution of 'Ram Ram Patra' (Exh.150) by defendant no.1 in favour of plaintiff, the plaintiff can prove that the transaction dated 2.11.1971 (Exh.88) was not the transaction of out right sale, but it was loan transaction.

10. Learned counsel for respondent no.2-A, 2-B and respondent no.3 supported the judgment passed by the Single Judge, on the ground that charge on the immovable property cannot be created only by executing the unregistered declaration (Exh. 153) in favour of the cooperative society. Therefore,

on the basis of such unregistered document, the plaintiff cannot prove that on the date of impugned sale transaction the disputed land was in the charge of the cooperative society.

Next objection of learned counsel for respondent no.2-A, 2-B and respondent no.3 is that, few days after the institution of the suit, the land purchased by defendant no.2 from defendant no.1 was released from the charge created by the cooperative society. He has drawn our attention to the copy of resolution, passed by the cooperative society on 3.6.1973 (Exh. 157). He submits that as charge was removed by the society, under Section 47 (2) (3) and 48 (d) r/w (e) of the Cooperative Societies Act, the sale deed executed by defendant no.1 in favour of defendant no.2 does not become void document.

Next contention of learned counsel for respondent no.2-A, 2-B and respondent no.3 is that, the impugned sale deed cannot become void-ab-initio on account of charge of the loan of the society on suit land, but at the most it would be a voidable document so far as right of the cooperative society

is concerned. His contention is that the plaintiff, who was well aware about the charge of the loan of the society, and had sold out the suit land to defendant no.1, cannot take benefit of his own wrong and cannot take defence that under Section 47 and Section 48 of the Cooperative Societies Act, the sale executed by him in favour of defendant no.1 is void document.

11. After hearing learned counsel for both the parties and after going through the record and proceeding as well as pleadings of the parties, it emerges that the plaintiff has disputed nature of transaction dated 2.11.1971 i.e. execution of sale deed (Exh.88) for the consideration of Rs.5,000/- on the ground that it was loan transaction and defendant no.1 agreed to reconvey the suit land in favour of plaintiff after repayment of Rs.5,000/- borrowed by the plaintiff. According to the plaintiff, consideration of Rs.5,000/- was highly inadequate than the market value of the suit land.

12. However, it cannot be ignored that no

evidence has been placed on record by the plaintiff to show that market value of the suit land was much higher than the consideration of Rs.5,000/- which was paid by defendant no.1 to the plaintiff. Thus, it cannot be said that the suit land was sold on 2.11.1971 to defendant no.1 for inadequate consideration. Only because subsequently defendant no.1 sold out 10 acre area out of the suit land to defendant no.2 for consideration of Rs.30,000/-, inference cannot be drawn that the consideration paid by defendant no.1 to the plaintiff was inadequate. Escalation of market price of the land due to passage of time is also probable for payment of consideration of Rs.30,000/- by defendant no.2 to defendant no.1 on 14.7.1972.

13. Another important aspect is that, the plaintiff admits that in the year 1971 he was in dire need of money. The plaintiff also admits that at that relevant time he was burdened with the bank loans. Even, it is not disputed that defendant no.1 is nephew of plaintiff and he subsequently became the son-in-law of the plaintiff. Therefore,

sale of the suit land to defendant no.1 even for less consideration, to come out from the financial crises, cannot be ruled out. On the other hand, as defendant no.1 was near relative of plaintiff, in the natural course he would have not insisted for obtaining security for the meager loan amount of Rs.5,000/- to the plaintiff. Thus, execution of the sale deed by plaintiff on 2.11.1971 in favour of defendant no.1 as a security for the loan of Rs.5,000/- is not probable.

14. Though, much reliance has been placed on agreement of reconveyance written in the style of 'Ram Ram Patra' on 2.12.1971 (Exh.150), after going through this document, it emerges that it was written on plain paper, when plaintiff admits in his cross-examination that on the same day the sale deed was written by the regular scribe. No reason is assigned by the plaintiff as to why the agreement of reconveyance (Exh.150) was not written in the hand writing of scribe. So also, when on 2.11.1971 the plaintiff and defendant no.1 had gone to the Sub-Registrar office for registration of the

sale deed, it is highly doubtful circumstance as to why the 'Ram Ram Patra' (Exh.150) was written on plain paper when stamp papers were easily available in the Sub-Registrar office. So also, to prove the contents of 'Ram Ram Patra' (Exh.150) the plaintiff has not taken pains to examine defendant no.1 as his witness in whose hand writing 'Ram Ram Patra' (Exh. 150) was written. These circumstances on record indicate that probability cannot be ruled out that the reconveyance deed (Exh.150) was prepared by defendant no.1 in collusion with the plaintiff to suit defence of the plaintiff. In the circumstances, when registered sale deed dated 2.11.1971 (Exh.88) recites that it was executed by plaintiff in favour of defendant no.1 after receiving the consideration of Rs.5,000/- for the suit land, merely on the basis of doubtful reconveyance deed (Exh.150) it cannot be held that the transaction dated 2.11.1971 was transaction of loan or contract of reconveyance, after refund of Rs.5,000/- by plaintiff.

15. Otherwise also, if the sale deed, dated

2.11.1971 (Exh. 88) was executed by plaintiff in favour of defendant no.1 as security for repayment of loan of Rs.5,000/- borrowed from defendant no.1 with condition of reconveyance, under Section 58 (c) of the Transfer of Property Act, the said document becomes mortgage by conditional sale. However, Section 58 (c) mandates that the condition of reconveyance must be embodied in the body of the document. In the body of sale deed (Exh.88) condition of reconveyance is not embodied. Thus, the agreement of reconveyance (Exh.150) cannot be used to prove that the suit land was mortgaged with defendant no.1 as security for loan of Rs.5,000/- alleged to be borrowed by the plaintiff.

16. In view of foregoing discussion, the case of the plaintiff regarding execution of sale deed on 2.11.1971 (Exh.88) in favour of defendant no.1 as a security for loan is not acceptable. On the other hand, considering dire need of money of the plaintiff at the relevant time of execution of that sale deed, and clear recitals of the sale deed (Exh.88), we have no hesitation to hold that the

transaction dated 2.11.1971 (Exh.88) is nothing but out right sale of the suit land by plaintiff to defendant no.1.

17. Plaintiff has also disputed the genuineness of sale deed, dated 14.7.1972 (Exh.90) executed by defendant no.1 in favour of defendant no.2 for the sale of 10 acre land out of suit land for the consideration of Rs.30,000/-. According to the plaintiff, this sale deed was executed by defendant no.1 in collusion with defendant no.2. However, it cannot be ignored that defendant no.1 was nephew as well as son-in-law of the plaintiff.

18. From the evidence on record, it also emerges that defendant no.1 resides along with the plaintiff. Therefore, the theory of collusion between defendant no. 1 and defendant no.2, as put up by the plaintiff is highly improbable and not acceptable. Otherwise also, defendant no.2 himself stepped into witness box and has proved the execution of sale deed, dated 14.7.1971 (Exh.90) by defendant no.1 in his favour after receiving

consideration of Rs.30,000/-. This sale deed is registered document and the endorsement of Sub-Registrar shows that in presence of Sub-Registrar the consideration of Rs.30,000/- was received by defendant no.1 from the plaintiff. Under Section 58 (c) r/w Section 60 (2) of the Registration Act, 1908 the endorsement on such registered sale deed by the Registrar has presumptive value of correctness. No circumstances have been brought on record by the plaintiff to rebut such presumption. Therefore, we have no hesitation to hold that even the genuineness of sale deed executed by defendant no.1 in favour of defendant no.2 (Exh.90) is proved by defendant no.2. Thus, defendant no.2 has duly proved that on 14.7.1972 he had purchased 10 acre area out of suit land from defendant no.1 for consideration of Rs.30,000/-.

19. In fact, execution of sale deed of the suit land on 2.11.1971 in favour of defendant no.1 by plaintiff is an admitted fact in between the parties. Even the sale of 10 acre area out of the suit land by defendant no.1 in favour of defendant

no.2 on 14.7.1972 under registered sale deed (Exh.90) is duly proved as observed above. Therefore, unless plaintiff proves that these both sale deeds are void under Section 47 (2) (3) and Section 48 (d) (e) of the Cooperative Societies Act, the plaintiff cannot claim possession of 10 acre land which is admitted in possession of defendant no.2. Section 47 (2) and (3) reads as under :

" 47. Prior claim of society. -

.....
 (2) No property or interest in property, which is subject to a charge under the foregoing sub-section, shall be transferred in any manner without the previous permission of the society; and such transfer shall be subject to such conditions, if any, as the society may impose.

(3) Any transfer made in contravention of sub-section (2) shall be void.

..... "

A bare glance at Section 47 (2) and (3) of the Cooperative Societies Act makes it clear that all property, which is subject matter of charge under Section 48 of the Cooperative Societies Act, cannot be transferred without previous permission

of the society and any transfer made in contravention of sub-section (2) is void.

20. Section 48 deals with procedure regarding creation of charge on immovable property of members of the society, who borrow loan from the society.

Section 48 (a) (d) and (e) reads as under :

"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 a 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 such member, subject to such maximum as may be determined by the society, together with interest on such amount of the loan and advances;

.....

(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 [a Co-operative Agriculture and Rural Multipurpose 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;

..... "

After going through the relevant portion of Section 48, it becomes clear that a member of the society, who is also owner of any land or has interest in any land as tenant, may create charge on his land by

making declaration in the prescribed form, for the payment of amount of loan, which the society may make to the member or even for future advances, if any. The society may determine the maximum limit of such advances or loan. Once such charge is created, the member cannot alienate his land under the charge unless entire borrowed loan is repaid with interest. Any alienation made by such member without repayment of such loan with interest shall be void alienation. Explanations to Section 48 shows that for the purpose of this Section 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 the State Government, by a general or special order. "

21. In the case at hand, after reference of the additional four issues to the trial Court, additional evidence was recorded by the plaintiff as well as by the defendants. Even the membership register of the cooperative society was produced before the trial Court. Register of membership is

maintained from 1943 upto June 1991. List of 855 members has been mentioned in the register and majority of the members are shown as agriculturists by profession. Even the by-laws of the society were produced, which show that the dominant object of the society is to secure loans and credit for the purpose of members for furtherance of their agricultural operations.

22. Narsing Sadashiv Sonar, Assistant Registrar, Cooperative Societies at Rahuri has proved that the society was registered on 15.11.1911 and the society was grouped as resource society and was sub-classified as service resource society. Even the audit reports of the society were produced before the Court. Object of the society is to provide crop finance to the members and it enrolls agriculturists as members.

One Chief Secretary of the society namely Karbhari Raghunath Shete and working Secretary Ramkrushna Hapase were examined before the trial Court. On the basis of evidence of these witnesses, the plaintiff has duly proved that he

was the member of cooperative society and the said society is resource society having majority of the members agriculturists and the primary object of that society is to obtain credit for its members. Thus, the plaintiff has also proved that the cooperative society from which he borrowed loan, is 'society' within the meaning of Explanation to Section 48 of the Cooperative Societies Act.

23. Mutation Entry No. 3346 (Exh.86) shows that on 15.8.1969, the plaintiff, by making declaration created charge on the suit land of the cooperative society. Even the said declaration is produced on record (Exh.153). Certified copy of loan account extract (Exh.151) and certificate (Exh.155) issued by society show that on the date of execution of both sale deeds (Exh.88) and (Exh.90) plaintiff was indebted to cooperative society.

24. In addition to this, the 7/12 extract (Exh.91) of Survey No. 30/1 recorded in the name of defendant no.2 shows that charge of the cooperative society is recorded on the said land. Thus,

obviously under Section 47 (2) the suit land on which charge of the cooperative society was created cannot be transferred in any manner without previous permission of the society. Any transfer made without permission of the society is void under Section 47 (3) of the Cooperative Societies Act.

25. However, in the case at hand, our attention was drawn towards resolution dated 3.6.1973 (Exh.157) passed by the cooperative society, which shows that charge of the society created on the land sold by defendant no.1 to defendant no.2 was released by the society. Under Section 114 Illustration (e) of the Indian Evidence Act, 1872, presumption is to be drawn that the official act of the society has been duly performed by obtaining necessary approval of the Central Bank for removal of the charge of the society from the land purchased by defendant no.2. Though, plaintiff examined the officials of the society as his witnesses, he has not brought on record that permission of the Central Bank was not obtained by

the society before the release of the property of defendant no.2 from the charge of the society. Thus, we do not find any substance on record that charge of the loan borrowed by the plaintiff was removed by the society from the land purchased by defendant no.2 in contravention of Section 48 second Proviso. In the result, when the charge of the loan of the society is removed from the land purchased by defendant no.2, it must be held that the society has validated the sale transaction of the land purchased by defendant no.2 by granting ex-post facto sanction to the alienation of land by defendant no.1 in favour of defendant no.2.

26. It cannot be ignored that the Cooperative Societies Act is enacted with an object to provide easy finance to the agriculturists. The bar of alienation without previous permission of the society under Section 47 (2) and under Section 48 (d) of the Cooperative Societies Act is brought into existence to protect the society against the default in the matter of recoveries of the loan advanced. A bare glance at this provision makes it

clear that the condition or restriction imposed on alienation of land is not absolute condition, but the owner of the land could sale, transfer or alienate the property with prior permission of the society, as the property is kept under the charge of the loan of the society. Section 47 (2) of the Cooperative Societies Act makes it clear that no property, which is subject to charge under earlier sub-section, shall be transferred in any manner without previous permission of the society and the transfer shall be subject to such condition as the society may impose.

27. Therefore, it is reasonable to infer and hold that the condition regarding non-transfer of the property is subject to the previous permission of the society, and therefore, it is apparently clear that the owner of the land could sale or transfer the suit land in favour of defendant no.1 and even defendant no.1 in favour of defendant no.2 subject to such condition as prescribed by the society. As the plaintiff was competent to sale the suit land to defendant no.1 with previous

permission of the society, the sale deed (Exh.88) executed by the plaintiff in favour of defendant no.1 and subsequent sale deed (Exh.90) executed by defendant no.1 in favour of defendant no.2 cannot be said to be void-ab-initio, but at the most it may be said to be voidable, so far as society is concerned. Undisputedly, the society has not taken steps to declare the alienation void. When the society did not think that the alienation was prejudicial, the plaintiff cannot question the validity of the sale deed. It is only the society, which is aggrieved due to alienation of suit land by plaintiff and subsequent alienation by defendant no.1 in favour of defendant no.2. Though, the plaintiff was well aware that charge of the loan borrowed from the society is kept on the suit land, he sold out the suit land to defendant no.1 and though due to entries in the record of right of suit land about charge of the society even defendant no.1 was aware about the said charge, he alienated 10 acre land out of the suit land in favour of defendant no.2, neither the plaintiff nor defendant no.1 can take defence that the alienation

of the suit land or 10 acre area by defendant no.1 out of the suit land is void-ab-initio.

28. In "**Malhari Gangaram Kale through LRs vs Shenfad Namdeo Tayade and others**" [2004 (4) Mh.L.J. 577], this Court has taken view that though the transactions, which violate Section 47 of the Maharashtra Cooperative Societies Act have been declared void, those being void are to be construed to be void qua the society. It shall never be allowed to lie in the mouth of person entering into said transaction and committing of an open act of violating it and transferring the interest in the property adverse to the interest of society, to say that the transaction is void on account of mandatory prohibition contained in Section 47 of the Cooperative Societies Act. If allowed, this would amount to abuse of law by granting incentive or bonus on commission of illegality.

29. Learned Single Judge of this Court has carefully considered all the above discussed

aspects in details and held that the plaintiff cannot agitate or base his claim for recovery of suit land on the ground that alienation of the suit land by him is void under Sections 47 or 48 of the Cooperative Societies Act. Otherwise also, by releasing the charge kept on the land purchased by defendant no.2, as the society has already validated the sale transaction of 10 acre area out of the suit land in between defendant no.1 and defendant no.2, the plaintiff is not entitled to recover the possession of 10 acre area out of the suit land from defendant no.2.

30. Though plaintiff raised objection that sale of 10 acres out of suit land by defendant no.1 in favour of defendant no.2 is invalid as barred under Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 (for short, 'the Fragmentation Act') the transfer certificate (Exh.147) issued under that Act shows that the said transaction is not bad under the provisions of the Fragmentation Act.

31. Though defendant no.2 has raised the objection regarding non-registration of declaration of charge by plaintiff, the said objection has been rightly considered by the Single Judge in paragraphs 38 and 38 of the judgment and rightly held that in view of Article 254 (2) of the Constitution of India when Section 48 has been the part of original Maharashtra Cooperative Societies Act, 1960 and the said Act received assent of President on 4.5.1961, the provisions of Indian Registration Act cannot supersede the provisions of Section 48 of the Cooperative Societies Act, which provide that charge created by member of the society on his land need not be registered. We concede the view taken by the learned Single Judge holding that for creating charge on the land of plaintiff under his declaration, registration of that document is not necessary.

32. As observed above, the plaintiff failed to prove that sale transaction in between plaintiff and defendant no.1 was contract of reconveyance or loan transaction. Thus, the plaintiff cannot get

the decree for reconveyance of the suit land even from defendant no.1. Therefore, the learned Single Judge did not commit any illegality while dismissing the suit claim.

33. Before parting with the judgment, we must make it clear that though our attention was drawn to Section 65 of the Indian Contract Act, 1872 by the learned Senior counsel for appellant, no equity should be shown in favour of plaintiff or defendant no.2 for the reason that both of them entered into contract of sale of the land with charge of the society, though they were aware regarding the said charge. Even defendant no.2 cannot take protection of Section 53 of the Transfer of Property Act, 1882 as bona fide purchaser without notice, for the simple reason that he has admitted in his cross-examination that before entering into the contract of sale he did not verify the clear title of the land under sale.

34. After careful scanning of the evidence placed on record and the reasons assigned by the

learned Single Judge while allowing the appeal filed by defendant no.2, we are fully satisfied that the view taken by the learned Single Judge is possible view and cannot be termed as perverse. Therefore, while exercising the jurisdiction in this Letters Patent Appeal, we do not find any reason to interfere with the judgment and decree passed by the learned Single Judge in the First Appeal. It follows that this Letters Patent Appeal deserves to be dismissed.

35. Accordingly, Letters Patent Appeal No. 33 of 1998 is dismissed. Civil Application No. 2631 of 1998 is disposed of. Parties to bear their respective costs of the appeal.

[SUNIL K.KOTWAL, J.]

[T.V.NALAWADE, J.]

dbm