

**(1986) 03 BOM CK 0063**

**In the Bombay High Court**

**Case No :** Appeal From Order No. 161 of 1985 (with C.A. No. 967 of 1985) ,  
with A.O. No. 162 of 1985 (with C.A. No. 966 of 1985) , with A.O. No.  
163 of 1985. (with C.A. No. 965 of 1985)

Khotani Construction Co., Marceline Louis Misquitta (Smt.) APPELLANT  
and Viridi Builders Pvt. Ltd. and Others

Vs

Anwar Haji Alimohammed Cassum and Others RESPONDENT

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**Date of Decision :** 25-03-1986

**Acts Referred:**

Bombay Court Fees Act, 1959 — Section 6  
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 4, 85  
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1  
Evidence Act, 1872 — Section 115  
Limitation Act, 1963 — Article 58, 64, 65, 17

**Citation :** (1986) 3 BomCR 454

**Hon'ble Judges :** Sharad Manohar, J

**Bench :** Single Bench

**Advocate :** Anil A. Mehta, instructed by Kiran Sampat and Co. in A.O. 161/85, M.M. Sakhardande, N.M. Gunjalkar and Vasanti Bangera, in A.O. 162/85 and J.I. Mehta, S.P. Oke and D.S. Sawant, in A.O. 163/85, for the Appellant; D.D. Samant and G.L. Damle, instructed by Aziz Hoosenally Vishram and Co. in A.O. 161/85, 162/85 and 163/85, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

Sharad Manohar, J.—These three Appeals from Order arise out of the judgement and order passed by the Bombay City Civil Court in the Notice of Motion taken out by the plaintiff in S.C. Suit No. 6042 of 1983 for the various reliefs against the various defendants.

2. Said Suit No. 6042 of 1982 has been filed by the plaintiffs, who are the main contesting respondents in all the three appeals. Initially, the suit was filed only against two defendants, viz.,

Smt. Marceline Louis Misquitta, widow of Shri Louis Francis Misquitta, as

defendant No.1 and the Court Receiver, who had been appointed by this Court as the Receiver of the property which was the subject matter of the Administration Suit No. 3115 of 1947 pending on the Original Side of this Court, as defendant No. 2.

3. The said suit was filed by the plaintiffs for a declaration that certain orders which came to be fraudulently obtained by one Misquitta, the husband of defendant No.1 in the suit, from the tenancy Courts, were illegal, null and void and for a further declaration the defendant No.1 had no right, title and interest in the suit property which consists of 15 lands situate at village Dahisar within the limits of the Bombay Municipal Corporation, for a direction that possession of suit land should be restored for the Court Receiver, defendant No. 2 and for injunction restraining the first defendant, her servants and Agents from constructing upon or parting with the possession of the suit lands.

Along with the suit, a Notice of Motion was taken out by the plaintiffs for temporary injunction pending the suit and an order of ex-parte injunction in terms of the Notice of Motion was passed by the trial Court. When the Notice of Motion and the ex-parte injunction was served upon defendant No. 1 she appeared in the Court and contended that she had already entered into development agreements in respect of the various lands with defendant No. 3 to 6 and had received consideration in that behalf. She went to the extent of contending that though they were only agreements of sale, at their highest the title to the suit lands already stood transferred to the various intending purchasers of the lands and her contention was that the construction on the lands were being made by defendant Nos. 3 to 6 on the basis of the said development agreements. It was after the receipt of this information that the plaintiff made the requisite application to the Court for impleading defendant Nos. 3 to 6 in the suit and order in that behalf was accordingly passed by the Court and defendant Nos. 3 to 6 came to be impleaded in the suit. They opposed the said Notice of Motion for injunction and at the request defendant No. 1, by its order dated 29th March, 1984, the injunction granted by the Court giving a blanket prohibition of all constructions on all the suit lands was slightly modified by the trial Court and defendant No. 4 as such was allowed to complete, but only to complete, the construction on the land Survey No. 56/2. The injunction prohibiting the defendant from parting with possession of the construction and of the suit land, however, continued. So far as defendant Nos. 3, 5 and 6 were concerned, the ex-parte injunction against them, as granted earlier, continued.

The Notice of Motion was heard thereafter. However, after hearing all the defendants Nos. 1 and 3 to 6, at length. The learned Judge negatived all the contentions raised by the said contesting defendants for opposing the prayer of temporary injunction and by this order dated 4th December 1984 he confirmed the ex-parte injunction and directed the same to continue till the hearing and disposal of the suit. A slight modification was, however, made by him in favour of defendant No. 4 directing him to submit the list of the flat owners to whom they

had already sold the flats, together with the particulars as regards the price etc. agreed upon and the amount received towards the price. Two weeks, time was given to defendant No. 4 in that behalf for filing the list.

A.O. No. 162 of 1985 is filed by defendant No. 1 against the said order. A.O. No. 163 of 1985 is filed by original defendant Nos. 3, 5 and 6 against the said order in the Notice of Motion whereas A.O. No. 161 of 1985 is filed by defendant No. 4 in the said suit against the said order.

All the three appeals are being disposed of by this common judgement.

x x x x x x 4. Let me state here very briefly the facts out of which the suit and the Notice of Motion arise. I may state here that most of the facts are such as are admitted at least at this stage of the hearing of these appeals. The facts which are disputed will be examined at the time of the examination of the arguments advanced in relation with them.

For the sake of convenience the parties will be referred to in the same way as they were referred to in the trial Court, that is to say as plaintiffs and defendants Nos. 1, 2 and 3 etc.

(a) All the plaintiffs are the heirs of one Haji Ali Mohmed Haji Cassum himself evidently who are Muslims. Haji Ali Mohmed Haji Cassum was an heir of one Haji Cassum Jossab. He was the owner of the extensive properties including the suit properties. The suit properties are 15 pieces of lands situate at village Dahisar, which is included within the Municipal area of the Bombay Municipal Corporation. I will have occasion to give more particulars about some of the land because the legal questions involved in this litigation are not the same vis-a-vis each of the land although some of the questions are common to all.

Haji Cassum Jossab died in the year 1919 and was succeeded as mentioned above by Haji Ali Mohmed Haji Cassum. This Haji Ali Mohmed Haji Cassum died on 7-11-1946 and there is no dispute that all the plaintiffs are his heirs. There is no dispute further that in the year 1947 Suit No. 3415 of 1947 was filed by the widow of said Haji Ali Mohmed Haji Cassum for administration of the estate left by the deceased and in that suit the remaining heirs were impleaded as parties. The present suit, it appears has been filed by all the said heirs of the deceased Haji Ali Mohmed Haji Cassum.

There was a prayer in the suit for appointment of Receiver and hence two of the sharers were appointed as Private Receivers by the Court. However, it appears that the arrangement did not prove successful and, hence, on 13-1-1950, the private receivers were discharged and the Court Receiver was appointed by the High Court to manage the suit property with all the powers under Order 40 of the Civil Procedure Code. In the said suit, a preliminary decree was passed on 25-11-1952. We are not concerned with the nature of the preliminary decree. All that needs be stated is that the Receiver continued to be in the management of the property even after the preliminary decree.

(b) One crucial position relating to the entries in the Record of Right pertaining to the suit land may be stated here itself though the details and particulars in that behalf will be given a little later while examining the arguments relating to the alleged tenancy right of Misquitta, husband of defendant No. 1 (referred to herein as "Misquitta" ). Mr. Samant, the learned Advocate appearing for the plaintiffs, handed over to the Court a Chart giving detailed position of the Record of Right ranging from the year 1932 right till the year 1953-54 and onwards till the date when Misquitta managed to obtain declaration in respect of his right of ownership under the Tenancy Act from the Agricultural Lands Tribunal and paid the purchase price fixed by the Tribunal that is to say almost till the year 1972-73. The correctness of the Chart was not disputed by any of the Counsel and Advocate appearing before me. From the entries in the Record of Rights described in the said Chart, it becomes clear that although Misquitta claimed tenancy rights in respect of all the said lands right from the year 1942 in the first instance and later on from the year 1939, save and except a suspicious entry in the Record of Rights relating to Survey No. 279/7 in favour of Misquitta showing him to be tenant, there existed not a single entry in respect of any other land right from the year 1932 till the year 1952-53 showing Misquitta having anything to do with the said 14 lands. Further, there is not a single document showing creation of tenancy in favour of Misquitta either by the deceased Haji Ali Mohammad Cassum or by any of the Receivers after his death nor it is shown that if the Receiver wanted to create any tenancy he had obtained the sanction from the Court to create it. However, not a whisper of explanation was given by any of the platoon of the eminent Advocates and Counsel appearing before me as to how it was that Misquitta's name did not appear anywhere in the Revenue Records till the year 1953 and as to how it erupted out in the Record of Right suddenly in the year 1953 and that too in the form of pencil entry; Some documents were flourished before the lower Court as well as before me and it was argued that those documents were indicative of Misquitta's tenancy in respect of the suit land before the year 1953-54 and thereafter. The trial Court has examined the documents and found them to be thoroughly irrelevant for the purpose of bringing about any such result and after examining the same myself I had found it impossible to arrive at any other conclusion. As will be fully stated presently, I myself gave time to Mr. Sakhardande, appearing for defendant No. 1 to produce any other document even at this appellate stage indicative of Misquitta's tenancy right even remotely. Mr. Sakhardande repeatedly took time from this Court for production of the said documents. But ultimately after taking more than enough time in that behalf, a frank statement was made by his learned Junior Mr. Gunjalkar (Mr. Sakhardande not being able to remain present on that day) to the effect that his client, defendant No.1, had no other document vindicating his claim of tenancy in respect of any of the suit lands prior to the year 1953 and that even for the subsequent years there existed no document evidencing his tenancy excepting the pencil entry in the Record of Right in the year 1953-54 onwards. Further, Mr. Sakhardande was wholly unable to state before the Court as to who has ever created tenancy in favour of Misquitta and if

it was created by the Receiver what was the evidence about it and as to by what power he had created the same without the sanction of the Court or without the consent of the real owners.

The long and short of the legal and factual position, therefore, is that Misquitta had not a title of evidence to be produced before any Court of Law for vindicating his tenancy in respect of any of the suit lands save and except the most suspicious entry relating to Survey No. 279/7 and the pencil entries dating from the year 1952-53 or 1953-54 onwards which are even more suspicious. As to in what circumstances the entries come to be made is shrouded in mystery. Mr. Sakhardande could not throw any light upon these entries, because he could not answer the question as to who created the tenancy in favour of Misquitta in the year 1949-50 relating to survey No. 279/7 or in the year 1952-53 or 1953-54 in relation to the other lands. The fact that they were mere pencil entries itself is an eloquent fact showing that the revenue authorities were suspicious about the veracity of the entries and that the entries were never confirmed by the Circle Officer or any other higher revenue authority without confirmation, their evidentiary value is scant.

(c) In spite of this legal and factual position, on 6-7-1954, Tenancy Application No. 8/54 was filed by one Misquitta, husband of present defendant No. 1 to the Mamlatdar at Borivli for declaration that he was a tenant in respect of the 12 out of 15 suit lands. The land Survey No. 28/1, which is not the subject matter of the present suit, was not the subject matter of the said Tenancy Application No. 8/54 as well. The reason why reference is made to this land will be pointed out presently. In that suit the Receiver contended that Misquitta was never a tenant of the suit land and that he had been given contract to cut the grass on some of the suit lands which grass was naturally growing on the lands and that his position was nothing better than that of a usurper. Amazingly enough in that application, Misquitta did make the Court Receiver a party opponent; but none of the present plaintiffs, the then existing owners of the 12 lands in question were impleaded. Instead, the deceased Haji Ali Mohammed Haji Cassum who made a party opponent and it was shown that the notice of the application was served upon the dead person by affixing the same on some conspicuous place on the suit lands. As contended by the plaintiffs and no more disputed by any of the contesting defendants, at least before me, that there could exist no doubt about the fact that, to the full knowledge of Misquitta said Haji Ali Mohamed Haji Cassum was dead long since and that to the full knowledge of Misquitta the present plaintiffs were his heirs and were the co-owners in respect of the lands in question. But still none of the plaintiffs was impleaded in the said Tenancy Application. A dead man was impleaded and a farce-drama was enacted of having effected service of the notice of the tenancy application upon the dead person. It was in this patently fraudulent manner that an order was obtained by Misquitta against the Receiver alone behind the back of the present plaintiffs and that too in spite of the protestations of the Receiver that Misquitta was never a tenant of any of the lands in question and there existed no evidence about his

tenancy. By his order dated 14-3-1956 the Mamlatdar passed an order holding Misquitta to be a protected tenant and directing entry of his name in the Record of Rights.

It defies understanding as to why the Receiver chose not to file any appeal against this order because it was an order sham on the face of it atleast for two reasons. Firstly it was an order indicative of the patent fraud upon the Court. Secondly, it was an order passed against the Receiver without leave from the Court to sue him.

As will be presently pointed out, the Receiver himself urged this latter question subsequently before the Tenancy courts. But for the reasons best known to himself, the Receiver allowed the patently illegal order of the Mamlatdar dated 14th March, 1956 to remain un-challenged. Not only this but the Receiver chose to treat the patently illegal order to be replete with legality and chose to give a notice dated 26-12-1951 to Misquitta terminating his tenancy in respect of the 12 lands and to file Tenancy Application No. 81/57 for possession of the said lands from Misquitta u/s 31 of the Bombay Tenancy and Agricultural Lands Acts, 1948 (hereinafter referred as "the Tenancy Act"). The said Application No. 81/57 was dismissed by the Mamlatdar on 30th November 1957. Appeal was filed by the Receiver against the said order of dismissal but that too after delay and hence the same came to be dismissed not on merits but on the ground of delay.

5. I have referred to the above application filed by Misquitta in the Tenancy Court for a similar declaration in respect of Land Survey No. 28/1 belonging to the plaintiffs and in the management of the Receiver. That land is not the subject matter of the present suit; that land was not the subject matter even of the earlier Tenancy Application No. 8/54. While filing the Application No. 8/54 in respect of the 12 lands, it had not dawned upon Misquitta that he was the tenant even in respect of this land Survey No. 28/1 and that too ever since 1942. But for this solitary land, Misquitta filed another Tenancy Application No. 49/56-57 in the same Court of the Mamlatdar for a declaration that he was the tenant of that land as well. The modus operandi resorted to by this Misquitta in this application for impleading and for serving notice upon the real owner is identical. He made the dead person Haji Ali Mohd. Haji Cassum a party. The other person impleaded was the Receiver. A similar farce was enacted of having served the dead person in a more or less similar manner in which the service was effected on the dead person on the earlier occasion. We do not know whether the Receiver thought it fit to point out this illegality and fraud to the tenancy Court or not. Anyway, the tenancy Court has taken no notice of it. But on this occasion when the stake involved was in respect of one small piece of land only, the Receiver did take atleast one of the many correct and legitimate objections to the application. The objection raised by him was that no suit or application could be filed against the Receiver without the leave of the Court by whom the Receiver was appointed. The Mamlatdar did not find it necessary to attach any importance even to this objection. Before the Mamlatdar there was no evidence that Misquitta was the

tenant in respect of the land at any time before 1953 and even for the period after 1953 the only evidence that existed was in the form of pencil entries in the revenue records. Identical was the position of evidence also in the earlier case. Moreover, if at all any tenancy was created, it would have been created either by the owners before the filing of the suit or by the Receiver, after the suit, with the sanction of the Court. It had never been the case of Misquitta that the Receiver gave him tenancy in respect of any land as such. His case, at the most, was that the Receiver has recognised his tenancy. His contention has been that he had been the tenant of the owner Haji Ali Mohammad Cassum. Initially, he contended that he was the tenant since the year 1942, but subsequently finding that tenancy since the year 1942 could not clothe him with the status of a protected tenant, he shifted his tenure to the earlier year, 1939. But the point is that the entire revenue record leaves no doubt that he was nowhere on the horizon right till the year 1953 (except, perhaps, in the case of one land Survey No. 279/7 where some entry appears in the year 1949. But even that entry is quite suspicious on the face of it because even at that time the two private Receivers were already there). No evidence is brought on record to show that those Private Receivers gave tenancy to Misquitta even in respect of the lands referred to above. By and large, the mischief played by him can be seen by any person who wants to see that it was only when the Receiver gave the Grass Cutting Contract to Misquitta in respect of just a few lands which contract had nothing to do with creation of tenancy, that the said Misquitta started creating evidence of these pencil entries in respect of the tenancy right in respect of the suit land.

In spite of this crystal-clear position, the Mamlatdar once again went all the way in favour of Misquitta and gave a declaration in his favour that he was tenant in respect of even land Survey No. 28/1. This order was passed by the Mamlatdar on 5-10-1957.

But on this occasion, the Court Receiver or his agent looking after this litigation on his behalf, had a brain waive. Somehow or the other, he persuaded himself to file an appeal against the said order. That was Appeal No. 126/57-58 and before the appellate authority it was contended probably, *inter alia*, that the Tenancy Application No. 49/56-57 was bad on the face of it for the simple reason that such an application did not lie against the Receiver in the absence of the leave of the Court appointing the Receiver to sue him. The Receiver could as well have taken the other point which was equally un-answerable at least *prima facie*, viz. that the original owners of the land were necessary parties to the suit, that Misquitta was very much aware of this position, that he in fact purported to make the owner the party and that he played fraud upon the Court by joining the dead owner as party, leaving the living owners un-impealed and thus mulcting an illegal and fraudulent order against the true and legal owners. This objection could have been taken by the Receiver. But it appears that the Receiver was more concerned with his own powers and immunity rather than the interest of the real owners for whom he was managing the property and for whom he was in the position of a constructive trustee. Whatever it may be, only one of the two

patent illegalities was brought to the notice of the appellate authority. Misquitta had no answer to the same. The result was that the appeal was allowed by the appellate authority on 20-9-1958 and the original application of Misquitta (No. 49/56-57) was dismissed by that authority.

Misquitta filed a Revision Application against that order to the Maharashtra Revenue Tribunal which dismissed the same on 30-11-1962.

6. At least at this stage it should have been evident to the Receiver that if Tenancy Case No. 49/56-57 was bad for the reasons agitated by him before the Appellate Authority, Misquitta's earlier application (Tenancy Application No. 8/54 ) was equally bad for the identical reasons. All the same, the Receiver chose not to move his small finger to get the earlier decision in respect of as many as 12 lands quashed by appropriate proceedings. The decision was a nullity and hence he could have atleast treated as such. For reasons best known to himself or to those acting on his behalf, so far as that decision and order of the Mamlatdar in Tenancy Case No. 8/54 was treated by the Receiver as sacrosanct, thus revealing crass & gross negligence in the discharge of his duties of a prudent and reasonable man. The contention today of defendant Nos. 1 and 2 to 6 has been that the order has become final and, therefore. Misquitta has become tenant in respect to the same. The lower Court has examined this contention and negatived it. I shall have to examine the same de novo.

x x x x x x 8. Let me now turn to the next crucial proceedings instituted by the self-same Misquitta in the Tenancy Court namely Tenancy Application No. 1/1968. On 22-8-1967 Misquitta has filed an application in the Court in the said Administration Suit for leave to file the proceedings against the Court Receiver, firstly u/s 70(b) of the Tenancy Act for a declaration that he was a tenant in respect of the suit land and for fixation of the price of the same u/s 32-G of the Tenancy Act.

In pursuance of the said application, an order granting leave to file such tenancy application u/s 70 (b) and section 32-G of the Tenancy Act was passed by this Court on 8-9-1967. In pursuance of this leave, Misquitta in fact filed a Tenancy Application 1/68 in the Tenancy Court for two-fold reliefs:

(a) For a declaration that he was tenant in respect of the suit lands u/s 70(b) of the Tenancy Act;

(b) For fixation of the price of the suit lands u/s 32-G of the Tenancy Act. What is to be noted here is that even Misquitta had realised by this time that the order obtained by him from Mamlatdar dated 14-3-1958 declaring that Misquitta was a tenant in respect of the 12 lands which were the subject matter of the Tenancy Application No. 8/54 was not worth the paper on which the order was written or typed because, if not for any other reason, it was bad because it was an order passed by the Mamlatdar who had no jurisdiction to pass the same in the absence of the requisite leave from the Court to institute proceedings against the Receiver. Further, the order obtained against a dead person viz. Haji Ali

Mohammed Haji Cassum, was a nullity on the fact of it. Evidently with this realisation, declaration was sought by Misquitta vis-a-vis not only regarding Survey No. 28/1 (in Application No. 44/56-57 which was dismissed by the Appellate Authority) but also regarding the 12 lands which were the subject matter of Tenancy Application No. 8/54. But what is to be noted in this connection is that at this juncture the tentacle of the octopus spread further to grab more lands namely Survey Nos. 62/5, 63/13, 63/15. No claim in that behalf was ever made by Misquitta in any Court in any earlier occasion; but even these lands are included by this Misquitta in Tenancy Application No. 1/68. By what process he became tenant of the same later on, but retrospectively from the year 1939 is a mystery.

Secondly, realising that the claim of the tenancy from the year 1942 would be inadequate to serve this purpose Misquitta pushed his claim backwards to the year 1939. The intention of doing so was obvious. The legal position in this behalf was correctly pointed out by Mr. Samant and could not be even disputed by any of the Advocates or Counsel for the defendants. He would not have become a protected tenant of any of the lands if his claim was set up from the year 1942 and in 1954 he would not have claimed protected tenancy if the tenancy was claimed from 1942. Under the provisions of the 1939 Tenancy Act as amended 1945-46 read with the provisions of the 1947 Tenancy Act, the protected tenancy could be claimed only if the person was a tenant of the lands from a particular date in the year 1939. Hence this Misquitta who claimed tenancy of the lands, in the year 1954, from 1942, all of a sudden became a tenant in respect of 16 lands (the 15 suit lands plus Survey No. 28/1) in the year 1968 from the year 1939.

But this was not all. No doubt one of the procedural requirements was complied with by him by taking the leave of this Court to institute the proceedings u/s 70 (b) and 32-G of the Act against the Receiver. But so far as the requirement of making the owners of the lands parties to the proceedings, they being the necessary parties, was concerned, Misquitta continued to resort to the same old fraudulent device. Once again he impleaded the dead owner Haji Ali Mohammed Haji Cassum as tenant in the said proceedings namely the Tenancy Case No.1/68 leaving his heirs, the present plaintiffs, high and dry, with a view to mulct and run away with an order against them behind their back. Once again a sham farce of serving the dead person by affixing the notice of the proceeding upon the suit property addressed to a dead person was enacted and in this fraudulent manner the proceeding proceeded.

However, the proceeding was just not defended by the Receiver at all. The Receiver sent his usual officer Mr. Pai to defend the proceedings and the part played by the said Pai in this drama is most gruesome and scandalising. Mr. Pai very well knew that the order passed in the first proceedings namely Tenancy Application No. 8/54 was devoid of any jurisdiction and was a nullity because it was passed against the Receiver without the court's leave. He should have been

aware at least of the fact that it was bad on this ground because that ground was agitated by the Receiver through himself before the Appellate Authority and before the Revenue Tribunal and that the plea of the Receiver was specifically accepted by both these courts. The Receiver and Mr. Pai should have seen that Misquitta had not a title of evidence to show that he was a tenant of the land at any time till 1953. He should have seen that Application No. 8/54 claimed tenancy of the 12 lands from the year 1942 whereas in the year 1968 tenancy was claimed for 15 lands and that too from the year 1939. Ignoring all these formidable defences, Mr. Pai just went to the Court and admitted the claim of Misquitta lock, stock and barrel and that too behind the back of the present plaintiffs and without giving as much as an inkling of his intention to give such admission to any of the plaintiffs at any time. I will have occasion to discuss this rank dereliction of duty bordering upon breach of trust on the part of the said Mr. Pai acting as the Receiver's Agent showing that he did not act as a prudent man and spent no part of his time for studying his brief and showed gross; if not culpable, negligence bordering upon something even more serious. Suffice here to say, however, that in view of this convenient admission given by said Mr. Pai acting in behalf of the Receiver, the Mamlatdar and Agricultural Lands Tribunal proceeded to give the declaration in favour of Misquitta; making a donation as it were to him of all these lands on a matter without his having title to any of them. The said Tenancy Application No. 1/68 was filed by Misquitta in the said Tenancy Court on 6-1-1968 whereas the order passed by the Mamlatdar and Agricultural Lands Tribunal giving declaration u/s 70(b) and section 32-G of the Tenancy Act was passed by the Mamlatdar and Agricultural Lands Tribunal on 30-3-1968. Since the order came to be passed by virtue of the generous concession made by Mr. Pai, no question arose of the Receiver's filing any appeal against the same.

9. By the said order dated 30-3-1968 the Mamlatdar fixed the compensation payable to the owners at Rs. 20,985.00 and it appears that the tenant was given 5 years time to pay the said amount by 5 yearly instalment. It is the case of defendant No.1 that a sum of Rs. 22,048.55 Ps. was deposited by Misquitta in the A.L. Tribunal's office on 28-9-1970 and a further sum of Rs. 262.10 was also paid by him on 19-5-1971. In the meantime, it is contended by defendant No.1, on 8-7-1970 entry M.E. 6127 was made by the revenue authorities entering the name of the said Misquitta as a deemed purchaser of the lands u/s 32-G as per the order of the A.L.T. dated 30-3-1968. However, it is stoutly contended on behalf of the plaintiffs that no notice in respect of this entry or the next entry No. M.E. 6328 was received by the plaintiffs from any quarters. On 14-5-1971 Misquitta died. Defendant No.1 is his wife and hence, heir and legal representative.

It is defendant No.1's case that on 22-12-1971 a certificate was received by her u/s 32-M of the Tenancy Act of having become the deemed purchaser of the land in question and on 3-5-1973 entry M.E. 6328 came to be made in the Revenue Record entering the name of present defendant No.1 as holder (Kabjedar) of the said properties.

It is the further case of defendant No.1 and defendants Nos. 3 to 6 as well that not only that the Receiver withdrew the total amount of Rs. 23,010.10, but the said amount was distributed by the Receiver among all the sharers, who are the plaintiffs in this suit, and the plaintiffs have received the said amount of compensation from the Receiver. In these circumstances, the case of the contesting defendants is that it is futile on the part of the defendants that they were un-aware of the proceedings instituted by Misquitta u/s 70(b) and section 32-G of the Tenancy Act.

It is also the further contention of the contesting defendants that in any event the receipt of the said amount of Rs. 23,010.10 by the plaintiffs constitutes an estoppel against them from denying the fact that Misquitta had lawfully become the deemed purchaser of the suit land.

10. I will now summarise and set out the substance of the case sought to be made out by the plaintiffs, by defendant No.1 and defendants Nos. 3 to 6.

The plaintiff's case is that :---

(a) The plaintiff's suit is not based only on title. Partly it is. But their original title is not a matter of dispute at all. It is no doubt contended by the Counsel of the contesting defendants that to none of the tenancy proceedings, 8/54, 49/56-57 or 1/68, the plaintiffs were necessary parties. But that contention is not based upon the plea that the plaintiffs had no title to the lands in question. The contention is based upon the plea that the plaintiffs were fully and/or sufficiently represented by the Receiver and that, hence, the orders passed in Tenancy Applications No. 8/54 and 1/68 are wholly binding upon the plaintiffs. But this plea clearly shows that the original title of the plaintiffs was never in dispute.

(b) The present suit of the plaintiffs is based principal upon fraud perpetrated by defendant No.1's husband, Misquitta upon the Tenancy Court (in conspiring with some officers of the Tenancy Court) upon this Court and upon plaintiffs (in conspiracy with some officers in the (Receiver's office) with a view to keep the plaintiffs in the dark about every adverse order obtained against them at the hands of the Mamlatdar. Case of the plaintiffs is that to each of the proceedings, 8/54, 49/56-57 and 1/68, the plaintiffs were the most necessary parties, to the knowledge of Misquitta. The very fact that the dead owner was impleaded in all these proceedings and, further that the farcical show was made of service of notice in respect of each of the above "proceedings leaves no room for doubt that

(i) this was all a fraud, and

(ii) this fraud was perpetrated with the help of the officers of the Mamlatdar's Court and

(iii) probably this fraud was perpetrated, not without the active co-operation and/or connivance of the Receiver's officer attending to this litigation on the Receiver's office.

(c) The further case of the plaintiffs is that it was strictly on account of this well calculated fraud that the plaintiffs were incapacitated from getting the vital and precise information as regards the order passed by the Mamlatdar and Agricultural Lands Tribunal against the plaintiffs dated 30-3-1968 adversely against the plaintiffs holding that Misquitta had become the deemed purchaser of the land.

(d) It is their further contention that they received the necessary information about the fraud perpetrated by the plaintiffs for the first time on 4-8-1983 when they got the certified copy of the Mutation Entry No. 6328. According to them, the period of limitation for the suit based upon fraud starts from the date of their awareness of the fraud and that, hence, the present suit dated 15-10-1985 is within limitation.

10(A). The case of the contending defendants is that :-----

(a) The substance of the case of defendant No.1 is that though the dead owner Haji Ali Mohammad Haji Cassum was made party to the relevant tenancy proceedings (8/54,49/56-57 and 1/68), it was just a mistake; that since there was already a Receiver appointed for managing the plaintiff's property it was not at all necessary to implead the owners of the property because the Receiver completely represented the estate of the deceased belonging to the plaintiffs at the time of the Applications. Contention is that since the management of the property was being looked after by the Receiver exclusively, the order passed by the Mamlatdar against the Receiver was binding, with equal force upon the plaintiffs.

It is the further contention that, in any event, the plaintiffs were all along aware of these proceedings and they allowed the Receiver to represent themselves in the proceedings and that it is now too late for them to contend that the order passed against the Receiver was not binding upon them. They thus deny the perpetration of any fraud on the part of Misquitta.

(b) In any event the plaintiffs became aware of the fact that Misquitta had been declared the deemed purchaser of the land by a Competent Court at least when they received their share of compensation from the Receiver. If at all there was the existence of any fraud, defendant No.1 contends, the plaintiffs became aware of the same long before 1974. They contended that there is evidence to show that the returns were filed on behalf of some of the plaintiffs u/s 17(2) of the Maharashtra Agricultural Lands Ceiling Act and an affidavit sworn by plaintiff No. 5 which documents show their awareness of the ownership acquired by Misquitta by virtue of the order of the Mamlatdar in Tenancy Case No. 1/68.

The suit filed by the plaintiffs in the year 1983 (15-10-1983) is therefore, hopelessly barred by limitation even on the assumption that some fraud was committed by somebody as alleged by the plaintiffs.

Nextly, the City Civil Court has no jurisdiction to entertain and try the suit for two

reasons :---

(i) the jurisdiction is barred by section 85 of the Tenancy Act and

(ii) the Court has no pecuniary jurisdiction to entertain the suit because, in the ultimate analysis, the suit is essentially for possession of the suit land from defendant Nos. 1 and 3 to 6 to the Receiver, defendant No. 2.

Contention is that it is essentially a suit for possession and that, hence, the valuation of the suit must be made upon the market value of the land. According to defendant No.1, the market value of the land far exceeds the pecuniary jurisdiction of the Court and hence, the Court has no jurisdiction to entertain the suit; that in any event, defendant No.1 has acquired title to the suit land by adverse possession because initially Misquitta and thereafter defendant No.1 had been in un-interrupted possession of the suit lands, rightly or wrongly, for a full period of 12 years before the date of the suit and that even assuming, therefore, that the plaintiff's suit is based on fraud and not merely on title, still defendant No.1 having perfected her title by adverse possession long before the date of the suit, the plaintiff's cause of action based upon the alleged fraud becomes illusory.

As regards lands Survey Nos. 272 and 273/2 contention of defendant No.1 is that these lands have already been sold, by the order of the Court, to the Bombay Municipal Corporation. Contention is that whatever may be the dispute between the Corporation and defendant No.1 inter se the plaintiffs have lost their title to these lands and hence, their claim of possession even of these lands is misconceived.

Lastly, it is the contention of defendant No.1 that the plaintiff's suit is also barred on the principle of estoppel.

10(B). The defence of remaining defendants Nos. 3 to 6 is more or less the same as that of defendant No.1 because, as stated above, these defendants must sail or sink with defendant No.1. But these defendants have tried to make out certain additional defence not available to defendant No.1. It is based upon the principle embodied in section 41 of the Transfer of Property Act. Contention is that defendant Nos. 3 to 6 are bona fide transferees for value without notice. Plea is that the plaintiffs allowed the name of Misquitta and defendant No.1 to be shown in the Revenue Record as Kabjedar of the property and relying upon their entries in the said Revenue Record these defendant have entered into an agreement to purchase the said properties, taken possession of the same and have spent huge amount for constructions on the same. Apart for the plea of general estoppel therefore having regard to the provisions of section 41 of the Transfer of Property Act, the sale effected or intended to be effected by defendant No.1 is binding upon the plaintiff.

x x x x x x x x x x x

13. Appeal from Order No. 162 of 1985 was argued, as the main appeal, by the learned Counsel Mr. M.M. Sakhardande, appearing for original defendant No.1.

He questioned the correctness of the lower Court's judgement vis-a-vis four points :-

(a) the trial Court's jurisdiction to entertain the suit;

(b) bar of limitation;

(c) estoppel operating against the plaintiff;

(d) on merits, but only on the fringe, with the contention that, according to him, the Tenancy Application No. 8/54 & 1/68 were valid inspite of the fact that the real owners, viz. the plaintiffs were not made parties to the said application.

(a) The question of jurisdiction was agitated by him only with reference to the Court's pecuniary jurisdiction under the Suit Valuation Act and the Court Fees Act.

The contention urged by Mr. M.M. Sakhardande was that the plaintiff's suit was beyond the City Civil Court's pecuniary jurisdiction. An apparently attractive argument was advanced by him. He relied upon the development agreements entered into between defendant No.1 on the one hand and defendant Nos. 3 to 6 on the other and pointed out the price for which the lands were sought to be purchased by the ultimate purchaser long before or some time before the date of the suit. He pointed out that the value went to lakhs of rupees. He invited the Court's attention to the prayer clauses in the plaint as well as in the Notice of Motion and pointed that the suit was for nothing else but for possession of the suit land though the prayer was that the possession should be taken from the contesting defendants to be handed over to the Receiver, defendant No. 2. According to him, the nature of the suit was not changed just because possession was asked not for the plaintiffs, but for defendant No. 2, the Receiver.

In this connection, he invited my attention to the provision of section 5(iv)(d) as also section 6(v) of the Court Fees Act. According to him, section 6(iv)(d) had no application to the nature of the instant suit. He contended that only Clause (v) of the said section 6 applied and according to him the value of the suit land, as per said Clause (v) had to be computed as per the market value of the land as on the date of the suit. He submitted that after defendant No.1 had become the owner of the suit land under the Tenancy Act and at the time when she entered into an agreement with defendant Nos. 3 to 6 for development and sale of the lands and in any event on the date of the suit, the lands had ceased to be agricultural lands and ceased to be governed by Clauses (a) to (c) of said Clause (v) of section 6 of the Court Fees Act.

A very neat answer is given by Mr. Samant to this argument. I will refer to the same, at length, when I deal with his arguments. At this stage, I may point out very brief the answer to this plea. The plaintiffs contention is that the suit lands never ceased to be the agricultural lands. That was so because in the first place, the question has to be decided with reference to the averments made in the plaint. As per the plaintiff's Misquitta was never a tenant of the suit lands.

Further, even assuming that he had some kind of right in respect of any of the suit lands, the order passed in Tenancy Application No. 1/68 was a nullity on several grounds such as fraud, non-joinder of most necessary parties and so on. If this plea is made good, it may follow as one of the many results that no valid order was passed by any Authority converting the lands, which were admittedly agricultural lands till the year 1971, into non-agricultural lands. Even assuming, therefore, that at the instance of Misquitta or his wife, present defendant No.1, any such order of conversion of user of the lands, from agricultural to non-agricultural, was passed by the revenue authorities, the order was blatantly illegal, inter alia, because it would be an order passed at the instance of persons having no title to the same and having been passed behind the back of the true owner of the lands. The position, therefore, would be that the lands would continue to be agricultural lands as before, and as such, would be very much governed by sub-clause (a) of Clause (v) of section 6 of the Court Fees Act. This means that the value of the lands will be only the sum equal to 121/2 times of the survey assessment and the Court-fee shall be payable on the basis. The suit has been valued by the plaintiffs on this very basis which is clear from the averments made in para 33 of the plaint.

To my mind, this answer to the 1st point raised by Mr. Sakhardande is almost conclusive. That apart, Mr. Samant, argued the question even on the assumption that the suit lands had ceased to be the agricultural lands and had to be valued on the basis of their market value on the date of the suit and pointed out that it was impossible to hold that the price of the land would be more than Rs. 50,000/- on the date of the suit.

I will refer to that part of the argument while dealing with the submission made by Mr. Samant.

(b)(i) as regards the plea of limitation, Mr. Sakhardande's contention was two-fold. He accepted the fact that the Plaintiff's suit was based on fraud alleged to have been committed by defendant No. 1 against the plaintiff. But he did not accept the position that :---

(a) The plaintiffs got knowledge of the fraud on the date mentioned in the plaint;  
or

(b) the cause of action to file the instant suit accrued to the plaintiff on the date when they or any of them got knowledge of the said fraud,

In the connection, Mr. Sakhardande tried to take me through the various proceedings before the receiver in the Administration suit as also the various documents filed in the Court in that suit as also elsewhere by or on behalf of the present plaintiffs and contended that all those proceedings and documents point a finger at the fact that most of the plaintiffs were fully aware of the pending tenancy proceedings instituted by Misquitta and that, in all probability, most of them were fully aware even of the fact that Misquitta had been held by the tenancy Court to have become the deemed purchaser of the suit land and that he

had paid the full compensation for the said purchaser and, this is more important further that each of the plaintiffs had in fact received his share of the said amount of compensation through the Court Receiver.

These facts were strongly relied upon by Mr. Sakharkande for two purposes:

(a) for contending that the plaintiffs, contention that they got knowledge of the order in favour of Misquitta in Tenancy Application No. 1/68 only in the year 1983 was false & futile; and

(b) for contending that, In any event, the above mentioned conduct of the plaintiffs estopped them from questioning the title of Misquitta or defendant No.1 and consequently of the remaining contesting defendants.

This argument has been advanced by the Counsel appearing for all the contesting defendant. I will, therefore, deal with the argument at length after referring to the arguments of the other Counsel. At this stage, I may only mention the brief answer to the argument. So far as the factum of the Plaintiff's knowledge relating to the order passed by the Tenancy Court in Tenancy Application No. 1/68 is concerned, the sum and the substance of what is brought on record by the the contesting defendants goes to show only this much that:-

(a) some of the plaintiffs were aware of the facts that Misquitta had instituted certain proceedings against the Receiver; and

(b) that the receiver had been contesting the same.

It is not brought on record that each of the plaintiffs was aware of either the fact that:---

(a) Misquitta had instituted any such proceedings against the Receiver: or

(b) that any proceedings were instituted fraudulently against the plaintiffs as such.

So far as the receipt of the compensation was concerns, there is no dispute that the plaintiffs received their share of compensation paid by Misquitta. But as pointed by Mr. Samant, the Court Receiver used to send cheques to the individual shares (the present plaintiffs) for the share of each of them in the income of the entire property and the plaintiffs went on receiving the share of their income. Mr. Samant pointed out that all that the Court Receiver informed the plaintiffs was that the cheques for their share in the income from various items were being sent to them, keeping them in the dark about or being blissfully vague about the exact nature of the income, the share of which was sent to each of the share by cheques. It was pointed out that the plaintiffs were numerous. It is not as if that all of them are in Bombay or even in India at all times. The plaintiffs were placing blind reliance upon the Receiver, who was a respectable Officer of the Court, least suspecting that come one or more persons in the Receiver's office might be playing mischief or might be indulging in negligence. I have examined the conduct of the Receivers office and particularly that of the Receivers agent

and I have tentatively found that his negligence in this matter, while defending the proceedings instituted by Misquitta against him as well as against the plaintiff, is so ungracious that it atleast borders upon culpable negligence and gives rise even to a well founded suspicion that a deliberate attempt to sacrifice the interest of the plaintiffs could not be ruled out. If this is the positions it would not be difficult for the Court to take the view that defendant No. 1 and some busy body in the Receivers office managed to keep the plaintiffs and even their Solicitors in the dark as regards the heinous part played but the Receiver's agent in the Tenancy Court against the plaintiffs and even about the fact that the ultimate order of the Tribunal Holding that Misquitta had become the deemed purchaser of the land was kept back by the Receivers office from the plaintiffs.

If this position is established, than it will not be difficult for the plaintiffs to succeed in their plea that they got realisation of the fraud practised upon them and the orders obtained against them only on or about the dates mentioned in the plaint. As stated by the learned trial Judge all this requires leading of elaborate evidence and examination of the proceedings of and before the Court Receiver in the Administration Suit. An inquiry as to the Acts, omissions and deeds of the Receivers office may also be called for in this behalf. To non-suit the plaintiffs at the stage of the Notice of Motion by holding that the plaintiffs got knowledge of the fraud, which is almost an admitted and established fact, practised by Misquitta would be highly unjust and inequitable

(ii) the second line of argument of Mr. Sakhardande, which was towed also by the other Counsel, was based upon the supposed acquisition of title by Misquitta by adverse possession. Contention was that even assuming that Misquitta had perpetrated the alleged fraud and the plaintiffs got knowledge of the same on the dates mentioned in the plaint, still Misquitta or defendant No. 1 had already acquired the title to the suit land by adverse possession long before the said dates.

Certain dates referred to by Mr. Sakhardande in this connection may be mentioned:-

The order passed by the Tenancy Court, courtesy Mr. V.M. Pai, u/s 70(b) of the Tenancy Act holding Misquitta to be the tenant of all the 15 lands u/s 32-G holding that Misquitta had become the deemed purchaser of the land is dated 30-3-1968. Mr. Sakhardande contended that Misquitta was undisputedly in possession of these lands in that date, which is evident from the entry in the Records of Right. No doubt an appeal was filed against the order, but not by the Receiver. Tenancy Appeal No. 7/68 was filed by Vikyalal Investments and that too was withdrawn later on. The Court Receiver filed no appeal against this order at all. Mutation Entry No. 6127 was made in favour of Misquitta in the Record of Right as purchaser of the suit land u/s 32-G of the Tenancy Act, as per the Tenancy Court's order dated 30-3-1968, on 8-7-1970. According to Mr. Sakhardande, Misquitta's possession of the land was that of an owner at least on this date , as is evidenced by this entry. The full price fixed by the Agricultural

Lands Tribunal was paid by Misquitta or defendant No.1 by 19-5-1971 and the certificate was received by defendant No. 1 as regards Misquitta's ownership u/s 32-M of the Tenancy Act on 22-12-1971.

Contention was that it would be only if the possession of Misquitta or defendant No.1 was held to be adverse possession as from 22-12-1971, that is, only, when the certificate u/s 32-M of the Tenancy Act was received by her and not earlier, then she can be said not to have acquired title to the suit lands by adverse possession on the date of the suit. Contention, however, was that there is no reason why the starting point of the adverse possession should be extended till 22-12-1971, submission being that Misquitta during his life time and after his death on 14-5-1971 the 1st defendant, had already started being in possession on the lands as owners quit adversely to each of the plaintiffs. It was contended that no rent was paid by them to the Receiver at any time after 30-3-1968 and that hence, their possession must be deemed to be that of owner. But it was fairly conceded that in fact there is no evidence whatsoever that Misquitta paid rent to the Receiver or to the plaintiffs at any time the history whatsoever. All the time it has been the contention of Misquitta that he was the Tenant of the suit land. But as to who created the tenancy in his favour, who allowed him to cultivate the suit land, what was the rent paid by him in this connection and as to when and to whom he paid rent at any time in the history is something about which defendant No.1 has observed eloquent reticence. Not one piece of evidence could be placed before the Court of Misquitta having paid rent to any of the plaintiffs or the Receiver at any time. Some arguments were flourished before the Court showing payments to the Receiver. But the Receiver has been repeatedly saying that all he had done was to allow Misquitta to cut the grass already grown on the land and that the receipt was for the price of the grass cut and taken away by Misquitta. The plea that Misquitta never paid any rent to the Receiver after 30-3-1968 is, therefore, futile. The fact that Mutation Entry was made in the name of Misquitta as on 8-7-1970 may be equally futile. No evidence is brought on record to show that any or each of the plaintiffs was aware of the said entry before the dates mentioned in the plaint. The facts that Misquitta was claiming tenancy may be taken to be an established fact. But the fact that he got his status converted to that of an owner to the knowledge of the plaintiff is a matter which requires leading of evidence. No presumption under the Land Revenue Code can be drawn in such a case, because the original entries in favour of Misquitta were pencil entries, never confirmed by the proper authorities and were on the face of them, suspicious entries. The entry dated 8-7-1970 was the result of the order passed by the Tendency Court unmindful of the fraud being practised upon itself. In these circumstances, it will be open for the plaintiffs to show that the ingredient of adverse possession viz. *nec vi, nec clam, nec precarius* (possession open and not stealthy) existed in these case.

(iii) But this apart question is to whether the plaintiffs got cause of action for filing the suit or not. If the suit is based on fraud, the fact that the defendants have acquired title by adverse possession before the plaintiffs knowledge about

the fraud would be neither here nor there. In this connection, to provisions shall have to be reconciled. Mr. Sakhardande relied upon Articles 58 and 64 of the Limitation Act and contended that the plaintiffs suit was barred on both the Articles. Contention was that this suit was for declaration and possession and that the suit for declaration was barred because the right to sue for declaration accrued to the plaintiffs immediately after the order of the Agricultural Lands Tribunal was passed on 30-3-1968.

It is impossible to agree with this contention. In the first place, the plaintiffs contention has been that the impugned orders of the Tenancy Court were void and illegal. No declaration is necessary for such cases. It is the settled position of law now that a void and illegal order need not be set aside and hence declaration in that behalf need not be asked for Article 58, therefore, does not come into the picture at all. Assuming that the same comes into the picture, still the terminus-a-quo for such a suit is the date when the right to sue first accrued to the plaintiff. When the suit is based upon fraud and when the fraud comes to the knowledge of the plaintiffs in the year 1983, the suit filed in the year 1983 itself can hardly be said to be barred under Article 58 of the Limitation Act.

So far as Article 64 is concerned, the Article has no application at all. The plaintiff's suit is not based merely on their previous possession and subsequent dis-possession. Their suit is mainly on title and Article 64 has no application to such a suit. The Article applicable at the most would be Article 65. But when the suit is based on fraud, the provisions of section 17 will come into operation. There appears to be an apparent conflict between said section 17 and Article 65 of the Limitation Act. But in such case, it will be at least an extremely arguable point that when there exists a conflict between Sections & Articles in the Schedule, provisions of section 17 would prevail and in that case the suit would be very much within limitation, on the basis of the averments made in the plaint and borne out by the evidence brought on record.

But even assuming that this Article 65 would apply, still defendant No. 1 would have to show not merely the fact that there were entries in the Revenue Record showing Misquitta to be in possession from 1953 onwards, but that certain acts evidencing the possession were done by him. No such act is brought on record. Moreover, the entry in the Revenue Record from 1953 to 1968 or even later on are blatantly suspicious entries.

In the first place, they are mere pencil entries, never confirmed by any of the appropriate revenue authorities. As to how they came into the Record of Right is a mystery. Misquitta never came before the Court with any plea that the Receiver had inducted him as a tenant. He never could show to any Court as to by what authority Misquitta could be inducted as a tenant at any time. On the other hand, there are circumstances showing that there was some kind of collusion between some of the persons in the Receiver's office and Misquitta, as a result of which certain orders were allowed to be passed against the Receiver. No overt act of enjoyment of possession of these lands is brought on record conclusively. In

these circumstances, the very factum of possession of Misquitta or of defendant No. 1 after his death till 22-12-1971 and even for some time thereafter is very much suspect. If the very possession before 22-12-1971 is suspect and if there existed no evidence in regard to the same excepting the paper entries in the Revenue Record, it is futile to contend that possession was adverse to the plaintiff.

I make it clear that, as stated by the learned Judge, all this is a matter of evidence. It will be open for all the parties to prove their case in this behalf, one way or the other, by leading all the necessary evidence. But as the evidence brought on record stands, no definite conclusion could be arrived at in favour of the contesting defendants and hence it must be held that the plaintiffs have made at least a strong prime facie case to prove that their suit is quite within limitation.

(iv) Moreover one more point (besides many others which may crop out of the juridical erudition and ingenuity of the plaintiff's Counsel during the course of the hearing of the suit) will have to be faced by the contesting defendants. Admittedly plaintiffs are Muslims, not Hindus. They are no doubt the co-owners of the suit lands. Even their shares in the entire property left by the deceased Haji Ali Mohd. Haji Cassum are fixed as evidenced by the preliminary decree in the Administration Suit, passed on 25-11-1952. But none of the plaintiffs can claim to be the agent of or for the remaining co-owners/plaintiffs. The suit in which the Court Receiver is appointed is an administration suit amongst Mohammedans. It is not a dissolution suit of any partnership firm where each partner is the agent of the other partners; nor is it a suit for partition of Jt. Hindu family where a Karta can bind the other members of the joint family as regards his acts, omissions and knowledge. It follows that even if one plaintiff is proved to have no knowledge of the relevant facts, the present suit would be maintainable at his instance alone.

It was contended that plaintiff No. 5 was acting as the Power of Attorney Holder for some of the other plaintiffs, that he had knowledge of the order of the A.L. Tribunal u/s 32-G of the Tenancy Act making Misquitta the owner of the suit lands u/s 32 of the Tenancy Act and that he gave certain instructions to his Solicitors to take certain steps on behalf of himself and on behalf of the some of the other plaintiffs for whom he held the Power of Attorney. Contention is that the knowledge of the Power of Attorney Holder must be deemed to be that of the other whom he represented.

Several answers present themselves to these arguments. I will mention only those which were put to the Counsel for the defendants.

In the first place, I am not at all convinced that plaintiff No. 5 or any other plaintiff for the matter of that, knew about the real mischief played by Misquitta and about the part played by the Receiver's office as also about the noticeable connivance indulged in by each of the Mamlatdars trying the particular Tenancy

proceedings at the patent fraud practised by the manifestly mischievous Misquitta in connection with each of the tenancy proceedings referred to above.

Secondly, it is possible that plaintiff No. 5 and some other plaintiffs might have been aware of the fact that the Receiver had been defending some proceedings relating to Misquitta's claim to the tenancy and even to statutory ownership under the Tenancy Act. But their contention that they never knew the final result of the proceeding cannot be lightly rejected. Moreover, they could not have been aware of the seemingly heinous role played by Mr. Pai as the Receiver's representative of making a virtual donation of these lands to Misquitta on a platter by admitting the patently fraudulent claim of Misquitta before the Tenancy Court. All this smacks of fraud and collusion not to mention breach of trust. Neither plaintiff No. 5 nor any other plaintiff could have been aware of this fraud, collusion etc. And knowledge of fraud is the crux of the plaintiff's cause of action.

That apart, it is arguable that few other plaintiffs for whom plaintiff No. 5 held the Power of Attorney could not be fastened with each act or omission of plaintiff No. 5 or with each piece of knowledge had by plaintiff No. 5. The scope of the authority of plaintiff No. 5 under the Power of Attorney will have to be investigated into which can be done only at the time of the hearing of the suit, not at the time of this Notice of Motion. There are well recognised limits to the evidence to be scanned at the stage of such Notice of Motion.

Moreover, what about the other plaintiffs for whom plaintiff No. 5 held no Power of Attorney and to whom no knowledge even of the existence of any of the fraudulent tenancy proceedings could be imputed ? They could legitimately repose trust in the Receiver to look after their interest. And we have seen how the Receiver's officers discharged their obligation under the trust. Do these plaintiffs not get a cause of action to file this suit when they become apprised of the fraud ?

It was an extremely arguable contention urged on behalf of the plaintiffs that even if just one plaintiff was proved to be totally unaware even of the existence of the fraudulent proceedings of Misquitta, he could have the entire order dated 30-3-1968 passed by the Mamlatdar and Agricultural Lands Tribunal in Tenancy Application No. 1/68 under sections 70(b) and 32-G of the Tenancy Act quashed in the instant suit, knowledge of the remaining plaintiffs notwithstanding. It would be no answer to this plea that as per the preliminary decree in the Administration Suit, such plaintiff was having only a specified share in the property. His share that was specified by the preliminary decree of the year 1952 was in the entire property left by the deceased which was the subject matter of the Administration Suit, not in any specific or particular property. Ultimately there shall be the division of the property by metes and bounds and that would be done generally on equitable principles. One share may get only the cash, another may get only lands, the third may get only house property and so on. All this will be according to the extent of share of each sharer. But the point is that until the division by metes and bounds takes place, each sharer has claim to the

entirety of each piece of the property left by the deceased is limited only to the shares specified by the preliminary decree.

I do not intend to express my final opinion on this aspect. But the point is that this legal and factual position needs investigation and plaintiffs must be held to be having a strong prima facie case in that behalf.

(c) So far as the plea of estoppel is concerned, its merit is lesser still.

Estoppel is alleged on two-fold grounds:---

(i) Allegation is that the plaintiffs were aware of all the tenancy proceedings instituted by Misquitta and in any event of Tenancy Application No. 1/68. My attention was sought to be invited to the minutes of certain meetings before the Receiver to show that the Solicitors of some of the plaintiffs were appraised by the Receiver of the tenancy application filed by Misquitta against the Receiver. So far as Tenancy Application No. 1/68 is concerned, the plea is that the Receiver appraised the Solicitors of some of the plaintiffs of the said notice received by himself. It is argued on this ground that the plaintiffs must have been aware of the proceedings at all the material times and if that is so they are estopped from denying the knowledge of the same as late as in the year 1983 when the instant suit was filed.

The factual part of this allegation is hotly contested by Mr. Samant and I must mention here that the arguments made by him were not at all devoid of substance. But it is really un-necessary for me to examine this part of the argument of the respective parties. I am prepared to assume, for the sake of argument, that some of the plaintiffs were aware of both the proceedings, viz. Tenancy Application No. 8/54 and Tenancy Application No. 1/68. But the question is as to whether estoppel can be spelt from this much of awareness of some of the plaintiffs. We have seen that so far as Tenancy Application No. 1/54 was concerned, the ultimate order passed in the same by the Mamlatdar is bad for more reasons than one. It was an order passed only against the Receiver and none of the Counsel for any of the defendants had any answer to the question as to how the order was valid if the proceedings against the Receiver was itself untenable since it was instituted without the leave of the Court by which the Receiver was appointed. The provision for the leave is mandatory provision. The correctness of the view taken by the lower Court in this behalf could not be controverted by any of the learned Counsel appearing for the contesting defendants. That was the reason why they banked more upon the legality and finality of the tenancy Court's order in Tenancy Application No. 1/68. Which proceedings were instituted by Misquitta after taking the requisite leave from the Court. This clearly means that the order passed in Tenancy Application No. 8/54 is undisputedly bad.

This conclusion is further reinforced by the significant fact that although Tenancy Application No. 8/54 was filed by Misquittas for declaration u/s 70 (b) of the Tenancy Act that he was a tenant in respect of 12 of the suit lands and although

he had obtained the necessary declaration from the Mamlatdar, still he asked for identical declaration, inter alia, in respect of the self-made lands, once again in Tenancy Application No. 1/68.

The entries in the Record of Rights further reinforces this conclusion in that the order in TNA. 8/54 was never acted upon either by Misquitta or the Revenue Authority. This is clear from the fact that the entry for the year 1953-54, which was just a pencil entry and which formed the basis of Misquitta's fraudulent Application No. 8/54. Had been continued in the same -(iii)61 form right till the year 1970. In the same form, entry for the year 1953-54 was a pencil entry. The order fraudulently obtained by Misquitta in TNA 8/54 is dated 14-5-1956. But inspite of this order, no confirmed entry is made in the Revenue Records showing Misquitta to be the tenant in respect of the said 12 lands. Inspite of the order of the Mamlatdar, the entries in favour of Misquitta in the Revenue Record in connection with the said lands continued to be mere pencil entries which have scant evidentiary value and no presumptive value whatsoever. This fact clearly shows that the order passed by the Mamlatdar in TNA 8/54 was never acted upon. The order was ignored by all the parties concerned including Misquitta and that was the reason why he filed another application TNA 1/68 for identical relief as prayed for in TNA 8/54 inter alia, in respect of the self-same 12 lands. No question of estoppel would arise against any of the plaintiffs vis-a-vis this order in TNA 8/54.

So far as the order in TNA 1/68 is concerned, even assuming that the plaintiffs were aware of these proceedings, all that can be imputed against them is that they were aware about the fact that some proceeding was instituted by Misquitta against the Receiver. The minutes of the proceedings would at the most show that they had no objection to the Receiver's defending the said proceedings instituted against himself. Such an act would not mean that they had constituted the Receiver as their agent for defending the suit even on their behalf. Such an agency being given by the plaintiffs to the Receiver could have been perhaps inferred if the plaintiffs were parties to the said proceedings TNA 1/68 along with the Receiver and further, if the plaintiffs had entrusted the work of representing themselves in those proceedings in addition to the work of defending himself. I do not wish to express any final opinion on this point. But I/am prepared to assume this to be the legal position . When, however, the plaintiffs were not all the parties to the proceedings, contention that they must have constituted the Receiver as their agent to defend the proceedings instituted by Misquitta not against themselves but against the Receiver himself and himself alone is a meaningless contention having no basis in procedural jurisprudence. A person "A" constitutes another person "B" as his agent to defend the proceedings against himself i.e. against "A". But if the person "A" acquiesces in the person "B" defending certain proceedings instituted no power against "A" but against "B" himself, no question of any agency being given by "A" to "B" to defendant "A" could be inferred. The quintessence of the plea of estoppel urged by Mr. Sakhardande as also by some other Counsel in the lower Court as well as before

me in the plea of agency allegedly given by the plaintiffs to the Receiver. To my mind, the plea is devoid of any legal basis. The plea of estoppel based upon such a plea must, therefore, be rejected.

(ii) The other ground of estoppel urged by Mr. Sakhardande is that each of the plaintiffs have received his share of the compensation paid by Misquitta to the Receiver. The receipt of this amount of compensation, according to the learned Counsel, constitutes estoppel against the plaintiffs.

I am unable to accept this submission. In the first place, the learned Judge has given an apt answer to this plea by pointing out the plaintiffs' explanation thereto. The plaintiffs have been emphatically pointing out to the Court that it was not as if that the Receiver sent the cheques to them only for the amount of compensation. Each of the plaintiffs was receiving his share in the income of the entire property periodically and when compensation was received by the Receiver, probably from the Tenancy Court, it was disbursed by the receiver amongst the sharers along with other income of the property which was the subject matter of the Administration Suit. The sum received by each of the sharers by way of compensation in respect of the suit lands was not specially earmarked by the Receiver while sending the cheques for the amount. If this is the correct evidential position, then the knowledge of the fact that the plaintiffs received compensation from Misquitta cannot be imputed to the plaintiffs at all.

But even assuming that the plaintiffs did have such knowledge, the question is to whether the ingredients of a plea of estoppel can be said to be present in the particular case. It is defendant No. 1's own contention that she had been in possession of the suit land. She was thus liable to pay either rent or mesne profits to the plaintiffs. By receipt of the amount of compensation by the plaintiffs, neither Misquitta nor defendant No. 1 can be said to have acted to their detriment. This important ingredient of the plea of estoppel, viz. the change of the position, to the detriment of person setting up estoppel is completely absent in the present case. The plea of estoppel must, therefore, fail.

(d) This brings me to the last ground urged by Mr. Sakhardande in justification of the order in TNA 1/68 on merits.

As mentioned at the beginning of this para 13, this plea purporting to be related to the merits of the defendants' case, apart from the earlier technical pleas, was touched by the learned Counsel only on the fringe of the merits. His contention was that when the Receiver was impleaded in the two applications, 8/54, & 1/68, the impleading of the plaintiffs was wholly unnecessary and that, hence, the impleading of the deceased owner and the fraudulent service upon him were matters of no legal consequences.

The substance of the plea is that once a Receiver is appointed in Administration Suit for administration of the Estate, the Receiver is the custodian of the entire property, that, hence the property which is the subject matter of the Administration suit vests in him. The alternate contention is that the Receiver at

least represents the body of owners in any legal proceedings relating to the property in question, instituted either by or against the Receiver.

On first principles, the plea of vesting of the property in the Receiver is untenable. A mere glance at the scheme of the Order 40 of the C.P.C. juxtaposed against the principles of Insolvency Law and the Companies Act would be enough to show the distinguishing feature between the two. It is elementary knowledge that when a Receiver is appointed by the Insolvency Courts, either under the Provincial Insolvency Act or the Presidency Town Insolvency Act, upon the adjudication of any person as insolvent, the property of the Insolvent vests ipso facto in the Receiver absolutely. The insolvent continues to have no locus standi whatsoever to deal in the property. He cannot file a suit for enforcing any of his proprietary rights after he is adjudicated as insolvent because he has none and after the Receiver is appointed as regards his property nor can anyone else file a suit against the insolvent for enforcement of any property right against the insolvent. The suit has got to be filed against the Receiver only and to such a suit the insolvent will not be even a proper party, let apart he being the necessary party. The insolvent ceases to have locus standi in any Civil Court after his adjudication as insolvent, except. Of course, in the Insolvency Court itself.

Identical is the position of a Joint Stock Company in liquidation. When the liquidator is appointed, the property of the Company vests absolutely in the liquidator ipso facto and no civil proceedings can be instituted either by or against the Company or its directors in relation to the property claimed by or from the Company.

The legal position of a Receiver appointed under Order 40 of the C.P.C. is, however, noticeably different. He has got the right to manage the property as per the direction of the Court. But that does not mean that the property vests in him. But there existed a well marked distinction in the suit filed by him for the purpose of the management of the property and the suit filed against him for contesting the title of the real owners in the property. No person can file a suit against such Receiver alone for denying or affecting the title of the owners in the suit property without making the owners a party to such a suit or proceeding, the Receiver would also be a necessary party. But the parties most imperatively necessary for such a suit or proceedings relating to or affecting the title of the owners in the suit property are the owners themselves. No decree or order can be obtained against the owners behind their back by any person by resort to the expedient of joining only the Receiver to such suit or proceeding. The decree would not be binding upon the real owners.

Reliance was placed by Mr. Sakhardande on the judgment of the Supreme Court in Kurapati Venkata Mallayya and Another Vs. Thondepu Ramaswami and Co. and Another, particularly upon certain observations made therein. The observations read, divorced from the facts and contest of the case, might support Mr. Sakhardande. It is, therefore, necessary to set out firstly the facts of the case and the contest in which the said observations were made.

In that case the plaintiff firm claimed to have supplied 112 bales of DB tobacco strips to the defendant on 5th June, 1946. According to the plaintiff, a sum of Rs. 14,095/- with interest thereon was due by the plaintiff/Company from the defendant/Firm. Since the defendant/Firm denied its liability to pay any such amount, suit had to be filed by the plaintiff/firm against the defendant/Firm; but before filing of the suit, in an entirely independent suit filed by some one else, a Receiver had been appointed for realisation of the debts due to the plaintiffs/firm. (For the sake of convenience, we will call the suit filed by the plaintiff/Company as Suit "A" and the independent Suit filed against the plaintiff/firm by some one else as Suit "B".) In suit "B", the Court had made an order on 22nd June, 1949 permitting the Receiver to collect the debts due to the plaintiff/firm. It was in pursuance of this order that the Receiver appointed in Suit "B" filed Suit "A" against the defendant/firm for recovery of the said amount of Rs. 14095/- with interest thereon as the price of 112 bales of tobacco supplied to the defendant/Firm. In the said Suit "A", defendant/Firm contended that the suit was not maintainable because the Receiver had no right to institute the suit in his own name and further that the Receiver had not been expressly authorised by the Court to institute the suit in question (evidently because the order passed by the Court in Suit "B" gave permission to the Receiver only to "collect" the debts due to the Company). In consequence of this plea taken by the defendant/Firm, the plaintiff/Company amended the plaint in suit "A" with the leave of the Court, on 27th December, 1949 by describing the plaintiff in Suit "A" as "Messrs. Thondepu Ramaswamy & Co., represented by I. Suryanarayan Garu receiver appointed in O.S. 275/1948 on the file of the District Munsif's Court, Guntur." In the place of the original description of the plaintiff viz. "I. Suryanarayana Garu Receiver appointed in O.S. 275 of 1948 on the file of the District Munsiff's Court, Guntur". The defendant/firm amended its written statement and contended that this amendment made long after the lapse of the period of limitation, could be of no avail to the plaintiff and that the suit, as originally filed continued not to be maintainable and further, that the suit, as filed as per the amendment in the amended plaint, was barred by limitation. This contention of the defendant/firm was accepted by the trial Court and the plaintiff's suit was dismissed by the Court on this ground.

In Appeal, the High Court took the view that the original suit filed by the Receiver as per the order of the Court for collection of the dues of the plaintiff/firm was perfectly maintainable. The High Court further held that if there was any error in the description of the plaintiff in the suit as originally filed, it was at the most a mis-description of the plaintiff/Company in the cause title of the suit which could be corrected at any time without attracting the plea of limitation. Contention of the plaintiff/Company on merits also were accepted by the High Court and hence the suit of the plaintiff/Company stood decreed.

In Appeal to the Supreme Court, this decision of the High Court was confirmed. In this connection the Supreme Court cited with approval to the judgement of the Calcutta High Court in ILR 34 Cal 305, Jagat Tarind Dasi v. Nabegopal

Chaki,as regards the position of the Receiver and his legal capacity. The following observations of the Calcutta High Court were cited by the Supreme Court:-

"Though he is in one sense a custodian of the property of the person, whom in certain respects he is made to supplant, there seems to be no reason why his power should not be held to be co-extensive with his function. It is clear that he cannot conveniently perform those functions, unless upon the theory that he has sufficient interest in the subject matter committed to him to enable him to sue in respect thereof by virtue of his office, in his own name.

On the whole, we are disposed to take the view that, although a receiver is not the assignee or beneficial owner of the property entrusted to his care, it is incomplete and inaccurate statement of his relations to the property to say that he is merely its custodian. When a Court has taken property into its own charge and custody for the purpose of administration in accordance with the ultimate rights of the parties to the litigation it is custodian legis.

The title of the property for the time being, and for the purpose of the administration may, in a sense, be in the Court. The Receiver is appointed for the benefit at all concerned; he is the representative of the Court, and of all parties interested in the litigation, wherein he is appointed . He is the right arm of the Court in exercising the jurisdiction invoked in such cases for administering the property; the Court can only administer through a receiver. For this reason, all suits to collect or obtain possession of the property must be prosecuted by the Receiver , and the proceeds received and controlled by him alone. If the suit has to be nominally prosecuted in the name of the true owners of the property, it is an inconvenient as well as useless form - inconvenient, because in many cases, the title of the owners may be the subject matter of the litigation in which the receiver has been appointed unless, because the true owners have no discretion as to the institution of the suit, no control over its management , and no right to the possession of the proceeds."

The Supreme Court later on observed as follows :-

"A Receiver who is placed incharge of the property on behalf of a Court can be the only appropriate person who could do so. His function cannot be limited merely to the preservation of the property and it is open to a Court if occasion demands , to confer upon him the power to take such steps including institution of suits in the interest of the parties themselves. Here , apparently the Receiver was not a person with full powers but by its order dated June 26,1949 the Court authorised him to collect debts, particularly as some debts were liable to get barred by time. The Receiver , therefore, had the right to institute the suit in question. It is, however, contended that the order does not say specifically that he should institute a suit . In our opinion , the authority given to the Receiver " to collect the debts " is wide enough to empower the Receiver to take such legal steps as he thought necessary for collecting the debts including instituting a suit. The suit as originally instituted , was thus perfectly competent."

Out of the observations , Mr. Sakhardande has strongly relied upon the following observations of the Calcutta High Court ( which appears by implications to have been approved of by the Supreme Court )-

"The title of the property for the time being , and for the purpose of the administration, may , in a sense , be said to be in the Court ".

It is this observation which is relied upon by Mr. Sakhardande in support of his contention that they suit land s have "vested " in the Receiver and that , hence , the application made by Misquitta , in effect, against the Receiver alone, was a perfectly competent application.

To my mind, the observations made by the Calcutta High Court must be read in the context of the question arising for the consideration of the Court in that case. It was the case where for the administration of the Estate for the benefit of all the parties concerned, the Receiver had to take certain steps and he was given a specific direction by the Court to do so. The direction included, by necessary implication, the direction to file the suit. The question of the plaintiff/firm being made a party to Suit "A" would not therefore, arise. As pointed out by the Calcutta High Court, in that case the partners of the plaintiff/Company had "no direction as to the institution of the suit, no control over its management and no right to possession of the proceeds." But when a third party files a suit against a person in whom the property continues to vest, it cannot be said that he has no discretion but to file a suit only against the Receiver. When he files a suit on title against the real owner, the real owner can always defend the suit and there exist no bar for any person to file a suit against the real owner. To stick to the facts of the Calcutta case, if the plaintiff/firm was to file the suit against the defendant/ Firm for the recovery of the amount, such a suit would not have been competent because the possession of the entire actionable claims of the plaintiff/firm including the dues to itself were in the possession of the Receiver. The right to sue the defendant/firm would be of the Receiver. There could exist a virtual bar operating against the real owner such as the plaintiff/Company to file a suit for recovery of the dues when the Receiver was appointed by the Court for the self same purpose.

On the other hand, in the case where a third party files a suit against the real owner affecting the real owner's title to the property in question there exist no bar against a third party from impleading the real owners in such suit even if the property is or is deemed to be in the possession of the Receiver. It may be that in such a case the Receiver may be a proper or even a necessary party. But likewise the real owners would also be the necessary parties. In the case such as the Administration Suit, the real owners are the subject matter of the Administration Suit. They have very much of "interest" in the said properties, in the legal sense of the term and are very much interested in safeguarding their title probably more than the Receiver would be. For defending the suit, the Receiver might require the Court's permission, but not the real owners. They would certainly be able to defend the suit and if in the Suit their title stands established or

untarnished, the benefit will be had ultimately by the Receiver as well.

But that apart, it is necessary to note that while making an observation that the title of the property may for the time being be said to be in the Court, the High Court had not forgotten to qualify the broadness of the proposition by stating that it may be said to be in the Court only for the purpose of the Administration. Likewise, the High Court has not forgotten to qualify its observation by saying that the title can be said to be in the Court "in a sense". This clearly shows that according to the High Court the title in such a case as is governed by Order 40 of the C.P.C. Does not "vest" in the Court.

When "A" files a suit against "B" in respect of whose property the Receiver is appointed under Order 40 of the Code, he is doing nothing towards the administration of the estate. When the Receiver defends such a suit, he may be said to be taking steps towards administration of the entire estate in question. But a third party filing a suit against the Receiver appointed in an Administration suit does nothing towards administration of the estate which is the subject matter of the Administration Suit. It therefore, follows that if "A" wants to file said suit against "B" questioning or affecting B's title to the suit property would have to make "B" a party to the suit even if, Receiver has been appointed to manage the suit property under Order 40 of the Code and it would not be open for him to remain satisfied by impleading only the Receiver in the suit.

No other authority was cited by any of the Counsel in support of the proposition that even in the case of Receiver appointed under Order 40 of the Code, the property which is the subject-matter of suit for which the Receiver is appointed, vests in the Receiver so much so that the suit in connection with the title to the property can be filed against the Receiver alone without making the real owners parties to the same.

14. But all this apart, in the instant case the position is that there is formidable material on record to show that there was fraud practised by Misquitta not only upon the plaintiffs but also upon the Court. Further, there obtains a formidable material on record to show that there was such culpable negligence on the part of the Receiver's agent in defending the proceeding TEN.A 1/68 that a very reasonable doubt about the collusion between the Receiver and Misquitta existed and there is enough material on record to show that it would be possible for the plaintiff to establish Misquitta to be hand -in -gloves with the Receiver's agent so much so that the latter appears to have committed grave breach of trust against the plaintiffs whom must have placed complete faith in him as a very responsible officer of the Court. If such is the case, then the order passed by the Tenancy Court in pursuance of such fraud and collusion would never be binding upon the real owners.

15. It may be true that plea of collusion has not been specifically taken by the plaintiffs in their against the Receiver's Agent. But from the facts stated in the plaint as also from those which have come on record as undisputed facts, a very

reasonable inference of such collusion can be legitimately drawn. Moreover, Mr. Samant appearing for the plaintiffs have stated before the Court that he is taking early steps for amending the plaint in suitable manner so as to incorporate specifically the plea of collusion between Misquitta and the Receiver's agent. Since the suit is likely to take years before it comes up for hearing, it cannot be said that such an amendment could be disallowed on the plea of delay. The facts constituting the allegation of collusion are already there on record. In these circumstances, I do not see any justification for holding that the order passed by the Tenancy Court in TEN.A. 1/68 is final and conclusive and is binding upon the plaintiffs.

x x x x x x 18. Nextly, Mr. Sakhardande relied upon the notice given by the Receiver terminating Misquitta's tenancy in respect of the 12 lands which were the subject matter of TEN.A. 8/64. The Notice is dated 26-12-1956.

Argument was that the notice specifically mentioned that Misquitta was a tenant in respect of the 12 lands and that the Receiver had purported to terminate his tenancy on the ground of his personal bona fide requirement for user of the land for N.A. purposes. According to the learned Counsel, this spells admission of Misquitta's tenancy.

Now, the whole point is that the Receiver or his agent Mr. Pai has gone on making admissions in favour of Misquitta. Question is whether those admissions are binding upon the plaintiffs. That question cannot be answered by producing more and more of similar material before the Court and by reference to more and more admissions on the part of the Receiver or his agent in favour of Misquitta. Prima facie I am of the view that in the facts and circumstances of the present case, the Receiver could not be said to have been the agent of the plaintiffs and could not be said to have any authority to give admissions and concessions damaging and binding the plaintiffs.

But all these questions not only need examination of the principles and provision of law, but also the examination of the evidence which is required to be produced by the parties. There cannot be any assumption in favour of the defendants at this stage of the Notice of Motion that the Receiver was the plaintiff's agent and that the admissions given by him are binding upon the plaintiffs.

19. Similar is the position relating to the application made by the Receiver's TEN.A. 81/57, under the Tenancy Act, pursuant to the above mentioned notice terminating Misquitta's tenancy. If the Receiver went to the extent of making the application to the Tenancy Court, argued the Counsel, for the recovery of possession of the lands from the tenants, it is not open for the person whom he represents to turn round and contend that the person against whom such an application was made by the Receiver was not their tenant.

Answer to this plea is the same as the one made to the arguments referred to in the above para 18. The argument assumes that the Receiver represents the real owners in a suit filed against the owner affecting their title and that he is their

agent for the purpose of the suit. The proposition needs thorough examination but at least prima facie the propositions formulated in such a broad manner, cannot be upheld. One difficulty in upholding such proposition is upheld, even a total stranger can constitute the Receiver an agent of the real owner, when there is no provision of the law bringing about such a dangerous position.

x x x x 22. Nextly the Receiver's report dated 12-8-1958 was relied upon by the learned Counsel. The report proceeds upon the assumption that Misquitta was a tenant in respect of the suit land. It is difficult to say on what basis such an assumption was made by the Receiver. As stated above, the Receiver had himself taken a plea in the application filed by Misquitta relating to the land Survey No. 28/1, questioning the validity of the proceedings on the ground that it was instituted without the leave of the Court. When the Mamlatdar's decision went against the Receiver he filed an appeal to the Deputy Collector. The appeal was allowed and Revision Application filed against the same by Misquitta was dismissed by the Tribunal. In spite of this position, the Receiver proceeded just to rely upon the declaration given by the Mamlatdar in TEN.A. 8/54 and to assume that Misquitta was a tenant in respect of the 12 lands. The Receiver was not a layman. He was profoundly trained in the intricacies and ten principles of law. It will be seen that Misquitta had proceeded upon the belief that the result of the decision in TEN.A. 49/56-57 was that even the earlier declaration in his favour in TEN.A. 8/54 was a nullity. That must have been the reasons why he refrained from acting upon the said declaration. Even the Revenue Authorities ignored the declarations. No entry was effected in the Revenue Records on the basis of the declaration. Above all, TEN.A. 1/68 he asked for identical declaration and inter alia for the said 12 lands de novo. Still the Receiver chooses to presume the declaration in TEN.A. 8/54 was lawful. This means that the circumstances which cried hoarse about the futility of the order in TEN.A. 8/54 was known to Misquitta was not known to the Receiver or his Adviser while making the said irresponsible assumption that Misquitta was a tenant of the said 12 lands.

Moreover, once again, the question is same. It is an admission or concession by the Receiver. Is it binding upon the plaintiffs ipso facto ?

23. The next document referred to is the letter written by Mr. V.N. Pai, the Receiver's officer addressed, presumably, to the Receiver dated 6th October, 1958. In that letter Mr. Pai has referred to the proceedings instituted by Misquitta and has asked for orders from the Receiver in relation to the question of taking possession of Survey No. 28/1 from Misquitta.

The purpose of reliance upon these documents is the same, namely that the Receiver or his Agent was aware of these proceedings. Hence it does not carry the case of defendant No. 1 any further.

But what is extremely significant about this letter is that in the very second para of the letter Mr. Pai has himself stated that Misquitta was concerned with these lands only in connection with cutting of grass on the same. Thus, it is clear that

Mr. Pai was aware of this factual position and amazingly enough inspite of this awareness he has gone on making admissions after admissions in favour of said Misquitta.

24. Nextly reliance is placed upon the statement made by Misquitta before the Revenue Authorities and the substance of it, it is alleged, is to be found from the relevant extract of the Revenue Record.

The statement is dated 15-10-1966 and even as late as on that date Misquitta has asserted claim only to the 12 lands which were subject matter of TEN.A. 8/54. On this date, for the first time, he started making the claim of tenancy of these lands from the year 1939 and not from 1942 as done by himself in TEN.A. 8/54.

The further significant fact is that the tenancy is claimed as ancestral property. This means that according to Misquitta not he himself but his ancestors were cultivating the land. In the application made by him in this Court in the Administration Suit for leave to file Tenancy Application against the Receiver u/s 70(b) and 32-G of the Tenancy Act this plea is given up and the claim is that he had been personally cultivating the land as tenant from the year 1939. It is impossible to discern any evidentiary value of these documents at least at this stage.

25. The next group of circumstances and documents relied upon by Mr. Sakhardande do not relate to Misquitta's tenancy. They relate mainly to the defendant's plea of Misquitta's adverse possession, of limitation and estoppel.

Mr. Sakhardande argued that Misquitta had been claiming ownership from 1-4-1957 and that the record leaves no doubt about this position. In support of this plea, he also relied upon the judgment of the Supreme Court reported in Sri Ram Ram Narain Medhi Vs. The State of Bombay,

The simple and undisputable answer to this plea is that the record shows no such thing. On the other hand, the Record cries hoarse that Misquitta not only did not assert his title to the suit land as a deemed purchaser u/s 32 of the Tenancy Act, but that he did not even assert his right of tenancy in respect of any of these lands after he had got the void declaration from the Mamlatdar in TEN.A. 8/54, till he made the statement before the Revenue Authorities claiming ancestral tenancy to the 12 lands from the year 1939. It is significant to note that no step was taken by him right till the year 1970 to have the entries in the Revenue Records relating to the suit lands suitably altered from the year 1939 till 1-4-1957 inspite of the declaration obtained by him in TEN.A. 8/54. The entries in the Revenue Records continued to be from the year 1953-54 only and those too only the pencil entries in his favour which cannot have any evidentiary value against the real owners. Significantly enough, no proceedings were taken by the Revenue Authorities u/s 32-G of the Tenancy Act for determining whether Misquitta had become the owner of the suit land or not and for fixing the price thereof. A cursory glance at section 32-G would show that these proceedings

have to be taken by the tenancy Authority suo moto. No application as such is required to be made by the tenant. In this case, neither the authorities had taken any such proceedings suo moto nor had Misquitta even made any application to the authority to set in motion such proceedings. That application was made by him for the first time in the year 1968.

The reason for this need not be sought far away. He was fully aware of the fact that the order obtained by him in Tenancy Court in TEN.A. 8/54, was a nullity, if not for any other reason, just for the reason that the order was passed against the Receiver without the leave of the Court. That was the precise reason why he made a second application before the tenancy Court u/s 70(b) of the Tenancy Act, in TEN.A. 1/68, for declaration that he was a tenant in respect of the 12 lands amongst others. The declaration obtained by him in TEN.A. 8/54 was never acted upon either by him or by the Revenue Authority or the Tenancy Authorities.

Reliance upon *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, is quite misconceived. It was held in that case by the Supreme Court that the title of the lands of which a person was a tenant on 1-4-1957 stood vested in him as from 1-4-1957 and not from any subsequent date on which the order in that behalf was passed by the Agricultural Land's Tribunal in the proceedings taken pursuant to the section 32-G of the Tenancy Act. This legal proposition is deeply entrenched in our Tenancy Law. But it has no application to the facts of the case. The authority spells legal position, not any factual position. If it is an admitted fact or a proved fact that a person is a tenant in respect of the land in question on 1-4-1957, then his deemed purchase will be from 1-4-1957 and not from any subsequent date. But the Authority does not lay down that every person claiming to be a tenant of the land on 1-4-1957 will be deemed to be such a tenant and will be deemed to be a statutory purchaser on that account. The tenancy of the person as on 1-4-1957 has got to be proved first. In the instant case, there are circumstances crying hoarse that Misquitta had played egregious fraud upon the Courts and upon the plaintiffs for the purpose of establishing his tenancy in respect of the suit lands and there existed next to no evidence, except his bare words coupled with the most suspicious pencil entries in the Revenue Records to prove his claim.

x x x 28. The learned Counsel nextly addressed this Court on the question of the peculiar position of the lands Survey Nos. 272 and 273/2

He pointed out that these lands have been sold by the Receiver, with the permission of the Court, to the Municipal Corporation of Greater Bombay, by the Sale Deed dated 17-12-1903. His grievance was that:-

(i) The Corporation was not made party to this suit and still the sale in favour of the Corporation was challenged as illegal;

(ii) The Corporation had in fact recognised Misquitta as their tenant and hence the plaintiffs have no locus standi to challenge Misquitta's tenancy in respect of

the suit land.

The lower Court has given apt answer to this plea. In the first place, the Sale Deed in favour of the Corporation itself is of questionable validity. As pointed out by Mr. Samant, the lands have been Agricultural lands at the relevant time. On the Corporation's own showing, Misquitta was the tenant in respect of the same. If that was so, the same would be void under sections 63 & 64 of the Tenancy Act. The sale would be bad and void even on the footing that Misquitta was not the tenant of the lands at any time having regard to section 63 of the Tenancy Act. It may be true that plaintiffs have not objected to the same. But a void thing does not become valid merely because the person entitled to object to the same does not raise the objection. A plea of estoppel may be available for the purchaser in that behalf as against the real owner who has stood by the sale. (I wish to express no opinion on this point). But the plea of estoppel is available to the purchaser not to the person such as Misquitta, who has been claiming tenancy rights independent of the Corporation. In this connection, it is significant to note that Misquitta had instituted proceedings also against the Corporation in the year 1968 and had contended that the Corporation had no right, title and interest in the said land and that he was tenant of deceased Haji Ali Mohammed Haji Cassum and had, as such, become owner of the same on 1-4-1957, even before the Corporation had purchased the lands from the Receiver. The validity of the Sale Deed by the Receiver in favour of the Corporation was itself challenged by Misquitta. It may be mentioned here that this plea was accepted by the Tenancy Court and Misquitta was declared by that Court to have become deemed purchaser of those lands u/s 32 of the Act, that is to say, from 1-4-1957, long before the purported purchase of the lands by the Corporation. It is thus clear that Misquitta has not been claiming through the Corporation at all. The plea of estoppel, if available for the Corporation, would not be available for Misquitta. The lands are, today in possession of Misquitta or the persons claiming through him and plaintiffs are claiming possession of the land from them. The frame of the suit filed by the plaintiffs does not, therefore, appear to be defective. Moreover, if there is any defect in the same, the benefit thereof can be taken by the Corporation. The contesting defendants cannot take advantage of the same.

28-A. The next arguments were advanced by Mr. A.M. Mehta, appearing for defendant No. 4, who has filed A.O. No. 161 of 1985. After the hearing of the appeals were over, two out of the four defendants, defendants Nos. 3 & 4, have compromised the entire dispute with the plaintiffs.

A.O. No. 161 of 1985 has been filed by defendant No. 4 alone which he has withdrawn on 19-3-1986. It is, therefore, unnecessary to refer to the arguments advanced by Mr. Mehta on his behalf.

However, it will be useful referring to two of his arguments: one relating to the jurisdiction of the City Civil Court and the other relating to the Receiver's power to bind the parties in the suit to which he is appointed as the Receiver.

(a) Mr. A.M. Mehta argued the bar contained in section 85 of the Tenancy Act, which question was not argued by Mr. Sakhardande. The entire question has been dealt with quite satisfactorily by the trial Court and the Counsel Mr. A.M. Mehta had hardly any answer to this. However, I would like to point out some other answers to the said plea of jurisdiction based upon section 85 of the Tenancy Act.

In the first place, it has been held by a Division Bench of this Court in 55 Bombay Law Reporter, P. 946, that the Civil Court always has the jurisdiction to enquire into the question whether the order impugned is a nullity or not. This is the precise plea of the plaintiffs, who contend that both the orders in TEN.A. 8/54 and TEN.A. 1/68 are nullities.

(b) A mere glance at the prayer clause in the plaint of this suit is enough to show that the kind of reliefs asked for could not be granted by the Tenancy Court at all. Section 70(b) of the Tenancy Act sets out the issues that can be tried by the Tenancy Court. There are also other provisions in the Act which impose the duty upon the Mamlatdar to try certain other questions. Reading all these provisions in conjunction with section 85 of the Act, which brings about the bar to the Civil Court's jurisdiction, it will be seen that only those questions and issues which can be decided or dealt with by the Mamlatdar will be out of the purview of the Civil Court. In the instant case, the question as to whether the earliest orders passed by the Tenancy Courts in TEN.A. 8/54 and TEN.A. 1/68 were nullities or not could not be decided by the Tenancy Court at all, under any of the provisions of the Tenancy Act. This makes the plea of want of Civil Court's jurisdiction illusory.

Moreover, the present suit is essential for the relief of possession, injunction and appointment of Receiver against a person who is alleged to be a trespasser. For deciding the jurisdiction of the Court, what is required to be taken into account are the averments made in the plaint. It is the consistent contention of the plaintiffs that defendant No. 1 has always been a trespassers and possession is asked for from such a trespasser. Likewise, injunction is asked for against a trespasser. No doubt the contesting defendants have come out with the plea that Misquitta was always a tenant . But out of these pleadings an issue will arise as to whether Misquitta was a tenant or not. This issue may be required to be tried by the Tenancy Court having regard to the provisions of section 70(b) of the Act. But the procedure for this purpose is not to return the entire plaint for presentation to the proper Court or to dismiss the suit for want of jurisdiction. The procedure in this behalf has been very well prescribed by section 85-A of the Tenancy Act. If the defendants persist with the plea of Misquitta's tenancy from the year 1939, issue will have to be framed by the trial Court on that point and the same might be required to refer to the appropriate Tenancy Court. I make it clear that I wish to express no final opinion on this point, particularly having regard to the fact that a possible answer may be available to such a plea that the Tenancy Act, if does not apply to these lands, save and except the provisions of

section 43-A of the said Act and also there is the plea of fraud raised by the plaintiffs. But the point is that the plea of bar of Civil Court's jurisdiction is a misconceived plea having regard to the scheme of the Tenancy Act as also having regard to the provisions of section 85-A of the Act.

(c) The second argument of Mr. A.M. Mehta worth taking note of was relating to the Receiver's power to bind the power of the party to the suit in which he is appointed as the Receiver. According to him, even in the case of the Receiver appointed under Order 40 of the Code, the ultimate result of the same as the one in the insolvency cases viz. that the property vests as in the Receiver. According to him, the suits lands had vested in the Receiver immediately upon his appointment.

In support of his contention, he relied upon the judgment of the Calcutta High Court reported in ILR 34 Calcutta page 305.

It is necessary for me to discuss this question any further, because ILR 34 Calcutta page 305, is the self-same authority which has been relied upon by the Supreme Court in Kurapati Venkata Mallayya and Another Vs. Thondepu Ramaswami and Co. and Another, I have held that in the facts and context of this case, the judgement of the Supreme Court as also of the Calcutta High Court are clearly distinguishable. It is, therefore, unnecessary for me to examine the points raised by Mr. Mehta. There is, however, one more answer to this plea of vesting of the property in the Receiver. I propose to discuss the same while examining the arguments of Mr. J.I. Mehta.

Mr. A.M. Mehta also made submissions relating to the balance of convenience between defendant No. 4 and the plaintiffs. But since the entire dispute has been settled between the two parties, it is un-necessary for me to discuss the question any further.

29. Mr. J.I. Mehta appeared for defendant No. 3 with Mr. Sawant, who appeared for defendant Nos. 3, 5 and 6 in A.O. No. 163/85. However, since defendant No. 3 has fully compromised the dispute with the plaintiff, I will be justified in not referring to his arguments. All the same I propose to refer to the same briefly because they were implicitly adopted by Mr. Sawant on behalf of 2 defendants 5 and 6.

(a) Mr. J.I. Mehta argued that the declaration given by the Mamlatdar in TEN.A. 8/54 could not be said to be a nullity merely because the requisite leave of the Court was not taken by Misquitta for filing the said application. According to him, the leave required to be given to the plaintiffs for proceedings against the Receiver in another suit is only for the purpose of protection of such person against contempt of Court proceedings against him. He contended that the leave does not clothe the Receiver with any higher power or immunities.

It may be true that the leave to sue or to be sued by or against the Receiver is not the result of any statutory provision; but it is a settled law by now that the

rule has come down to us as a part of rules of equity, binding upon all courts of equity. It is a rule based upon public policy which requires that when the Court has assumed possession of a property in the interest of litigants, the authority of that Court is not to be obstructed by suits designed to disturb the possession of the Court (See para 1089, Basu on Receiver, 1984 Edn. P. 1019). This rule necessitated by the principles of equity has stretched itself to such an extent that though normally the Court does not refuse the leave to a person with a genuine or bona fide desire to file a suit against the Receiver for effective relief, the Court may refuse the leave if the intending plaintiffs bona fides are found to be suspect. But what is to be noted is that in such cases the intending plaintiff has the right to apply to the Court for permission to him for leading evidence for the purpose of proving his bona fides and the Court must give him permission. But if even after examining the evidence the Court is not satisfied about the applicants (intending plaintiff's) bona fides, the Court has all the power in the world to refuse the leave. The Court does so in its inherent powers. If the applicant files the suit against the Receiver inspite of the absence of the leave; the suit has got to be dismissed.

This is the settled position of Law (See Basu 1984 Edn. para 1088, page 1018). It is, therefore, a futile contention that absence of leave results only in the threat of action for contempt of Court. Contempt of Court it may be. But the fallacy in Mr. J.I. Mehta's argument is that that is the only result. The other result is that the suit becomes not maintainable and the Court in which it is instituted has no other option but to dismiss it. If this is the correct legal conclusion, then it is just a short but inescapable step to the further conclusion that the decree passed by the Court in such plaintiff's favour when the suit should have been dismissed by it, is a nullity.

(b) The next submission of Mr. J.I. Mehta was that immediately upon being entrusted with the management of the property in question he becomes the de facto owner of the property and all the rights and powers of the real owners therein stand suspended, with the legal result that he must be deemed to be having all the power to file any suit and to defend any suit relating to the property in question, to the exclusion of the real owners. In support of a part of this proposition, he relied upon the self-same commentary of Basu with particular reference to Part of para 957 and part of para 958 (P. 892) which are extracted below:

"957. Powers which can be conferred on Receiver's under Order 40, Rule 1(d)- Under Order XL, Rule 1(d) the Court may also by order "confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits and the execution of the documents as the owner himself has, or such of those powers as the Court thinks fit".

"958. Receiver's powers are strictly limited by terms of his appointment subject

to any subsequent change by the Court under which he holds the appointment. Where general powers of management are conferred subject to the control of the Court, he has all the powers of a proprietor within the meaning of section 4 of Mad. Act II of 1894(2) in the above case the Court observed: The suits arise out of certain appointments to Karnamship made by the Court Receiver of Nidadavole Estate and reported to the Revenue Divisional Officer u/s 15 of Act II of 1894. The appointments have to be made by the proprietor of the estate. The term "proprietor" is defined in section 4 of the Act and includes any person who is in lawful management of the Estate otherwise than as agent or servant of the proprietor or as mortgagee or lessee. The first question for determination is whether the Receiver of the Nidadavole Estate comes within the definition. Both the lower courts have answered this question in the affirmative and in our opinion rightly, subject to certain remarks which we shall come to presently."

The proposition, taken at its logical conclusion, would mean that the Receiver who is constituted only a manager of the property is made the owner of it to the exclusion of the real owners and that the distinction between the Receiver under the Insolvency Act and the one under Order 40 of the C. P. Code is nonexistent, done away with as it were.

In support of the plea of suspension of the real owners' power to file or defend suits relating to their property, the learned Counsel no doubt had in mind the observations of the Calcutta High Court in *Jagat Tarini Dasi's case* (I.L.R. 34, Cal. 305) referred to by the Supreme Court in above mentioned *Kurapati Venkata Mallayya and Another Vs. Thondepu Ramaswami and Co. and Another*,

Dealing firstly with the observations made by the learned Commentator Mr. Basu, it is clear that the power of the Receiver is what the Court gives to him, whether for filing a suit or for defending the same suit. It is inconceivable that the real owners for whose benefit the suit or for defending the same suit is to be filed or defended will be or can be told by the Court "You parties "the suit is being filed/defended by the Receiver for your benefit; but you have no right to be co-plaintiffs/co-defendants in that suit. The Property which is the subject matter of the suit belonged to you before the Receiver was appointed. But the moment the receiver was appointed and he started managing your property, your title in the same got suspended; you have, therefore, no locus standi in the suit, forget everything about it. But mind well. The receiver is all supreme now. He can do anything in the suit now. He may do his best or his worst; he may even admit the other-sides claim against you, with justification or without anything of it. Whatever he may do, you will be bound by it. But you cannot do anything about it."

But this is what in effect comes to if we accept the theory of suspension of the real owners title. The Supreme Court never contemplated bringing about such situation while deciding *Kurapati Venkata Mallayya and Another Vs. Thondepu Ramaswami and Co. and Another*, . The observation that title of the property may "in a sense" be said to be of the Court did not mean that the owners were completely divested of the property. All that was meant was that the Court had

the power to empower the receiver appointed in Suit "A" for doing everything for managing and protecting the property which is the subject matter of the Suit A and, for that purpose to empower the Receiver even to file some Suit B such as the one for recovery of the dues of the estate, all by himself, if, even without joining the parties to the Suit A as co-plaintiffs or co-defendants.

Further, the position is entirely different when a question of defending.

(a) a Suit C filed by third parties and particularly.

(b) one filed by third party questioning or affecting the title of the parties to Suit A arises. If the third party chooses to file such suit against both, the real owners (parties to Suit A) as also the Receiver the Court can

(a) give leave to the intending plaintiff to sue the Receiver;

(b) empower the Receiver, expressly or implied, to defend the suit.

But the Court cannot tell the intending plaintiff, "Remove the name of the real owners; their title is suspended. You must proceed against the Receiver exclusively. The real owners have no locus standi in the suit. On the other hand, if the party has chosen to file suit B affecting title of the parties to Suit A and to make only the receiver appointed in the Suit A a party to the suit B, the third party may apply to the Court in Suit A for leave to file suit B against the receiver. Such suit might be one affecting title of the real owners who are parties to the suit A and still the Court may give the leave; but the grant of such leave would not mean that the Court in Suit A gave sanction to the intending plaintiff to file Suit B against the Receiver without impleading the real owners in Suit B. The Receiver of the Court may be the de facto owner of the relevant property (on that point I keep my fingers crossed). But the real owners who are the parties to the suit are, in any event, at least, the de jure owners and they are very much of necessary parties to suit which suit jeopardised their title. I do not think that even the Court appointing the receiver in Suit A has power to clothe the plaintiff in suit B with privilege of not joining the real owners, whose title is being jeopardised, in that suit. It is held by courts time and again that the receiver u/s 40 of C.P.C. is not the representative of the Court. But even the Court does not represent the parties. At least not for all purposes. The Court is the custodia legis vis-a-vis the property; not the title to the property does not vest in the Court; it continues to vest in the real owners. As such even the Court has no power to authorise third parties to file suit jeopardising title of the persons in whom the title vests, the de jure owners, by resort to the expedient of filing such suit exclusively against the Receiver, without imploding the real owners. A statute can authorise such third parties to proceed exclusively against the Receiver; not the Court. There exists such statutes. The statute viz. Madras Act II of 1894 with which the Madras High Court was dealing in the case of Ratnasami Pillai Vs. Sabapathy Pillai and Others, referred to by Basu in Para 958 of his commentary was one such statute. Our own Bombay Rent Act is another such Statue which makes the Receiver himself a landlord by its extensive definition. The position

under the Tenancy Act, on the other hand, is different so far as the claim of Misquitta and defendant No. 1 is concerned. I am dealing with the difference between the definitions of the word landlord given in the two statutes while examining another argument of Mr. J.I. Mehta. Point to be noted here is that a Statute has the power to authorise a person to proceed against the Receiver exclusively even in cases in, which the real owners are necessary parties. The Court does not have any such power.

There exists a difference between suit to be filed by the Receiver and against the Receiver particularly when it relates not only to mere management of the property and not with the title to the property. The judgment of the Supreme Court in Venkat Mellayya's case and the judgment of the Calcutta High Court in Jagat Tarini Dasi's case relate to the former categories of suits, not to the latter.

(c) But the above discussion relates to the principle of the things. Descending down to the facts of the case, where has this Court granted leave to Misquitta to institute proceedings against the Receiver without making the present plaintiffs parties to the proceedings no such leave was asked for, none is granted.

(d) All this apart, what of the cases in which the Receiver conducts himself, in such proceeding, in grossly negligent manner or in manner facilitating fraud by the third party (such as Misquitta) to be practised upon the courts and the true owners alike? Will the order in such proceedings stoically and non-challantly suffered by him, without moving his small finger to have it otherwise, at the cost of the real owners, be binding upon them?

(e) Mr. J.I. Mehta also relied upon the judgment of the Madras High Court in the case of Secretary of State for India in Council represented by the Collector of Secretary of State for India in Council Vs. Komaragiri Janardhana Rao, Chamarthi Venkata Hanumantha Rao and Nanduri Bhimaraju,

This case also related to the interpretation of the word "proprietor" in Madras Act No. II of 1894, reference to which is already made above. It is pointed out by Mr. Basu in his Commentary, as mentioned above, that in view of the peculiar extended definition of the word "proprietor" employed in Madras Act No. II of 1894, a Receiver appointed by a Court in a Suit could be said to be "proprietor" within the meaning of the said Act. The proposition of law laid down by the said authority, and party urged by Mr. J. I. Mehta is partly contained in the head-note of the Report Mr. Mehta relied upon the following portion of the head-note :---

"The powers of a receiver appointed by the Court depend upon the terms of his appointment (subject to any modification the Court may from time to time make) but where general powers of management are conferred though subject to the control of the Court, that Receiver is as the person "in lawful management otherwise than as an agent, servant, mortgagee or lessee" the "proprietor" and can validly exercise the power of nominating village officers vested in the "proprietor" under Act II of 1894."

But what the learned Counsel has lost sight of is the very next portion of the head-note which also correctly reflects the principle laid down by the said judgment. That portion of the head-note runs as follows :

"Whatever the amount of control exercised by the Court on the receiver, the Court cannot be said to be in management so as to be treated as the "proprietor."

Held, accordingly that a direction by the Court that in case of nominations of village officers, Court's sanction should be previously obtained did not justify the Collector in treating the Court as the proprietor and serving notices of nomination on it and requiring appointments to be also made by it."

It will be thus seen that whereas the Receiver is the agent of the Court, the Court itself is not the proprietor of the property even under the extended definition. The position is identical in the present suit with which we are dealing. The word "landlord" is defined by section 2(18) of the Act. The definition makes a distinction between an ordinary tenant under the Transfer of Property Act, who is made a tenant also under the Tenancy Act, and a "deemed tenant" u/s 4 of the Act. A "deemed tenant" is a person who is not a tenant within the meaning of the Transfer of Property Act, but who is all the same deemed to be a tenant, because, he is lawfully cultivating the land belonging to another and because he does not fall in any of the excepted categories mentioned in the said section with which we are not concerned. Even licensee who is not a tenant within the meaning of the Transfer of Property Act is a deemed tenant under the Tenancy Act. Point is that it was never Misquitta's contention that he was only a "deemed tenant". He had been contending that he was a tenant since 1939. My attention is not invited to any provisions of the 1939 Tenancy Act spelling the concept of a "deemed tenant". The concept of "deemed tenant" appears to have been introduced in the tenancy legislation first time by section 4 of the Bombay Act 26 of 1946. Further, it was never the contention of Misquitta that any person other than the real owner had lawfully allowed him to cultivate the land right from the year 1939 and that is why he was a deemed tenant from the year 1939 onwards. From the very nature of things, his contention has been that he was contractual tenant as contemplated by the Transfer of Property Act and not a deemed tenant as contemplated by section 2-A of the 1939 Tenancy Act as amended by section 4 of the Bombay Act 26 of 1946 or as contemplated by section 4 of the Tenancy Act 1948. I have mentioned above that he has been shouting from the housetops that he had been a tenant of the suit lands or of some them. But he has never mentioned as to who made him a tenant and as to who was his landlord at the relevant time. But one thing is certain. It was never his case that the Receiver was his landlord from the year 1939. From the very nature of things, that could not be, because the Court Receiver come to be appointed for the first time in the year 1950. There were earlier two private Receivers. But it is not his case that they had given permission to him to cultivate the lands. The long and short of all this is that it is not and it cannot be his plea that he was a deemed tenant at any time. His plea has been that he was a contractual tenant from the year 1939 and

as such became a protected tenant upon the advent of 1948 Tenancy Act.

Point is that the Receiver does not become a landlord of such a person in the case with which we are dealing. As stated above, the position is analogous with the proposition laid down by the Madras High Court in 30, Madras Law Journal, p. 456. In that case it was argued that since the Receiver was the court's agent and since he was the "proprietor" within the meaning of Mad. Act II of 1894, the Court was also the "proprietor." This plea was negatived because as per the Act, the Receiver was clothed with the status of proprietor, not his Principal. In the instant case, the Receiver could be the landlord of a deemed tenant; if he had allowed the person concerned, during the course of his management and lawfully to cultivate the lands. But he would not be the landlord in respect of the lands alleged to have been leased not by himself but by the real owner.

This distinction between contractual tenant and deemed tenant is of great significance for appreciating the fallacy in the claim of Misquitta. Section 2(18) deals with both the tenancies. But the first results from the lease under the T.P. Act whereas the second is the result of section 4 of the Tenancy Act.

But even the earlier observation in the head-note of the said Authority does not help Mr. Mehta to any appreciable extent having regard to the facts and context of the present case. What is held there is that when general powers of management are conferred, though subject to the control of the Court, the Receiver is as the person in lawful management, the "proprietor" under Act II of 1894.

As pointed out above, this was the result of the peculiar extended definition of the word "proprietor" contained in said Madras Act No. II of 1894. The relevant definition of the word "landlord" in section 2(18) is co-related to the definition of the word "tenant". So far as contractual tenant is concerned only the real owner can be landlord. But in the case of a deemed tenant, it is not necessarily that only the real owner can be the landlord. Even a receiver, if he has lawfully allowed any person to cultivate the land under his management, can become the landlord of such person. But he is the landlord of a deemed tenant, not of a contractual tenant. It, therefore, did not lie in his mouth to contend that the Receiver was his landlord.

(f) The next argument of Mr. J. I. Mehta was based upon the very definition of the word "landlord" contained in section 2(18) of the Tenancy Act referred to above. His contention is that the word "landlord" defined in the said section is wide enough to include a Receiver appointed under Order 40 of the Code.

The correct position in this behalf is already explained by me above. In the case of a deemed tenant, a Receiver may be a landlord if he is the person who has allowed any other person to cultivate the land lawfully. But in the case of a contractual tenant, he cannot be a landlord unless he has himself given the lease as per the provision of the T.P. Act read with the provisions of the Contract Act. It is not Misquitta case at any time that in the year 1939 (on, in fact, at any time

thereafter), the Receiver made him the tenant by executing a lease in his favour. The definition, therefore, does not help Mr. Mehta at all.

(g) The position can be explained also by the comparison of the definition of the word "landlord" in section 5(3) of the Bombay Rent Act with the definition of the same word in section 2(18) of the Tenancy Act, both the statutes being *pari materia* with each other.

I would like to juxtapose the two respective definitions for ready appreciation of the distinction:

The definition of the word "landlord"

Under Section 2(18) of the u/s 5(3) of Tenancy Act. the Bombay Rent Act. "tenant" means a person who holds "Landlord means any person who land on lease and include--- is for the time being, receiving, or (a) a person who is deemed to be entitled to receive, rent in respect of a tenant u/s 4; any premises whether on his own (b) a person who is a protected account or on account, or on behalf, tenant; and or for the benefit of any other (c) a person who is permanent person or as a trustee, guardian, or tenant; and the word "land receiver for any other person or who lord" shall be construed accord would so receive the rent or be ingly;" entitled to receiver the rent if the premises were let to be a tenant; and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his subtenant, a tenant who has sub-let any premises; (and also includes in respect of a licensee deemed to be a tenant by section 15-A, the licensor who has given such licence; I have juxtaposed the two definitions because both the Statutes are *pari materia*. It becomes clear that the definition of the word "Receiver" under the Rent Act is so wide, that every Receiver of the property (viz. the premises) will be the landlord of the tenant in the premises. Under the Tenancy Act, however, only the word "Tenant" is defined and the meaning of the word "landlord" is made to vary with the meaning of the word "Tenant". The Receiver does not become a landlord of a contractual tenant unless he has himself leased the lands to the tenant as per the Transfer of Property Act.

Reliance upon the definition of the word "landlord" in section 2(18) of the Tenancy Act does not carry Mr. Metha's case any further.

(h) But even after every provision of procedural law is assumed to be in favour of Misquitta, the question of the almost patent fraud committed by him still remains. Further, there are indications that responsible officer of this Court has played mischievous and apparently collusive part in the relevant proceedings. If this position is established, then the orders in Tenancy Application A. 8/54 and 1/68 would be nullities on that account alone.

I must say that Mr. J. I. Mehta had no answer to this patent appearance of fraud on the part of Misquitta and he tried to give none.

x x x x

50. I cannot part with this judgment without once again referring to the obnoxious part played by the Receiver's representative before the Tenancy Court. I have already mentioned above the heinous role played by him, bordering upon gave breach of trust, if not criminal breach of trust, against the plaintiffs. I am inclined to pass a separate and independent order in this behalf for necessary inquiry into this scandalising state of affairs.

51. So far as the part played by Mamlatdar in TEN. A. 8/54 and in TEN. A. 1/68 is concerned. I can see that there is much more in the judgment than that which meets the eye. But it will be futile for me to order any inquiry into those matters at this length of time.

52. The result is that all the three appeals fail.

However, so far as Appeal from Order No. 161 of 1985 is concerned, as stated above, the dispute between the appellant (defendant No. 4) and the contesting respondents (the plaintiffs) has been resolved by amicable settlement. All the Counsel concerned have stated before the Court that though the dispute has been settled outside the Court, in fact in pursuance of the said settlement the parties have obtained an order from the trial Court dismissing the plaintiffs suit against defendant No. 3 in fact said A.O. No. 161 of 1985 had been withdrawn by the appellant (defendant No. 4) and necessary order in that behalf has been passed by this Court on 19-3-1986.

So far as Appeal from Order No. 162 of 1985 is concerned, the said Appeal is hereby dismissed with costs. As mentioned above, this appellant appears to be the main mischief-monger. There is every indication that he has played immense fraud upon various courts and has swallowed large chunks of property belonging to the plaintiffs by practice of such fraud. The ultimate consequence of the fraud practised by him is any body's guess.

In these circumstances, said defendant No. 1 deserves to suffer a stiff order as to costs. That apart, the hearing of the Appeal was inordinately delayed by virtue of several adjournments obtained by and on behalf of the said defendant No. 1 in this Court and the hearing of the appeal was un-necessarily lengthen by virtue of the acts and omissions of the said appellant, defendant No. 1. The said appellant (defendant No. 1) shall, therefore, pay the costs of this appeal to the contesting respondents (the plaintiffs) which are taxed at Rs. 5000/-.

So far as Appeal from Order No. 163 of 1985, which is filed by original defendant Nos. 3, 5 and 6, is concerned, the dispute between the original plaintiffs (the contesting respondents) and said defendant No. 3 (appellant No. 1) has been resolved and settled amicably between the parties so much so that an order has been obtained by the plaintiffs and said defendant No. 3 from the trial Court dismissing the plaintiffs' suit against said defendant No. 3 and, in this Court, an application was made on behalf of said appellant No. 1 in the said appeal (defendant No. 3 in the trial Court) for withdrawal of the appellant in this Court so far as defendant No. 3 was concerned.

The Court has taken note of this application. However, since the appeal was filed, in common, by defendant Nos. 3, 5 and 6 since the other two defendants, Nos. 5 and 6, have not settled the dispute between the plaintiff, no order allowing the appeal to be withdrawn in part could be passed. However, the said Appeal is dismissed on merits. Appellants Nos. 2 and 3 (defendants Nos. 5 and 6) shall pay the costs of the contesting respondents (original plaintiffs) which are taxed at Rs. 1000/- each. Since the dispute between appellant No. 1 and the original plaintiffs is resolved, there shall be no order as to costs vis-a-vis appellant No. 1 in the said appeal.