

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 15-2-2022 & 26-04-2022****Pronounced on 27-04-2022****FA No. 24 of 1993**

Kishan Kumar Agrawal S/o Shri Pawan Kumar Agarawal Aged About 26 Years R/o Naya Sarkanda, Bilaspur Chhattisgarh.

**---- Appellant.****Versus**

1. Rev. Anurag Nathaniel Executive Secretary, Indian Church Council Of The Disciples Of Christ Resident Of Ashlay Memorial Banglow , Mohalla, Jarhabhata, Bilaspur Chhattisgarh.
2. Indian Church Council Of The Disciples Of Christ Through Its Executive Secretary, Rev. Anurag Nathaniel Ashlay Memorial Banglow, Jarhabhata, Bilaspur Chhattisgarh.
3. Sushil Kumar Agrawal, aged 56 years, r/o. Old Sarkanda, District Bilaspur (CG), (Arrayed in compliance of the court's order dated 12-9-2019).

**---- Respondents**

---

For Appellant.	:	Mr. Ankit Pandey, Advocate.
For respondents No. 1&2	:	Mrs. Fouzia Mirza, Sr. Advocate with Mr. Shobhit Mishra .
For respondent No.3	:	Mr.Padmesh Mishra, Advocate.

---

**Hon'ble Shri Justice Narendra Kumar Vyas****C.A.V. JUDGMENT**

1. The appellant/plaintiff has preferred this First Appeal against the judgment and decree dated 4-12-1992 passed by the First Additional Judge to the court of District Judge, Bilaspur, in Civil Suit No. 2-A/77 (Seth Banwarilal /plaintiff vs. Rev. Adwin Bhagirathi) by which the suit filed by the appellant for possession of Ashley Memorial building



with open plot area measuring 39400 sq. fit in sheet No. 4, najul plot No. 85/1 situated in Mohalla Jarhabhata, District Bilaspur has been dismissed.

2. The names of the parties have been described as mentioned in Civil suit filed before the trial Court.
3. The brief facts as reflected from the record are that the plaintiff filed a suit on 14.11.1972 before the learned Additional District Judge, Bilaspur for possession and mesne profits of suit property mentioned in schedule-A annexed with plaint, mainly contended that the plaintiff has purchased the suit property as described in the map annexed with plaint for Rs.45,000/- by a registered sale deed dated 17-5-1971 from the owner of the property namely United Christian Missionary Society, United States of America, Indiana Polis, Indiana (hereinafter referred to as "UCMS (USA) ) through their authorized Attorney F.C. Jonathan, holding a power of attorney. It has also been contended that name of the plaintiff has also been mutated by the Nazul Authorities, Bilaspur, in Revenue Case No. 94/1970-71 vide order dated 4-11-1971.
4. It has been further contended that defendant No.1 – Bhagirathi claiming and describing himself as an Executive Secretary of the Indian Church Council of the Disciples of Christ (for short, "ICCDC") who is in wrongful possession of the suit property refused to vacate the suit premises which has necessitated plaintiff to file a suit for damages from the date of purchase till the date of granting possession by the trial court. It has also been contended that defendants have filed a suit on 1-10-1971 in order to continue the wrongful possession of the suit property which was registered as Civil Suit No. 8-A/1971 against the plaintiff as well as vendor of the plaintiff in the Court of District Judge, Bilaspur, wherein the defendant has claimed that the defendants are in possession of the suit property in their own right the plaintiff has suppressed this fact from the knowledge of Najul Authority and thus order of mutation, if any, is vitiated on account of fraud practice by the plaintiff with the Najul Authority.





5. It has been further contended that H.M. Renalds on behalf of UCMS (USA) sold a part of the land plot No. 85 of sheet No.4 to one M.M. Scot under a registered deed of sale dated 31-10-1956 for a sum of Rs.48/-, as an agent and as Secretary of UCMS (India) and placed him in possession. The State of Madhya Pradesh has executed a deed of renewal of lease in favour of the Secretary, UCMS under a registered deed dated 28-10-1966 for a period upto 31-1-1994 wherein it has been shown as sheet No.4 plot No.85/1, area 129073 sq. ft and same was executed by R.A. Vicks as an Administrator and Field Secretary of UCMS who was the then residing at Napier Town, Jabalpur and was looking after the work and managing the properties from there.
6. It has been further contended that since disputes about management of the Mission and the properties at Bilaspur arose between R.A. Vicks who was an Attorney for UCMS (USA) and Ex-Secretary of UCMS (India) and CCDC on the one hand and these defendants viz., Edwin Bhagirathi as the Executive Secretary of ICCDC, on the other hand, a petition under Article 226/227 of the Constitution of India has been filed before the Hon'ble High Court of Madhya Pradesh which was registered as miscellaneous petition No. 327 of 1968. Hon'ble the High Court of Madhya Pradesh has passed the following order and the relevant paragraphs 5 to 8 are extracted below:

“5. Both parties have pleaded that there was union or, amalgamation of UCMS (India) and CCDC though, according to them, the consequences were different. It is, therefore, necessary to examine what actually took place. The relevant proceedings and resolutions of the two societies UCMS (India) and CCDC have not been placed before us to enable to us to ascertain whether they decided to become members of the new society or dissolved themselves. Our attention is drawn to clause 2 of the memorandum of association of ICCDC which reads:



“This Council is a body formed by the Union of the Convention of Churches and the United Christian Missionary Society (India) to carry out the objects of the two bodies”.

What the two amalgamating societies had decided would be shown by their own resolutions and not by this clause in the memorandum of association of the new society. In the absence of valid resolutions of the two societies dissolving them in accordance with law, it cannot be found that they ceased to exist. This conclusion is supported by two other considerations. One of these is that it would appear from clauses 3D(ii) and 9B of the Memorandum of Association of ICCDC shows that UCMS (India) or CCDC were not even members of the first named society and that this society was validly formed by the requisite number of individuals and duly registered under Section 6 of the Act. The position, therefore, is that while the two societies UCMS (India) and CCDC continued to exist, a new society ICCDC was validly formed, by the requisite number of individuals and, after being duly registered, it had a separate legal existence.

6. The only other question is whether, as a result of withdrawal of UCMS (India) and CCDC the new society ICCDC ceased to exist. As we indicated earlier, the Memorandum of Association of ICCDC shows that UCMS (India) and CCDC were not even members of this first named society. It may be that the two pre-existing societies may have promoted the formation of the new society clause 3D(ii) of the Memorandum of Association but there is nothing in that document to show that the new society, which





had a separate legal existence, ceased to exist merely as a consequence of withdrawal of support of the two promoting societies. In this connection we may point out that the manner in which the new society would cease to exist is specifically provided in Clause 19 of the Memorandum of Association, In our opinion, ICCDC remained unaffected by the withdrawal of support by UCMS (India) and CCDC.

7. The petitioners in this case have prayed for writ of certiorari to quash the registration of the new society, ICCDC, on account of the registration of that society being void for the reason that, under Section 23 of the Act, such a society could not be formed, by the amalgamation or union of two registered societies. They had also asked for the issuance of a writ of mandamus requiring the respondent 1 to cancel the registration on the ground that, upon withdrawal of UCMS (India) and CCDC, ICCDC had ceased to exist. As we have shown in the foregoing paragraphs, the grounds on which these reliefs have been claimed are not well founded. Further, the respondents had resisted this petition inter alia on the ground that the petitioners had no locus standi because, as a consequence of formation of ICCDC, the other two societies, UCMS (India) and CCDC, ceased to exist. This, as already indicated earlier, is also not well founded. But since we are dismissing this petition, it is unnecessary for us to dwell further on this aspect of the matter.

8. Before closing we may state that if the petitioners consider that their property rights have been infringed, they may seek relief in the ordinary Civil Court. We understand that a suit involving such a dispute is pending in Civil Court”.





7. It has been further contended that position of defendant No.1 is claiming to be an Executive Secretary of the defendant No.2 was that of a licensee and the license automatically came to be revoked with the withdrawal of the above two societies and the defendant No.1 or defendant No.2 cannot any more retain the possession and they are under an obligation to hand over the same to the owners or their transferees. It is further contended that after execution of sale deed for consideration of Rs.45,000/-, plaintiff approached defendant No.1 to vacate the suit premises but he has refused to vacate the suit premises and the suit bungalow which has necessitated the plaintiff to file a present suit. Defendant No.1 has also let out a part of the suit bungalow to one Mr. A. Ganian on monthly rent of Rs.100/-, without obtaining permission from the plaintiff and thus continuing to retain the unlawful and wrongful possession over the suit property, therefore, they are liable to pay damages or mesne profits for use and occupation at the rate of Rs.450/- calculated on the basis of the prevalent bank rate of 12% per annum on the purchase price of Rs.45,000/- and prayed that for a decree for possession of the suit bungalow and premises as detailed in the map attached to the plaint for wrongful use of the property may kindly be granted.

8. Defendant No.1 filed his written statement denying the allegations made in the plaint mainly contending that the sale deed was a fictitious transaction as no sale consideration was paid. It is also denied that the society UCMS (USA) is owner of the suit property. It is owned by the Indian disciples and vests in the office bearers of the society ICCDC. It is emphatically denied that sale of such property measuring area 39,400 sq.ft was done and it is denied and same was mutated in the revenue records by the nazul authority, Bilaspur. Even if any such mutation has been made, it is void and inoperative against the defendants, as it has been done without due process of mutation. It has been contended that the said plot was recorded in the name of the Indian society known as Christian Mission Society, Bilaspur and later on it was recorded in the name of the Indian Society F.C. M.S., Bilaspur. Subsequently, it came to be recorded in the name of next succeeding society known as UCMS, Bilaspur,

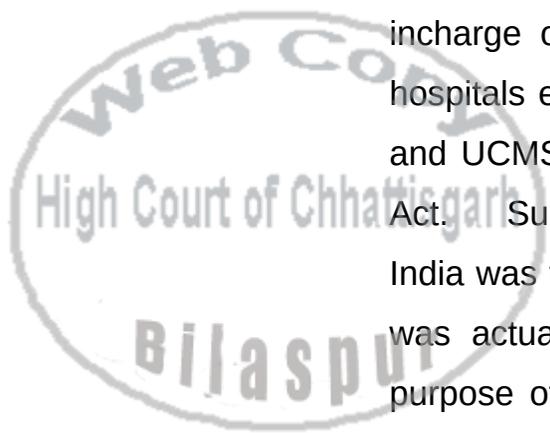


which was the local name of the Indian Society known as UCMS (India). UCMS (India) was duly registered under the Societies Registration Act and was a different entity from the society UCMS (USA). No notice of alleged mutation was served on the office bearers of the society UCMS or the office bearers of the society ICCDC, even though the plaintiff knew fully well that the society ICCDC was in possession of the suit property through its Executive Secretary/defendant No.1 and was claiming to be in possession thereof as an owner. It is denied that the plaintiff is not entitled to get damages from the defendants. The defendants are in rightful possession of the suit property and it is the plaintiff who has been wrongfully disturbing the peaceful and rightful possession of the defendants over the suit property. It is further contended that the defendants have filed civil suit No. 8A/71 in the court of District Judge, Bilaspur against the plaintiff and his vendors. It is emphatically submitted that allegations made against the defendants from paragraphs 4A and 4K are baseless and incorrect. It is further submitted that the disciples of Christ is well defined religious denomination. It has been further contended that two American societies known as Foreign Christian Missionary Society and Christian Women's Board of Mission were unregistered in the beginning but they were registered sometime in or about 1912. The missionaries converted many Indians to disciples faith. The missionaries residing in India established various institutions managed by congregational methods and congregational churches at different places in India. The American Missionaries had to complete a period of one year of residence in India, before obtaining the right of participating in the management of the institutions and churches of the disciples in India. The American Missionaries were required to become members of the Indian Congregational Disciples Churches.

9. It has been further contended that the missionaries who were sent by FCMS formed an Indian Society known as FCMS India and the missionaries and converts in India became members of that society. Similarly the missionaries sent by CWBM formed Indian society



known as CWBM India and the missionaries and the Indian converts became members of that society. Initially both societies were working separately but later on they merged to form one society known as Indian Mission Disciples of Christ (hereinafter referred to as "IMDC"). The disciples in Indian were the members of IMDC and formed the well defined minority denomination. It has been further contended that the affairs of the Indian disciples was divided into two compartments known as Evangelistic and non-evangelistic work. For the purpose of gaining legal entity, the Indian Disciples formed two societies; one society was known as Convention of Churches of Disciples of Christ (hereinafter referred to as "CCDC") and that society was put Incharge of evangelistic work the second congregational society United Christian Missionary Society (India) (hereinafter referred to as "UCMS India) was formed and put incharge of management of various institutions, such as schools, hospitals etc., belonging to the Indian Disciples and both the CCDC and UCMS (India) were registered under the Societies Registration Act. Subsequently, an unregistered society known as Christian India was formed by UCMS and CCDC for managing their work that was actually managing the work of Indian disciples and for the purpose of creating co-ordination in respect of these activities, the office bearers of two societies CCDC and UCMS (India) decided that only one society be formed for managing the complete affairs of the Indian disciples in respect of both evangelistic and non-evangelistic activities. This proposal was sent to all the disciples Churches and to other members of both societies and constitution convention was convened the constitution of the one proposed society was considered by the all churches and members of both the societies and the constitution convention in its various sittings with the approval of all concern one society was formed for the purpose of managing the evangelistic and non-evangelistic activities of the Indian disciples and for managing various institutions and churches and properties attached to them. This society is known as Indian Church Council of the Disciples of Christ (hereinafter referred to as "ICCDC". This society is registered under the M.P., Societies





Registration Act, 1959. It took over the possession of all the immovable property including the various church buildings and the buildings of the institution and took over the management of all the churches and institutions from both the societies CCDC and UCMS (India). All the disciples (India) churches became affiliated to the society ICCDC. Both societies CCDC and UCMS (India) were re-employed by the society ICCDC and the society was maintaining provident fund scheme which was duly registered by the Income Tax authorities and provident fund amount was deposited in the Allahabad Bank in the name of the society ICCDC. The applications were made for the mutation of the name of the society ICCDC in place of the society UCMS (India), CCDC, CWBM (India) and FCMS India and IMDC but the concerned authorities directed the counsel concern to make separate application for such mutation. The applications were also made to the property tax, authorities in the name of ICCDC for obtaining exemption from Nagariya Sthawar Sampati Kar Adhinyam, 1964 and the authorities were pleased to grant the exemption in respect of all the properties including the suit property to the society ICCDC. The Government was also giving grant in aid to the various schools run by the Indian disciples in the name of the society ICCDC. The society ICCDC took possession of the suit property soon after its formation and registration and was maintaining its office in the said bungalow. The Executive Secretary of the society ICCDC was residing in the said bungalow and was maintaining his office. The defendants are in possession of the said bungalow in their own right. The society ICCDC was a congregational church of the Indian disciples.

10. It has been further contended that after formation and registration of the Society ICCDC, two societies CCDC and UCMS (India) and the unregistered society church in India became defunct and extinct. They had no duties to be performed and consequently had no right with respect to the properties attached to the various churches and institutions of the Indian disciples. All the members of UCMS (India) and CCDC became of the members of the society ICCDC. It has been denied that the society IMDC was brought into existence by the





society UCMS (USA) or that the society IMDC or UCMS (India) were acting as agents of the society UCMS (USA). It has also been contended that Nazul Plot No. 85/A was purchased by the society IMDC which is also known as Christian Mission Society and that plot was recorded in the name of Christian Mission Society, Bilaspur. The work of construction suit bungalow was done by the Indian society IMDC. Out of the funds contributed by the Indian disciples and also obtained by donation from the members of the family of Ashley, who was an American Disciple, Ashley bungalow has been constructed. It has been further contended that the suit land was acquired by the society IMDC before 1913 much before formation of the society UCMS (USA). The society IMDC remained in possession of the suit property in its own right upto 1943 and from 1943 UCMS (I) remained in possession thereof in its own right upto 1962 and thereafter, the society ICCDC remained in possession thereof in its own right. It has been further contended that Hon'ble High Court of Madhya Pradesh in Misc. Petition No. 327 of 1968, had specifically given a finding that the society ICCDC was continuing to function, as such its registration under the Societies Act was not liable to be canceled and that society UCMS (I) and CCDC were not entitled to pass any resolution for effecting their alleged withdrawal from the society ICCDC and that resolution is of no legal consequence. On the above facts, it is also contended that said property is not owned by the society UCMS (USA) or any other American society and as such they have no right to sell the said properties. As already stated above, the property vested in the office bearers of the Indian societies known as FCMS, IMDC, UCMS (I) Church in India and thereafter ICCDC and would pray for dismissal of the suit.

- 11.** On the pleadings of both parties, learned trial Court has framed as many as five issues which are as under.

“1. Whether UCMS being the owner of the suit bungalow and premises was in possession of the same?

2. Whether Mr. Jonathan being the duly authorized



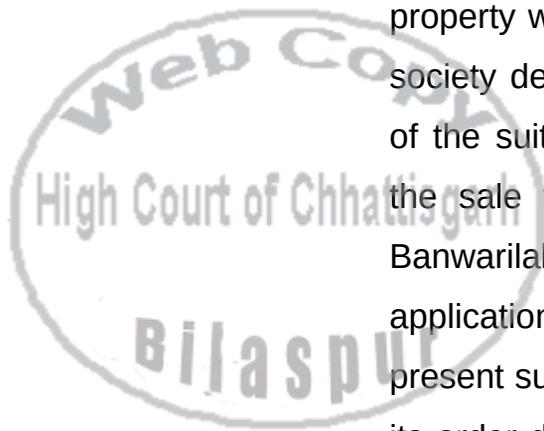
agent of the said society was competent to execute sale deed on behalf of the said society?

3. Whether the plaintiff purchased the suit bungalow and premises for Rs.45,000/- by means of a registered sale deed dated 17-9-1971?

4. Whether the defendant No.1 refused to vacate the suit bungalow and also further let out a portion of it?

5. Relief and cost.

- 12.** From the records it is quite clear that defendant No.1/ ICCDC has filed a suit before the Court of District Judge, Bilaspur which was registered as Civil Suit No. 8A of 1971 for declaration that suit property which is also a suit property in the present case belongs to society defendant No.2 and defendant No.1. ICCDC is in possession of the suit property in the capacity of Executive Secretary and that the sale transaction in favour of the plaintiff in this case Shri Banwarilal is valid. The said suit was fixed on 21-12-1973 and an application was filed under Section 10 of CPC for grant of stay of the present suit. In pursuance of that application, learned trial Court vide its order dated 29-12-1973 has stayed the present suit till 3-1-1974. The Civil Suit No. 8A/1971 has been dismissed as withdrawn, therefore, the learned trial Court has vacated the stay granted on 29-12-1973 and fixed the case for plaintiff's evidence. The plaintiff has closed his evidence on 29-4-1975, thereafter fixed the case for defendants' evidence.
- 13.** The plaintiff has examined the witness namely M.K. Banerjee, Joseph Koshy and F.C. Jonathan to substantiate that sale consideration for Rs.45,000/- was given in this regard and vide cheque No. 959846 dated 27-8-1971 amounting to Rs.1000/- and second cheque dated 17-9-1971 amounting to Rs.44,000/- have been deposited in the bank in the name of United Christian Missionary Society on 1-10-1971. Plaintiff Banwarilal himself has examined as PW/3. The defendants to substantiate their stand examined Edwin Bhagirathi, Philip James, M. Henry, Dev Prasad

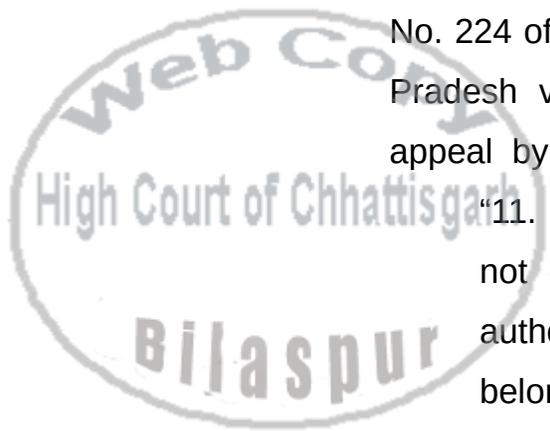




Verma and Samuel Nathaniel as their witnesses.

14. Learned trial court vide its judgment and decree dated 17-6-1977 has dismissed the suit by recording a finding that neither the suit property belongs to UCMS (USA) nor it was in its possession. Learned trial Court has further recorded a finding that possession of the defendants is not against the law. Learned trial Court has also recorded a finding that the defendants have not proved as to who is the owner of the property and against whom they intend to possess the property, therefore, the plea raised by the defendants for adverse possession is also not acceptable. Accordingly, it was held that defendants' possession cannot be said to be illegal.
15. Against that, the plaintiff has preferred an appeal before the Hon'ble High Court of Madhya Pradesh which was registered as First Appeal No. 224 of 1977. Hon'ble Division Bench of High Court of Madhya Pradesh vide its order dated 25-9-1980 has dismissed the said appeal by recording a finding in para 11 which reads as under.

“11. Under such a state of law, the material placed is not enough to hold in favour of existence of due authority in Shri Jonathan to sell the property belonging to UCMS (USA). The power of attorney (Ex.P/10-A) does not give the least indication if the Board of Trustees/or the Management ever resolved sanctioning the sale of the properties of the U.C.M.S (USA) in India. On the other hand, it is in the evidence of Shri Jonathan himself that the UCMS (USA) never resolved to dispose of the suit property (See deposition of Shri Jonathan (PW/4) para 12). He has further stated at the end of para 15 of his deposition that he did not even inform any one of the sale of the suit property. He has also deposed that he has not received any instructions from the managing body of UCMS (USA) in America for sale of this property. That he stated that he had an absolute power to sell it. In the face of such statement, we





cannot possibly held, that the sale of the suit property to the appellant/plaintiff was by the UCMS (USA). In our opinion, the sale deed executed by Shri Jonathan conveyed no right, title or interest in the suit property to the appellant/plaintiff. The suit must fail, therefore, fail.”.

16. Against the dismissal of the First Appeal by Hon'ble Division Bench of the Madhya Pradesh High Court, the plaintiff has preferred civil appeal No.8205 of 1983 before Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 27-3-1991 has allowed the appeal and passed the following order:

“In view of these circumstances, we allow the applications filed by the appellant under Order 41 Rule 27 and permit the plaintiff/appellant to prove these additional documents. The defendant/respondents would also be free to lead any evidence in rebuttal of such documents after the evidence led by the plaintiff/appellant, in this regard is over.

In the result, we allow this appeal, set aside the judgment and decree of the trial court dated 17-6-1977 in C.S.No.2-A/1977 as well of the High Court dated 25-9-1980 in FA No. 224 of 1977 and remand the case back to the trial court with a direction to allow both the parties to lead evidence restricted to the additional documents filed before this court. The trial court will then decide the suit afresh on all points in accordance with law. In view of the fact that this is an old case, the trial court shall dispose of the suit as early as possible within six months of the receipt of the papers. The registry will send the additional documents filed before this court to the trial court immediately”.





17. After remand, the matter was fixed on 29-11-1991, on that day an application was moved under Order 1 Rule 10(2) r/w section 151 CPC for impleading N.D. Rai who has been elected as Secretary of defendant No.1. Learned trial court vide its order dated 22-01-1992 has rejected the said application but allowed the application of the plaintiff by which name of legal representative of Banwarilal has been sought to be incorporated. The learned trial Court thereafter fixed the case for plaintiff's evidence as per direction of Hon'ble Supreme Court. On 2-9-1992 the learned trial court has rejected the application filed by the defendants for amendment in his written statement and again fixed the case for plaintiff's evidence on 8-9-1992. On 3-11-1992 plaintiff examined the witness namely F.C.. Jonathan and he was cross-examined and thereafter, the plaintiff has closed their evidence. After remand, defendant has examined Edwin Bhagirathi who has stated in his evidence as under:"

"17- यू.सी.एम.एस. अमेरिका ने वाद सम्पत्ति को बिक्री करने हेतु कोई प्रस्ताव नहीं किया था तथा 1970 में मि० जोनाथन को बिक्री करने हेतु मुख्तयारनामा देने के लिए कोई प्रस्ताव नहीं दिए थे । सन् 85 में मैं अमेरिका गया था उस दौरान उक्त कार्यालय भी गया था । मैंने वहाँ श्री राबर्ट थामस जो भारतीय डिवीजन के इंचार्ज थे से भेंट की थी । तथा पूछा था कि क्या यू.सी.एम.एस. अमेरिका ने सन् 70 में भारत में स्थित वादग्रस्त संपत्ति को विक्रय करने के संबंध में कोई प्रस्ताव किया है तो श्री राबर्ट थामस ने मुझे इसका उत्तर दिया ।

नोट:- वादी अधि० की आपत्ति है कि थामस के द्वारा दिया गया उत्तर सुनी सुनाई गई त्रुटिगत साक्ष्य होने से साक्ष्य में ग्राह्य नहीं है इस कारण पूछी जा सकती जबकि प्रति० अधि० का तर्क है कि साक्षी ने स्वयं श्री राबर्ट थामस से बात की थी व प्रश्न पूछा था उसका जो उत्तर उसने दिया वह त्रुटिगत साक्ष्य की परिधि में नहीं आता बल्कि प्रत्यक्ष साक्ष्य के रूप में आता है इस कारण साक्ष्य में ग्राह्य है ।

इस आपत्ति का निराकरण प्रकरण के गुणदोष के वक्त किया जावेगा । उक्त राबर्ट थामस के उत्तर को अभिलिखित किये जाने की अनुमति दी जाती है ।



18- राबर्ट थामस ने मुझे कहा कि मुझे ऐसा ख्याल नहीं है कि हमने ऐसा कोई प्रस्ताव पारित किया है ।

19- श्री राबर्ट थामस की मदद से मैंने सन् 1970-71 के रिकार्ड यू.सी.एम.एस. के कार्यालय में देखे किन्तु ऐसे कोई प्रस्ताव मुझे नहीं मिले ।

20- मैं अमेरिका में 3 माह रुका था और कार्यालय में एक दिन रुका था ।

प्रतिपरीक्षण द्वारा श्री बाजपेयी अधि० ओर से वादी

21- मैं माह जुलाई 85 में अमेरिका गया था और माह अक्टूबर 85 में वापस आया था मैंने पासपोर्ट भोपाल से लिया था और वीसा दिल्ली से लिया था पासपोर्ट मेरे पास मौजूद है उसे लेकर मैं आज नहीं आया हूँ ।

22- मैंने सन् 91 में माननीय सर्वोच्च न्यायालय में आवेदन का उत्तर प्रस्तुत किया था उसमें अमेरिका जाने का हवाला नहीं दिया गया था । फिर कहा कि हमारे अधि० ने उत्तर प्रस्तुत किया था उसकी जानकारी मुझे नहीं है। मेरे अधि० ने क्या जवाब दिया मैं नहीं जानता मैंने अपने अधि० को जवाब देने के पहले अमेरिका जाने के तथ्य की जानकारी नहीं दी थी । मेरे अधि० को मैंने अमेरिका में ऐसे प्रस्ताव नहीं होने बाबत् जानकारी इसलिए नहीं दी क्योंकि उनसे कोई चर्चा हुई । मैंने चिड्डी द्वारा सूचित नहीं किया ।

न्यायालय द्वारा:-

23- माननीय सर्वोच्च न्यायालय में वादी द्वारा जो दस्तावेज पेश हुए उसका उत्तर हमारे अधिवक्ता द्वारा पेश किया गया अथवा नहीं मैं नहीं जानता।

24- मैंने अमेरिका जाने पर वहाँ भारत की वादग्रस्त संपत्ति को बेचने के संबंध में कोई प्रस्ताव न होने का सर्वोच्च न्यायालय में पैरवी करने वाले अधि० को नहीं दी । यह सूचना न देने का कारण यह है कि मुझे इस बात की जानकारी नहीं थी कि क्या हो रहा है मुझे यह मामलूम था कि अपील सर्वोच्च न्यायालय में पेंडिंग है । मुझे दिल्ली के कौन अधि० नियुक्त थे इसकी जानकारी मुझे नहीं थी उसे श्री एन.एल. सोनी अधिवक्ता ने नियुक्त किया था मैंने श्री एन.एल. सोनी को अमेरिका जाने और उपरोक्तानुसार प्रस्ताव नहीं होने की जानकारी नहीं दी ।





25- यह जानकारी नहीं देने का कोई कारण नहीं है । श्री एन.एल. सोनी अधि० ही सर्वोच्च न्यायालय में पैरवी करने की व्यवस्था करते थे । श्री एन.एल. सोनी अधि० जीवित है और बिलासपुर में पैरवी करते हैं ।

26- मैंने श्री राबर्ट थामस से ही जानकारी अमेरिका में हासिल की थी और किसी व्यक्ति से नहीं की थी । श्री थामस जीवित हैं । मैंने श्री राबर्ट थामस से ऐसे प्रस्ताव न होने बाबत् लिखाकर नहीं लाया पावर आफ एटार्मी न दिए जाने बाबत् भी लिखाकर नहीं लाया । इसका कारण मैं नहीं बता सकता कि बातचीत के द्वारा मैंने विश्वास कर लिया था । मैं अमेरिका इस तथ्यों की जाँच हेतु नहीं गया था मलेशियाओं में विजिट के लिए गया था तो उपरोक्तानुसार जांच की थी ।

27- वहाँ प्रस्तुत मामला चलने बाबत् चर्चा हुई थी और चर्चा नहीं हुई थी । श्री थामस कब से कब तक प्रेसीडेंट रहे यह मुझे जानकारी नहीं है । जो दस्तावेज सर्वोच्च न्यायालय में प्रस्तुत हुए वे दस्तावेज देखने का मुझे अवसर प्रकरण के सर्वोच्च न्यायालय से वापस आने पर प्राप्त हुआ था । दस्तावेज देखने के बाद श्री राबर्ट को कोई पत्राचार नहीं किया कि इस प्रकार का प्रस्ताव न होने की जानकारी दी थी किन्तु ये प्रस्ताव कैसे हुए हैं । सन् 85 में मैं जब अमेरिका गया तो मैंने वादग्रस्त सम्पत्ति को बेचने के संबंध में प्रस्ताव की जानकारी इसलिए प्राप्त करने का प्रयास किया था क्योंकि मैं सन् 68 से कार्यकारणी सचिव आई.सी.सी.डी.सी. का रहा हूँ तो मुझे इस तथ्य की जानकारी थी कि ट्रस्ट की सम्पत्ति को बिना प्रस्ताव के नहीं बेचा जा सकता लेकिन इस संबंध में मुझे न्यायालय में तथा उच्च न्यायालय में पूछताछ की थी इसलिए पता लगाया ।

28- मैंने प्रस्तुत दस्तावेज प्रस्ताव के बारे में जानकारी न होने से उसकी जानकारी अमेरिका में हासिल नहीं की थी केवल सामान्य जानकारी प्राप्त करने के संबंध में प्रस्ताव होने के संबंध में जानकारी की थी ।

29- यह कहना गलत है कि मैंने अमेरिका में पावर आफ एटार्मी तथा प्रस्ताव के संबंध में कोई जांच नहीं की ।”.

18. The plaintiff in support of his averments exhibited the documents ie., Ex.P/11 authorization for sale of property, Ex.P-1/ ExP-12 Power of



Attorney along with certification dated 19.11.1970 certifying that E. Allen Hunter whose official attestation appears to be annexed instrument, attestation of signature of Barbara Hartman, Authentication Officer, competent authority of United State of Washington, District of Columbia and the seal of the said department dated 03.12.1970, testimony of Tina Lee Vitte clerk of the circuit court State of Indiana, County of Marian, Authorization for sale of property dated 12.08.1971, Certificate of office by Joseph H. Hogsett Secretary, State of Indiana with regard to appointment of Faye I. Mowery as clerk of Circuit Court, Certificate of officer by Faye I. Mowery certifying that Sugion R. Guardinar, Certification by William J. Nothingham, President the United Christian Chruch Missionary societies regarding resolution was passed on 17.11.1970 giving president Dr. T.J. Liggett authorization to issue power of attorney to Frankling C. Jonathan of Jabalpur, Madhya Pradesh. The resolution also include and empower Franklin C.Jonathan of Jabalpur Madhya Pradesh to sell plot no. 85/1 of sheet No. 4, 340181. 25 square feet land of Rai Saheb Banwarilia on 17.09.1971 by registered sale deed. Affidavit dated 17.07.1989 given by Mary L. Collins, Secretary, Certificate regarding meeting of Board of Trustees held on 17-18/11/1970 wherein it has been resolved that authority be granted to the President of United Christian Missionary Society to issue a general power of attorney to Frankling C. Jonathan, Jabalpur, Madhya Pradesh, attestation of signature of Edwin H. Mcgowen authentication officer dated 17.10.1979 Ex.P-13. Certification issued by Authentication Officer, Department of State dated 01.10.1979 Ex.P-14. Affidavit of Robert A.Thomas, President United Christian Missionary Society, attesting recommendation taken by the trustee of the United Christian Missionary Socieity in connection with the sale of property in Bilaspur, Takhatpur, Katni MP, India Mungeli and Jabalpur etc 13.11.1985 Ex.P-15.

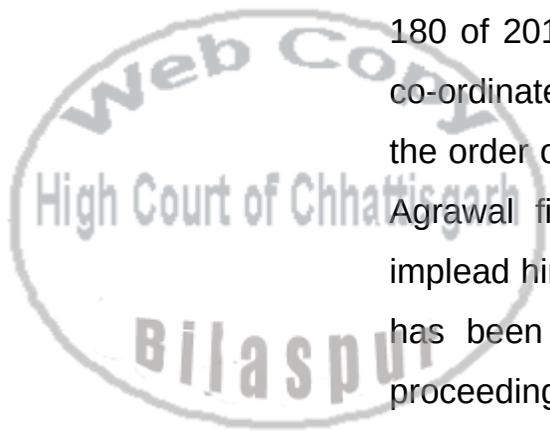
- 19.** Appellant witness was cross-examined by the defendant, defendant has examined his witnesses and thereafter the matter was fixed for arguments. Learned trial Court vide order dated 4-12-1992 dismissed the suit. The learned trial Court while dismissing the suit has



recorded a finding that UCMS (USA) has been empowered by the Board of Trustees to sell the property. This fact was not proved by the plaintiff, therefore, Mr. F.C. Jonathan has no right to sell the property and while deciding the issue whether defendant No. 2 has right to acquire title over the property or not, the trial court has recorded a finding that the society was constituted in 1962 and since then they were in possession of suit property which is more than 12 years, on the basis of adverse possession, they have acquired the right and accordingly, the suit was dismissed. Against the above order, plaintiff has filed the present appeal.

20. During pendency of this appeal, defendant No.1 Mr. N.L. Soni (Now since deceased) had entered into compromise with the plaintiff and on the basis of compromise, the appeal was disposed of by this court vide its order dated 1-10-2018. Thereafter, Review application No 180 of 2018 was filed for review of the order dated 1-10-2018. The co-ordinate Bench of this court while hearing the parties has passed the order on 12-9-2019. In the said review petition one Sushil Kumar Agrawal filed an application under Order 1 Rule 10 of CPC to implead him as respondent in this case as substantial part of interest has been accrued in his favour and to avoid multiplicity of the proceedings. The Co-ordinate Bench of this court after detailed order allowed the review petition No. 180 of 2018 vide its order dated 12-9-2019 and operative part of the order are extracted as under:-

“21. By application of the aforesaid principle laid down by the Supreme Court when are examined and applied as against the documents filed along with the application under Order 1 Rule 10 CPC it drives to draw an interference that Krishna Kumar Agrawal received a substantial amount and entered into agreement with the applicant herein but subsequently tried to take over the property by suppression of facts solely by entering into compromise with N.L. Soni. Therefore, the circumstances and the documents would show that substantial part of interest was created that of the applicant over the property in suit. In order to avoid all the multiplicity of the proceedings, the Court has already recalled the order passed under the compromise decree by review as it was outcome of fraud.





So as to safeguard the further proceeding of the first appeal and to avoid any further fraud and to avoid multiplicity of the proceeding in future, the application under Order 1 Rule 10 CPC filed by the Sushil Kumar Agawal is allowed. Sushil Kumar Agrawal be added as a respondent in the first appeal.

22. In the result, as discussed above, in the facts of this case the order dated 01-10-2019 is called. Consequential, the judgment and decree passed on the basis of order dated 1-10-2018 is also recalled. The application under Order 1 Rule 10 CPC is allowed. The necessary amendment be carried out as per Rules and the first appeal is directed to be listed for hearing on merits”.

21. Against that order, Mr. N.L. Soni, filed Special Leave to Appeal ( Civil) No. 30749 of 2019 ) and the Hon'ble Supreme Court vide its order dated 6-1-2022 has held as under:

“As the decision of the Registrar is adverse to the petitioner, no indulgence can be shown to this petitioner in light of the finding of facts recorded by the High court in the impugned judgment that the petitioner had executed the documents) with full knowledge that he had no authority to do so on the given date. The special leave petition is dismissed.

Counsel for the petitioner submits that the petitioner has assailed the decision of the Registrar before the High Court. If the petitioner succeeds in that writ petition, he may take out a formal application for revival of this special leave petition, which application can be considered appropriately,

Pending applications shall stand disposed of.”.

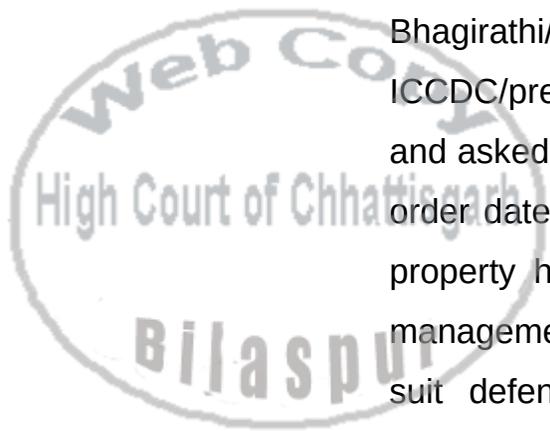
22. Since Mr. N.L. Soni, Advocate was not appearing in this case, therefore, the court issued notice to him for his appearance on 7-2-2022. On that day it was brought to the notice of this court that Mr. N.L. Soni expired on 29-1-2022, therefore, respondent No.1 ICCDC who was already party in this suit is allowed to represent through Executive Secretary Anurag Nathaniel and accordingly it was directed to amend the cause title and in pursuance of the direction given by this court, the plaintiff has amended the cause title and Anurag Nathaniel, Executive Secretary, ICCDC was





allowed to implead as party respondent.

23. Learned counsel for the appellant would submit that the finding recorded by the learned trial Court that Mr. Jonathan has no right to sell the property, is erroneous and perverse finding and on perverse finding the learned trial court has dismissed the suit. He would further submit that the finding recorded by Hon'ble High Court of Madhya Pradesh would operate *res-judicata* against the defendants and defendant society in the present case was not the property owing society and it has thus no right, claim or title in respect of the suit or the property. It has been further contended in the plaint that another civil suit No.19-A/70 was filed in the Court of Second Civil Judge, Class-1, Bilaspur by one Wallace James claiming to be the business Manager and Acting Administrator of the Jackman Memorial hospital against Rev. Edwin Bhagirathi/defendant No.1 describing him as Executive Secretary of ICCDC/present defendant No.2, Mr. Rev. F.C. Jonathan and others and asked for temporary injunction. The learned trial Court vide its order dated 7-7-1970 held that the new society ICCDC was not a property holding body but was formed for the purpose of better management of two institutions i.e., UCMC and CCDC. In the said suit defendant No.6 Shri Jonathan moved an application for injunction and the same was allowed, as such the contention raised by the respondent that they are title holder of the property will operate *res-judicata* against them. Learned counsel for the appellant would submit that the plaintiff after remand the matter, has executed the original records and power of attorney which was duly approved and if the power of attorney was given by the foreigner, therefore, as per Section 85 of the Indian Evidence Act presumption has to be drawn that it is true power of attorney unless it is rebutted by the opposite party by recording cogent evidence. In the present case, nothing was brought on record by the respondents No.1 and 2 to rebut the execution of power of attorney in favour of F.C. Jonathan, still the trial court has committed illegality in dismissing the suit.





24. Learned counsel Mr. Ankit Pandey appearing for the appellant would submit that the finding recorded by the learned trial Court that the Power of Attorney which has been recorded in favor of F.C. Jonathan has not been proved, in accordance with law, merely execution of documents Ex.P/12 to P/15 do not prove that power of attorney has been duly proved and the contention that on the basis of Power of Attorney, F.C. Jonathan can execute the sale deed, is perverse and against the law on the subject. He would further submit that trial court while recording a perverse finding ignored the provisions of Section 85 and 57 (6) of the Indian Evidence Act, 1872.
25. He would further submit that the learned trial court should have also given due consideration to Section 14 of the Indian Notaries Act, 1952 which provides that if the Central Government is satisfied that by the law or practice of any country for place outside India, the notarial acts done by the notaries within India are recognized for all or any limited purposes in that country or place, the Central Government may by notification in the Official Gazette, declare that the notarial act lawfully done by the notaries within such country or place shall be recognized within India for all purposes or, as the case may be for such limited purposes as may be specified in the notification, therefore, the notarization has been done at United State of America, certificate to that effect has also been affixed, signatures have authenticated, certificate has also been annexed to this effect, as such, learned trial court should have held that the Power of Attorney has been duly executed. Therefore, the finding recorded by the learned trial court is perverse, contrary to law and judgment and decree passed by the trial court deserves to be set aside. In support of his submissions, learned counsel for the appellant has also filed written submissions reiterating the stand taken by him. In support of his arguments, he has relied upon the judgment of **Hon'ble Supreme Court in Jugraj Singh and another vs. Jaswant Singh and others<sup>1</sup>**, **Hon'ble Delhi High Court in National and Grindlays Bank Ltd. vs. M/s. World**

---

<sup>1</sup> AIR 1971 SC 761



Science News and others<sup>2</sup>, Hon'ble Allahabad High Court in Abdul Jabbar vs. 2<sup>nd</sup> Additional District Judge, Orai<sup>3</sup>, Hon'ble Calcutta High Court in Re. K.K. Ray (Private) Pvt. Ltd.,<sup>4</sup>. He has also relied upon the judgment of Hon'ble Delhi High Court in Rajesh Wadhwa vs. Dr. (Mrs) Sushma Govil and would pray for setting aside the judgment and decree passed by the trial court and would pray for grant of decree as prayed in the plaint.

26. On the other hand, learned Sr. Advocate Smt. Fouzia Mirza appearing for respondents /defendants No. 1 and 2 would submit that registered sale deed is a fictitious transaction as no sale deed was ever executed, ownership of the suit property is vested in the society ICCDC. The property has been used by the Local Church Council and has been in continuous possession openly and adversely to the others. She would further submit that Exhibit D/69 proves the existence of library in Ashley Bungalow, Ex.-D/70 mentions a meeting in the Ashley compound regarding Kinder Garden School, Ex.D/47 is a report dated 12-2-1926 of Deputy Commissioner Bilaspur with regard to the exemption of taxes and further F.C. Jonathan was not having any authority to sell the property, therefore, appellant is not entitled for any relief as prayed for. She would further submit that the learned trial Court has rightly dismissed the suit as property does not belong to UCMS (USA) nor was in their possession and even if it is presumed that the property belongs to UCMS (USA), it is a trust property and F.C. Jonathan was not authorised to sell the suit property. She would further submit that on earlier litigation, learned trial Court vide its judgment and decree dated 17-6-1977 has dismissed the suit and against that, plaintiff has preferred First Appeal No. 224 of 1977 which was dismissed wherein Hon'ble High Court has recorded a finding that the material placed on record is not enough to hold in favour of existence of due authority in Shri F.C. Jonathan to sell property belonging to UCMS and thereafter, plaintiff has preferred an appeal i.e., Special Leave to Appeal before the Hon'ble Supreme Court along with an application for taking documents on record under

<sup>2</sup> AIR 1976 Delhi 263

<sup>3</sup> AIR 1980 Allahabad 369

<sup>4</sup> AIR 1967 Calcutta 636





Order 41 Rule 27 of CPC which was allowed by the Hon'ble Supreme Court and permitted the plaintiff/appellant to prove the additional documents and the defendants/respondents would also be free to lead any evidence in rebuttal of such documents after evidence led by the plaintiff/appellant in this regard is over. Thereafter, the trial court has rightly dismissed the suit vide its order dated 4-12-1992 as merely execution of documents does not prove the contents of the documents. She would further submit that minutes of meeting and resolution ought to have been proved by calling witnesses from America in order to prove on which case and by whom resolution has been passed. Further, authenticity of the documents is doubtful and it was not legally proved that F.C. Jonathan was having authority of selling the property. It has also been contended by learned counsel for the respondents No. 1 and 2 that the learned trial court has recorded a finding that the defendants are in possession of the suit property for the last more than 12 years and have acquired the title on the basis of adverse possession with respect to UCMS (USA), therefore, learned trial court has dismissed the suit. She would further submit that Ex.P.11 and P.15 came under the private documents as received by F.C. Jonathan through UCMS (USA) but the plaintiff witness No.4 was unable to prove the documents or the contents of the documents, the documents have to be proved by primary evidence which is the best evidence, it ought to have been proved by evidence led by the person who has made the original document unless the person is no longer available to produce before the court, or by the person who has the personal knowledge about document or was a part of making of the document and had verified the document either approval it or signed it with the knowledge of its contents. The documents have not been proved as per provisions of Sections 62 ab 64 of the Indian Evidence Act, therefore, the finding recorded by the learned trial court is legal and does not call for interference by this court. In support of her submissions, she has relied upon the judgment of Hon'ble Supreme Court in **Madholal Sindhu vs. Asian Assurance Co. Ltd, & others**<sup>5</sup>. She would further submit that

<sup>5</sup> 1945 SCC Online Bom 44



Ex.P/11 to P/15 are suspicious documents with regard to the authenticity of the documents. She would further submit that an attempt for authentication of the documents has been made and would submit that all these documents are all got up documents and a suspicion is created, would refer to the judgment of Hon'ble Supreme Court in **Maria Margarida Sequeria Fernandes and others vs. Erasmo Jack De Sequeria (dead) through Lrs**<sup>6</sup>. She would further submit that the suit for permanent injunction without seeking declaration of title itself is not maintainable as held by Hon'ble Supreme Court in **Anathula Sudhakar vs. P. Buchi Reddy (dead) through Lrs.**

27. Learned Sr. Advocate for the respondents No.1 and 2 would further submit that documents Ex.P/11 to Ex.P/15 have been exhibited without there being any pleading by way of amendment, therefore, the documents have been rightly disbelieved by the trial court. She would further submit that plaintiff has not proved burden of proof as per the Evidence Act and the plaintiff/appellant has not discharged the burden of proof as per Evidence Act and initial burden lies on the plaintiff and thereafter it shifted to defendants. She would refer to judgment of Hon'ble Supreme Court in **Bachhaj Nahar vs. Nilima Mandal & another**<sup>7</sup> and would pray for rejection of the appeal. Lastely, Sr. Advocate would submit that the finding recorded by the learned trial court is just and proper which does not call for any interference by this court.
28. Per contra, learned counsel for respondent No.3 Mr. Padmesh Mishra, would submit that the learned trial court has committed illegality in holding that on account of adverse possession, defendants No. 1 and 2 have accrued any right over the suit property. He would submit that the defendants No. 1 and 2 have filed the suit for declaration of the title of the suit property which was subsequently withdrawn by them without permission, therefore, in view of sub rule (3) of Rule 1 of Order XXIII of the CPC, defendants 1 and 2 are precluded from instituting any fresh suit in respect of such subject matter or such part of the claim. He would further

<sup>6</sup> (2012) 5 SCC 370

<sup>7</sup> (2008) 17 SCC 491



submit that since the suit claiming title over the property has been withdrawn by them, the claim of ICCDC qua title suit stood abandoned as such, ICCDC cannot claim over the suit property. He would further submit that since the defendants have withdrawn the suit without any liberty granted by this court, therefore, their claim with regard to title over the suit property is barred by principle of *res judicata* as held by Hon'ble Supreme Court in **Sarguja Transport Service vs. STAT**<sup>8</sup>. He would further submit that the trial court has recorded a finding in para 28 of its judgment wherein it has been held that UCMS was true owner of the suit premises and the aforesaid position has been affirmed by the Hon'ble High Court of Madhya Pradesh in para 11 of its judgment dated 25-9-1980, reported in 1981 MPLJ 137, therefore, defendants No. 1 and 2 cannot claim that they are title holder of the suit premises. He would further submit that the defendants No. 1 and 2 have not placed on record any documentary evidence to claim the title over suit property. He would further submit that the defendants No. 1 and 2 claiming to be true owners were barred under the law to claim adverse possession as pre-requisite of adverse possession under law is hostile possession i.e., possession under the denial of the title of the true owner in the property. He would further submit that a person who admits permissive possession cannot be allowed to plead adverse possession. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Ram Nagina Rai vs. Deo Kumar Rai**<sup>9</sup>. He would further submit that it is incumbent upon defendants No. 1 and 2 to admit the ownership of the plaintiff of the true owner on the suit property, thereafter they can claim for adverse possession whereas ICCDC in their written submission has denied ownership of UCMS and would refer to the judgment of Hon'ble Supreme Court in **M. Siddiq (Ram Janmabhumi Temple-5 J) vs. Suresh Das**<sup>10</sup> and would refer to paragraph 1142 which reads as under:

“1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in

---

<sup>8</sup> (1987) 1 SCC 5

<sup>9</sup> (2019) 13 SCC 324

<sup>10</sup> (2020) 1 SCC 1





another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No. 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr. Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the even that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established”.

29. He would further submit that from the pleadings of the defendant No.1, it is quite vivid that the defendants are claiming ownership and also claiming for adverse possession of the suit premises which is not permissible as held by Hon'ble Supreme Court in **Narasamma v. A. Krihnappa**<sup>11</sup> . Learned counsel for respondent No.3 would submit that on earlier occasion UCMS (USA) approached this Hon'ble Court by preferring an application under Order 1 Rule 10 of the CPC to implead party as the UCMS(USA) was not the party to the suit . Therefore, learned Court below could not have reached to any finding on conclusion against the UCMS (USA) without asking the contesting party to implead it as necessary party. This Court vide its order dated 31.07.2013 has rejected the said application by recording the finding that that UCNTIA in the present case is neither necessary party nor proper party nor formal party for adjudication of this appeal and that order has never been challenged by UCMS. He would further submit that the learned trial court has committed illegality in declaring the right of adverse possession in favour of defendant without examining the legal position applicable to the adverse possession. He would further submit that for grant of decree on the basis of adverse possession, parties have to be specifically pleaded that further such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the court to decide between rivalries. He would

---

<sup>11</sup> (2020) 15 SCC 218



refer to judgment of Hon'ble Supreme Court in **Dagadabai v. Abbas**<sup>12</sup>. He would further submit that permissive possession will come to an end upon alienation of suit property by the true owner as the suit property has already been sold through the registered sale deed by the true owner, therefore, the plea raised by the defendants No. 1 and 2 that they have pleaded adverse possession conceded to the title of UCMS as true owner and, therefore, they do not have right to stay in possession of the suit premises. With regard to power of attorney he would also support the case of the appellant and would draw attention of this court to Section 85 of the Indian Evidence Act and also relied upon the judgment of Hon'ble Supreme Court in Jugraj Singh (supra). He would further submit that the execution of power of attorney authorizes the attorney holder to execute a deed to effect transfer and convey title on behalf of the principal in exercise of the powers conferred on the attorney holder under the power of attorney. He would refer to the judgment of Hon'ble Supreme Court in **Suraj Lamp & Industries (P) Ltd vs. State of Haryana**. He would further submit the Power of Attorney in favour of F.C. Jonathan was executed and sale deed has been proved, in accordance with law, after remand order passed by the Hon'ble Supreme Court, the documents have been filed and proved in accordance with the provisions of law. He would further submit that the question as to in what manner a suit for possession and permanent injunction ought to be tried, is no longer *res-integra* and he would refer to the judgment of Hon'ble Supreme Court in Maria Margarida Sequeria Fernandes (supra). He would further submit that upon sale deed having been accepted by the trial court and in the absence of any documentary evidence to prove ownership or right of possession of the defendants, the trial court ought to have ejected the defendants No. 1 and 2 from the suit premises and would pray that this first appeal be allowed.

30. I have heard learned counsel for the parties and perused the records of the court below with utmost satisfaction.
31. From the above stated facts and considering the submissions of the parties, following points cropped up in the present appeal for decision

---

<sup>12</sup> (2017) 13 SCC 705



which are as under:

“1. Whether the Power of Attorney executed in favour of F.C . Jonathan has been duly proved by the plaintiff or not and on the basis of power of attorney F.C. Jonathan has authority to execute the sale deed in favour of plaintiff?.

2. Whether the finding recorded by learned trial Court with regard to adverse possession in favour of respondent no. 1 and 2 is legal, justified or not?

**32.** Now point No. 1:- Before advertng to the facts of the case to determine the point No.1, it is expedient for this Court to extract the relevant provisions of Section 14 of Notaries Act 1952, Section 57 and 85 of Evidence Act, Section 33 of Registration Act 1908;-

**14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries-** If the Central Government is satisfied that by the law or practice of any country for place outside India, the notarial acts done by the notaries within India are recognized for all or any limited purposes in that country or place, the Central Government may by notification in the Official Gazette, declare that the notarial act lawfully done by the notaries within such country or place shall be recognized within India for all purposes or, as the case may be for such limited purposes as may be specified in the notification.

**33.** Section 57 and 85 of the Evidence are reproduced as below:-

**Section 57 and 85 of the Indian Evidence Act, 1872**

57. Facts of which Court must take judicial notice.—The Court shall take judicial notice of the following facts:—

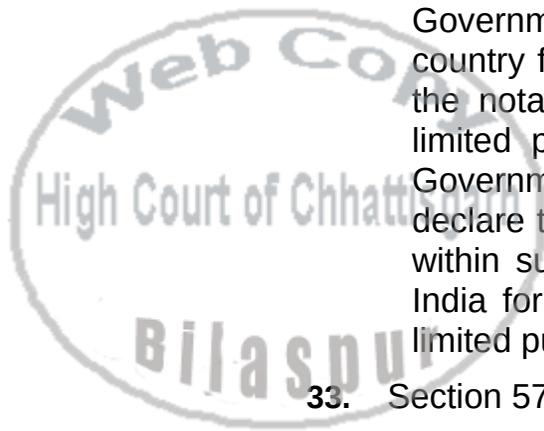
(1)All laws in force in the territory of India;

(2) All public Acts passed or hereafter to be passed by Parliament 2[of the United Kingdom], and all local and personal Acts directed by Parliament 2[of the United Kingdom] to be judicially noticed;

(3)Articles of War for 3[the Indian] Army, 4[Navy or Air Force]; 5

(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any law for the time being in force in a Province or in the State;]

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;





(6) All seals of which English Courts take judicial notice: the seals of all the 6[Courts in 7[India]], and all Courts out of 5[India] established by the authority of 8[the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by 9[the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in 7[India];

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in 10[any Official Gazette];

(8) The existence, title and national flag of every State or Sovereign recognized by 11[the Government of India];

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(10) The territories under the dominion of 11[the Government of India];

(11) The commencement, continuance, and termination of hostilities between 11[the Government of India] and any other State or body of persons;

(12) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;

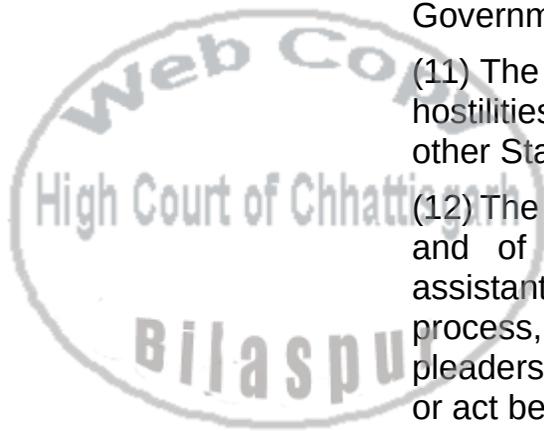
(13) The rule of the road, 12[on land or at sea]. In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

#### **34. Section 85 of the Indian Evidence Act, 1872**

85. Presumption as to powers-of-attorney.—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, 1[Indian] Consul or Vice-Consul, or representative 2[\*\*\*] of the 3[Central Government], was so executed and authenticated.

#### **35. Section 33 of Registration Act 1908;-**

“33. Power-of-attorney recognizable for purposes of section





32.—(l) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:—

(a) if the principal at the time of executing the power-of-attorney resides in any part of <sup>45</sup> [India] in which this Act is

for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

<sup>46</sup>

(b) if the principal at the time aforesaid [resides in any part of India in which this Act is not in force], a power-of-attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government: Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:—

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in Court. <sup>49</sup> [Explanation.—In this sub-section “India” means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897 (10 of 1897).]

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

36. For examine whether the power of attorney made in United State of America has been duly executed or not. It is necessary for this Court





to extract the Ex.P-13 to Ex.P-15 which are as under:-

**Ex.P-13** "IN WITNESS WHEREOF, the United Christian Missionary Society has hereunto set its hand and seal this 18<sup>th</sup> day of November, 1970.

THE UNITED CHRISTIAN MISSIONARY SOCIETY

Sd/-

By Thomas J. Liggett, President.

ATTEST

Sd/-

Nancy Jane Wilson, Secretary,  
(State of Indiana)  
(Country of Marion) SS:

Before me, the undersigned, a Notary Public in and for said country and State, personally appeared Thomas, . Liggett in his character of President of the United Christian Missionary Society, a corporation organized under the laws of the State of Ohio and duly authorised to do business in the State of Indiana, on this the 18<sup>th</sup> day of November, 1970, and for and and on behalf of and in the name of said corporation , acknowledged the execution of the above and foregoing power of attorney to be the corporation act and deed of sad corporation.

Witness my hand and notarial seal on the 18<sup>th</sup> day of November,1970"

Sd/-

TINA DE WHITE, NOTARY PUBLIC,  
MY COMMISSION EXPRESS FEB 4, 1974  
ISSUED THROUGH INDIANA NOTARY ASSOC."

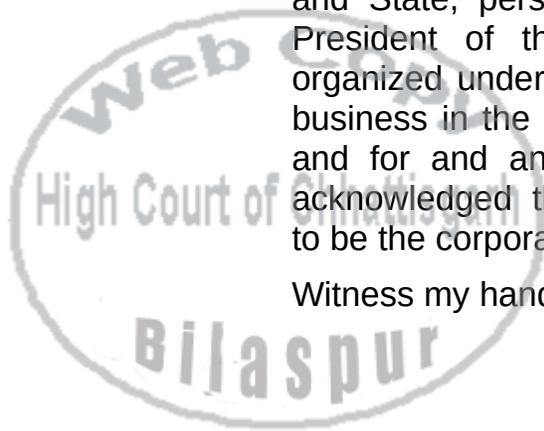
**Resolution (Ex P/13)-**

"July, 17, 1989.

CERTIFICATION

This is to certify that the trustees of The United Christian Missionary Secretary unanimously approved the following resolution on July, 17, 1989 to -wit:

"That The United Christian Missionary Society does hereby ratify and reaffirm that plot N.85/1 of sheet No.4, 34081.25 square feet of land of Jarhabhata, Bilaspur, was sold to Rai Saheb Banwarilal on 17-9-1971 by registered sale deed, through our appointed Attorney in India, the Rt. Rev. francklin C. Jonathan, and that this as by te unanimous action by the





trustees of The United Christian Missionary Society which at the time of the sale held a free simple title and interest to said Rai Saheb Banwarilal”.

Sd-

William J. Nottingham, President.

**Ex.P/14**

“No.79/17755

UNITED STATES OF AMERICA

symbol.

DEPARTMENT OF STATE

To all to whom these presents shall come, Greetings:

Certify that the document hereunto annexed is under the seal of the State of ( Indiana).

In testimony whereof, I, Cyrue R. Vance, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this first day of October, 1979.

Sd/-

Secretary of State.

**(Ex.P/14)**

TO WHOM IT MAY CONCERN:

7917755

This is to certify that at a regular meeting of the Board of Trustees of The United Christian Missionary Society held in Indianapolis, Indiana on November 17 and 18, 1970, at which a quorum was present, the following resolution was adopted:

VOTED: That authority be granted to the president of The United Christian Missionary Society to issue a general power of attorney to Franklin C. Jonathan, Jabalpur, Madhya Pradesh, India, including the power of declaration, for the handling of the affairs of The United Christian Missionary Society in India.

This is to further certify that on this 10<sup>th</sup> day of September, 1979, the above resolution is in full effect, and that Wade D. Rubick is the duly elected Assistant Secretary of The United Christian Missionary Society.

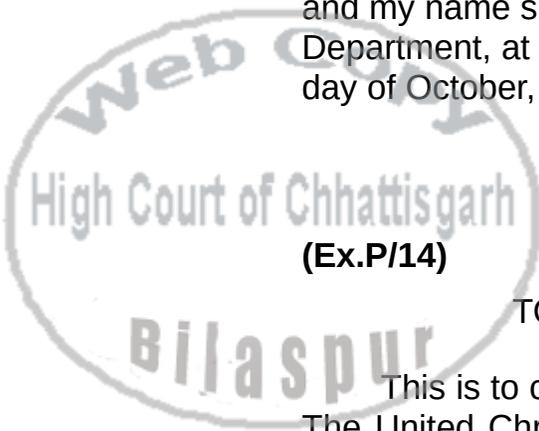
Witness my hand and the corporate seal of said corporation this 10<sup>th</sup> day of September, 1979.

Wade D. Rubick, Assistant Secretary

The United Christian Missionary Society.

(STATE OF INDIANA) SS:

(COUNTY OF MARION)





Before me, the undersigned, a Notary Public in and for said County, this 10<sup>th</sup> day of September, 1979, appeared The United Christian Missionary Society by Wade D. Rubick, its Assistant Secretary, who for an on behalf of said corporation acknowledged the execution of this Certification. Witness my hand and official seal this 10<sup>th</sup> day of September,1979.

**(Ex.P/15)**

**AFFIDAVIT**

8216011

I, Robert A. Thomas of Indianapolis, Indiana, do solemnly make the following statements and affidavit:

(1) I am the President of The United Christian Missionary

Society, a not for profit corporation duly authorized to do business by the state of Indiana.

(2) As p resident of the United Christian Missionary Society, I am personally responsible for and familiar with the records and actions taken by the Trustees of The United Christian Missionary Society.

(3) That, the attached recommendations taken by the Trustees of The United Christian Missionary Society in connection with the sale of properties in Bilapur, Takhatpur and Kotmi, MP India, Mungeli and Jabalpur and Pendra Road, Madhya Pradesh, India and Bargarh, Orissa, India, a re accurate and state the Action taken with regard to the transferred in connection with the sale and disposition of the above properties.

Further affiant sayeth not;

Sd/-

Robert A. Thomas, President,

The United Christian Missionary Society.

(State of Indiana )

(country of Marion) ss.

Subscribed and sworn to before me, a Notary Public, in and for said country and state, this, the 23<sup>rd</sup> day of July, 1982.

Sd/-

Edna M. Sanders, Notary Public

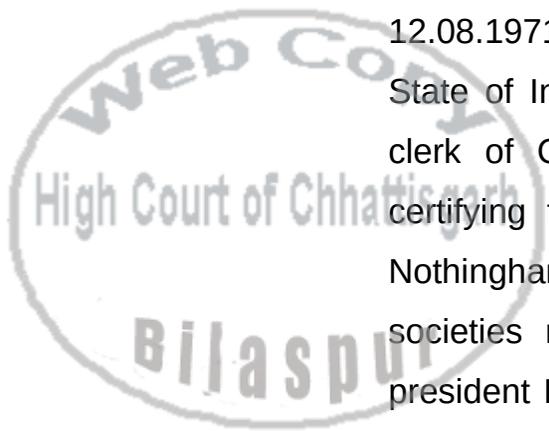
My commission expires November, 13, 1985.”.

37. Now this Court has to examine whether the power of attorney has been proved as per direction of Hon'ble the Supreme Court. As the Hon'ble Supreme Court on earlier round of litigation has remanded the matter to the trial court to decide the suit allowing the application under Order 41 Rule 27 CPC filed by the appellant which are documents relates to execution of power of attorney and has granted liberty to lead the defendant to rebut the same by recording a cogent





evidence. In pursuance of the remand order, the plaintiff has examined F.C Jonathan. The plaintiff's witness was examined before the trial court. The plaintiff exhibited the documents i.e., Ex.P/11 authorization for sale of property, Ex.P-1/ ExP-12 Power of Attorney along with certification dated 19.11.1970 certifying that E. Allen Hunter whose official attestation appears to be annexed instrument was, at the time of signing the same, an acting clerk in and for the county of Marion in the said State, duly elected and qualified and authorized by the Laws of this State to make such attestation, attestation of signature of Barbara Hartman, Authentication Officer, competent authority of United State of Washington, District of Columbia and the seal of the said department dated 03.12.1970, testimony of Tina Lee Vitte clerk of the circuit court State of Indiana, County of Marian, Authorization for sale of property dated 12.08.1971, Certificate of office by Joseph H. Hogsett Secretary, State of Indiana with regard to appointment of Faye I. Mowery as clerk of Circuit Court, Certificate of officer by Faye I. Mowery certifying that Sugion R. Guardinar, Certification by William J. Nothingham, President the United Christian Chruch Missionary societies regarding resolution was passed on 17.11.1970 giving president Dr. T.J. Liggett authorization to issue power of attorney to Frankling C. Jonathan of Jabalpur, Madhya Pradesh. The resolution also include and empower Franklin C.Jonathan of Jabalpur Madhya Pradesh to sell plot no. 85/1 of sheet No. 4, 340181. 25 square feet land of Rai Saheb Banwarilia on 17.09.1971 by registered sale deed. Affidavit dated 17.07.1989 given by Mary L. Collins, Secretary, Certificate regarding meeting of Board of Trustee held on 17-18/11/1970 wherein it has been resolved that authority be granted to the President of United Christian Missionary Society to issue a general power of attorney to Frankling C. Jonathan, Jabalpur, Madhya Pradesh, attestation of signature of Edwin H. Mcgowen authentication officer dated 17.10.1979 Ex.P-13. Certification issued by Authentication Officer, Department of State dated 01.10.1979 Ex.P-14. Affidavit of Robert A.Thomas, President United Christian Missionary Society, attesting recommendation taken by the trustee of





the United Christian Missionary Society in connection with the sale of property in Bilaspur, Takhatpur, Katni MP, India Mungeli and Jabalpur etc 13.11.1985 Ex.P-15.

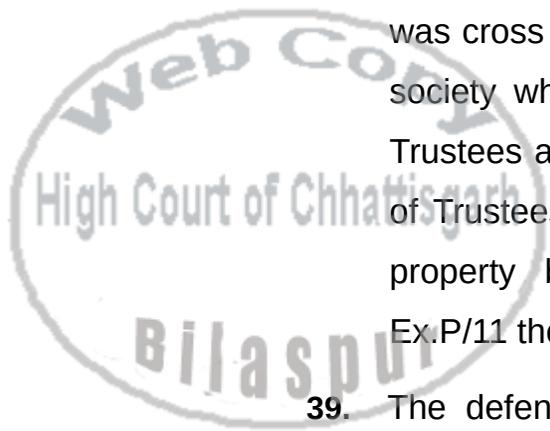
38. This witness has further stated that in Ex.P/11 the signature of Mr Thomas is there which he has recognized as he is a member of UCMS. This witness further stated that in EX.P/12 there was signature of Ms. Lara and H.N. Rock, he knew about his signature and he also stated that in Ex.P/13 there was a signature of Nattinghom which he has recognized his signature and he is still President of the Society and the Ex.P/13, affidavit and certification of L. Collins who was Secretary has put his signature in the affidavit of Ex.P/.13 and in the certification the signature of William Nottingham is also there. He has stated that Mrs. Lara H Prophet is a member of society. Similarly, he has further stated that Ex.P/14 there was a signature of Vedik Rubik, he knows that earlier he was earlier an Asst. Secretary of the society. Similarly, in Ex.P/15 there was signature of Robert A. Thomas who was ex-President of the society and he knew them personally as there was correspondence between them and since they are coming to India, therefore, he identified their signatures. This witness was cross examined wherein he has stated that all the persons whose signature are there, are alive and the documents written by them are in my office. He has stated that Thomas J. Likit has given a letter, 12 to 15 years back he has retired and similarly Lara who has put his signature on Ex/P/12 has been received by him, prior to 10 -12 years they have been kept in the office, but he is not aware how many letters have sent to him, but it is the fact that the letters are being sent to him. This witness was cross examined wherein he has denied that he has no right to sell the property and UCMS (USA) has not sent any proposal through which he has been authorized and he has also denied that since there was no proposal, therefore he has not mentioned in (Ex.P/11). The witness was extensively cross-examined by the defendants wherein he has admitted that in the proposals which were recorded in Ex.P/13 and P/15 was not available, he has again denied that no right has been given to him to sell the property though Power of





Attorney. He has also stated that the proposal dated 18-11-1970 has been received but he is not thinking proper to give it to the plaintiff or to produce in the court. He has again denied that no proposal was given to him to sell the property. **A specific question was put to him** when the proposal was given on 19/20-3-1977 by UCMS (USA), prior to him who has given right to sell the property and as per proposal made on 18-6-1970, **he clarified in his reply that UCMS (USA) used to send all the proposals, sometime that proposals were given in time, that proposals were received in time and he used to comply with proposal**, but he is not aware that in what circumstances UCMS (USA) has done the proposal. He has also admitted that he has received the right to sell the property on 18-11-1970 and 22/23-6-1971 and these proposals have been received after some long time before his statement was recorded earlier. He was cross examined and it was brought on record that UCMS (USA) society which is registered as Corporation and there is Board of Trustees also therefore, the trust has been mentioned as the Board of Trustees and as per the Board of Trustees that right to sell the property but he said that he has been given power of attorney by Ex.P/11 therefore, this right has been given to him.

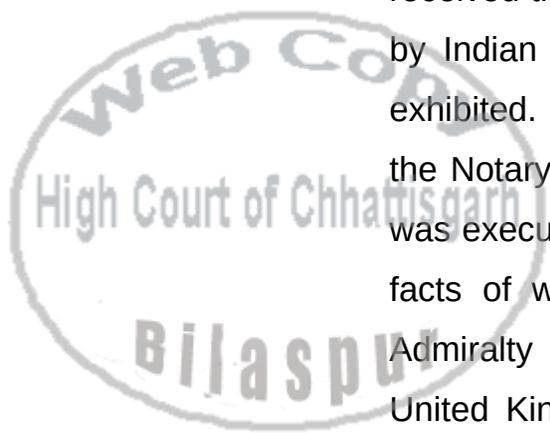
39. The defendant again examined Edwin Bhairathi on 14-11-1993 wherein, he has stated that UCMS (USA) has not given any proposal for sale of the suit property and in the year 1970 also there was no proposal to give Power of Attorney to Mr. Jonathan. He has further stated that he went to America in the year 1985 wherein Robert Thomas who was In-charge of Indian Division has met him and he has enquired about the sale of property in the year 1970 whether any proposal was made for sale of the property in the year 1970 or not, then he stated that there is no proposal. The plaintiff counsel has raised objection that this evidence is not acceptable. The learned trial court recorded finding that this objection can be considered at the time of final arguments. He has stated that he has seen some record with assistance of Mr. Robert Thomas of 1970-1971, but no proposal was received by him. The witness was extensively re-cross-examined wherein he has admitted that he has received information





from Robert Thomas in America only and he has not received any information from any other person and he has also admitted that Thomas is alive. He has also stated that he has not taken anything in writing from Thomas with regard to proposal made in favour of Jonathan. He has further stated that he is not aware when Robert Thomas was made President of Society. He has stated that he has not received any specific information but he has made an effort to get general information with regard to proposals.

40. From the evidence it is apparent that no cross examination over the plaintiff's witness was made by the defendants with regard to authenticity or correctness of the documents which were exhibited as Ex.P/11 to P/15. On the contrary, the documents were exhibited after adducing the evidence and the fact that the documents have been received through proper custody of American Ambassador as well as by Indian Ambassaor and to that effect the documents were also exhibited. Even, as per provisions of section 14 of the Notaries Act, the Notary Public is also recognized in India. The power of attorney was executed in USA and as per section 57 of the Evidence Act, the facts of which Court must take judicial notice seal of Courts of Admiralty and maritime jurisdiction and of notaries public of the United Kingdom. Since, the power of attorney has been executed before Notary Public, presumption has to be drawn that power of attorney is true and correct. Unless the presumption is rebutted by recording cogent evidence by the defendants. In the present case, the defendants have relied upon the **heresay** evidence of Bhagirathi that he went to America, Robert Thomas informed him about the fact that no proposal was made with regard to exaction of power of attorney but to substantiate this evidence nothing has been brought on record, therefore, contention of the learned counsel for the defendants that the plaintiff has failed to discharge his burden is not acceptable.
41. As per the provisions of Section 33 of the Registration Act 1908, the power of Attorney executed in foreign country is required to be authenticated as per Section 33 of the Indian Registration Act. This issue has come up for consideration before the Hon'ble Supreme





Court in case of Jugraj Singh (supra) wherein it has been held in para 8 which is extracted below:

“8. The short question in this case is whether Mr. Chawla possessed such a power of attorney for executing the document and for presentation of it for registration. Now, if we were to take into account the first power of attorney which was executed in his favour on May 30, 1963, we would be forced to say that it did not comply with the requirements of the law and was ineffective to clothe Mr. Chawla with the authority to execute the sale deed or to present it for registration. Mat power of attorney was not authenticated as required by s. 33 of the Indian Registration Act which in the case of an Indian residing abroad, requires that the document should be authenticated by a Notary Public. The document only bore the signature of a witness without anything to show that he was a Notary Public. In any event there was no authentication by the Notary Public if he was one) in the manner which the law would consider adequate. The second power of attorney however does show that it was executed before a proper Notary Public who complied with the laws of California and authenticated the document as required by that law. We are satisfied that that power of attorney was also duly authenticated in accordance with our laws. The only complaint was that the Notary Public did not say in his endorsement that Mr. Chawla had been identified to his satisfaction. But that flows from the fact that he endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official acts and we are satisfied that he must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. This makes the second power of attorney valid and effective both under Section 85 of the Indian Evidence Act and s. 33 of the Indian Registration Act”.

42. From the evidence brought on record, it is quite clear that power of attorney was duly authenticated as evident from Ex.P-12 to Ex.P-15 and certificate of authentication was filed along with the power of attorney, therefore, it is safely proved that power of attorney has been duly authenticated and there is compliance of section 33 of the Registration Act. The power of attorney was duly verified and





certificate to this effect was exhibited therefore, as per provisions of section 85 of the Evidence Act, there is presumption in favour of the plaintiff. The defendant No.1 and 2 are challenging the said presumption then burden lies heavily on the same to rebut the same. Hon'ble High Court of Allahabad in case reported in AIR 1972 Allahabad 219, in case of Smt. Kulsumun-Nisa v. Smt. Ahmadi Begum and others at para 29 has held as under;-

29. We now come to Exts. A-9, A-13, A-17 and A-22. These are the documents executed by Ajaibun-nissa. These documents were executed on April 7, 1944. By these documents she appointed Mohd. Ismail Khan as the special attorney for the purpose of filing an affidavit, getting her name expunged in the khewats of certain villages in the district of Fatehpur and getting the name of the appellant entered in those khewats and for taking all proceedings connected with the mutation cases. We may here point out that after the oral gift of December 15, 1942, the appellant applied for mutation of her name in respect of the property situate in villages Salawan, Nasenan, and Nandapur in the District of Fatehpur. Ajaibun-nissa had zamindari property in these villages. These applications are Exts. A-10, A-14, A-18 and A-23. In these applications the oral gift, dated December 15, 1942 is shown as the foundation for her title to the properties which once belonged to Ajaibun-nissa. Mutation was ordered on May 22, 1944. The documents Exts. A-9, A-13, A-17 and A-22 specifically mention the oral gift. The documents were verified by her before a Magistrate, The Magistrate's verifications are Exts. A-12, A-16, A-21 and A-25. These verifications show that the documents were read over to and accepted by Ajaibun-nissa before the Magistrate. The trial court did not presume these documents to be true and accordingly attached no evidentiary value to them. But there it was wrong. Power of attorney along with verifications are to be presumed to be true under Section 85, Evidence Act (See Wall Mohammad v. Jamal Uddin Chaudhari AIR 1950 All 524). No evidence has been led on behalf of Ahmadi Begum to rebut the presumption.

43. Again the Allahabad High Court in the case reported in AIR 1980, Allahabad 369 in the case of Abdul Jabbar v. Second Additional District Judge, while examining presumption available as authentication by Notary of foreign country have held that documents authenticated before Notary Public in other country must be presumed to have been duly authenticated.





16. The decision reported in AIR 1976 Delhi 263 (para 11) also equally fortifies the view canvassed by counsel for the respondents. In paragraph 11 of the Report, the learned Judge has observed that both Sections 57 and 85 lead to the conclusion that the documents authenticated before Notaries Public in other countries must be presumed to have been duly authenticated within the meaning of Section 85 of the Act, and that it would lead to serious difficulties if the other interpretation namely that Section 85 of the Evidence Act is limited only to documents authenticated by Notary Public of this country, was accepted. The learned Judge deciding that case has followed the decisions of the Supreme Court in the case of Jugraj Singh v. Jaswant Singh (AIR 1971 SC 761). In the said decision, the Supreme Court accepted a document which was authenticated before a Notary Public of California, U.S.A. The Supreme Court case applied Section 85 without reference to the provisions of the Notaries Act. In my view, the decision of the Supreme Court is fully applicable to the facts of the present case. The decision is binding upon this Court.

17. Following the decisions cited by counsel for the respondents, I hold that Section 85 of the Act applies equally to documents authenticated by Notaries Public of other countries. I further hold that there are no grounds for importing the provisions of Notaries Act into the interpretation of Section 85 of the Evidence Act. In my opinion, documents which purport to be executed before or authenticated by Notaries Public, bearing proper seals, of other countries ought to be presumed to have been duly notarised within the meaning of Section 85. I, therefore, find no substance in the first point.

44. Learned Single Judge of the Delhi High Court in National and Grindlays Bank Ltd (supra) has held in para 10 which is extracted below.

“(10) The document in the present case is a power of attorney and again on the face of it shows to have been executed before, and authenticated by, a notary public. In view of Section 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. Once the original document is produced purporting to be a power of attorney so executed and attested, as stated in S. 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. The provision is mandatory, and it is open to the Court to presume that all the necessary requirements for the proper execution of the power of attorney have



been duly fulfilled. There is no doubt that the section is not exhaustive and there are different legal modes of executing a power of attorney, but, once the power of attorney on its face shows to have been executed before, and authenticated by, a notary public, the Court has to so presume that it was so executed and authenticated. The authentication by a Notary Public of a document, purporting to be a power of attorney and to have been executed before him is to be treated as the equivalent of an affidavit of identity. The object of the section is to avoid the necessity of such affidavit of identity. Under Section 57 sub-section (6) of the Evidence Act, the Courts have to take judicial notice of the seals of Notaries Public and when the seal is there, of which judicial notice is taken, there is no reason why judicial notice should not be taken of the signatures as well". What is argued by Shri Rameshwar Dial, learned counsel for defendants 1 to 3, is that the Notary Public in Section 85 or Section 57 of the Evidence Act merely means notaries appointed under the Notaries Act 1952. The argument is that where a document purports to be a power of attorney, before the Court can presume it to be so executed and authenticated as is contemplated by S. 85, it should have been authenticated by Indian Consul or Vice-Consul or the representative of the Central Government and not by a notary public of a foreign country. For one thing Notaries Act 1952 was not there when Evidence Act which was the first Act of 1872 was enacted. Secondly, the purpose of Sections 57 and 85 is to cut down recording of evidence. For such matters, like the due execution of a power of attorney in the present day of international commerce, there is no reason to limit the word "Notary Public" in S. 85 or Section 57 to Notaries appointed in India. The fact that notaries public of foreign countries have been recognised as proper authorities for due execution and authentication for purpose of section 85 of the Evidence Act is illustrated by the Supreme Court in case Jugraj Singh and anr. v. Jaswant Singh and or s. . In this case the Supreme Court held that a power of attorney executed and authenticated before a notary public of California satisfied the test of S. 85 of the Evidence Act and S. 33 of the Indian Registration Act. If the interpretation of notary public is limited to notaries public appointed in this country only, it will become impossible to carry on commerce with foreign countries. Surely, S. 57 of the Indian Evidence Act which enjoins upon the Courts to





take judicial notice of seals of Notary Public, such judicial notice cannot be limited to Notaries appointed in India only. It seems clear if the entire sub-section is read. Once, this conclusion is reached, there is no reason to limit the meaning of the expression "Notaries Public" in S. 85 of the Indian Evidence Act to Notaries appointed in India only".

45. Again the Delhi High Court in case of *Rajeshwarhwa vs. Sushma Govil* reported in AIR 1989 Delhi 144 has held as under:-

12. The Court also noticed the provisions of Section 14 of the Notaries Act and satisfied itself at first whether there is reciprocity of material acts of Notaries of India being recognised in U.S.A. and vice versa and it held that such a material act of Notary of U.S.A. is recognisable in India and thus, the said document is admissible in India. The Court also advised that it is high time that the Central Government should issue necessary notifications also under Section 14 of the Notaries Act. It is the contention of the learned counsel for the respondent that Notaries Act had not made illegal and well-established previous practice of recognising the material acts of Notaries of U.S.A. or England by the Indian Courts when such acts of Notaries of India are recognised by the said countries as well. Yogeshwar Dayal, J., in the case of *National & Grindlays Bank (supra)* has held such a power of attorney to be admissible in evidence and presumptions under Sections 57 & 85 of the Evidence Act were held to be available to such a document although he relied upon the case of *Jugraj Singh (supra)* for giving that finding. *Sultan Singh, J., in Suit No. 671/77, Bank of India v. Ajai Singh*, decided on April 20, 1979, (24) followed the above case for giving the same opinion. However, independently of these two decisions of two Judges of this Court, I hold that the provisions of Section 14 of the Notaries Act do not place any bar in recognising the material acts of such countries wherein the material acts of Notaries of India are recognised. Even in *Abdul Jabbar & Others*, it was held that Section 85 of the Evidence Act applies equally to documents authenticated by Notaries Public of other countries and there is no reason to import the provisions of Notaries Act for interpreting the provisions of Section 85 of the Evidence Act. I agree with these observations. Hence, I repel this contention of the learned counsel for the appellant that the said power of





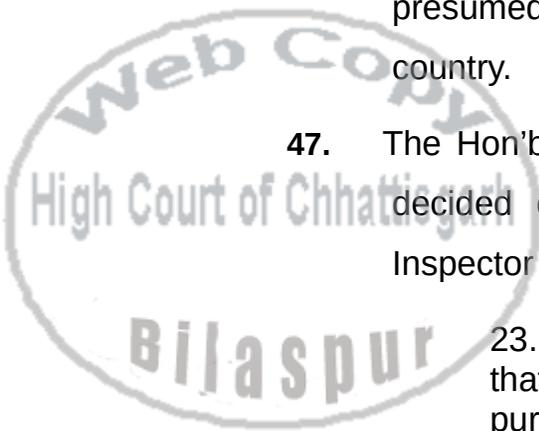
attorneys endorsed by Notary Public of U.S.A. by themselves are not admissible in evidence.

46. Counsel for the appellant would submit that till it is proved that the person who signed the said power of attorney was the duly appointed attorney, the court cannot draw any presumption under Sections 57 & 85 of the Evidence Act as it will be against the provisions of Sections 57 and 85 of the Evidence Act and it will amount to nullify the provisions. He would further submit that if it proved that in the foreign country whether a particular person had attested the document as a Notary Public of that country is in fact a duly appointed Notary. When a seal of the Notary is put on the document, Section 57 of the Evidence Act comes into play and presumption can be raised regarding the genuineness of the seal of the said Notary, meaning thereby that the said document is presumed to have been attested by a competent Notary of that country.

47. The Hon'ble High Court of Madras in writ appeal No. 856 of 2021 decided on 02.02.2022 in the case of Dr. Elizabeth Rajan v. Inspector General of Registration and others has held as under;

23. In the light of the above discussion, it is clear that once the original document is produced purporting to be a Power of Attorney executed and attested as stated in Section 85 of the Evidence Act, the court has to presume that it was so executed and authenticated. The provision is mandatory and it is open to the court to presume that all the necessary requirements for the proper execution of Power of Attorney have been duly fulfilled.

24. Now coming to the Registration Act, 1908, Section 32(c) of the said Act states that every document should be registered under the said Act and the same shall be presented at the proper registration office. The object of Section 32 of the Registration Act is to prevent some outsider from presenting the document for registration with which he has no concern and in which he has no interest. This section applies for registration of Power of Attorney. However, it has no application if the Power of Attorney is produced merely for authentication in which case the only requirement that has to be complied with are those that are set out in Section 33 of the Registration Act. The

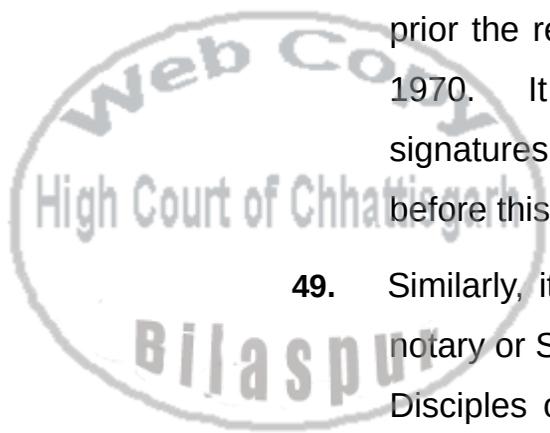




applicability of Section 32 Page 18/26  
W.A.No.856/2021 would arise only when presented for registration and not when it is merely produced for authentication. Section 33(c) of the Registration Act, 1908, recognized the Power of Attorney for the purpose of Section 32. So, the above provisions in the Registration Act are clear as to who are the persons to present the document for registration and the Power of Attorney recognizable for the purpose of Section 32 of the Registration Act, 1908

48. Learned counsel for the respondents have raised suspicion with regard to authenticity of the documents mainly contending that the power of attorney was executed on 18-11-1970 whereas the authentication of sale of United States of America shown to be authenticated by Babara Hartman on 2-12-1970 and the said case No.286 does not bear the seal of notary and it was also stated that the receipt of authentication fee was of the date 12-02-1970 much prior the resolution passed granting power of attorney dated 18-11-1970. It has also been contended that the persons whose signatures are there, are alive but they have not been examined before this court.

49. Similarly, it has been stated that the Ex.P/13 is signature of public notary or Suzanne Gardner but it is in the letter pad Christian Church Disciples of Christ and it has not been proved that the seal and signatures of the document belongs to notary public. It has also been stated that the seal of embassy of India, Washington DC and documents of authentication dated 3-12-1970 and authentication dated 27-10-1989, 17-10-1989 are different and letter dated 25-8-1982 does not prove that the seal or letter was received from Embassies of India. From the evidence brought on record it is manifest that the defendants have not placed any evidence on record to prove the suspicious circumstances with regard to execution of power of attorney. Once the power of attorney executed outside India has been authenticated under Section 33 of the Registration Act, the burden shifted upon the defendants to prove the suspicious circumstances which they miserably failed to prove by cogent evidence despite opportunity granted by Hon'ble Supreme Court, therefore, the contention made by the learned Sr. Advocate





for the appellant that power of attorney is suspicious, suffers from surmises and conjunctures which deserves to be negated by this court.

50. The judgment referred to by learned counsel for the defendants No. 1 and 2 in case of **Sait Tarajee Khimchand And Ors vs Yelamarti Satyam Alias Satteyya**<sup>13</sup> that the mere marking of an exhibit does not dispense with the proof of documents, is not applicable to the facts of the present case as the power of attorney has been proved as per Section 33 of the Registration Act and other relevant provisions of Section 85 and 57 of the Indian Evidence Act.
51. The defendants from very beginning of the suit has raised objection about the execution of power of attorney and once power of attorney has been proved, it was incumbent on them to place on record the cogent evidence that the document which has been filed before the trial court is bogus, forged or fabricated document, but no such steps have been taken, therefore, it cannot be held that the power of attorney is forged and not proved in accordance with law. As such, the finding recorded by the learned trial court that the plaintiff has failed to prove that F.C. Jonathan has authority to sell the property is set aside. It is also held that learned trial court has given erroneous finding in paragraph 47 of the impugned judgement and decree that plaintiff is failed to prove that the suit property belongs to UCMS (USA) and it was in their actual possession whereas in paragraph 28 of the judgment and decree the learned trial Court has recorded the finding that the suit property belongs to UCMS (USA) and it was managed by various societies engaged by them, there is contradictory finding in paragraph 47 of the judgment. From the evidence, material on record it is proved that the suit property belongs to UCMS(USA). Even otherwise, the defendants have not produced any documentary evidence how the suit property is vested to them, therefore, the finding recorded by the learned trial Court in paragraph 47 is set aside and it is held that the suit property belongs to UCMS (USA) which has been rightly sold to the plaintiff in view of power of attorney executed in favour of F.C. Jonathan.

---

<sup>13</sup> 1972 4 SC 562



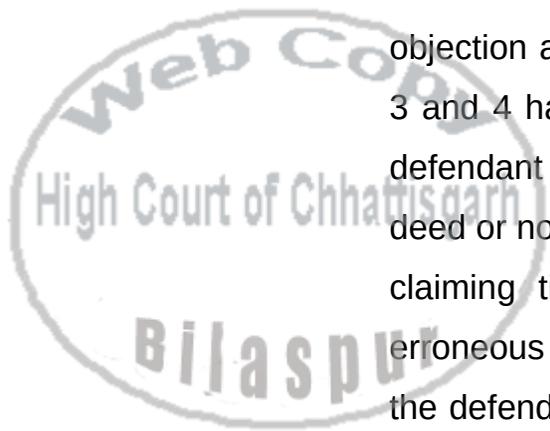
52. From the above stated legal and factual matrix it is quite clear that once the original document has been produced purporting to be a power of attorney so executed and attested as provided in Section 85 of the Evidence Act, the court has to presume that it was so executed and authenticated. Thus, the learned trial Court has committed illegality in recording the finding that power of attorney has not been proved and on the basis of the power of attorney, F.C. Jonathan has authority to execute the sale deed in favour of the plaintiff.
53. Issue No.1 framed by the trial court is whether bungalow of suit premises was in possession of UCMS as owner. This point has been decided in favour of the plaintiff and it has been categorically recorded finding that UCMS (USA) is the owner of the suit property as the learned trial court in para 28 of its judgment has recorded a finding that the property belong to UCMS (USA) which was managed by various societies functioning in India as well as the officer appointed by the UCMS (USA). It has also been recorded by the learned trial Court that before constituting ICCDC, the property was in the name of UCMS (USA), therefore, the said property cannot be transferred to defendants No.2 but defendant No.1 was in actual possession of the property for the last 12 years. As such, on the basis of adverse possession the defendant has acquired the title over the property. The defendants No. 1 and 2 have not challenged the finding recorded by the trial court that the property belongs to UCMS (USA) by filing counter objection under Order 41 Rule 22 of CPC, but the appellant has assailed the finding recorded by learned trial Court and has categorically made submission that for claiming title over the suit property on the basis of adverse possession, defendants No. 1 and 2 have to prove that they are in possession of the suit property with consent of the owner of the property whereas in the written submission filed by the defendant No.2, they have claimed themselves as owners of the property. This finding is perverse and contrary to law laid down by Hon'ble Supreme Courts in **Jugraj Singh (supra)**, **Suraj Lamp & Industries (P) Ltd (supra)**, **Maria Margarida Sequeira Fernandes (supra)** and **Anathula**





**Sudhakar (supra).** Therefore, the finding recorded by the learned trial court that the defendant No.2 acquired the title over suit property on the basis of adverse possession is contrary to the facts and law and deserves to be set aside by this court. Accordingly, the finding recorded by the learned trial court that defendants acquired suit property on the basis of adverse possession is erroneous and liable to be set aside and is hereby set aside.

54. **Now point No2:-** Learned trial Court while deciding the issue Nos. 3 and 4 in favour of plaintiff, held that the plaintiff has purchased the suit property at Rs. 45,000/- vide registered sale deed dated 17-9-1971. While deciding the **issue No.4** has recorded the finding that defendant No.1 has refused to vacate the suit premises and one portion of the suit property has also be given on rent. This finding has not been assailed by the defendants No. 1 and 2 by filing cross objection also. Therefore, findings recorded with regard to issue not 3 and 4 have attained finality. It is worthwhile to mention here, that defendant No. 1 and 2 have not filed any suit challenging the sale deed or no counter claim was ever filed before the trial court by them claiming title over the suit property, still learned trial Court on erroneous finding has held that on account of adverse possession, the defendant No. 1 and 2 are not entitled to vacant the possession of the suit property. The findings recorded by learned trial Court in paragraph of 46 of impugned judgment and decree that the defendants are in possession of the suit property for more than 12 years, therefore, they having title over the suit property. The learned trial Court without appreciating the evidence, facts that the plaintiff has filed present suit for possession in the year 1972 which has been dismissed by the trial Court and even after remand by the Hon'ble Supreme Court. The law has been well settled by the Hon'ble Supreme Court for claiming adverse possession, the party has to first accept the title of the property holder and thereafter it has to demonstrate that the claimant is in possession of the suit property with the knowledge of the owner. The Hon'ble Supreme Court in the case of *Narasamma v. A. Krishnappa* (2020) 15 SCC 218 has held as under;-





30. We may also note that on the one hand, the appellants herein have sought to take a plea of bar of limitation vis-à-vis the original defendant claiming that possession came to them in 1976, with the suit being filed in 1989. Yet at the same time, it is claimed that the wife had title on the basis of these very documents. The claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to prove as to from which date did the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner. We fail to appreciate how, on the one hand the appellants claimed that the wife of the original defendant, appellant 1 herein, had title to the property in 1976 but on their failure to establish title, in the alternative, the plea of adverse possession should be recognized from the very date.

31. We also find that the reliance placed by learned counsel for the appellants in Ravinder Kaur Grewal & Ors.<sup>8</sup> is also misplaced. The question which arose for consideration before the three Judge Bench was whether, a suit could be maintained for declaration of title and for permanent injunction seeking protection on a plea of adverse possession, or that it was an instrument of defence in a suit filed against such a person. In fact, if one may say, there was, for a long time a consistent view of the Court that the plea could only be of shield and not a sword. The judgment changed this legal position by opining that a plea to retain 8(supra) possession could be managed by the ripening of title by way of adverse possession. However, to constitute such adverse possession, the three classic requirements, which need to co-exist were again emphasized, nec vi, i.e., adequate in continuity, nec clam, i.e., adequate in publicity and nec precario, i.e., adverse to a competitor, in denial of title and his knowledge.

32. The question which confronts us is not the aforesaid, but whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. In this behalf, we may refer to the four judgments cited by learned counsel for the respondent herein, which succinctly set forth the legal position.

33. In Karnataka Board of Wakf 4 case, it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12





that “....the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the 9(supra) former is renounced....”

34. The aforesaid judgment in turn relied upon the judgment in Mohan Lal (Deceased) Thr. LRs.10, which observed in para 4 as under:

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”

35. In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial.

36. In the facts of the present case, this fact has not at all been proved. The possession of Smt. Narasamma, the wife of the defendant, is stated 10(supra) 11P.T. Munichikkanna Reddy & Ors. (supra) to be on account of consideration paid. Assuming that the transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars.

55. From the facts it is quite evident, that defendant no.1 and 2 have denied the title of the plaintiff and the litigation is going on between the parties, therefore, it cannot be said that the finding recorded by the learned trial Court with regard to the adverse possession is legal and justified. Hence, the same deserves to be set aside.
56. Accordingly, the appeal is allowed and the judgment and decree passed by the learned trial court is set aside. It is held that the Board of Trustees of the United Christian Missionary Society passed a reso-





lution granting authority to the President of the United Christian Missionary Society to issue a general Power of Attorney to F.C. Jonathan, Jabalpur and on the basis of Power of Attorney given to him, he has sold the property to the plaintiff. It is also held that the plaintiff is entitled to get vacant possession of the suit premises. It is made clear that the defendant No.3 who has also been arrayed as party in this case can agitate his right in respect of clam against the plaintiff or defendants No. 1 and 2 before appropriate forum, in accordance with law.

57. A decree be drawn up accordingly.

Sd/-

(Narendra Kumar Vyas)

Judge





### Head Note

Presumption can be drawn if Power of Attorney is executed outside India as per the provisions of Section 14 of the Notaries Act, 1952, Sections 57 and 85 of the Indian Evidence Act, 1872 and if Power of Attorney is duly attested as per Section 33 of the Registration Act, unless rebutted by the cogent evidence.

भारत के बाहर निष्पादित मुख्तियारनामा के संबंध में अवधारणा की जा सकती है कि यदि मुख्तियारनामा का निष्पादन धारा 14 नोटरी अधिनियम, 1952, धारा 57 एवं 85 भारतीय साक्ष्य अधिनियम, 1872 व धारा 33 पंजीकरण अधिनियम के अनुसार अनुप्रमाणित हो जब तक अन्यथा पुख्ता सबूतों से खण्डित नहीं किया गया हो।

