
(2026) 08 BOM CK 4997

In the Bombay High Court, Nagpur Bench

Case No : Writ Petition No. 985/2025 with Writ Petition No. 2959/2025

Siraspeth Co-Operative Housing Society Limited

APPELLANT

Vs

M/s. Kiran & Ors.

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Maharashtra Cooperative Societies Act, 1960 — Section 91; Section 94, sub-section (3)
(a)

Transfer of Property Act, 1882 — Section 53A

Citation : (2026) 08 BOM CK 4997

Hon'ble Judges : Rohit W. Joshi, J

Bench : Single Bench

Advocate : Mr. P.S. Wathore, Mr. R.P. Joshi

Final Decision : Partly Allowed

Judgement

(1) Petitioner in Writ Petition No. 985/2025 is a cooperative society registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the MCS Act" for the sake of brevity). The disputant - society purchased land bearing Kh. No.58/1 situated at Siraspeth, Nagpur from one Kesrichand Dhadiwal vide Sale Deed dated 03.12.1982 and developed a layout over the said land. The respondent no. 1 is a member of the petitioner - society. The controversy in the present writ petition pertains to Plot No. 44 in the said layout which was allotted by the petitioner - society to the respondent no. 1. The society had entered into a registered agreement of sale dated 10/08/1987 with respect to the suit property in favor of the respondent no. 1. Based on the said agreement for sale dated 10/08/1987, the respondent no. 1 executed registered sale deed in favour of the respondent no. 2 on 14/11/1990. The respondent no. 2, in turn, entered into a development agreement with respect to suit property with the respondent no. 3 on 06/09/1999 and executed registered power of attorney in furtherance of the said development agreement in favour of one Chandrashekar Mudliyar.

(2) The respondent no. 4 in Writ Petition No. 985/2025 has entered into an

Agreement of Development with respect to the suit property with respondent no. 2 vide Agreement dated 07.12.2007. Respondent nos. 2 and 4 in Writ Petition No. 985/2025 are petitioners in Writ Petition No. 2959/2025. The petitioner in Writ Petition No. 985/2025 will be hereinafter referred to as the 'society' or 'disputant' and the respondent nos.1 to 4 in the said petition will be referred to as 'opponent nos. 1 to 4' respectively.

(3) There was a dispute inter se between opponent nos.2 and 3 in relation to the aforesaid Development Agreement. As a consequence of which, opponent no.3 had filed a suit, being Special Civil Suit No.457 of 2008 against the opponent no.2. Opponent no.2 filed a counterclaim for possession in the said suit. The suit filed by opponent no.3 was dismissed and the counterclaim for possession filed by opponent no.2 was decreed. Opponent no.2 had entered into an Agreement of Development and had also granted Power of Attorney dated 07.12.2007 with respect to suit property in favour of opponent no.4. The claim of opponent no.3 against opponent no.4 was also rejected in the said civil suit.

(4) It will be pertinent to state that opponent no.1 had filed an application for intervention in Special Civil Suit No.457 of 2008 filed by opponent no.3 against opponent no.2. The application for intervention was rejected.

(5) The layout was handed over to Nagpur Improvement Trust (NIT) for regularization. Opponent no.2 had made an application for regularization of suit plot to NIT and had also paid requisite charges for the same. NIT had issued demand note in favour of opponent no.2, which is at Exhibit 163. The plot was regularized by NIT. NIT has executed lease deed with respect to the suit plot in favour of opponent no.4. The said lease deed is at Exhibit 149.

(6) The society had filed a dispute under section 91 of the MCS Act before the learned Judge, Cooperative Court, Nagpur, vide Dispute No. 208/2014. The society claimed a declaration that the sale transaction with respect to the suit property by the opponent no. 1 in favour of the respondent no. 2 was illegal and bad in law. The society claimed declaration of ownership over the suit property and also made a prayer for delivery of possession. The said dispute, which was filed on 07/05/2014, came to be registered as Dispute No. 208/2014.

(7) The said dispute came to be dismissed by learned Judge, Cooperative Court, Nagpur, vide judgment and order dated 10/04/2014. Learned Cooperative Court held that, (i) the dispute was not competently filed, since it was not backed by any resolution by the society, (ii) the society had received entire sale consideration from the opponent no. 1 in terms of the agreement dated 10/08/1987 and had also delivered vacant possession of the suit property to her and also on the ground that it was filed beyond the period of limitation. However, contention raised by the opponent nos. 2 and 4 with respect to jurisdiction under section 91 of the MCS Act was rejected and it was held that the Cooperative Court had the jurisdiction to adjudicate the dispute.

(8) It must also be stated that the Cooperative Court has held that since the sale

deed was not executed by the society in favour of the opponent no. 1, she, in turn, could not have executed the sale deed with respect to the suit property in favour of the opponent no. 2. It is held that, title in suit property was not transferred from the society in favour of the opponent no.1, and consequently, she could not have transferred the title in favor of the opponent no.2. However, learned Cooperative Court has held that the society has received entire sale consideration in terms of the agreement of sale executed in favour of the opponent no. 1, it had delivered vacant possession of the suit property to opponent no. 1 and had also issued no objection in favour of the opponent no. 1 for carrying out construction over the suit property and for obtaining loan. It is also recorded that upon regularization of the suit property by the Nagpur Improvement Trust (NIT), the opponent no. 2 had deposited amount of demand with the NIT, and thereafter, the NIT executed lease deed with respect to the suit property in favor of the opponent no. 4. In view of such findings conclusion is drawn that the opponent no. 4 had acquired better title over the suit property in comparison to the disputant - society and opponent no. 1.

(9) It will be pertinent to state that the opponent no. 1 had also filed a counter claim in the dispute challenging the said sale deed executed by her in favour of the opponent no. 2. The said counter claim was also dismissed as barred by limitation and also on merits.

(10) Being aggrieved by the aforesaid judgment and order dated 10/04/2024 passed by learned Judge, Cooperative Court, Nagpur, the disputant - society preferred an appeal before the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur, (hereinafter referred to as "learned Cooperative Appellate Court" for the sake of brevity), which came to be registered as Appeal No. 33/2024. The opponent no. 1 also challenged the said judgment by filing Appeal No. 46/2024.

(11) Learned Member, Cooperative Appellate Court dismissed both the appeals vide common judgment and order dated 12/09/2024. Learned Cooperative Appellate Court has held that the dispute was not covered by section 91 of the MCS Act, and as such, learned Cooperative Court did not have jurisdiction to entertain the dispute. The issue of limitation is also decided against the disputant - society and the opponent no. 1/counter claimant. However, the findings with respect to the title are not disturbed by learned Cooperative Appellate Court.

(12) The opponent no. 1 has not challenged the judgment delivered by the learned Cooperative Appellate Court. However, the disputant - society and the opponent nos. 2 and 4 have filed separate petitions challenging the said judgment delivered by the learned Cooperative Appellate Court.

(13) Mr. P.S. Wathore, learned counsel for the disputant -society argues that both the learned Courts have recorded a positive finding that the disputant - society has merely executed the agreement of sale in favour of the opponent no. 1 and that based on the said agreement, the opponent no. 1 could not have sold the

property to the opponent no. 2. He contends that in view of such clear finding, it is apparent that the ownership of the suit property is still vested with the disputant – society, and as such, the dispute ought to have been allowed. He contends that both the learned Courts have committed serious error of law in not passing the award in favour of the disputant – society, despite holding that the title over the suit property was not transferred by the disputant - society by virtue of the agreement of sale dated 10/08/1987 executed in favour of the opponent no.

1. He contends that since the society is the owner of the suit property, the claim for possession ought to have been allowed. He further argues that the title has not passed from the opponent no. 1 to the opponent no. 2 and that since the opponent no. 1 has paid the entire sale consideration to the disputant - society and has received the possession in terms of the said agreement, the counterclaim filed by the opponent no. 1 should have been allowed. As regards jurisdiction, the contention is that the dispute pertains to property of the disputant – society and the parties to dispute are the society, the opponent no.1, who is a member of the society and persons claiming title under the opponent no.1 and therefore having regard to the subject matter of dispute and parties to dispute, it must be held that dispute falls within four corners of Section 91 of MCS Act.

(14) *Per contra*, Mr. R. P. Joshi, learned counsel for the opponent nos. 2 and 4, vehemently argues that the dispute was clearly beyond jurisdiction of learned Cooperative Court under section 91 of the MCS Act. He contends that the learned Cooperative Court gets jurisdiction to decide a dispute under section 91 of the MCS Act only in cases where the subject matter of dispute falls within the ambit of section 91 of the MCS Act. He contends that the dispute does not pertain to business of the society and further that the opponent nos. 2 and 4 are also not members of the disputant – society, and as such, learned Cooperative Appellate Court has rightly held that learned Cooperative Court did not have jurisdiction to entertain the dispute. He further contends that the disputant - society had entered into agreement of sale dated 10/08/1987 with the opponent no. 1 and was, all the while, aware about the subsequent transaction by the opponent no. 1 in favour of the opponent no. 2. He draws attention to the findings recorded by learned Cooperative Appellate Court and states that deposition of the witness no. 2 of the disputant - society clearly indicates that the disputant - society had knowledge about the sale deed dated 14/11/1990 executed in favour of the opponent no. 2 at least since the year 2005-06 and the dispute filed in the year 2014 was clearly barred by limitation.

(15) Apart from this, Mr. R.P. Joshi, learned counsel contends that the disputant - society is not entitled to seek any relief, since it is duly established that it had allotted the suit property to the opponent no. 1 and had delivered physical vacant possession thereof to her upon receipt of the entire sale consideration. He also contends that permission for raising construction over the suit property and

a no-objection certificate for obtaining loan were also granted to the opponent no. 1 by the disputant - society. He contends that the claim of the disputant - society is clearly not tenable, in view of section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act" for the sake of brevity). He further argues that since the NIT has executed lease deed in favour of the opponent no.4 which is not challenged the question of granting any relief to the disputant and opponent no.1 does not arise.

(16) As regards the opponent no. 1, the contention of Mr. Joshi, learned counsel is that it is duly proved that the opponent no. 1 has received the entire sale consideration in terms of the sale deed dated 14/11/1990 executed by her in favour of the opponent no. 2, and therefore, the counterclaim is rightly rejected.

(17) Apart from this, learned counsel argues that the dispute is filed by the disputant - society acting in collusion with the opponent no. 1. It is contended that a transaction which had assumed finality on 14/11/1990 was sought to be questioned by filing a dispute after a period of 24 years in 2014. He contends that the findings recorded by both the learned Courts, which are supported by material on record, will indicate that the proceedings were contested by the disputant - society and opponent no. 1 acting in collusion with each other and that the opponent nos. 2 to 4 are unnecessarily embroiled in a long drawn litigation. He strongly urges that the facts of the case warrant that the opponent nos. 2 and 4 should be compensated with realistic costs for being embroiled in a litigation for a period of around 12 years.

(18) As regards Writ Petition No. 2959/2025 filed by the opponent nos. 2 and 4, the contention is that since learned Cooperative Court did not have jurisdiction to decide the dispute, learned Cooperative Court as well as the learned Cooperative Appellate Court should not have recorded any finding on the aspect of title.

(19) Learned counsel for the disputant - society contends that valid title dispute is raised by the society and findings with respect to the title are also recorded by both the learned Courts in its favour. He, therefore, contends that the litigation cannot be said to be frivolous and question of payment of costs does not arise at all. He reiterates that the petition filed by the disputant -society deserves to be allowed since the society continues to be the owner of the suit property. With respect to contention raised in Writ Petition No. 2959/2025, learned counsel for the disputant - society reiterates his contention that subject matter of the suit fell within the jurisdiction of learned Cooperative Court and further that the findings with respect to the title are correctly recorded.

(20) Learned advocates for the disputant and opponent no.1 state that the issue of jurisdiction under section 91 of the MCS Act should be answered in their favour, since the basic dispute pertains to agreement of sale dated 10/08/1987 executed by the disputant - society in favour of the opponent no. 1.

(21) I have heard the rival submissions of the parties as aforesaid, perused the judgments delivered by both the learned Courts, as also, the pleadings of

respective parties, evidence led by them and the documents on record which were referred during the course of the hearing.

(22) It will be appropriate to deal with the issue of jurisdiction first. By now, it is well settled that a dispute before a Cooperative Court is not maintainable against a person who is not a member of the society. In the case at hand, the opponent nos. 2 to 4 were admittedly never the members of the disputant – society, and as such, the dispute did not fall under section 91 of the MCS Act. Apart from this, subject matter of the dispute also does not fall within the ambit of section 91 of the MCS Act. Perusal of the prayer clause will indicate that the disputant -society is questioning the sale deed executed by the opponent no. 1 in favour of the opponent no. 2. The said prayer is foundation of the dispute. Based on the aforesaid prayer, consequential relief of possession of the suit property is claimed in the dispute. It is clear that unless the disputant - society is able to get over the sale deed in favour of the opponent no. 2, relief of possession cannot be granted. The relief of possession is a consequential relief. The jurisdiction to order cancellation of the sale deed executed by the opponent no. 1 in favour of the opponent no. 2 will be available to a Civil Court. The sale of suit property by the opponent no. 1 to the opponent no. 2 cannot be a subject matter of business of the disputant - society. The dispute is, therefore, beyond the jurisdiction of learned Cooperative Court on this ground as well. Reliance in this regard can be safely placed upon the judgment of the Hon'ble Supreme Court in the case of *Margret Almeida & others vs. Bombay Catholic Co-operative Housing Society Limited & others reported in 2012 (5) Mh.L.J. 4*. The Hon'ble Supreme Court has clearly held that a dispute will be maintainable against a third party who is not a member of the society, only in case where interest in the property which is subject matter of dispute, is transferred in favour of such non-member third party after filing of the dispute. A contention was raised in the said matter that the Cooperative Court will also have jurisdiction to decide a dispute against any person, who acquires the interest over the subject matter of dispute from a member of the disputant – society, which is categorically rejected by the Hon'ble Supreme Court. Relevant observations at para no. 36 of the said judgment are reproduced herein below for ready reference:-

"36. We are of the opinion that having regard to the language of Section 94, sub-section (3)(a), more specifically "has acquired any interest", the acquisition of the interest contemplated is only an acquisition made during the pendency of the dispute before the Co-operative Court. For the reason that such an acquisition of interest is qualified by the words, "in the property of a person who is a party to the dispute", we hold so for another reason also."

(23) In view of the above, in the considered opinion of this Court, the conclusion arrived at by the learned Cooperative Appellate Court with respect to jurisdiction is just and proper. The conclusion drawn by the learned Cooperative Court that the subject matter of dispute falls within the ambit of section 91 of the MCS Act is erroneous.

(24) As regards the issue of limitation, it must be stated that the sale deed in favour of the opponent no. 2 is executed by the opponent no. 1 on 14/11/1990. Perusal of the evidence of witness no. 2 of the opponents will demonstrate that statement of D.W. 2 was recorded by the police authorities on 14/03/2013 in relation to transactions relating to suit property. The said witness admitted the contents of the said statement during his cross-examination. It is stated in the said statement that prior to seven to eight years, the opponent no. 2 had approached the disputant - society for obtaining membership on the basis of the sale deed dated 14/11/1990 executed by the opponent no. 1 in her favour. The said statement will clearly indicate that the disputant - society had knowledge with respect to the said sale deed at least in the year 2005-06 and the dispute was filed in the year 2014.

(25) It must also be stated that the pleadings in the dispute are completely silent with respect to the date on which the disputant - society gathered knowledge about the sale deed dated 14/11/1990 executed by the opponent no. 1 in favour of the opponent no. 2. Both the learned Courts have rightly answered the issue of limitation against the disputant - society.

(26) The case of the opponent no. 1 is that the sale deed was got executed and registered by fraud practised upon her by her father. She claims that she has not received any sale consideration and the entire sale consideration was withdrawn by her father from her bank account. It must be stated that during the course of cross-examination, the opponent no. 1 had admitted her signature on the sale deed. It is clearly mentioned in the said sale deed that sale consideration is paid. The sale deed is a registered document. The opponent no. 1 has stated that her father had withdrawn the entire sale consideration from her bank account, which implies that the sale deed is not without consideration and that the sale consideration was paid by the opponent no. 2 - purchaser. Assuming that her father had allegedly withdrawn the amount of sale consideration from her bank account, that by itself will not be sufficient to cancel the sale deed, since the purchaser cannot be penalised for alleged wrong committed by father of vendor

(27) It will also be pertinent to state that the opponent no. 1 herself has issued a no objection dated 20/05/1991 for mutation of the suit property in the name of the opponent no. 2. The suit property is mutated in the name of the opponent no. 2. All these documents are sufficient to infer that the opponent no. 1 has sold the suit property to the opponent no. 2 for a consideration and further that she has failed to make out any case for challenging the said sale deed.

(28) It is apparent that in view of the evidence that is on record, that although the disputant - society did not execute the sale deed in favour of the opponent no. 1, it had made allotment of the suit property in favour of the opponent no. 1 and had also executed a registered agreement of sale in her favour. It is also clearly established that physical possession of the suit property was delivered by the disputant - society to the opponent no. 1. The disputant - society has also issued no objection letters in favour of the opponent no. 1 for obtaining loan,

raising construction and for securing water and electricity connection for the suit property. Having received the entire sale consideration in terms of the agreement for sale, it will not be open for the disputant - society to claim relief of possession on the ground that title is not transferred under the agreement for sale. Section 53A of the TP Act will come to the rescue of the opponent no. 1 and consequently also to the opponent no. 2, who has purchased the suit property from the opponent no. 1 by registered sale deed dated 14/11/1990.

(29) In view of the aforesaid, the disputant - society and opponent no. 1 are not entitled to claim any relief. The disputant - society and the opponent no. 1 have failed to make out any case even on merits. In the considered opinion of this Court, no case for interference is made out in Writ Petition No. 985/2025 filed by the disputant - society. The writ petition is, therefore, dismissed.

(30) As regards Writ Petition No. 2959/2025, it must be stated that it is a well-settled proposition of law that the findings recorded by a Court not having the jurisdiction over the subject matter are *non-est*. In this regard, a distinction needs to be made between an order which is absolutely without jurisdiction i.e. lacking in subject matter jurisdiction and an order which suffers from procedural defects of jurisdiction such as pecuniary jurisdiction, territorial jurisdiction, limitation, etc. An order which is passed in inherent lack of jurisdiction is a nullity. An order suffering from procedural aspects of jurisdiction is required to be challenged and it is binding on parties, unless set aside. In the present case, the learned Co-operative Court and Co-operative Appellate Court have recorded findings with respect to title of the opponent nos. 2 and 3 over the suit property. These findings are recorded after arriving at a conclusion that the subject matter of the dispute fell beyond the jurisdiction of Co-operative Court as vested under Section 91 of the MCS Act. The findings with respect to title are, therefore, by a Court which lacks the subject matter jurisdiction. This is, therefore, a case of finding recorded by a Court lacking inherent jurisdiction. A judgment passed by a Court which does not have subject matter jurisdiction over a dispute is a nullity in the eyes of law. Reliance in this regard can be placed on judgments of *Nusli Neville Wadia v. Ivory Properties & Ors.*, reported in (2020) 6 SCC 557 and *Asma Lateef & Anr. v. Shabbir Ahmad & Ors.* reported in (2024) 4 SCC 696.

(31) Mr. R. P. Joshi, learned advocate for the petitioner has vehemently argued that the disputant – society and opponent no.1 have contested the litigation in collusion. He contends that the litigation is absolutely frivolous and was initiated only with a view to harass the petitioners and opponent nos. 2 and 3. He, therefore, contends that heavy costs should be imposed on the disputant – society and opponent no.1 to meet the ends of justice. The learned advocate has placed reliance on judgment of the Hon'ble Supreme Court in the case of *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors.*, reported in (2012) 6 SCC 430, *Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors.*, reported in (2011) 8 SCC 249 in support of his

contention.

(32) Although the dispute is dismissed on the ground of jurisdiction and limitation, the disputant – society had received entire sale consideration from the opponent no.1 and had delivered possession to her in terms of the agreement of sale entered into between them. Further, no objection was also granted for obtaining electricity connection, water connection and building construction. Opponent no.1 also sold the property to opponent no.2 by receiving the entire sale consideration. However, they have dragged the opponent nos.2 and 4 - petitioners into unnecessary litigation.

[An exhibit is reproduced here in the original judgment.]

(33) At the same time, it must also be stated that in the agreement of sale the word, "agreement" was scored off and substituted with the words, "sale deed". Findings is recorded by both the Courts that the agreement in this regard, it is not clear as to who made the said alteration. However, opponent no.2 has purchased the property from opponent no.1 on the basis of such document. In the peculiar facts of the case, in my considered opinion exemplary costs as prayed need not be awarded.

(34) In the result, following order is passed:-

I. Writ Petition No.985/2025 is dismissed.

II. Writ Petition No. 2959/2025 is allowed by holding that the findings with respect to merits of claim recorded by the learned Courts will not be binding on the petitioners -original opponent nos. 2 and 4.

III. Pending application(s), if any, stand(s) disposed of.