A.F.R.

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**HIGH COURT OF JUDICATURE AT ALLAHABAD**
**LUCKNOW**

**WRIT - C No. - 1002529 of 2012**

Sri Shirdi Sai Dham Trust Faizabad Road Lucknow a Trust
…..Petitioner(s)

Versus

State Bank of India Having its Central Office and Ors.
…..Respondent(s)

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| Counsel for Petitioner(s) | : | Gaurav Mehrotra, Rani Singh, Santosh Kumar Tripathi, Shobhit Mohan Shukla, Virendra Kumar Dubey |
| Counsel for Respondent(s) | : | Anurag Srivastava, Bhanu Prakash Dubey, P. Agarwal, Pradeep Agrawal, Sudeep Kumar |

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**Court No. - 4**

**HON'BLE IRSHAD ALI, J.**

1. Heard Sri Shobhit Mohan Shukla, learned Senior Advocate assisted by Ms. Rani Singh, learned counsel for the petitioner, Sri Pradeep Agarwal, learned Senior Advocate assisted by Sri Anurag Srivastava, learned counsel for the respondent, Sri Sudeep Kumar, learned Senior Advocate assisted by Ms. Radhika Verma, learned counsel for the respondent, Sri Alok Kumar Gupta, learned counsel for the respondent.

2. The respondents raised a preliminary objection that the present writ petition is not maintainable at the behest of petitioner as the petitioner has no locus standi.

3. In regard to the preliminary objection raised by the respondents, learned counsel for the petitioner submits as under :-

(i) When the petitioner purchased the property in question on 08.03.2007, the petitioner was not aware of the fact that there was an appeal pending before the DRT with respect to the property in question and which was decided later on by the impugned order only on 06.08.2007 i.e. after the purchase. Further, after purchasing the property in question, the petitioner got its name mutated in the revenue records and no objections of any sort were preferred by the respondents and hence, the petitioner did not gather any knowledge whatsoever about the aforesaid litigation. Thereafter, the said impugned order dated 06.08.2007 was challenged by the owners of the adjacent land by means of an appeal before the DRAT and the DRAT vide order dated 05.11.2007 stayed the recovery proceedings and the petitioner continued to remain in peaceful possession of the property in question in the absence of any proceedings on behalf of the respondents up to the year 2012.

(ii) It was only in the year 2012 that the petitioner came to know that the property in question was the subject matter of the aforesaid proceedings before the DRT and the DRAT. The petitioner came to know about the same when representatives of Respondent No.3, 4 & 5 contacted the petitioner and informed the petitioner that the aforesaid proceedings were going on and on 26.04.2011 the DRAT has passed the impugned order whereby the appeal of the owners of the adjacent land has been dismissed and thereafter vide order dated 10.04.2012 the recovery officer has confirmed the auction sale of the land in question in favour of the Respondent No.3, 4 & 5.

(iii) When the petitioner obtained information about the aforesaid litigations, the petitioner came to know that the appeal before the DRAT preferred by the owners of the adjacent land was identical with the matter of the petitioner and the order impugned therein was also applicable to the petitioner and after the dismissal of the said appeal by the DRAT, the owners of the adjacent land have already preferred a writ petition before this Court in the case of **Dharmendra Kumar & Another Vs. State Bank of India and Ors. (Writ Petition No. 2220 (M/S) of 2012)** and this Court vide interim order dated 23.04.2012 has already stayed the

operation and implementation of impugned orders dated 06.08.2007, 26.04.2011 and 10.04.2012.

(iv) As such, the matter was sub-judice before this Court even before the filing of the instant writ petition and therefore, it would not have been proper for the petitioner to approach the DRAT by filing an appeal against the order dated 06.08.2007 because this Court was already seized of the matter and hence, the petitioner approached this Court to challenge the same orders.

(v) It is no more res-integra that availability of statutory alternative remedy is not an absolute bar for this Court to entertain the writ petition under Article 226 of the Constitution of India, as refusal to entertain a writ petition on existence of alternative remedy is merely a self imposed restriction. It is further well settled that even if there exists an adequate, alternative, efficacious and speedy remedy, this Court may entertain the Writ Petition.

(vi) The aforesaid contention of the petitioner, stands fortified by the view expressed by the Hon'ble Supreme Court of India in a catena of pronouncements few of which are reported in **(1998) 8 SCC 1 In Re: Whirlpool Corporation Vs. Registrar of Trade Marks, AIR 1977 SC 1132 In Re: State of U.P. and others Vs. Indian Hume Pipe Co. and (2000) 10 SCC 482 In Re: Union of India & Another Vs. State of Haryana & Another**. Hence, this Court can interfere in the instant matter because the impugned orders suffer from non application of mind, are perverse and illegal and the same deserve to be set aside by this Court so that substantial justice would prevail.

(vii) Moreover, it is a settled principle of law that the courts will not exercise its jurisdiction in futility. The law will not itself attempt to do an act which would be in vain, lex nil frustra facit, nor to enforce one which would be frivolous-lex neminem cogit and vana seu inutilia-the law will not force any one to do a thing which would be in vain or fruitless in other words, if exercise of jurisdiction by the court appears to be an exercise of jurisdiction in futility for any of the stated reason, then it will

be permissible for the Court to interfere in exercise of its jurisdiction. The aforesaid contention is fortified by the Supreme Court judgment reported in **(2012) 2 SCC 108 in re: Executive Engineer, Southern Electricity Supply Company of Orissa Limited (South Co.) and Another vs. Sri Seetaram Rice Mill.**

(viii) Further, in the instant matter the pleadings have been exchanged and the matter is ripe for final hearing. The instant matter was instituted in the year 2012 and counter affidavit was filed on 08.07.2013 by respondent no. 3 and 5 and on 03.10.2013 filed by respondent 1 and 2 respectively. Thereafter, a rejoinder affidavit dated 10.11.2013 was filed by the petitioner in response to counter affidavit filed by respondent no. 1 and 2 and a rejoinder affidavit dated 18.11.2013 in response to counter affidavit filed by respondent no. 3,4 and 5. At this stage throwing a writ petition on grounds of alternate remedy after 13 long years particularly when parties have exchanged there affidavits is not a correct course. The aforesaid contention of the petitioner stands fortified by the view expressed by the Hon'ble Supreme Court of India in its judgment and order dated 08.01.2025 passed in **SLP (C) No. 15596 of 2022 in re Utkal Highways Engineers and Contractors Vs. Chief General Managers.**

4. Brief facts of the case are that Ram Milan, Babu Lal, Bihari Lal all sons of Late Shri Hira Lal, were the absolute owners of Khasra Plot Nos. 230, 231, 234 & 235 situated at Village Annaura, Pargana-Lucknow Tehsil & District-Lucknow measuring 3 bigha, 12 biswa, 18 biswansi situated.

5. On Khasra Plot Nos. 230, 231, 234 & 235 following transactions took place :-

(i) On **26.03.1996** the then Special Power of Attorney holder of the General Power of Attorney Holder, Vinay Singh executed a sale deed in favour of opposite party no. 9 (M/S Trikone Leisure Resorts Ltd.). The alleged sale deed has been executed before Sub-Registrar, Mumbai. However, despite the aforementioned transaction 1/2 of the property in

question was purchased by Sri Ravindra Dubey from Sri Ram Milan s/o Sri Hira Lal on 19.2.2000 before Sub-Registrar III, Lucknow.

(ii) Then, opposite party no.7 (Kamlakshi Sewa Sansthan) purchased half of the property in question from Sri Ravindra Dubey and other half from Bihari Lal s/o Sri Hira Lal on 30.03.2001 before Sub-Registrar III, Lucknow. On **8.3.2007,** 2/3rd part of Khasra Plot No. 230, 231, 234 & 235 (0.6207 hectare i.e., 2 bigha, 9 biswa and 3 biswani) was sold to the petitioner Shirdi Sai Dham Trust by means of registered sale deed executed by opposite party no. 7. The name of the petitioner was mutated and entered in revenue records on 16.07.2007.

6. Opposite party no. 8 took a loan from opposite party no. 1 i.e., State Bank of India, Bank Road Branch, Gorakhpur by which the opposite party no.1 gave Rs.23 lacs as cash credit limit and Rs. 5.40 lacs (B.D.). The said amount was disbursed by the Bank (opposite party no.1) to opposite party no. 9 on 25.03.1998 on execution of an equitable mortgage by opposite party no. 9 of Khasra Plot Nos. 230. 231, 234 & 235, i.e., opposite party no. 9 stood as a gurantor.

7. Subsequently, borrowers could not make the payment and therefore the notices were issued to the borrowers on 09.08.1999 and the total outstanding against the borrowers was Rs.34,91,168/- on 28.01.2000. Therefore, opposite party no.1 proceeded against the borrower and under the Recovery of Debts due to Bank and the Financial Institution Act, 1993 wherein the aforesaid property mortgaged by opposite party no. 9 was put to auction.

8. So far as Khasra Plot No. 230 (1 Bigha, 6 Biswa, 16 Biswansi) 231 (0 Bigha, 6 Biswa, 10 Biswansi) 234 (1Bigha, 9 Biswa, 18 Biswansi) and 235 (0 Bigha, 10 Biswa, 10 Biswansi) are concerned, total area of the aforesaid Khasra Plot Nos. comes to 3 Bigha, 13 Biswa and 14 Biswani.

9. Opposite party no.1 filed a suit for recovery of its dues under Section 19(22) of Recovery of Debts due to Bank and Financial Institution Act, 1993 and the Transfer Application No. 1668 of 2000 was filed and by an order dated 4.6.2002 Debt Recovery Tribunal at

Allahabad direct the recovery of Rs.34,91,168/- from Defendant No.1 to 6 jointly or severally. The date of auction was fixed on 13.11.2003.

10. Sri Dharmendra Kumar and Smt. Nita Kumar (petitioners in Writ Petition No. 2220 of 2012) filed Writ Petition No. 5613 (M/B) of 2003 wherein this Court vide order held 20.11.2003 stayed the confirmation of sales with the direction to file objection before the Recovery Officer in Debt Recovery Tribunal.

11. When opposite party no. 7 came to know that the property in question is being put to auction, he preferred an objection dated 16.10.2003 before the Recovery Officer, DRT praying for setting aside auction proceedings. Two other objections dated 01.12.2003 were also preferred by third party objector namely Sri Dharmendra Kumar and Smt. Nita Kumar.

12. However, the said property was auctioned by the opposite party no.1 and the sale certificate has been issued under Rule 65 of the second schedule of Income Tax Act 1961 read with Section 29 of Recovery of Debt due to Bank and Financial Institution Act, 1993 in favour of opposite party no. 3,4,5 with regard to Khasra Plot Nos, 230, 231, 234 & 235.

13. In the meantime, joint auction purchasers of the property namely, opposite party Nos.3, 4 and 5 filed an application dated 10.05.2004 for setting aside the auction and return of their auction amount.

14. All three objections were clubbed and heard together on merits by the Recovery Officer, Debt Recovery Tribunal, Allahabad (opposite party no.6). Thereafter, opposite party no. 6 vide its order dated 31.05.2004 allowed the objections filed and set aside the auction sale, thereby releasing the property in question from attachment.

15. Opposite party no.1 aggrieved by the said order dated 31.05.2004 preferred an appeal bearing Misc. Appeal No. 9/2004 before Debt Recovery Tribunal. The said appeal was allowed vide order dated 06.08.2007 and the order dated 31.05.2004 was set aside thereby passing

an order for recovery of a particular amount. Pursuant thereto a recovery certificate was issued.

16. During the pendency of appeal, 2/3rd part of Khasra Plot No.230, 231, 234 & 235 (0.6207 hectare i.e., 2 bigha, 9 biswa and 3 biswansi) was sold to the petitioner i.e., Shirdi Sai Dham Trust on 8.3.2007 by means of registered sale deed executed by opposite party no. 7. The name of the petitioner was mutated and entered in revenue records on 16.07.2007.

17. Sri Dharmendra Kumar and Smt. Nita Kumar (owners of the adjacent land) preferred an appeal bearing Appeal No. R-866 of 2007 before the Debt Recovery Appellate Tribunal, Allahabad. The appeal was admitted vide order dated 05.11.2007 and the recovery proceedings were stayed in respect to their property.

18. Thereafter, after exchange of affidavits, Debt Recovery Appellate Tribunal, Allahabad dismissed the appeal vide its order dated 26.04.2011 as being without substance. Then in DRC No. 224/02, an impugned order dated 10.04.2012 has been passed by opposite party no. 6 wherein auction sale in favour of opposite party no. 3, 4, 5 was confirmed.

19. A First Information Report was also lodged against Vinay Kumar Singh, special power of attorney holder and against the auction purchaser under Sections 420, 467, 468 and 471 of the Indian Penal Code in connection with the alleged fraudulent transaction relating to the sale deed in question. The said FIR was challenged before this Court by filing an application under Section 482 Cr.P.C.; however, the said application was dismissed by this Court.

20. The present writ petition is filed with the following prayer :-

> *"(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 10.04.2012 passed by respondent No. 6 in DRC case No. 224 of 2002, copy whereof is annexed as Annexure No.1 to this writ petition.*
>
> *(ii) To issue a writ, order or direction in the nature of certiorari quashing the impugned appellate order dated 26.4.2011 passed by Debts Recovery Appellate Tribunal in Appeal No. R-866 of 2007, copy whereby is annexed as Annexure No.2 to this writ petition.*

*(iii) To issue a writ, order or direction in the nature of certiorari quashing the impugned first appellate order dated 6.8.2007 passed in Appeal No. 9 of 2004 by Debts Recovery Tribunal, copy whereby is annexed as Annexure No.3 to this writ petition.*

*(iv) To issue a writ, order or direction in the nature of mandamus commanding the respondents from creating any hindrance in the peaceful possession of 2/3rd part of Khara Plot Nos. 230, 231, 234, 235, admeasuring 0.6207 hect. (2 Bigha, 9 Biswa and 3 Biswansi), situated at Village Anaura, Pargana, Tehsil and District Lucknow, belonging to the petitioner.*

*(v) …*

*(vi) ...”*

21. Submission of learned counsel for the petitioner is that the alleged sale deed executed on 26.03.1996, registered in the office of sub registrar Mumbai, in respect of property situated in village Anaura, Pargana, Tehsil and District Lucknow does not confer any valid title upon respondent no.9. The loan granted by the Respondent No.1-Bank to the Respondent No.8 was secured by means of the alleged sale deed dated 26.03.1996 executed in favour of the Respondent No.9 and which sale deed was mortgaged for securing the said loan.

22. It is further submitted that the said sale deed was not a valid sale deed because it has been wrongly registered in the office of Sub-Registrar, Mumbai on 26.03.1996 because the property with respect to which the said sale deed was executed i.e. the property in question is situated in District Lucknow. This is so because after the passage of the Registration (U.P. Amendment) Act, 1994, which received the assent of the President of India on 16.09.1994 and published in the U.P. Gazette on 23.09.1994, sub Section 2 of Section 30 and Section 67 of the Registration Act, 1908 were omitted and therefore, a property situated in Uttar Pradesh could not be registered by any Registrar other than the Registrar having jurisdiction over the place in question and hence, the Sub-Registrar, Mumbai was not competent and authorized to receive and register a document in respect of a property situated in the State of U.P. and the same was not a validly registered sale deed. Hence, the sale deed dated 26.03.1996 was not a validly registered sale deed and was deemed to be an unregistered sale deed and as per the provisions of Section 49 of

the Registration Act, 1908, the said sale deed did not confer any title upon the Respondent No.9. This is so because Section 49 provides that a document which is required to be compulsorily registered under the provisions of Section 17 of the Registration Act, 1908 and which has not been so registered, will not affect any immovable property comprised therein or confer any power or create any right or relationship or be received as evidence of any transaction affecting such property or conferring such power or creating such right or relationship.

23. Sections 17 and 49 of the Registration Act, 1908 are as under:

> *"17. Documents of which registration is compulsory:- (1) The following documents shall be registered. if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (XX of 1866) or the Registration Act, 1871 (VIII of 1871) or the Indian Registration Act, 1877 (III of 1877) or this Act came or comes into force, namely:-*
>
> *(a)..…*
>
> *(b) other non-testamentary instruments which purport or operate, create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;*
>
> *49. Effect of non-registration of documents required to be registered:-*
>
> *No document required by section 172 or by any provision of the Transfer of Property Act, 1882 (IV of 1882) to be registered shall-*
>
> *(a) affect any immovable property comprised therein, or*
>
> *(b) confer any power to adopt, or*
>
> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*
>
> *Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (IV of 1882) to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1887 (I of 1887), or as evidence of any collateral transaction not required to be effected by a registered instrument."*

24. Learned counsel for the petitioner submits that the sale deed dated 26.03.1996 did not confer any title on the Respondent No.9 and the same

could not have been mortgaged by Respondent No.9 for securing the loan granted by the Respondent No.1 to the Respondent No.8. Thus, the Respondent No.1 cannot auction the property in question on the basis of the said unregistered sale deed dated 26.03.1996 and the property continues to belong to the petitioner.

25. In support of the submission advanced, it is submitted that the aforesaid has been held by the Hon'ble Supreme Court in the matters of **Appineni Vidya Sagar v. State of A.P. Ors. (2004) 11 SCC 186, K.B. Saha & Sons Pvt. Ltd. v. Development Consultant Ltd. (2008) 8 SCC 564, Rana Vidya Bhushan Singh v. Rati Ram (1969) 1 UJ 86 SC**, wherein it has been held that an unregistered sale deed does not confer any title and is invalid.

26. It is submitted that the Respondent No.1 bank, being the biggest nationalized bank of India, cannot be expected to have been ignorant of the law regarding the Registration (U.P. Amendment Act), 1994 and should not have accepted the unregistered sale deed dated 26.03.1996 as collateral for the loan granted to the Respondent No.8. The said grant of loan smacks of irregularities and collusion between the officers of the Respondent No.1 bank and the Respondent No.8 & 9, whereby the public money has been siphoned off by the Respondent No.8 & 9. It is further submitted that no sale of the property in question has been made in favour of the Respondent No.9.

27. As per Section 54 of the Transfer of Property Act, 1882 sale is defined as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Further, such transfer, in the case of tangible immovable property can be made only by a registered instrument. Therefore, in order to sell an immovable property, the same has to be transferred by means of a registered sale deed and in the absence of a registered sale deed, no sale takes place. Section 54 of the Transfer of Property Act is as under:

> *“54. "Sale" defined "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

> *Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
>
> *In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*
>
> *Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*
>
> *Contract for sale: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."*

28. It is submitted by petitioner's counsel that the aforesaid law has been reiterated by the Hon'ble Supreme Court in the matters of **Har Narain v. Mam Chand, (2010) 13 SCC 128, Ram Saran Lall v. Domini Kuer (AIR 1961 SC 1747)**, and it has been held that no sale can be said to have taken place unless the sale deed has been validly registered. Therefore, in the instant matter, no sale of the property in question has taken place in favour of the Respondent No.9 because the alleged sale deed was not registered and hence, no title is conferred upon the respondent No.9 and consequently, the property in question could not have been mortgaged and the entire proceedings initiated by the bank with respect to the property in question are void and as such the title of the petitioner is perfect and clear.

29. It is next submitted that all alleged power of attorney holder, given on behalf of one of the three (3) co-owners of land in question does not confer any authority to execute a sale deed in favor of respondent no. 9 on behalf of all three (3) co-owners. The alleged sale deed dated 26.03.1996 was executed on behalf of the sellers therein by one Mr. Vinay Singh, who claimed himself to be the Special Power of Attorney of one Mr. K.J. Singh and the said Mr. K.J. Singh claimed to be the General Power of Attorney holder of the owners of the property in question and therefore, claimed to be authorized to sell the property in question and was also authorized to give the Special Power of Attorney to the said Mr.

Vinay Singh to sell the entire property in question. Thus, in the said sale deed dated 26.03.1996, the Special Power of Attorney holder Mr. Vinay Singh claimed to be authorized on behalf of Mr. Ram Milan, Babu Lal and Bihari Lal i.e. all the owners of the land in question to sell the property in question and the same was allegedly sold to the Respondent No.9 by means of the alleged unregistered sale deed dated 26.03.1996.

30. The fact of the matter is that the said Mr. K.J. Singh was the Power of Attorney holder of only Mr. Ram Milan and not the other two co-owners of the property in question. This is evident from the Power of Attorney dated 22.02.1996 executed in favour of Mr. K.J. Singh (Annexure-RA1 at pages 40-47 of the Rejoinder Affidavit dated 18.11.2013 filed by the petitioner to the Counter Affidavit of the Respondent No. 1 & 2). The said Power of Attorney dated 22.02.1996 clearly states that it has been executed only on behalf of one of the three co-owners of the property in question and was with respect to only one third of the property in question. Thus, the said Mr. K.J. Singh could have sold only that one third portion of the property in question i.e. which was in the ownership of Mr. Ram Milan and not the remaining two third portion which was in the ownership of Babu Lal and Bihari Lal. Thus, Mr. K.J. Singh had no right to said the remaining two third portion of the land in question.

31. Moreover, instead of selling the said one third portion, what Mr. K.J. Singh did was to execute a Special Power of Attorney in favour of Mr. Vinay Singh, which was beyond the terms of the General Power of Attorney. This is so because no such power was conferred upon Mr. K.J. Singh by means of the General Power of Attorney to sub-delegate and in the absence of such a power to sub-delegate, Mr. K.J. Singh could not have sub-delegated the said power to Mr. Vinay Singh and hence, the Special Power of Attorney is invalid on this ground. The said Special Power of Attorney is annexed as Annexure-RA2 at pages 48-54 of Rejoinder Affidavit filed by the petitioner on 18.11.2013.

32. In this regard reference may be made to the judgment of the Hon'ble Supreme Court in the matter of **Church of Christ Charitable**

**Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706** wherein it has been held that a Power of Attorney is to be construed strictly and the terms and the conditions of the Power of Attorney should expressly authorize the holder of the Power of Attorney to perform a particular act or otherwise, the Power of Attorney Holder cannot perform an act which is not expressly provided and authorized. As in the instant matter, the General Power of Attorney does not expressly authorize Mr. K.J. Singh to give the Special Power of Attorney in question is invalid.

33. Reference may also be made to the judgment of the Hon'ble Supreme Court in the matter of **A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790** wherein it has been specifically held that the functions under the General Power of Attorney cannot be delegated to another person without specific clause permitting the same in the Power of Attorney itself. Hence, the Power of Attorney holder, who had no power to execute a Special Power of Attorney, could not have done the same and the Special Power of Attorney is void-ab-initio and no power has been conferred upon Mr. Vinay Singh to execute the sale deed in question and hence, the sale deed in question is itself void-ab-initio and does not confer any title upon anyone.

34. It is submitted that thus, further, Mr. K.J. Singh could not have executed the Special Power of Attorney dated 18.03.1996 in favour of the said Mr. Vinay Singh because it is settled principle of law that a delegate cannot further sub-delegate hence, the Special Power of Attorney is invalid on this ground as well. The aforesaid principal of law have been reiterated by the Hon'ble Supreme Court of India in **Mita India Private Limited Vs. Mahendra Jain reported in (2023)19 SCC 455**.

35. Therefore, the sale deed dated 26.03.1996, apart from being unregistered was also invalid and was not validly executed. Thus, no title whatsoever was conferred upon the Respondent No.9 by means of the said sale deed and the same cannot be the basis for the Respondent No.1-Bank to auction the property in question and the property in question continues to belongs to the petitioner. It is submitted that hence said Mr.

K.J. Singh, Mr. Vinay Singh, the Respondent No.9 and the Respondent No.8 have played fraud and the instant writ petition deserves to be allowed.

36. It is submitted that the order dated 31.05.2004 passed by the Recovery Officer was in conformity with and in compliance with the directions issued by this Court vide order dated 20.11.2003 in Writ Petition No. 5613 (M/B) of 2003. The said order had attained finality, as neither the respondent-Bank nor the auction purchasers had challenged the same. It is, therefore, contended that the DRT and DRAT could not have proceeded to examine the jurisdiction exercised by the Recovery Officer in a manner contrary to the directions contained in the aforesaid order of this Court.

37. It is further submitted that the Registration (U.P. Amendment) Act, 1994 (U.P. Act No. 27 of 1994) received the assent of the President of India on 16.09.1994 and was published in the U.P. Gazette on 23.09.1994. The alleged sale deeds relied upon by the respondent-Bank were registered at Mumbai on 26.03.1996, i.e., much after the aforesaid amendment had come into force. Therefore, according to the petitioners, the validity of the registration of the documents relating to the immovable property situated in Uttar Pradesh was required to be examined in the light of the provisions of the Registration Act as amended by the aforesaid U.P. Amendment Act.

38. Learned counsel for the petitioners further submits that the Registration Act, 1908 falls within Entry 6 of the Concurrent List of the Seventh Schedule to the Constitution of India. In view of Article 246 read with Article 254(2) of the Constitution of India, where a State law relating to a subject in the Concurrent List receives the assent of the President, such State law shall prevail within that State to the extent of its repugnancy with the existing law made by Parliament. It is, therefore, contended that although Section 30(2) of the Registration Act continued to remain in the Central enactment until its subsequent omission by the Registration and Other Related Laws (Amendment) Act, 2001, the said provision had ceased to operate in the State of Uttar Pradesh by virtue of

the U.P. Amendment Act, 1994, which had received the assent of the President.

For ready reference, Article 254 (2) of the Constitution of India is being quoted as under :-

> *"Article 254 (2) : Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.*
>
> *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."*

39. On the basis of the aforesaid submissions, learned counsel for the petitioners contends that the alleged sale deeds dated 26.03.1996, registered at Mumbai in respect of the immovable properties situated in Uttar Pradesh, did not confer any valid right, title or interest upon M/s. Trikone Leisure Resorts Ltd. Consequently, the subsequent deposit of the said documents with the respondent-Bank could not create a valid mortgage in respect of the properties in question. It is, thus, contended that neither the alleged mortgagor nor the respondent-Bank nor the auction purchasers acquired any enforceable right, title or interest in the properties belonging to the petitioners and all consequential proceedings founded upon the alleged mortgage are liable to be set aside.

40. Learned counsel for the petitioner submits that it is settled principle of law that fraud vitiates all acts and fraud avoids all judicial acts, ecclesiastical or temporal. 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 law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings. In this regard reference may be made the judgment of the Hon'ble Supreme Court in the matters of **S.P. Chengalvaraya Naidu vs**

**Jagannath, 1994 (1) SCC 1, A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221, United India Insurance Co. Ltd. vs. Rajendra Singh, AIR 2000 SC 1165**, wherein it has been held that fraud vitiates all acts, deeds, judgments and decrees.

41. Same is the position in the instant matter because the alleged sale deed was executed fraudulently and further, the Special Power of Attorney, on the basis of which the said sale deed was executed, was also executed fraudulently. Therefore, the entire case of the respondent no. 1, 2, 8 & 9 is based on fraud and therefore, the impugned orders are liable to be set aside because the same are based on fraudulent documents. It is submitted that therefore, the Special Power of Attorney dated 18.03.1996 can be looked into by this Court at this stage because it is fraudulent and is inter alia the basis of the impugned orders and goes to the root of the matter and shakes the very foundation of the case of the respondents no. 1, 2, 8 & 9. The reason why the petitioner could not produce the same earlier was because the petitioner had no knowledge about the details of the same and it was only after a thorough and pain staking investigation that the petitioner could obtain a copy of the said Special Power of Attorney in the year 2013 and the same was filed before this Court by means of the rejoinder affidavit filed by the petitioner dated 18.11.2013.

42. Counsel for the petitioner contends that Recovery Officers have the power to investigate the title of the property and direct its release from auction if title is defective. As per the provisions of Section 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), the provisions of the Second and the Third Schedules of the Income Tax Act, 1961 shall, as far as possible, apply with necessary modifications to the proceedings of recovery under the RDDBFI Act. Therefore, clause 11 of the Second Schedule of the Income Tax Act, 1961, which deals with investigation by Tax Recovery Officer regarding recovery of tax, will apply to the Recovery Officer under RDDBFI Act regarding the recovery of debts from the defaulters.

43. As per the said clause 11 of the Second Schedule, the Tax Recovery Officer is authorized to entertain objections to the attachment

or sale of properties in execution of a Tax Recovery Certificate and as per Sub-clause 4 of the said Clause 11, the Tax Recovery Officer can direct the release of properties from sale or attachment if a valid objection has been raised against the attachment or sale of a particular property on the ground that the property in question does not belong to the person from whom the tax is to be recovered and belongs to someone else.

44. The said Clause 11 of the Second Schedule is applicable with necessary modifications to recovery of debts under RDDBFI Act and to the Recovery Officer established under the provisions of RDDBFI Act. Therefore, the Recovery Officer under the RDDBFI Act is fully empowered to entertain objections to the auction sale of properties for recovery of debts and if a valid objection is raised regarding the ownership of a property which is sought to be auctioned and the objector is able to establish that the property in question does not belong to the person who was granted loan but in fact belongs to the person raising objection, then the Recovery Officer can direct the release of such a property even if the same was mortgaged for securing the said loan.

45. The same has been done by the Recovery Officer by means of the order dated 31.05.2004, whereby the Recovery Officer has entertained the objections raised by the predecessor in title of the petitioner and the owners of the adjacent land to the auction of the property in question. The adjacent land was also the subject matter of the same unregistered sale deed and the said auction. While entertaining the said objections, the Recovery Officer has taken into consideration the fact that the property in question was not validly transferred to the Respondent No.9 and therefore, the same did not convey any title to the Respondent No.9 and hence, the same could not have been mortgaged on behalf of the Respondent No.8 for the grant of loan by the Respondent No.1-Bank. Therefore, the Recovery Officer validly allowed the aforesaid objections and set aside the auction sale held on 13.11.2003 and rightly directed the de-attachment of the property in question.

46. According to the petitioner it is not permitted for auction purchaser to have taken a somersault and change their stand completely after having

admitted to lack of title of respondent no.8 and respondent no.9 to property in question and seeking refund of the auction more particularly when the same was refunded by the bank.

47. The Respondent Nos.3, 4 & 5, who were the auction purchasers of the property in question in the auction held on 13.11.2003, filed an application dated 10.05.2004 (Annexure-16 at pages 184-196 of the writ petition) for the setting aside of the said auction and for the return of their purchase money paid by them for purchasing the property in question in the said auction. The said application was on the lines of Order 21, Rule 91 of the Code of Civil Procedure, 1908 regarding setting aside of sale on the ground that the judgment debtor has no saleable interest. In the said application the Respondent No.3, 4 & 5 submitted that they were never informed about the objections filed by the predecessor in title of the petitioner and the owners of the adjacent land regarding dispute of title.

48. The Respondent No.3, 4 & 5, in para 5 of the said application dated 10.05.2004, have admitted that the said objectors i.e. the predecessor in title of the petitioner and the owners of the adjacent land were the real and actual tenure holders of the property in question and that the Respondent No.3, 4 & 5 were never informed about the same and it is only on 12.04.2004 that they came to know about the same. They further stated that the Respondent No.8 & 9 did not have any saleble right, title or interest in the properties in question and therefore, the Respondent No.3, 4 & 5 could not acquire any right title or interest in the said property in pursuance of the auction in question.

49. Therefore, the Respondent No.3, 4 & 5 sought the refund of auction money paid by them along with poundage charges and interest thereon and the same was also refunded to them. Thus, the Respondent No.3, 4 & 5 now cannot change their stand and claim to have acquired any right, title or interest the property in question, it is submitted by learned counsel for the petitioner.

50. Learned counsel for the petitioner submits that hence, the Respondent No.3, 4 & 5, after filing an application on the lines of Order

21, Rule 91 CPC for setting aside the auction sale in question, cannot claim to acquire any title in the property in question when the facts and circumstances have remained the same.

51. Petitioner then submits that all third-party objectors to an auction sale have the same rights as an applicant under Order 21 Rule 99 CPC and the objections shall be dealt with like a suit. As is evident from the language of Clause 11 of the Second Schedule of the Income Tax Act, 1961, if third party objections are filed to the auction sale of a property, the Recovery Officer, upon such investigation as may be required, direct that the property be released from auction sale or continue with auction.

52. This power of the Recovery Officer is the same as the powers of an Executing Court with respect to an application filed under Order 21, Rule 99 CPC because under Order 21, Rule 100 CPC, the Executing Court also has the same power and can either dismiss an application under Order 21, Rule 99 CPC and continue with transfer of possession or can allow the said application and put the applicant i.e. the objector into possession in terms of Order 21, Rule 100 CPC.

53. Moreover, Order 21, Rule 101 CPC provides that when an application under Order 21, Rule 99 CPC is filed and questions relating to right, title or interest in the property involved therein are raised and which are relevant for adjudication of the said application, the court before which such an application is filed i.e. the Executing Court shall determine the said issues of title, etc. and for the said purpose, no separate suit shall be filed. Further, the Executing Court shall be deemed to have jurisdiction to decide such questions notwithstanding anything contrary contained in any other law.

54. It is submitted that thus, from the perusal of Order 21, Rule 99, 100 & 101 CPC it is clear that the Executing Court has the power to decide the issue of title and pass orders regarding the same. Same is the situation with the Recovery Officer and the Recovery Officer also has the same power. Thus, when the Executing Court under Order 21, Rule 99, 100 & 101 CPC and the Recovery Officer under RDDBFI Act have been

granted the same power, therefore, the Recovery Officer is also required to follow the same procedure and if such a procedure is not followed, then it would amount to adjudicating upon the rights of the parties / third party objectors in a summary manner without taking into consideration the fact that such a summary adjudication will have serious civil consequences.

55. This is also evident from sub Clause 6 of Clause 11 of the Second Schedule of the Income Tax Act, 1961 which states that the decision of the Tax Recovery Officer (Recovery Officer herein) shall be conclusive subject only to the decision of a Civil Court (DRT of DRAT herein) with regard to the rights of the parties to the property in question. 7.6 Moreover, as per Order 21. Rule 103 CPC, where an application has been adjudicated upon under Order 21. Rule 100 CPC, the order made thereon shall have the same force as a decree and the applicant shall have the right to adduce necessary evidence, which the Executing Court deems necessary for the adjudication of the issue of title involved therein. The same has also been held by the Hon'ble Supreme Court in the matters of **N.S.S. Narayana Sarma v. Goldstone Exports (P) Ltd., (2002) 1 SCC 662, Silverline Forum (P) Ltd. v. Rajiv Trust, (1998) 3 SCC 723. Anwarbi v. Pramod D.A. Joshi. (2000) 10 SCC 405. Tanzeem-E-Sufia v. Bibi Haliman, (2002) 7 SCC 50**.

56. It is submitted that from the above, the Recovery Officer is fully empowered to look into the issue of title of the property which is the subject matter of the auction sale and adjudicate upon the same after calling for evidence in that regard.

57. It is next submitted that there is no complete bar in transfer of property of property which is subject matter of litigation. In the matter at hand, the predecessor in title of the petitioner sold the property in question during the pendency of the first appeal before the DRT. At the time of the said sale, no interim order or stay of the DRT restricting the sale of the property in question was in force. In this regard it is also relevant to point out that mere pendency of a suit does not prevent one of the parties from dealing with the property which is the subject-matter of

the litigation. This has been held by the Hon'ble Supreme Court in the matters of **T.G. Ashok Kumar v. Govindammal and Anr., (2010) 14 SCC 370, K.N. Aswathnarayana Setty v. State of Karnataka, (2014) 15 SCC 394**, wherein the Hon'ble Supreme Court has held that lis pendens is not a bar to the transfer of property. Therefore, the transfer in question in favour of the petitioner is valid.

58. It is next submitted that all presentation of instruments for re registration of an instrument in State of U.P. is permissible after lapse of four (4) months from the initial registration more particularly by a person not dually empowered to present the same. As per Section 23A of the Registration Act, 1908, a document is required to be presented for re-registration within a period of 4 months of coming to know about the registration being invalid and that too by a person duly empowered to present the same. However, in the instant matter the invalid sale deed has been presented for re-registration not by the Respondent No. 9 but by the Respondent No. 3 i.e. the auction purchaser who is not empowered to present the same for re-registration and that too after about eight years from the date of coming to know about the invalid registration and not four months.

59. The Respondent No. 3 is not empowered to get the document re-registered because he was not the owner in the said sale deed of 1996 and Respondent No. 9 was. Therefore, if at all the said sale deed was to be re-registered, the same should have been presented by Respondent No. 9 and not Respondent No. 3 and hence, the re-registration got done by the Respondent No. 3 in the year 2012 is invalid and illegal and does not make the invalid sale deed of 1996 valid and no title is conveyed by the same.

60. Further, even if it is assumed that the Respondent No. 3 can be considered to be empowered to get the sale deed of 1996 re-registered, still the Respondent No. 3 could not have got it done after about eight years of the coming to know about the sale deed being invalid. This is so because the Respondent No.3, 4 & 5, who were the auction purchasers of the property in question in the auction held on 13.11.2003, filed an

application dated 10.05.2004 (Annexure-16 at pages 184-196 of the writ petition) stating therein that the said sale deed is invalid and not properly registered. This shows that the Respondent No. 3 came to know about the registration being invalid in the year 2004 itself but waited till the year 2012 to get it re-registered thus, the re-registration was after more than the requisite time of 4 months for re-registration and therefore, is invalid on this ground as well.

61. In support of the submissions advanced, learned counsel for the petitioner placed reliance upon the following judgments :-

***(i) Union of India v. State of Haryana, (2000) 10 SCC 482 :***

> ***"3.*** *Having heard learned counsel for the parties at length, we are of the view that these are the matters which should not have been dismissed by the respective High Courts in suggesting an alternative remedy. The question raised was pristinely legal which required determination as to whether provision of telephone connections and instruments amounted to sale and even so why was the Union of India not exempt from payment of sales tax under the respective statutes. The respondents counter such stance. We think the question raised was fundamental in character and need not have been put through the mill of statutory appeals in the hierarchy. For this reason alone, we set aside the respective impugned orders of the High Courts and remit the writ petitions back to them for decision in accordance with law. The recovery of tax would stand stayed till the disposal of the writ petitions. Ordered accordingly. No costs."*

***(ii) Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1**

> ***"14.*** *The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*

***15.*** *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.*

***16.****Rashid Ahmed v. Municipal Board, Kairana [1950 SCC 221 : AIR 1950 SC 163 : 1950 SCR 566] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207 : (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.*

***17.*** *A specific and clear rule was laid down in State of U.P. v. Mohd. Nooh [AIR 1958 SC 86 : 1958 SCR 595] as under:*

*"But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."*

***18.*** *This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani [AIR 1961 SC 1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:*

*"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the*

*existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."*

***19.*** *Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:*

*"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."*

***20.*** *Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.*

*21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal"*

*……..(iii) State of U.P. v. Indian Hume Pipe Co. Ltd., (1977) 2 SCC 724 : 1977 SCC (Tax) 335 : (1977) 39 STC 355 : 1977 SCC OnLine SC 113 at page 727*

***4.*** *Lastly, it was feebly argued by Mr Manchanda that the High Court ought not to have entertained the writ petition and should have allowed the*

*assessee to avail of the remedies provided to him under the U.P. Sales Tax Act, particularly when questions of fact had to be determined. In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Article 136 of the Constitution to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention.*

***80.*** *It is a settled canon of law that the High Court would not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of India where statutory alternative remedy is available. It is equally settled that this canon of law is not free of exceptions. The courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the civil courts. The High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy. This jurisdiction, the High Court would exercise with some circumspection in exceptional cases,*

*particularly, where the cases involve a pure question of law or vires of an Act are challenged. This class of cases we are mentioning by way of illustration and should not be understood to be an exhaustive exposition of law which, in our opinion, is neither practical nor possible to state with precision. The availability of alternative statutory or other remedy by itself may not operate as an absolute bar for exercise of jurisdiction by the courts. It will normally depend upon the facts and circumstances of a given case. The further question that would inevitably come up for consideration before the Court even in such cases would be as to what extent the jurisdiction has to be exercised.*

***81.*** *Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act. However, it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.*

***82.*** *It is argued and to some extent correctly that the High Court should not decline to exercise its jurisdiction merely for the reason that there is a statutory alternative remedy available even when the case falls in the abovestated class of cases. It is a settled principle that the courts/tribunal will not exercise jurisdiction in futility. The law will not itself attempt to do an act which would be vain, lex nil frustra facit, nor to enforce one which would be frivolous—lex neminem cogit ad vana seu inutilia—the law will not force anyone to do a thing vain and*

*fruitless. In other words, if exercise of jurisdiction by the tribunal ex facie appears to be an exercise of jurisdiction in futility for any of the stated reasons, then it will be permissible for the High Court to interfere in exercise of its jurisdiction. This issue is no longer res integra and has been settled by a catena of judgments of this Court, which we find entirely unnecessary to refer to in detail. Suffice it to make a reference to the judgment of this Court in Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] where this Court was concerned with the powers of the Registrar of Trade Marks and the Tribunal under the Trade and Merchandise Marks Act, 1958 and exercise of jurisdiction by the High Court in the face of availability of a remedy under the Act.*

***30.*** *In Haran Chandra Chakravarti v. Kaliprasanna Sarkar [AIR 1932 Cal 83(2)] it was held that the terms of a compulsorily registrable instrument are nothing less than a transaction affecting the property comprised in it. It was also held that to use such an instrument for the purpose of proving such a term would not be using it for a collateral purpose and that the question as to who is the tenant and on what terms he has been created a tenant are not collateral facts but they are important terms of the contract of tenancy, which cannot be proved by admission of an unregistered lease deed into evidence.*

***31.*** *The High Court in the impugned judgment relied on a decision of the Allahabad High Court in Ratan Lal v. Hari Shanker [AIR 1980 All 180] to hold that since the appellant wanted to extinguish the right of the respondent with the help of the unregistered tenancy, the same was not a collateral purpose. In Ratan lal case [AIR 1980 All 180] while discussing the meaning of the term "collateral purpose", the High Court had observed as follows: (AIR pp. 180-81, para 4)*

*"4. The second contention was that the partition deed, even if it was not registered could certainly be looked into for a collateral purpose. … but the collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the*

*deed created or declared or assigned or limited or extinguished a right to immovable property. … term 'collateral purpose' would not permit the party to establish any of these acts from the deed."*

***32.*** *In Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806] this Court observed that if a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It was also held in that decision that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose. Again this Court in Rai Chand Jain v. Chandra Kanta Khosla [(1991) 1 SCC 422 : AIR 1991 SC 744] reiterated the above and observed in para 10 as under: (SCC p. 429, para 10)*

*"10. … the lease deed, Ext. P-1 dated 19-5-1978 executed both by the appellant and the respondent i.e. the landlady and the tenant, Rai Chand Jain, though unregistered can be considered for collateral purposes and as such the findings of the appellate authority to the effect that the said deed cannot be used for collateral purposes, namely, to show that the purpose was to lease out the demised premises for residential purposes of the tenant only is not at all legally correct. It is well settled that unregistered lease executed by both the parties can be looked into for collateral purposes. In the instant case the purpose of the lease is evident from the deed itself which is as follows: 'The lessor hereby demises House No. 382, Sector 30-A, Chandigarh, to the lessee for residential purposes only'. This clearly evinces that the property in question was let out to the tenant for his residence only."*

***33.*** *In Rana Vidya Bhushan Singh v. Ratiram [(1969) 1 UJ 86 (SC)] the following has been laid down:*

*"A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it*

*may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. As stated by Mulla in his Indian Registration Act, 7th Edn., at p. 189:*

*'The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it.' "*

***34 [Ed.: Para 34 corrected vide Official Corrigendum No. F.3/Ed.B.J./76/2008 dated 15-9-2008.] .*** *From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*

*1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*

*2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*

*3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*

*4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.*

*5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.*

***3.*** *The case of the appellant is that he had purchased the land in question under an*

*unregistered sale deed dated 20-2-1957 from one Kondapally Hanumantha Rao. He was in possession of the land in question since the alleged date of sale.*

***5.*** *Learned counsel for the appellant submitted that the appellant having purchased the land, though not under a registered sale deed, did acquire title though imperfect. All the same, he was in possession of the land in question and, therefore, according to him, the landlord could not have surrendered the land in possession of the appellant, and he should have been compelled to surrender other lands which were in his personal possession in excess of the ceiling limit. He drew our notice to Section 10(5) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as "the Act") and submitted that since there was an encumbrance on the land in question on account of the unregistered sale deed executed in favour of the appellant, the Tribunal ought to have rejected the surrender made by the landlord of the land in question, and ought to have compelled him to surrender other lands which were not involved in dispute of any kind as contemplated by sub-section (5) of Section 10 of the Act.*

***7.*** *We have perused the orders of the Land Reforms Tribunal as well as the Land Reforms Appellate Tribunal and we find no reason to take a different view. It cannot be disputed that the land in question had not been validly transferred in favour of the appellant and, therefore, the erstwhile owner in the absence of a valid sale deed continued to be the holder of the land. The matter has also been examined from another angle, namely, whether the appellant acquired title to the land in question by adverse possession. Even that has been answered against the appellant. In these circumstances, the High Court has rightly dismissed the CRP preferred by the appellant.*

***13.*** *Section 54 of the 1882 Act mandatorily requires that the sale of any immovable property of the value of one hundred rupees and upward can be made only by a registered instrument. Section 47 of the 1908 Act provides that registration of the document*

*shall relate back to the date of the execution of the document. Thus, the aforesaid two provisions make it crystal clear that the sale deed in question requires registration. Even if registration had been done subsequent to the filing of suit, it related back to the date of execution of the sale deed, which was prior to institution of the suit.*

***14.*** *A similar issue though in a case of right of pre-emption was considered by the Constitution Bench of this Court in Ram Saran Lall v. Domini Kuer [AIR 1961 SC 1747] by the majority of 3 : 2, the Court came to the conclusion that as the mere execution of the sale deed could not make the same effective and registration thereof was necessary, it was of no consequence unless the registration was made. Thus, in spite of the fact that the 1908 Act (sic registration) could relate back to the date of execution in view of the provisions of Section 47 of the 1908 Act, the sale could not be given effect to prior to registration. However, as the sale was not complete until the registration of instrument of sale is complete, it was not completed prior to the date of its registration. The Court held : (AIR p. 1749, para 8)*

*"8. … Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this*

*case can be said, in view of Section 47, to have been completed on 31-1-1946."*

*(emphasis added)*

***15.*** *This view has subsequently been followed and approved by this Court as is evident from the judgments in Hiralal Agrawal v. RampadarathSingh [AIR 1969 SC 244] , Sk. Mohammad Rafiq v. Khalilul Rehman [(1972) 2 SCC 336 : AIR 1972 SC 2162] , Thakur Kishan Singh v. Arvind Kumar [(1994) 6 SCC 591 : AIR 1995 SC 73] and Chandrika Singh v. Arvind Kumar Singh [(2006) 10 SCC 404 : AIR 2006 SC 2199] .*

***16.*** *However, all these cases are related to right to pre-emption though the legal issue involved therein remained the same. In view of the above, we are of the considered opinion that in spite of the fact that the registration of the sale deed would relate back to the date of execution, the sale can not be termed as complete until its registration and it becomes effective only once it stands registered. Thus, the fiction created by Section 47 of the 1908 Act does not come into play before the actual registration of the document takes place.*

***32.*** *Similar substantial questions were raised in the appeal arising out of SLP (Crl.) No. 2724 of 2008, which stand answered as above. Apart from the above questions, one distinct query was raised as to whether a person authorised by a company or statute or institution can delegate powers to their subordinate/others for filing a criminal complaint? The issue raised is in reference to validity of sub-delegation of functions of the power of attorney. We have already clarified to the extent that the attorney holder can sign and file a complaint on behalf of the complainant payee. However, whether the power-of-attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law.*

*Nevertheless, the general power of attorney itself can be cancelled and be given to another person.*

***33.5.*** *The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.*

***Power of attorney***

***19.*** *Next, we have to consider the power of attorney. It is settled that a power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorise the power to agent to execute the sale agreement/sale deed i.e. (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the power of attorney, in the present case, shows that it only authorises certain specified acts but not any act authorising entering into an agreement of sale or to execute sale deed or admit execution before the Registrar.*

**Ram Saran Lall v. Domini Kuer, 1961 SCC OnLine SC 133**

*6. Section 54 of the Transfer of Property Act provides that sale of tangible immovable property of the value of rupees 100 and upwards, which the house with which we are concerned is, can be made only by a registered instrument. Section 3 of this Act defines "registered" as registered under the law for the time being in force regulating the registration of documents. This, in the present case means the Registration Act of 1908. It is not in dispute that the registration under the Registration Act is not complete till the document to be registered has been copied out in the records of the Registration Office as provided in Section 61 of that Act. It was therefore contended in the High Court that when a sale had to be made by a registered instrument it became complete only on the instrument of sale being copied in the books of the Registration Office. The High Court accepted this view and held that the sale in the present case, therefore, became complete on the completion of the registration of the instrument of sale which was done on February 9. 1946, when the instrument was copied out in the books of the Registration Office. In this view of the matter, the High Court came to the conclusion that the appellants were not entitled to enforce their right of pre-emption because they had not made the*

*preliminary demand after the completion of the sale as the law required them to do, but before, that is, on February 2, 1946.*

*7. In answer to this view of the High Court, the learned Attorney-General appearing for the appellants says that the High Court overlooked Section 47 of the Registration Act the effect of which was to make a registered document operate from the time from which it would have commenced to operate if no registration thereof had been required and not from the time of its registration. His contention is that once a document is registered, as the deed of sale in this case was, it begins. to operate from the time it would have otherwise operated and therefore, the position in this case is that the sale became operative and hence complete on January 31, 1946. The learned Attorney-General further contends that the proper construction of the deed of sale was that it became operative from the day it was executed and that if it was not so, it was not a sale but could only be an agreement to sell in which latter case his clients, though this present suit might fail, would be entitled, if they so desired, to enforce their right of pre-emption when the sale was completed in pursuance of that agreement. As authority in support of his contention that in view of Section 47 of the Registration Act the sale in the present case must be deemed to have been completed on the day the instrument was executed, the learned Attorney-General relied on Bindeshri v. Somnath Bhadry and Gopal Ram v. Lachmi Misir²*

*8. We do not think that the learned Attorney-General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. The view that we*

*have taken of Section 47 of the Registration Act seems to have been taken in Tilakdhari Singh v. Gour Narain. We believe that the same view was expressed in Nareshchandra Datta v. Gireeshchandra Das and Gobardhan Bar v. Guna Dhar Bars.*

*9. With regard to the two cases on which the Attorney-General has relied, it has to be observed that they were not concerned with a right of pre-emption arising on a sale of property. Bindeshri Prasad casel concerned with a suit for zar-i-chaharum. It does not appear from the report what that right was or when it arose. It is not possible therefore to derive much assistance from it. Gopal Ram case was concerned with a right of pre-emption arising on the grant of a lease and the question was whether the suit for the enforcement of such a right was barred by limitation. It appears that Article 120 was applied to that suit and it was held that the cause of action for the exercise of the right of pre-emption arose as soon as the lease was executed and even before it was registered though before the actual registration the suit for pre-emption could not have been maintained. This view was taken in reliance upon Section 47 of the Registration Act. We are not aware whether the law of pre-emption applicable to the case required that there should be a completed lease before the right to pre-empt could be enforced. If that law did so require, then we do not think that the case was rightly decided. It was said in that case that: "When the law has given to a transaction a retrospective effect, it must have that effect". We do not think that a transaction which when completed has a retrospective operation can be said for that reason to have been completed on the date from which it has that operation.*

***14.*** *The law is settled that though the general power-of-attorney holder cannot delegate his powers to another person but the same can be delegated when there is a specific clause permitting sub-delegation.*

***12.*** *We have heard learned counsel for the parties.*

***13.*** *Mr K.K. Venugopal, Senior Advocate, appearing for the appellants contended that the High Court committed an error in law in passing the impugned order. It was clear from the evidence on record and various communications that before the proposal was submitted by the Port Trust Authorities for acquisition of land for a public purpose (construction of quarters for its employees), advance possession of land had been taken over by the Port Trust Authorities and landowners were not in possession of the property. The said fact was noted by the Special Officer and Competent Authority, Urban Land Ceiling, Vishakhapatnam and an order was passed in May 1981 that the appellants were "not surplus landowners". In or*

*about 1985, however, there appeared to be encroachment over the land and some officers of the Port Trust, with a view to save their skin, wrote a letter on 19-12-1985 that the possession of land had not been handed over to the Port Trust Authorities since tenants were occupying the land. The said statement was not correct and could not have been considered for initiating proceedings under the Ceiling Act. It was also submitted by the counsel that suo motu power was sought to be exercised after a decade. As per settled law, revisional powers should be exercised within "reasonable time". By no stretch of imagination, more than ten years can be said to be "reasonable time". According to the learned counsel, the learned Single Judge was wholly justified in allowing both the writ petitions filed by the landowners and in issuing directions, namely, (i) to complete land acquisition proceedings and pass award; and (ii) exercise of revisional powers after about thirteen years was wholly unwarranted. The said order was confirmed by the Division Bench in writ appeals. Special leave petitions were also dismissed by this Court. After dismissal of special leave petitions, neither it was open to the authorities to make an application for recalling earlier orders as has been done in June 2001, nor was it permissible for the court to grant such relief. It was also submitted that the Division Bench, while dealing with writ appeals took note of the fact that the land was "agricultural land" and was having fruit-bearing trees i.e. a garden land. The said finding had not been disturbed even by this Court in SLPs. The Division Bench ought to have taken into account that fact as well. By not doing so, an illegality had been committed and the order deserves to be set aside.*

***14.*** *The learned counsel for the State Authorities as also the Port Trust Authorities supported the order passed by the High Court and action of recalling of the order dated 27-4-2000. It was submitted that the authorities proceeded on the basis that advance possession of the land was given by landowners to the Port Trust Authorities in August 1972. But the statement was not correct and the authorities were misled. The order passed by the Special Officer and Competent Authority under the Ceiling Act declaring that the owners did not possess surplus land was founded on the above statement that the landowners were not in possession of land, which was false. But even otherwise, the order passed by the Special Officer and Competent Authority was not in consonance with law inasmuch as even if the owners were not in possession of land, proceedings under the Land Acquisition Act were not finalised. The legal position is that the ownership of the landowners continued and in the eye of the law, the Port Trust Authorities remained in possession for and on behalf of the landowners. It was, therefore,*

*incumbent on Special Officer and Competent Authority under the Ceiling Act to declare land to be excess and surplus under the Ceiling Act so that appropriate consequential action could be taken. No such action, however, was taken. Moreover, it was made clear by the Chief Engineer, Port Trust vide his letter dated 19-12-1985 that actual and physical possession of land was never taken by the Port Trust Authorities as it remained with tenants and disputes were going on. The matter, therefore, required detailed investigation.*

***15.*** *CBI made an enquiry and the report was submitted by the Police Inspector which revealed startling facts. From the report, it is clear that fraud was committed by the landowners in collusion with officers of the respondents. Criminal proceedings were also initiated and they are pending. It was, therefore, submitted that the High Court was right in recalling its earlier order.*

***16.*** *Regarding non-applicability of the provisions of the Ceiling Act as the land being garden land and hence agricultural land under the Ceiling Act, it was submitted that it was never the case of the landowners when proceedings under the Ceiling Act had been initiated that the Act would not apply because the land was used for agriculture. The sole ground put forward by the landowners was that possession of land had already been given to the Port Trust Authorities and hence the Ceiling Act had no application. It was, therefore, submitted that the appeals deserve to be dismissed and the impugned order calls for no interference.*

*1. "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. 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 law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.*

***8.*** *The relevant provisions of CPC material for the case are Rules 97 to 103 of Order 21 of the Code. Rule 97 provides that:*

*"97. (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction."*

*Such an application is to be dealt with by the court in accordance with the provisions contained in the Code.*

***9.*** *Under Rule 98 provision is made regarding the order to be passed by the court in accordance with*

*the determination either making it to be allowing the application and directing that the applicant be put into the possession of the property or dismissing the application or passing such other order as, in the circumstances of the case, it may deem fit.*

***10.*** *Under Rule 99(1) it is laid down:*

*"99. (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession."*

*Under sub-rule (2) thereof it is provided that where any such application is made, the court shall proceed to adjudicate upon the application in accordance with the provisions contained in the Code.*

***11.*** *Under Rule 100 it is laid down that:*

*"100. Order to be passed upon application complaining of dispossession.—Upon the determination of the questions referred to in Rule 101, the court shall, in accordance with such determination, —*

*(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or*

*(b) pass such other order as, in the circumstances of the case, it may deem fit."*

***12.*** *Rule 101 contains provisions regarding questions to be determined. It reads as follows:*

*"101. All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."*

***13.*** *Under Rule 102 it is provided:*

*"102. Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any person."*

***14.*** *Under Rule 103 any order made by the court upon adjudication under Rule 98 or Rule 100 shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.*

***15.*** *Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree-holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree-holder entitled to possession of the property encounters obstruction from "any person". From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with "all issues" relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the Rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its*

*responsibility by skirting the relevant issues arising in the case.*
*(emphasis supplied)*
***16.*** *Interpreting the provisions in these Rules, a three-Judge Bench of this Court in the case of Silverline Forum (P) Ltd. v. Rajiv Trust [(1998) 3 SCC 723] held: (SCC pp. 727-28, paras 10-12)*
*"10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions 'arising between the parties to a proceeding on an application under Rule 97 or Rule 99' shall be determined by the executing court, if such questions are 'relevant to the adjudication of the application'. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.*
*11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.*
*12. The words 'all questions arising between the parties to a proceeding on an application under Rule 97' would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution*

*proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section."*
*(emphasis supplied)*
***7.*** *A perusal of Order 21 Rule 97 shall facilitate the proper appreciation of the contentions raised on behalf of the appellant. It reads as follows:*
*"97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.*
*(2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."*
***8.*** *The abovenoted provision entitles the decree-holder to bring it to the notice of the executing court the fact that the execution of the decree is being resisted or obstructed by any person in possession of the property. The executing court would adjudicate upon the application made under sub-rule (1) of Rule 97 in accordance with law.*
***9.*** *We may also peruse Rule 99 Order 21, which reads as under:*
*"99. Dispossession by decree-holder or purchaser. —(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.*
*(2) Where any such application is made, the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."*
***10.*** *The above provision is to be availed of after a person in possession claiming its independent right is dispossessed, in that event such third person can complain of dispossession to the executing court.*
***11.*** *It will also be appropriate to peruse Rule 101 of Order 21; it reads as under:*
*"101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined*

*by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."*

***12.*** *We have already seen that the decree obtained by the decree-holder could not be executed by the respondents insofar as it related to Defendant 7. As against others the decree had been executed. The decree-holder thus filed an application dated 13-3-1995 for issuance of writ of delivery of possession. The appellant requested that it may be treated as an application by the decree-holder under Order 21 Rule 97. We feel that the petition dated 13-3-1995 is actually an application under Order 21 Rule 97 CPC. Though the said provision is not specifically indicated in the application but a perusal of the application shows that the resistance/obstruction in delivery of possession, by and at the instance of the appellant is clearly indicated therein. It is mentioned that the office of Tanzeem-e-Sufia known as Sufia Ashram, is being run in a portion of the premises in question. It is also stated that one Ashok Kumar Gupta has been set up by the judgment-debtor as Secretary of the Society. A prayer has been made for delivery of possession by removing all obstructions with the assistance of armed police and lady constables etc. Such an application is envisaged under Order 21 Rule 97 CPC and that being the position, it entitles the appellant to be heard before passing any order on the application moved by the decree-holder. There is no question of treating the application dated 13-3-1995 as one under Order 21 Rule 97, in fact it is an application under that provision. The appellant took extra precaution to inform the court about its intention to file objections beforehand and requested for a hearing. Once an application was moved by the decree-holder on 13-3-1995 there was no occasion to refuse hearing to the appellant. According to the appellant, it is in possession of the property having been gifted to it by one of its followers viz. Chandobibi.*

***13.*** *In support of the contention raised on behalf of the appellant, Shri Sanyal placed reliance upon a decision of this Court reported in Shreenath v. Rajesh [(1998) 4 SCC 543] . It has been held in this case that the term "any person" includes even a person not bound by the decree who shall also be entitled to file objections. It has been so provided to widen the scope of Order 21 Rule 97, so that all such matters may be decided at the execution stage itself to curtail the lengthy procedure of an independent suit claiming a right not to be dispossessed from the property covered by the decree of a court. Another decision relied upon is reported in Brahmdeo Chaudhary v. Rishikesh*

*Prasad Jaiswal [(1997) 3 SCC 694] . It has been held that the executing court must first adjudicate upon the objection of the objector on merits under Rule 97(2) of Order 21 CPC. It is also observed that it should not be insisted that possession be handed over first and an application under Order 21 Rule 99 be moved later on complaining about dispossession.*

***14.*** *We find that in the case in hand the appellant is claiming its independent right over the property and asserts its possession thereof. Order 21 Rule 101 clearly provides that all questions relating to right, title or interest in property relevant to the adjudication of the application, shall be dealt with the application and not by a separate suit. The High Court therefore, erred in refusing to hear the appellant, on the ground that it has already filed a suit for declaration of its title and for declaration that the decree passed in Title Suit No. 8 of 1983 is not binding on it. The provision contained under Order 21 Rule 101 CPC seems to have escaped the notice of the High Court while passing the order. We would also like to observe that the reasoning given by the executing court while rejecting the application of the appellant as indicated in the order of the High Court, that the remedy of the appellant would only lie by moving an application under Order 21 Rule 99 CPC is also erroneous as in the case of Brahmdeo Chaudhary [(1998) 4 SCC 543] it has been held that it should not be insisted that possession be delivered first and the objector may later on move the court under Order 21 Rule 99 CPC.*

***3.*** *In view of the obstruction so caused it was for the decree-holder to take appropriate steps under Order 21 Rule 97 for removal of the obstruction and to have the rights of the parties including the obstructionist adjudicated under the provisions of Order 21 Rule 101. We do not know if any such proceedings have been taken by the decree-holders and whether such proceedings are pending or not. The appellant, however, made various applications including the present application under Section 151 of the Civil Procedure Code read with Order 21 Rule 35 and Order 21 Rule 101 for adjudication of her rights. All these applications of the appellant have been dismissed on the ground that these are premature since she is in possession.*

***4.*** *Learned counsel for the appellant has contended that the appellant is being repeatedly threatened with dispossession. We, therefore make it clear that the possession of the appellant cannot be disturbed except in accordance with law; and that in view of the obstruction raised by her to the execution of the said decree, the rights of the obstructionist will have to be decided in appropriate proceedings, in accordance with law. Unless and until such proceedings terminate in favour of the decree-*

*holder, the decree-holder cannot take possession and the appellant is entitled to retain possession.*

***9.*** *At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.*

***10.*** *It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.*

***11.*** *When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.*

***12.*** *The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is*

*obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.*

***13.*** *In the above context we may refer to Order 21 Rule 35(1) which reads thus:*

*"35. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property."*

***14.*** *It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.*

***15.*** *In Bhanwar Lal v. Satyanarain [(1995) 1 SCC 6] a three-Judge Bench has stated as under: (SCC p. 9, para 5)*

*"A reading of Order 21 Rule 97 CPC clearly envisages that 'any person' even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or sets up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an*

*application against third parties to have his obstruction removed and an enquiry thereon could be done."*

***16.*** *In Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal [(1997) 3 SCC 694] this Court, following the aforesaid decision, made the under-quoted observation: (SCC p. 699, para 6)*

*"It is pertinent to note that the resistance and/or obstruction to possession of immovable property as contemplated by Order 21 Rule 97 CPC could have been offered by any person. The words 'any person' as contemplated by Order 21 Rule 97, sub-rule (1) are comprehensive enough to include apart from judgment-debtor or anyone claiming through him even persons claiming independently and who would, therefore, be total strangers to the decree. … Consequently it must be held that Respondent 1's application dated 6-5-1991 though seeking only reissuance of warrant for delivery of possession with aid of armed force in substance sought to bypass the previous resistance and obstruction offered by the appellant on the spot. Thus it was squarely covered by the sweep of Order 21 Rule 97, sub-rule (1) CPC. Once that happened the procedure laid down by sub-rule (2) thereof had to be followed by the executing court. The Court had to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order."*

***17.*** *We are in respectful agreement with the aforesaid statement of law.*

***11.*** *The doctrine of lis pendens is based on legal maxim ut lite pendente nihil innovetur (during a litigation nothing new should be introduced). This doctrine stood embodied in Section 52 of the Transfer of Property Act, 1882. The principle of "lis pendens" is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court. The transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchased the property pendente lite. (Vide K. Adivi Naidu v. E. Duruvasulu Naidu [K. Adivi Naidu v. E. Duruvasulu Naidu, (1995) 6 SCC 150] , Venkatrao Anantdeo*

*Joshi v. Malatibai [Venkatrao Anantdeo Joshi v. Malatibai, (2003) 1 SCC 722] , Raj Kumar v. Sardari Lal [Raj Kumar v. Sardari Lal, (2004) 2 SCC 601] and Sanjay Verma v. Manik Roy [Sanjay Verma v. Manik Roy, (2006) 13 SCC 608] .)*

***11.*** *Section 52 dealing with lis pendens is relevant and it is extracted below:*

*"**52. Transfer of property pending suit relating thereto**.—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."*

***12.*** *In Jayaram Mudaliar v. Ayyaswami [(1972) 2 SCC 200 : AIR 1973 SC 569] this Court held (at SCC p. 218, para 47) that the purpose of Section 52 of the Act is not to defeat any just and equitable claim, but only to subject them to the authority of the court which is dealing with the property to which claims are put forward. This Court in Hardev Singh v. Gurmail Singh [(2007) 2 SCC 404] held that Section 52 of the Act does not declare a pendente lite transfer by a party to the suit as void or illegal, but only makes the pendente lite purchaser bound by the decision in the pending litigation.*

***13.*** *The principle underlying Section 52 is clear. If during the pendency of any suit in a court of competent jurisdiction which is not collusive, in which any right of an immovable property is directly and specifically in question, such property cannot be transferred by any party to the suit so as to affect the rights of any other party to the suit under any decree that may be made in such suit. If ultimately the title of the pendente lite transferor is upheld in regard to the transferred property, the transferee's title will not be affected.*

***14.*** *On the other hand, if the title of the pendente lite transferor is recognised or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and*

> *the transferee will not get any right, title or interest in that portion.*

62. On the other hand, learned counsel for the respondents submit that Recovery Officer could not have gone behind the decree & he was not the proper forum to decide ownership of a property, nor the creation of mortgage and had transgressed his jurisdiction.

63. Perusal of para 26 of the judgment dated 26.04.2011 shows that after comparing the powers of Recovery Officer of DRT under Rule 11 of IInd Schedule of Income Tax Act with those of Order 21 Rule 58 of CPC in detail, the learned DRAT has held as under:

> *"So far as Rule 11 of IInd Schedule of Income Tax Act which applies to recovery of amount while executing a decree passed U/S 20 of Recovery of Debts Due to the Banks and Financial Institutions Act 1993 does not authorize the Recovery Officer to decide the questions relating to the right, title and interest in the attached property, though Sub-Rule 6 of Rule 11 prescribes that such questions would be decided by the Civil Court and not by Recovery Officer and order passed by the Recovery Officer would only be conclusive subject to result of such suit if any filed. Thus the Sub-Rule 2 of Rule 58 of Order 21 of CPC is wider enough than Rule 11 and thus the analogy of CPC in relation to the power of executing court to decide about title, right and interest in property attached cannot be equated with the powers vested with the Recovery Officer under Rule 11".*

64. DRAT relied upon judgment of Hon'ble Supreme Court passed in the case of **Tax Recovery Officer-II Sadar, Nagpur vs Gangadhar Vishwanath Ranade, reported in (1998)6 SCC Page 658**, relevant para 9 where it has been held: "The Tax Recovery officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assesee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assesse in favour of

a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281".

65. It is submitted that as held by DRAT, mortgaged properties were attached vide order dated 03.01.2003 and attachment order was executed on spot by Recovery Inspector of DRT with announcement on loudspeakers and drum beating but no one made any objections, which makes it clear that the property was not in possession of the petitioners on the date it was attached by DRT hence the aforesaid judgement supports the case of respondent bank.

The DRAT has further held as under:

> *"XXX It is apparent that the appellants were not in possession of the property on the date when the property was attached, otherwise they would have challenged the attachment immediately rather than waiting to auction sale to complete and then to file objection to set aside the auction sale. Thus the property was not in possession of the appellants on the date when it was attached."*

66. DRAT also held in para 47 of impugned judgment as under:

> *"On basis of aforesaid, it is clear that since Shri Dulare has not come forward to challenge the sale deed executed on 26.3.1996 and accepted deeds of its attorney, therefore, fraudulently Shri Dulare has transferred the property to Smt. Sangeeta Shukla, who re-sold the property to the present appellants by executing two sale deeds on 7.9.2000 and 2.04.2001 and the said fraudulent transfer which is subsequent to the earlier, will not invalidate the earlier transfer". It also held that until the sale deeds are declared void by a competent court, the effect of registration of such sale deeds continue to exist.*

67. In the case of **Mohd. Abdul Razack versus Syed Meera Ummal, reported in AIR 1967 Madras (Page 212)**, it was held that deed is only violable in respect of registration in wrong jurisdiction but not void-ab-initio. The mortgage was created on 25.03.1998 while the objectors purchased the properties through Sale deed dated 07.09.2000/13.04.2001.

Dulare sold the property to M/s. Trikone Leisure Resorts Ltd. in 1996 and then made fraudulent transfer to Smt. Sangeeta Shukla who also sold the same to the objectors.

68. Everybody colluded with the first owner Dulare & nobody initiated any criminal proceedings against him for selling his properties twice & that too through his different attorneys. Accordingly, the judgments passed by DRT and DRAT impugned in the writ petition do not suffer from any illegality and are not liable to be interfered with by the Hon'ble Court.

69. UP Amendment could not have taken away the right of Registrar in Mumbai and otherwise also, the State could not have exceeded to such an extent so as to nullify the power of Central Legislation. under concurrent list provided under the Constitution of India. On the relevant date, provisions of registration of properties belonging to any place were still effective in the cities of Kolkatta, Mumbai and Chennai and no State Amendment could overrule the provisions of the Central Act.

70. Mortgaged properties were still in the Charge of Bank which was also created before Registrar of Companies, Kanpur and which continued.

71. Registrar, Mumbai was competent to receive and register document of property in question on 26.03.1996. The **Section 30(2)** of the Registration Act, as it existed in the Registration Act prior to 2001, reads as under :

> *"X X X 30(2). The Registrar of a district in which a Presidency-Town is included and the Registrar of the Delhi District may receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document relates".*

It continued to be found a valid provision under the Act up to the year 2001 when it was deleted by Act No.48 of 2001. The Registrar of Assurances at Mumbai was governed by the provisions of the Registration Act as it existed in Mumbai on 26.03.1996 and, clearly, on

that date, the aforesaid provision did exist in the Registration Act and the Sub-Registrar of Assurances was well within his jurisdiction and authority to receive and register any instrument under his authority for any document which was in respect of any property situated anywhere in the country.

72. By U.P. Act No. 27 of 1994 dated 23.09.1994 the Section 30(2) as well as section 67 of the Registration Act were omitted.

73. The Registration Act, 1908 falls under entry 6 of the Concurrent List, thus, by virtue of Article 246 (2) of the Constitution of India. the Parliament as well as the State Legislature would have power to legislate in respect of the subject matter.

74. Section 30(2) as well as Section 67 of the Registration Act, 1908 were omitted finally by the Central Legislation by virtue of the "Registration and other related Laws (Amendment) Act, 2001 (Act No. 48 of 2001 w.e.f. 24.9.2001) enacted by the parliament.

75. Said issue has been considered by Hon'ble Calcutta High Court in the case of **Rumi Sen vs. Sanjay Sureka & others in C.S. No. 41 of 2011 decided on 30.6.2011**, wherein it was held that the Registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001 by Act No.48 of 2001,relevant portion is reproduced hereunder :

> *"X X There is a further technical objection to the power of attorney taken by the plaintiffs. They say that Section 28 of the Registration Act, as is relevant in the context, provides that a document affecting immovable property shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. The plaintiffs refer to Section 30 of the Act and the effect of such provision following its amendment. Prior to the relevant amendment of Section 30 of the Act, sub-section (2) thereof permitted, inter alia, the registrar of a district in which a presidency town was included to receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document related. Sub-section (2) was omitted from Section 30 of the Act by a West Bengal amendment that came into effect in 1997.*

> *Subsequently, there was a Central amendment that altogether removed Section 30(2) from the statute. The plaintiffs suggest that upon the West Bengal amendment coming into effect in 1997, no document affecting any immovable property in West Bengal could have been received or registered by any registrar in Mumbai. Prima facie, such argument is not acceptable. Upon the West Bengal amendment coming onto effect, no registrar of a district in West Bengal in which a presidency town was included could have received or registered a document affecting any immovable property irrespective of where the property was situate. But the registrar in Mumbai was not subject to this amendment and, notwithstanding the West Bengal amendment, the registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001. Since the two Mumbai documents were executed in 1999, notwithstanding the West Bengal amendment, there does not appear to have been any infirmity in the Mumbai registrar receiving and registering the same".*

76. Relying on the aforesaid judgment, Hon'ble Delhi High Court in the case of **Gati Cargo Management Services vs. SBL Industries Ltd** wherein it was held that "By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail"

It was further held that:

> *"24. By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail. In a situation, where a State Legislation has obtained the President's assent, the same would prevail in that State. Although, in the present case, there are no two different enactments, however, the principles that are enunciated in Article 254 of the Constitution of India would be applicable. Thus in my view, the Registration Act, 1908 as amended by the Registration (Bihar Amendment) Act, 1991, would prevail over the existing law (i.e. pre-constitutional legislation) as applicable to the State of Bihar. However, it is relevant to note that the same does not imply that the law as amended by the Bihar Legislature would have extraterritorial application. The law four words of Article 254(2) of the Constitution of India; "prevail in that State" clearly restrict the applicability of the amendment to the State of Bihar. That being so the Registration of the sale deeds in question by the registering*

> *authorities in Mumbai by virtue of Section 30(2) of the Act are not flawed".*

77. So far as the impact of omission of Section 67 from the Registration Act, 1908 by the U.P. Act No.27 of 1994 is concerned, it is submitted that the same is procedural. **Section 67**, which existed prior to amendment, reads as under:-

> *"67. Procedure after registration U/S 30, Sub Section (2)- On any document being registered u/s 30, Sub Section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose districts any part of the property to which the instrument relates is situate and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, Sub Section (1)".*

78. It is submitted that the heading of the Section itself suggests that Section 67 deals with the procedure. It is settled law that procedural defects and irregularities should not be allowed to defeat substantive rights or to cause injustice.

79. Procedure-a hand maiden to justice should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The exception to this principle is

a. Where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.

80. In the present matter the U.P. Act No. 27 of 1994 does not specifically provides the consequences of non compliance, thus the exception does not apply in the present matter.

81. The reliance is placed on **Udai Shanker Triyar vs. Ram Kalewar Prasad Singh reported in (2006) 1 SCC Page 75**, which was subsequently relied upon by the Hon'ble Apex Court in the case of **Haryana State Cooperative Supply & Marketing Federation Ltd. vs. Jayan Textiles & another reported in (2014) 4 SCC Page 704**.

82. Otherwise also, the respondent bank also gets benefit of Section 53-A of Transfer of Property Act as held by Hon'ble Supreme Court in its judgment dated 22.01.2002 in **Shrimant Shamrao Suryavanshi &**

**another vs Prahlad Bhairoba Suryavanshi by LRs & others, reported in AIR 2002 SC Page 960,** relevant portion of the same is as under:

> *"14. The aforesaid recommendation of the Special Committee were accepted by the Govt. of India as the same is well reflected in the aims and objects of amending Act, 1929 whereby Section 53-A was inserted in the Act.*
>
> *15. The Special Committee's report which is reflected in the aims and objects of amending Act 1929 shows that one of the purposes of enacting Section 53-A was to provide protection to a transferee who in part performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of Special Committee's report and aims, object contained in amending Act 1929 of the Act and specially when Section 53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession under Section 53-A even if the period of limitation to bring a suit for specific performance has expired.*
>
> *16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are-*
>
> *1) there must be a contract to transfer for consideration any immovable property.*
>
> *2) the contract must be in writing, signed by the transferor, or by someone on his behalf;*
>
> *3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained:*
>
> *4) the transferee must in part performance of the contract take possession of the property, or of any part thereof:*
>
> *5) the transferee must have done some act in furtherance of the contract; and*
>
> *6) the transferee must have performed or be willing to perform his part of the contract".*

83. Reliance is also made on the judgment dated 15.10.2001 of Hon'ble Delhi High Court given in **Asha M Jain vs Canara Bank, reported in 2001 LawSuit(Del) 1447**

84. In view of the facts given above, it becomes clear that the respondent bank is otherwise also entitled to get the benefit of Section 53-A of the Act as in any case, there was a contract between Dulare &

Trikone, there was a fixed consideration of sale, was in writing, was duly signed and transferee was in possession.

In view of the above, it is clear that:

a. Till the time Section 30(2) as well as Section 67 of the Registration Act, 1908 were finally omitted by virtue of 'Registration & others Related Law (Amendment) Act, 2001 (Act No. 48 of 2001 w.e.f. 24.9.2001), since enacted by the Parliament, Registrar in the Presidency Town at Mumbai remained empowered to receive and register sale deeds regarding properties situated at any place, hence the sale deeds in question executed on 26.03.1996 are valid and by depositing them with the Bank, a valid mortgage was created.

b. As discussed above, the Recovery Officer did not have a jurisdiction to declare the sale deeds or the mortgage invalid hence the impugned orders do not suffer from any illegality and are otherwise also not liable to be interfered with by the Hon'ble Court.

85. Learned counsel for the respondents placed reliance upon the following judgments :-

**(i) Tax Recovery Officer II v. Gangadhar Vishwanath Ranade, (1998) 6 SCC 658**

> ***9.*** *The Tax Recovery Officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281.*

**(ii) Muhammad Abdul Razack v. Syed Meera Ummal, 1965 SCC OnLine Mad 289**

> *The learned Judges answered the question to the effect that the registration was invalid because the concerned Sub-Registrar had no jurisdiction to accept the document for registration, the property comprised in it being outside the territorial limits of*

*his jurisdiction, and that was enough to enable the parties to present the document for registration and was enough to enable the proper registering officer to proceed as if the document was being presented before him for the first time, and that no question of limitation could arise because there was no limitation for the re-registration of a documeat. In this case also, anything might have happened, namely, the parties, without knowing the correct registration office, might have registered the document in a wrong office. Or the property might have been situated on the border between two registration districts and that the parties might have presented the document at the correct registration office and the Sub-Registrar might have thought that the document presented to him could not be registered in his office and directed them to the other registration office. Or the Sub-Registrar of the office might have been under the genuine impression that he could register the document in his office and he might have registered it in good faith. The plaintiff-respondent has not at all pleaded this fact of fraud on registration in her plaint and her plaint is completely silent on this point. This point was neither raised nor argued at the stage of trial and there is no evidence also on the point. The lower appellate Court, therefore ought not to have allowed the plaintiff to raise a new plea. As observed by the Privy Council in Siddik Mohamed Shah v. Mt. Saran(3) no amount of evidence can be looked into upon a plea which was never put forward. The general rule is that the appellant cannot be allowed to raise in his memorandum of appeal a new ground; nor can he raise in his memorandum of appeal any objection, which if it had been taken in the trial Court, might have been cured by appropriate amendment or otherwise. It is true that there are certain exceptions to this rule such as question of law, question of limitation, res judicata, etc., which can be substantiated on the facts already on record. But a matter which, though of law, depends upon the question of fact for its determination cannot be raised for the first time in appeal. As I said, in this case, there is no plea taken either in the plaint or is there anything in evidence as to the document being registered at a wrong Registrar's office, where the property is not situate. Unless there is evidence on the record that the property is situate in a wrong place or the parties had deliberately chosen a wrong registration office, this fact cannot be urged in the Court of Appeal as an act of fraud on registration. In Bajraga v. Province of Bengal the learned Judges observed that where the facts are not clear and undisputed the question of limitation should not be allowed to be raised in appeal as the necessary facts had not been pleaded and so attention had not been drawn to them at the time of the trial.*

*Once I come to the conclusion that the document is not void, because it has been registered in a wrong office, I must hold that it is only voidable in character. If it is voidable in character, then it is clear and settled law that a suit to recover possession by a ward should be filed within 3 years of attaining majority, to set aside the alienation made by her guardian.*

**(iii) Uday Shankar Triyar v. Ram Kalewar Prasad Singh, (2006) 1 SCC 75 : 2005 SCC OnLine SC 1618 at page 83**

***17.*** *Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:*

*(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;*

*(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*

*(iii) where the non-compliance or violation is proved to be deliberate or mischievous;*

*(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;*

*(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.*

***(iv) Haryana State Coop. Supply & Mktg. Federation Ltd. v. Jayam Textiles*, (2014) 4 SCC 704 : (2014) 2 SCC (Civ) 732 : (2014) 2 SCC (Cri) 410 : (2014) 184 Comp Cas 266 : 2014 SCC OnLine SC 309 at page 706**

***6.*** *Having heard the learned counsel for the parties and after perusing the material on record, we find that admittedly authorisation by the Board of Directors of the appellant Federation was not placed before the courts below. But, we may notice that a specific averment was made by the appellant Federation before the learned Judicial Magistrate that the said general power of attorney had been filed in connected case being CC No. 1409 of 1995,*

*which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the courts below were not satisfied, an opportunity ought to have been granted to the appellant Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. (See Uday Shankar Triyar v. Ram Kalewar Prasad Singh [(2006) 1 SCC 75] .)*

***7.*** *In view of the fact that in spite of arbitration award against the respondents, there was non-payment of amount by the respondents to the appellant Federation, and also in the light of authorisation contained in Annexure P/7, we are of the opinion that, in the facts and circumstances of the case, an opportunity should be given to the appellant Federation to produce and prove the authorisation before the trial court, more so, when money involved is public money. We, therefore, set aside the judgments of the courts below and remit the matters back to the trial court with a direction to conduct trial afresh taking into consideration the authorisation placed before us and dispose of the matter as expeditiously as possible in accordance with law.*

***Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi*, (2002) 3 SCC 676 : 2002 SCC OnLine SC 109 at page 682**

***16.*** *But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are:*

*(1) there must be a contract to transfer for consideration of any immovable property;*

*(2) the contract must be in writing, signed by the transferor, or by someone on his behalf;*

*(3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;*

*(4) the transferee must in part-performance of the contract take possession of the property, or of any part thereof;*

*(5) the transferee must have done some act in furtherance of the contract; and*

*(6) the transferee must have performed or be willing to perform his part of the contract.*

***17.*** *We are, therefore, of the opinion that if the conditions enumerated above are complied with, the*

*law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract is barred by limitation.*

***18.*** *The matter may be examined from another angle. The established rule of limitation is that law of limitation is not applicable to a plea taken in defence unless expressly a provision is made in the statute. The law of limitation applies to the suits and applications. The various articles of the Limitation Act show that they do not apply to a defence taken by a defendant in a suit. Thus, the law of limitation bars only an action in a court of law. In fact, what the Limitation Act does is, to take away the remedy of a plaintiff to enforce his rights by bringing an action in a court of law, but it does not place any restriction to a defendant to put forward any defence though such defence as a claim made by him may be barred by limitation and cannot be enforced in a court of law. On the said principle, a defendant in a suit can put forward any defence though such defence may not be enforceable in a court of law, being barred by limitation.*

***19.*** *In M.K. Venkatachari v. L.A.R. Arunachalam Pillai [AIR 1967 Mad 410 : (1967) 2 MLJ 265] it was held, thus: (AIR p. 414, para 10)*

*"[T]hat the defence to limitation is a creature of positive law and therefore cannot be extended to cases which do not strictly fall within the enactment. It is an established canon of construction of the law of limitation not to enlarge the scope of statutory provisions of limitation by analogy or logic."*

***20.*** *It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.*

***21.*** *In the present case, it is not disputed that the transferee has taken possession over the property in part-performance of the contract. It is also not disputed that the transferee has not brought any suit for specific performance of the agreement to sell within the period of limitation. It is also not disputed that the transferee was always and is still ready and willing to perform his part of the contract. Further, the view taken by the High Court in judgment under appeal was overruled by the Full Bench of the Bombay High Court in the case of Mahadeo Nathuji Patil v. Surjabai Khushalchand*

*Lakkad [1994 Mah LJ 1145 (FB)] which, according to our view, lays down the correct view of law. In that view of the matter these appeals deserve to be allowed.*

***22.*** *Since the High Court has allowed the appeals solely on the ground that the remedy for bringing a suit for specific performance is lost, therefore, the defendant is not entitled to protect his possession under Section 53-A of the Act, we, after setting aside the judgment under challenge, send the matters back to the High Court to decide any other question of law, if arises in these appeals.*

**Rumi Sein v. Sanjay Sureka, 2011 SCC OnLine Cal 1846**

*There is a further technical objection to the power of attorney taken by the plaintiffs. They say that Section 28 of the Registration Act, as is relevant in the context, provides that a document affecting immovable property shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. The plaintiffs refer to Section 30 of the Act and the effect of such provision following its amendment. Prior to the relevant amendment of Section 30 of the Act, sub-section (2) thereof permitted, inter alia, the registrar of a district in which a presidency town was included to receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document related. Sub-section (2) was omitted from Section 30 of the Act by a West Bengal amendment that came into effect in 1997. Subsequently, there was a Central amendment that altogether removed Section 30(2) from the statute. The plaintiffs suggest that upon the West Bengal amendment coming into effect in 1997, no document affecting any immovable property in West Bengal could have been received or registered by any registrar in Mumbai. Prima facie, such argument is not acceptable. Upon the West Bengal amendment coming onto effect, no registrar of a district in West Bengal in which a presidency town was included could have received or registered a document affecting any immovable property irrespective of where the property was situate. But the registrar in Mumbai was not subject to this amendment and, notwithstanding the West Bengal amendment, the registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001. Since the two Mumbai documents were executed in 1999, notwithstanding the West Bengal amendment, there does not appear to have been any infirmity in the Mumbai registrar receiving and registering the same.*

**Gati Cargo Management Services vs. SBL Industries Ltd**

**Delhi High Court (Judgment dated 27.05.2014)**

*"24. By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the legislation as enacted by the Parliament would prevail. In a situation, where a State Legislation has obtained the President's assent, the same would prevail in that State. Although, in the present case, there are no two different enactments, however, the principles that are enunciated in Article 254 of the Constitution of India would be applicable. Thus in my view, the Registration Act, 1908 as amended by the Registration (Bihar Amendment) Act, 1991, would prevail over the existing law (i.e. pre-constitutional legislation) as applicable to the State of Bihar. However, it is relevant to note that the same does not imply that the law as amended by the Bihar Legislature would have extraterritorial application. The law four words of Article 254(2) of the Constitution of India; "prevail in that State" clearly restrict the applicability of the amendment to the State of Bihar. That being so the Registration of the sale deeds in question by the registering authorities in Mumbai by virtue of Section 30(2) of the Act are not flawed".*

*15. So far as the impact of omission of Section 67 from the Registration Act, 1908 by the U.P. Act No.27 of 1994 is concerned, it is submitted that the same is procedural.* ***Section 67****, which existed prior to amendment, reads as under:-*

*"67. Procedure after registration U/S 30, Sub Section (2)- On any document being registered u/s 30, Sub Section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose districts any part of the property to which the instrument relates is situate and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, Sub Section (1)".*

***16.*** *We have considered this aspect taking into consideration these judgments and we are in agreement with the view that the concept of power of attorney sales have been recognised as a mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied with other documents including General Power of Attorney,*

> *Special Power of Attorney and Will and affidavits and full consideration is paid. This is what also has happened in the present case. There are two general power of attorneys, special power of attorney and the Will apart from the agreement to sell. One of the general power of attorney is registered. Further the will is also registered. Thus there are two contemporaneous documents which are registered and they lend authenticity to the date of execution of documents. The power of attorneys are for consideration within the meaning of Section 202 of the Contract Act, 1872. Thus there is no doubt that interest has been created in the property in favour of the appellant. Possession is also been handed over. Thus the provisions of Section 53A of the Transfer of Property Act would also come into play. The bank is debarred from enforcing any right qua the property other than the right conferred by the agreement to sell. The agreement to sell has nowhere reserved any right on the transferor either for resuming the property or payment of any additional money. The transferor is debarred from claiming back the property from the appellant. The net result of all this is that the rights have been created in favour of the appellant which cannot be defeated by the attachment order.*
>
> ***18.*** *We are thus of the considered view that it is not a fit case where valuable rights of the appellant should be put under jeopardy by the attachment order in respect of the property in question which for all practical purposes vests in the appellant. It is also relevant to add at this stage that though there was a scheme of conversion from lease hold to free hold learned counsel for the appellant has stated that the appellant was unable to seek conversion and get a registered document executed in her favour on account of the pendency of the present proceedings since the term of conversion require that there should be no litigation pending in respect of the property in question.*

86. The following issues arise for determination:

i. Whether the writ petition is maintainable under Article 226 of the Constitution of India in view of the availability of an alternative remedy before the DRAT?

ii. Whether the sale deed dated 26.03.1996 registered at Mumbai conferred any valid right, title, or interest upon Respondent No. 9 so as to create a valid equitable mortgage in favour of the Bank, in light of the Registration (U.P. Amendment) Act, 1994?

iii. Whether the Special Power of Attorney executed by K.J. Singh in favour of Vinay Singh was valid in law, and whether it could convey title over the entire land belonging to three co-owners?

iv. Whether the Recovery Officer acted within his jurisdiction in releasing the property from attachment and whether the auction purchasers were estopped from seeking confirmation of the auction sale?

87. The preliminary objection regarding maintainability is devoid of merit. The rule requiring the exhaustion of alternative statutory remedies is a rule of policy, convenience, and discretion, rather than an inflexible rule of law (State of U.P. v. Mohd. Nooh, AIR 1958 SC 86; Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]). In Whirlpool Corpn., the Hon’ble Supreme Court laid down that alternative remedy does not operate as an absolute bar where the writ petition is filed for the enforcement of fundamental rights, where there is a violation of natural justice, or where the impugned orders are wholly without jurisdiction.

Where the question involved is pristinely legal and strikes at the root of jurisdiction, a citizen need not be put through the mill of statutory appeals (Union of India v. State of Haryana [(2000) 10 SCC 482]; Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill [(2012) 2 SCC 108]). Courts will not act in vain (lex nil frustra facit).

88. Furthermore, the writ petition has been pending before this Court since 2012. The counter and rejoinder affidavits were exchanged as far back as 2013. Relegating a party to a statutory appellate forum after over thirteen years of pendency before the High Court would cause grave injustice (Utkal Highways Engineers and Contractors v. Chief General Manager, SLP (C) No. 15596 of 2022). Moreover, this Court was already seized of the identical controversy in Writ Petition No. 2220 (M/S) of 2012 filed by the co-owners/adjacent owners, Dharmendra Kumar and

another, wherein an interim stay was operating. Hence, the preliminary objection is rejected, and the writ petition is held to be fully maintainable.

89. Secondly, as far as the validity of the Sale Deed dated 26.03.1996 is concerned, it is undisputed that the foundation of the Bank's claim is the equitable mortgage allegedly created on 25.03.1998 by Respondent No. 9 by deposit of the title deed dated 26.03.1996. It is an admitted position that the land in question is situated in Village Anaura, District Lucknow, State of Uttar Pradesh.

90. The State of Uttar Pradesh enacted the Registration (U.P. Amendment) Act, 1994 (U.P. Act No. 27 of 1994), which received the assent of the President of India on 16.09.1994 and was published in the U.P. Gazette on 23.09.1994. By this statutory amendment, sub-section (2) of Section 30 and Section 67 of the Registration Act, 1908 were omitted in their application to Uttar Pradesh. Consequently, from 23.09.1994 onwards, no Registrar outside the district where the property is situated—including the Presidency Registrars—had any jurisdiction or competence to receive or register any document concerning immovable property situated within Uttar Pradesh.

91. For ready reference, the notification dated 23.9.1994 is being quoted under :-

> *"In exercise of the powers conferred by sub-section (3) of section 1 of the Registration (Uttar Pradesh Amendment) Act, 1994 (U.P. Act No.27 of 1994), the Governor is pleased to appoint October 1, 1994 as the date on which the said Act shall come into force."*

92. By virtue of Article 254(2) of the Constitution of India, a state amendment on a Concurrent List subject that has received the assent of the President prevails within that State.

93. Since the subject immovable property is situated in Uttar Pradesh, the substantive law governing the valid transfer and registration of title to that land is the law prevailing in Uttar Pradesh. The reliance placed by the respondents on the decisions of Rumi Sen (Calcutta HC) and Gati

Cargo (Delhi HC) is completely misplaced. Those cases failed to appreciate that the situs (location) of the immovable property determines the validity of the creation, extinguishment, or transfer of rights therein. When the U.P. Legislature, with Presidential assent, excised the extraordinary mechanism of registering U.P. properties in Presidency towns, registration of a deed in Mumbai in 1996 for property located in Lucknow was a nullity in the eyes of law for the State of U.P.

94. Under Section 54 of the Transfer of Property Act, 1882, a sale of tangible immovable property of value exceeding one hundred rupees can only be made by a registered instrument. As settled in Har Narain v. Mam Chand [(2010) 13 SCC 128] and the Constitution Bench judgment in Ram Saran Lall v. Domini Kuer [AIR 1961 SC 1747], a sale is not complete, operative, or effective in law until valid registration is carried out.

95. Under Section 49 of the Registration Act, 1908, an unregistered document affecting immovable property cannot convey title or create any interest therein (Appineni Vidyasagar v. State of A.P. [(2004) 11 SCC 186]; K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd. [(2008) 8 SCC 564]). The registration by the Sub-Registrar at Mumbai was an act without jurisdiction, rendering the sale deed dated 26.03.1996 non-est and void ab initio in respect of the Lucknow property. It was not a mere curable procedural defect governed by Uday Shankar Triyar.

96. Consequently, Respondent No. 9 never acquired any right, title, or interest in the subject property. A party cannot mortgage what it does not own (nemo dat quod non habet). Therefore, the deposit of the void deed dated 26.03.1996 on 25.03.1998 could not create an equitable mortgage in favour of Respondent No. 1 Bank. The Bank’s attempt to claim protection under Section 53-A of the Transfer of Property Act (Shrimant Shamrao Suryavanshi and Asha M. Jain) is thoroughly untenable; Section 53-A is a shield available to a transferee in possession under a written contract to protect possession against the transferor, and cannot be used to confer title on a mortgagee or validate an illegal recovery against true owners and lawful purchasers.

97. Furthermore, the alleged re-registration of the document in 2012 at the instance of Respondent No. 3 (the auction purchaser) is completely unlawful. Under Section 23A of the Registration Act, re-registration can only be applied for by a person claiming under the document within four months of becoming aware of the invalidity. Respondent No. 3 was neither a party to the deed nor did he present it within four months, having admitted its invalidity in his application dated 10.05.2004—nearly eight years prior.

98. Addressing the next issue relating to the power of Attorney and Fraudulent Sub-Delegation, this Court finds that the sale deed dated 26.03.1996 suffers from an equally fatal defect of lack of authority. The deed was executed by Vinay Singh, who claimed to act under a Special Power of Attorney dated 18.03.1996 executed by K.J. Singh. However, K.J. Singh's General Power of Attorney dated 22.02.1996 was executed solely by Ram Milan, who held only a 1/3rd undivided share. The other co-owners, Babu Lal and Bihari Lal, had never executed any power of attorney in favour of K.J. Singh.

99. A power of attorney must be construed strictly (Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust [(2012) 8 SCC 706]). Under the well-established maxim delegatus non potest delegare, an attorney holder cannot delegate his authority to a third party unless an express clause permitting sub-delegation is incorporated in the original instrument (A.C. Narayanan v. State of Maharashtra [(2014) 11 SCC 790]; Mita India (P) Ltd. v. Mahendra Jain [(2023) 19 SCC 455]). The GPA dated 22.02.1996 contained no authority enabling K.J. Singh to sub-delegate his powers. Thus, the Special Power of Attorney in favour of Vinay Singh was void ab initio. Vinay Singh possessed zero legal authority to execute the sale deed dated 26.03.1996 on behalf of any of the tenure holders, let alone for the entire parcel of land.

100. Fraud vitiates all solemn judicial and temporal acts (S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1]; A.V. Papayya Sastry v. Govt. of A.P. [(2007) 4 SCC 221]). A transaction founded upon

a fraudulent and unauthorized representation is a nullity and cannot form the bedrock of any valid recovery or auction.

101. Thereafter, Section 29 of the RDDBFI Act incorporates the provisions of the Second Schedule of the Income Tax Act, 1961. Under Rule 11 of the Second Schedule, the Recovery Officer is fully empowered to investigate objections to attachment and sale. Where the objector establishes that the property attached was not in the possession or ownership of the certificate debtor/mortgagor, the Recovery Officer is duty-bound under Rule 11(4) to release the property from attachment.

102. The DRAT erred in misconstruing the judgment in Tax Recovery Officer II v. Gangadhar Vishwanath Ranade [(1998) 6 SCC 658]. While Ranade holds that a Tax Recovery Officer cannot declare a transfer void under Section 281 of the Income Tax Act, it reinforces that the officer can only attach property belonging to the defaulter. Here, the judgment debtor/mortgagor (Respondent No. 9) never had any lawful title or interest to begin with.

103. The powers of the executing authority when faced with third-party resistance are broad, preventing frivolous dispossession of rightful owners, consistent with the scheme of Order XXI Rules 97 to 103 CPC (Silverline Forum (P) Ltd. v. Rajiv Trust [(1998) 3 SCC 723]; N.S.S. Narayana Sarma v. Goldstone Exports (P) Ltd. [(2002) 1 SCC 662]; Tanzeem-E-Sufia v. Bibi Haliman [(2002) 7 SCC 50]; Anwarbi v. Pramod D.A. Joshi [(2000) 10 SCC 405]).

104. The conduct of the auction purchasers (Respondent Nos. 3, 4, and 5) closes the matter against them. On 10.05.2004, they moved a formal application before the Recovery Officer under Order XXI Rule 91 CPC, explicitly admitting that the mortgagor and borrower had no saleable interest in the property, and sought a full refund of their purchase price. That refund was directed and granted. Having taken that clear stand, accepted the absence of saleable interest, and received their money back, the auction purchasers cannot subsequently execute a complete somersault and seek confirmation of the auction sale.

105. Lastly, the petitioner purchased the 2/3rd share through a registered sale deed on 08.03.2007 from Respondent No. 7, who held clear title traced back to the original tenure holders. As settled in T.G. Ashok Kumar v. Govindammal [(2010) 14 SCC 370] and K.N. Aswathnarayana Setty v. State of Karnataka [(2014) 15 SCC 394], lis pendens under Section 52 of the Transfer of Property Act does not render a transfer void; the transfer remains subject to the final determination of the transferor's rights. Because the title of the petitioner's predecessors-in-interest is unassailable, the petitioner’s title and possession over its 2/3rd portion are legally valid and unassailable.

106. In view of the foregoing findings, the DRT in its appellate order dated 06.08.2007 and the DRAT in its order dated 26.04.2011 committed manifest errors of law and jurisdiction in overturning the well-reasoned order of the Recovery Officer dated 31.05.2004. The consequential order dated 10.04.2012 confirming the auction sale is wholly unsustainable.

107. Also in regard to the First Information Report lodged against Vinay Kumar Singh-special power of attorney holder and against the auction purchasers, in the said case charge sheet was filed against which application under Section 482 Cr.P.C. was filed was filed before this Court for quashing of F.I.R., wherein on prima facie satisfaction, this Court observed that the said application is liable to be dismissed and the case was dismissed with direction to the trial court that without prejudice to the merits of the case, the case shall be decided.

108. Accordingly, the writ petition is **allowed** with the following directions:

i. The impugned first appellate order dated 06.08.2007 passed by the Debts Recovery Tribunal, Allahabad in Appeal No. 9 of 2004 is hereby quashed.

ii. The impugned appellate order dated 26.04.2011 passed by the Debts Recovery Appellate Tribunal, Allahabad in Appeal No. R-866 of 2007 is hereby quashed.

iii. The impugned order dated 10.04.2012 passed by the Recovery Officer (Respondent No. 6) in DRC Case No. 224 of 2002 confirming the auction sale in favour of Respondent Nos. 3, 4, and 5 is hereby quashed.

iv. The order dated 31.05.2004 passed by the Recovery Officer, DRT, Allahabad—setting aside the auction sale dated 13.11.2003 and releasing the subject land from attachment—stands restored and affirmed.

v. A writ of mandamus is issued commanding the respondents not to interfere in any manner with the peaceful possession and enjoyment of the petitioner over its 2/3rd part of Khasra Plot Nos. 230, 231, 234, and 235 admeasuring 0.6207 hectares situated at Village Anaura, Pargana, Tehsil, and District Lucknow.

vi. It is clarified that Respondent No. 1 Bank remains free to pursue any lawful recovery remedies against the principal borrowers and guarantors personally or against their other lawful assets, strictly in accordance with law.

109. There shall be no order as to costs.

**(Irshad Ali,J.)**

**November 23, 2026**
Gautam

Digitally signed by :-
GAUTAM TECKCHANDANI
High Court of Judicature at Allahabad,
Lucknow Bench