

IN THE COURT OF PRL. CIVIL JUDGE & JMFC GADAG

Present:- **Sri. S.CHINNASWAMY**

B.A. LL.B.

Prl. Civil Judge & JMFC, Gadag.

DATED THIS 17TH DAY OF JANUARY, 2022

O.S.No.60/2022

PLAINTIFF :

1. The United Basel Mission Church, in India trust association (Bombay Karnataka) Bombay Public, Trust Act 1952 registered under Institution . Gadag.
2. V.S. PolicePatil. Plaintiff No.1 represented by trust, Manager, Beneficiaries, Well-wishers Age: 65 years, Occ: Advocate, R/o. Basel Mission Compound Betageri-Gadag.

(In Person.)

- Vs -

DEFENDANTS:

1. Manohar S/o. Jems Nirmanika
Age: 61 Yrs., Occ: Retired government employee,
2. Sunita W/o. Manohar Nirmanika
Age: 52 Yrs., Occ: Government Teacher,
3. Shweta D/o. Manohar Nirmanika,
Age: 28 Yrs., Occ: Private Job,

4. Vinutadivya D/o. Manohar Nirmanika
Age: 26 Yrs., Occ: Private Job,
5. Nikhilkumar S/o. Manohar Nirmanika
Age: 24 Yrs., Occ: Student, all defendants are
residing in Bassel Mission Compound Betqageri
Gadag.
6. Smt. Leela S. Bower @ Jnthli,
Age:72 Years, Occ: Household,
R/o. Near K/F Anil Bower Chandavari Member/
Garaga, Rajeev Gandhi Nagar, Gadag.

**(D.1 to 5- By Sri- G.B.N. Adv.,)
D.6- Exparte**

Date of Institution of Suit	-	21.03.2019
Nature of Suit	-	For Recovery of possession and Mandatory Injunction and Permanent Injunction.
Date on which commencement of recording of evidence.	-	23.08.2021
Date of pronouncing of Judgment	-	17.01.2022
Total Duration.	-	Years Months Days 02 09 29

Prl. Civil Judge & JMFC, Gadag.

J U D G E M E N T

It is suit for recovery of possession and Mandatory Injunction and Permanent Injunction.

2. It is case of the plaintiff that,

The suit schedule properties bearing CTS. No. 4069/42 and its measuring 50 Sq.Yards, and 4069/50 and its measuring 150 Sq.Yards, and 4069/1B+8+9+15 to 18+46+51/9 its measuring 30 Sq.Yards are in ownership and enjoyment of the plaintiffs. And suit schedule properties are bounded on East- by Rojavva Devid house belongs to plaintiff trust, West- by V.S. Patil house, North – by Devaraj Pranchise house belongs to plaintiff trust . South by- trust vacant site, total measurement of the suit schedule properties is 46 x25 feet. The plaintiff No.1 trust is registrar under Bombay Public Tract Act 1954. wherein the one R.S. Bangera was GPA holder and maintaining the property of trust. He died on 1987 and after in the year 2003 the Bombay

Public Trust Act 1954 is abolished, plaintiff No.2 is the manager and care taker of the plaintiff No.1 trust property. In this regard the plaintiff trust has given the representation to appoint the trustees, to the Belagam Charity commissioner in enquiry No.14/90 and after obtaining the permission from the District court Dharwad in O.S. No.3/94 plaintiff No.2 is the managing the affairs of the trust since 25.12.1989. such circumstance the defendants are residing in the suit schedule property on the basis of yearly rent of Rs. 120/-. the suit schedule properties more than 100 years old and plaintiff has permitted the defendants to repairing the houses orally on 15.11.2015 one Smt. Leela S. Bower, was in possession as tenant. After a vacating the Leela S. Bower the defendants have occupied the suit schedule property as tenant and defendants illegally have constructed the R.C.C slab on unstrengthen Wall with out permission of the plaintiff and without obtaining the any valid liscence from the competent authority city municipality. In this regard the

plaintiff has issued the legal notice to the defendants as per U/sec. 106 of Transfer property act on 15.09.2018 to vacant the suit schedule property by providing 6 months time. Even after receipt of legal notice the defendants are continued to be occupations of the suit schedule property. Hence, plaintiffs have filed this suit for the recovery of possession and Mandatory Injunction to removing the compound illegally constructed by the defendants and permanent injunction to not to put up the car shed in the suit schedule property. Hence, pray for decree the suit with cost.

3. On the other hand defendants have filed their written statement wherein he has denied the entire plaint averments and taken specific contention that, the defendants have obtained the suit schedule property from one Leela W/o. S. Bower @ Janthli, for sum of Rs.3,50,000/- the said Leela W/o. S. Bower @ Janthli, has relinquished her right in the suit schedule property since the date of 09.10.2015 the defendants are in

possession and enjoyment of the suit schedule property by constructing the house in the suit schedule property by obtaining the necessary permission from the city municipality. The said plaintiff No.2 has no authority to file plaintiff no.2 is not trustee or care taker of the suit schedule property. Hence, pray for dismiss the suit.

4. In order to prove the case, the plaintiff No.2 got examined himself as P.W.1 and got marked Ex.P.1 to 23 documents in his favour and closed his side. On the other defendant No.1 himself got examined as D.W.1 and got marked one document as Ex.D.1 in his favour.

5. Heard the arguments and perused the materials available on record.

At this stage the plaintiff No.2 has argued that, the plaintiffs have filed the suit for the relief of recovery of possession and Mandatory Injunction and Permanent Injunction. The defendants have occupied the suit schedule properties for yearly rent of Rs.120/- per year. And they have illegally constructed the building and

tried to put up the compound and car shed in the suit schedule properties with out prior permission of the plaintiffs trust. Hence, they become defaulter. In this regard the plaintiffs have issued the legal notice to vacant the suit schedule property and further argued that the defendants have not disputed the Ex.P.8 and 9 which are rent receipts and not cross examined on those documents and same are admitted, plaintiff has produced, Ex.P.16 is the certified copy of the PTR sheet for having appointed the plaintiff as produced trustee and manager of plaintiff No.1. In this regard also defendants have not cross examined the plaintiffs Ex.P.17 is the authorised letter issued by the trust. Ex.P.20 is the summons issued by the court to the plaintiffs to give evidence in O.S. No. 155/2001 on these documents also defendants have not cross examined the plaintiffs. And plaintiffs has issued the legal notice , Ex.P.5 for which defendants have not given any reply and even after receipt of the legal notice as per Ex.P.7 and plaintiff has produced Ex.P.12 is the letter send by the defendants to

the city Municipality, on the Ex.P.12 also defendant has not cross examined the plaintiffs. In such circumstance the defendants can not denied the title of the plaintiff No.1 and also capacity of the plaintiff No.2 to file the suit. In support of this contention the plaintiff relying upon the decision of the Hon'ble high court of Karnataka reported in 2007 part 1 page No.614 and ILR 2005 KAR 3383. on the other hand the learned counsel for the defendants have argued that, plaintiff No.2 was trustee only for period from 26.03.1989 to 26.03.1992.from the period of plaintiffs have failed to produced any document to shows that, he is the trustee of the plaintiff No.1 Ex.P.8 to 11 are the create for this suit. Ex.P.17 original he has not been produced and judgment in O.S. NO.78/2016 also not produced so no document is produced by the plaintiff for become the manager for the trust. After death of trusties hence, the plaintiff has no capacity to field this suit. Pray for dismiss the suit.

6. The following Issues have been arised for court consideration. The predecessor in the office has framed following;

I S S U E S

1. Whether the plaintiffs prove that, the defendants are tenants to the suit schedule property on yearly rent Rs.120/-p.a?
2. Whether the plaintiffs prove that, there is a land lord and tenant relationship between plaintiffs and defendants?
3. Whether the tenancy is validly terminated?
4. Whether the plaintiffs prove that, the defendants are illegally encroached over the suit schedule property and constructed illegal building and compound in the suit property?
5. Whether the plaintiffs prove that, the plaintiffs No.2 is manager and trustee Manager to the plaintiff No.2 trust?
6. Whether the plaintiffs are entitled for the relief of permanent Injunction?
7. Whether the plaintiffs are entitled for the relief of possession of suit properties?

8. What Order or Decree?

7. Court finding to the above Issues as follows-

- Issue No.1 - In the Affirmative
- Issue No.2 - In the Affirmative
- Issue No.3 - In the Affirmative
- Issue No.4 - In the Affirmative
- Issue No.5 - In the Affirmative
- Issue No.6 - In the Affirmative
- Issue No.7 - In the Affirmative
- Issue No.8 - As per the final order for
the following:

REASONS

8. ISSUE NO. 5: That in order to prove, this issue the plaintiff No.2 examined himself as P.W.1 and he has got marked Ex.P.1 to 23 document in his favour and he has reiterated the plaint averments in his chief-examination.

9. It is specific case of the plaintiff that, plaintiff trust is registered under Bombay Public Trust Act 1954 wherein the one R.S. Bangera was GPA holder and

maintaining the property of trust. He died in the year 1987 after death of R.S. Bangera there is a petition pending before the court for appointing of trustee and plaintiff is acting as the trustee and the manager and care taker of the plaintiff No.1 trust property as per PTR sheet, submitted as per resolution passed on 25.12.1989.

10. In support of this contention plaintiff has produced Ex.P.16 is the list of trustees submitted to charity commission on dated 02.05.1989. on looking into the Ex.P.16 it discloses that as per resolution No.280/89 on dated 02.05.1989 the one Sri. L.W.Ben, 2. Sri.W.M. Hongal. 3. Sri. G.S. Gundi, 4. Sri. P.S.Gundi , 5. Sri. G.T. Banna, 6. Sri. V.S. Patil, 7. Sri. A.D. Raichur, 8. Smt. R.D. Nandihal, are the appointed as trustees and members of same is accepted by Charity commission and it was valid for the period from 26-03.1989 to 26.03.1992.

11. Further plaintiff has produced the Ex.P.17 is the letter issued by the Chairman of the managing committee of trustees the united Basel Mission Church, in India trust association (Bombay Karnataka) on dated 25-12.1989. on looking into the Ex.P.17 it discloses that, the plaintiff No.1 trust. After death of trustee by name R.S. Bangera Gpa holder plaintiff No.2 is authorised to managing the properties of plaintiff No.1.

12. Further plaintiff has produce Ex.P.20 is the summons issued by the 3rd Addl. Civil Judge and JMFC Gadag In O.S. No. 155/2001 wherein the plaintiff No.2 was call for to produced rent agreement and give evidence in respect of the properties involved in O.S. No. 155/2001 wherein the plaintiff No.2 name is referred the Sri. V.S. Policepatil manager of the United Basel Mission Church in India Trust Association (B.K) Bassel Mission compound Betagere Gadag. The said document was pertaining into the year 2004 it was issued by the court on undisputed point of time.

13. Plaintiff has produced the Ex.P.21 and 22 are the notice issued to the plaintiff No.2 on dated 31.01.1994 and 01.08.1998 wherein also plaintiff No.2 is referred as a manager and trustee of the United Basel Mission Church in India Trust Association (B.K) Bassel Mission compound Betagere Gadag.

14. On the other hand the defendants have completely denied the capacity of the plaintiff No.2 trustee and manager to plaintiff No.1 but defendants have not produced any document to show that, the trustee of the plaintiff No.1 is other than the plaintiffs. On the other hand the learned counsel for the defendants cross examined P.W.1 during the course of cross examination also the learned counsel for the defendants have denied the capacity of the plaintiff No.2 as manger and trustee of the above said association.

15. Further asserted that, there is no trust existing as on today. Even after the learned counsel for the defendant has cross examined the P.w.1 during the

course of cross examination except denied the capacity of the plaintiff. Plaintiff No.2 has admitted the existence of committee and plaintiff No.2 trustee for period of 26.03.1989 to 26.03.1992 so it clearly discloses that. The plaintiff No.2 was the trustee of the plaintiff No.1.

16. Further on looking into the Ex.P.17 is the letter given by the managing committee of trustees of United united Basel Mission Church, in India trust association (Bombay Karnataka) on dated 25.12.1989 to plaintiff to managing the property of trust it clearly discloses that, the plaintiff No.2 is empower to file the suit for the management of plaintiff No.1 trust property and looking after property of plaintiff No.1 on all this documents also the defendant has not made any cross examination, for denying the Ex.P.17.

17. Further it is relevant to refer the documents produced by the plaintiff Ex.P.12 letter submitted by the defendant No.1 to the city municipality on 14.12.2015 wherein the defendant himself has contended that, the

property belongs united Basel Mission Church, in India trust association (Bombay Karnataka) and defendants have not disputed the Ex.P.12 and also signature found on Ex.P.12 . So on considering the documents produced by the plaintiffs that is Ex.P.16 and 17 and Ex. P.12 and Ex.P.20 to 22. They clearly discloses that, the plaintiff is authorised to file this suit for protecting the suit schedule property of plaintiff No.1 as trustee and manager and care taker of the plaintiff No.1 property.

Accordingly, Issue No.5 is answered in the Affirmative.

18. ISSUE NO.1 and 2: These issues are inter-linked to each other, are taken for common discussion to avoid the repetition of facts.

It is specific case of the plaintiff that, the suit schedule property bearing CTS No.4069/42 measuring total extant 46x25 feet, bounded on East- by Rojavva Devid house is belong to plaintiff trust, West- by V.S. Patil house, North – by Devaraj Pranc house is belongs to plaintiff trust. South by- trust vacant site for which

plaintiff No.1 trust is owner in possession of the suit schedule property and plaintiff has given the said property to the defendant for rent for Rs.120/- per year in the year 2015 and also for permitted orally defendant No.1 and 2 repairing the said house and earlier the said property was given to rent one Smt. Leela S. Bower, the said Smt. Leela S. Bower, has returned the suit schedule property to the plaintiffs then the plaintiff has handed over the suit schedule property to the defendants to rent.

19. On the other hand the defendants have denied the relationship between plaintiff No.2 themselves contending that, the suit schedule property belongs to plaintiff No.1 trust and plaintiff No.2 is not trustee of the plaintiff No.1 he is not the manager of the plaintiff No.1 property. The suit schedule property was given by the one Smt. Leela S. Bower, she has received an amount of Rs. 3,50,000/- from the defendants and handed over the suit schedule property by relinquishing her right on 09.10.2015 so on the basis of relinquishment made by the Smt. Leela S.

Bower, the defendants are in possession and enjoyment of the suit schedule property.

20. In support of his contention plaintiff has produced Ex.P.1 to 3 are the certified copy of the CTS extract. On looking into the CTS extract it discloses that, the property bearing CTS No.4069/42, 4069/50, 4069/1B+8+9+15 to 18+56+51/9 are belongs to united Basel Mission Church, in India trust association (Bombay Karnataka) trust.

On the other hand the defendants have not denied the relationship of the suit schedule property of plaintiff No.1. In this regard also defendant in his cross examination has categorically admitted that, the properties situated with the united Basel Mission Church, in India trust association (Bombay Karnataka) belongs to defendant No.1 and 2 are residing in the house within the Bassel Mission trust they are not owners of the residence, are tenant from 100 years, are residing with permission of Bassel Mission Trust.

21. Further he deposed that, himself and his father are residing since 50 years in the plaintiff No.1 trust property that is CTS No.4069/42 and further D.W.1 has admitted that, the defendant No.6 was in occupation of suit schedule property, on the permission of plaintiff No.1 trust. The suit schedule property measurement is 450 Sq yards and defendant No.6 has handover the said property to him. The defendant No.6 was tenant to the plaintiff No.1. On looking into the evidence of D.w.1 it clearly discloses that, the suit schedule property was belongs to plaintiff No.1 trust.

Further it is case of the plaintiff that, the plaintiff No.2 is looking after the welfare of the plaintiff No.1 trust . plaintiff No.2 is the manager and care taker of the plaintiff No.1 trust property. In support of this contention the plaintiff has produced several document as discussed in the issue No.5 all those documents clearly discloses that, the plaintiff No.2 is the managing trustee of the plaintiff No.1.

Further it is case of the plaintiff that, the plaintiff No.1 and 2 have given the suit schedule property to the defendants on the yearly rent of Rs.120/- in the year 2015 and orally permitted the defendants to repairing the house.

22. In support of this contention plaintiff has produced Ex.P.8 to 11 are the rent receipts given by the defendants. On the other hand the defendants has denied the Ex.P.8 and 9 rent receipts and no cross examination is made by the defendants with regard to contents of Ex.P.8 and 9. Further on looking into the Ex.P.10 it discloses that earlier year 2006 and 2011 the one Smt. Leela S. Bower has paid the rent to the united Basel Mission Church, in India trust association (Bombay Karnataka).

Further plaintiff has produced Ex.P.12 is the letter given by the defendant No.1 to the city municipality on dated 14.12.2015. on looking into the Ex.P.12 it discloses that, the one Prasad Jarge Devid has given

objection to City municipality with regard to construction made in the suit schedule property for which the defendants No.1 has given representation to the city municipality contending that, in para 6 of the said letter that, the united Basel Mission Church, in India trust association (Bombay Karnataka) trust is owner by name Sri. V.S. Policepatil, the manager of the said trust. The city municipality officials can enquiry to him. On looking into the recitals made in the Ex.P.12 it clearly discloses that, the defendants has admitted the relationship of plaintiff No.2 with the plaintiff No.1 as manager of the plaintiff No.1 trust property. In respect of this documents is concerned defendant has not cross examined the P.W.1.

23. On the other hand the defendant has deposed in his cross examination that, the suit schedule property was in possession of the defendant No.6 Leela bower said Leela bower was tenant under plaintiff No.1. the admission given by the defendant No.1 with regard to ownership of

the plaintiff No.1 and defendant No.6 was the tenant, is admitted the question of disputed the ownership of plaintiff does not arise at all. As per the contention of the defendant that, the defendant No.6 has received an amount of Rs.3,50,000/- from him and given the suit schedule property to him by relinquishing her right and executed relinquishment deed, but the said alleged relinquishment deed is not produced and also deposed that, he would produced the said relinquish deed but even till today, the defendant has not produced the alleged relinquishment deed executed by Leela S. Bower and another thing is to be consider that, whether the said Leela S. bower having any right to relinquished right over the suit schedule property in favour of defendants by receiving an amount of Rs.3,50,000/- is to be looked into.

24. On looking into the rights of defendant No.6 is concerned she had only limited interest over the suit schedule property that, as a tenant. Whether the tenant

could transfer or alienate or relinquished the suit schedule property tenanted to her but when the said defendant No.6 is not at all owner of the suit schedule property how could she relinquish her right over the suit schedule property in favour of defendant, is not permissible and acceptable, for sake of arguments admitted that, the relinquishment deed executed by defendant No.6 in favour of defendant No.1 but the said relinquishment is made without any manner of right title over the suit schedule property. Hence, if any relinquishment made by the defendant No.6 in favour of defendant No.1 is void and illegal one. On looking into the admission given by the defendant itself is sufficient to draw inference that, the plaintiff No.1 trust is owner of the suit schedule property and the defendant No.6 was tenant under plaintiff No.1 property and either defendant No.1 or defendant No.6 are not the owner, but they are only tenant under plaintiff No.1 property. Hence, when the defendant No.1 has admitted the tenancy of defendant No.6 over the suit schedule property he can

not denied tenancy of himself to the plaintiff No.2, moreover the plaintiff has issued the legal notice to defendant No.1 on 15.09.2018 to vacate the suit schedule property as per under 106 of transferrer property Act. The said notice is served upon the defendant No.1 on 18.09.2018 for which also the defendants has not given any replay to the Ex.P.5 notice and postal acknowledgement, is marked at Ex. P.7. If at all if the defendant No.1 was not the tenant in plaintiff No.2 what prevented him to give replay by denying the assertion made in the Ex.P.5 is not explained by the defendants.

25. Further it is case of the plaintiff that, the defendant No.6 has handed over the suit schedule property on 08.11.2015. in support of this contention plaintiff has produced Ex.P.19 is the letter given by the Leela S. Bower for handing over the suit schedule property to the plaintiff No.2. On looking into the Ex.P.19 it discloses that, earlier tenant by name Leela S. Bower has

handover the suit schedule property by terminating the tenancy and same is accepted by the plaintiff No.2.

At this stage it is important to note the suggestions made by the defendants counsel during the course of cross examination of P.w.1 that,

ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ ಮೊದಲು ಪ್ರತಿವಾದಿಗಳು ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಮೊದಲು ದಾವಾ ಸ್ವತ್ತಿನಲ್ಲಿ ಲೀಲಾ ಬೊವೆರಾ ರವರು ಉರ್ಫ್ ಜಂತ್ರಿರವರು ಮನೆಯ ಬಾಡಿಗೆಗೆ ಇದ್ದರು. ಸದರಿಯವರು ಬಾಡಿಗೆ ಇದ್ದ ಬಗ್ಗೆ ದಾಖಲೆ ಹಾಜರುಪಡಿಸಿದ್ದೇನೆ.

further suggested that, ದಿನಾಂಕ 01.10.2015 ರಿಂದ ಸ್ವಾಧೀನ ಪಡೆದ ದಿನದಿಂದ ಪ್ರತಿವಾದಿಗಳು ಸ್ವಾಧೀನದಲ್ಲಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. On looking into the suggestions made by the defendants counsel it clearly discloses that, the defendant has obtained the possession of the suit schedule property on 09.10.2015 prior to that, the one Leela S. Bower was in possession and enjoyment of the suit schedule property as tenant.

26. The plaintiff has produced Ex.P.18 is the rent agreement dated 15.11.2015. On looking into the Ex.P.18 it discloses that. Prior to that defendant No.6 was in

possession as tenant. On considering the evidence of P.W.1, D.W.1 and materials available on record. This court has come to the conclusion that, the defendant No.1 to 5 are the tenant in the suit schedule property from plaintiff No.1 and 2 association. **Accordingly, Issue No.1 and 2 are answered in the Affirmative.**

27. ISSUE No.3: This issue is concerned it is specific case of the plaintiff that, the plaintiff has terminated the tenancy by issuing quit notice to the defendants same are served to the defendants. Even after service of notice the defendants nor given any replay to the notice and vacated the suit schedule property as per sec.106 of Transferrer property Act.

In support of this contention the plaintiff has produced Ex.P.5 is the legal notice issued by the plaintiff on 15.09.2018 and Ex.P.6 is the postal receipt and Ex.P.7 is the postal acknowledgement and same is served on defendants. The plaintiff has specifically stated that, wherein the plaintiff has requested the defendants to

vacate the suit schedule property as per 106 of transferrer property Act, notice is served the defendants have failed to handover the possession to the plaintiff.

28. In support of this contention plaintiff is relying upon the decision of **Hon'bel high court of Karnataka reported in KCCR 2007 part 1 page No.614 in case of Jodharam Vs Smt. Jagnathamma . Wherein the Hon'bel High Court of Karnataka has held that, the right of one co heir to seek eviction – one co- heir of the deceased landlord can sue for eviction in the absence of other co – heirs, who have no objection. A co- owner is as much as owner of the entire property as any sole owner of the property is. One of the co owners is competent to serve notice terminating tenancy and competent to maintain a suit under section 106 of the transfer of property act.** Unless the plaintiff No.1 has disputed the power of plaintiff No.2 the

plaintiff No.2 is having the power to maintain the suit for recovery of trust property.

29. Further plaintiff is relying upon the decision of Hon'ble high court of Karnataka reported in ILR 2005 page No.3383 in case of Associated Traders and engineers limited and another Vs. J. Nagaraj and others. Where in Hon'ble high court of Karnataka in page No.6 has held that, when the defendants admitted the relationship of landlord tenant between plaintiff and himself require the suit schedule property and bona-fide use and occupations still it is contended further that, the tenancy is still substantially the here under.

The defendant in his cross examination he has admitted that, the plaintiff No.1 is the owner and denied the capacity of the plaintiff No.2. to maintain the suit but during the course of cross examination of P.w.1 the suggestion made by the defendant counsel that, the

possession of the suit schedule property has been hand over to defendants on 15.11.2015 the said suggestion itself is sufficient to draw inference that, defendants are the tenant and in possession of the suit schedule property. In such circumstance the defendants can not denied the relationship of plaintiffs and himself as landlord and tenant and he can not travel behind his admission. Accordingly, the judgment relied by the plaintiff is aptly applicable to the case on hand. Accordingly the defendants is liable to hand over the possession of the suit schedule property to the plaintiff by remove the illegal construction made in the suit property and also to remove the compound made in the suit schedule property. Hence, this court has come to the conclusion that, plaintiff has validly terminated the tenancy of defendants. **Accordingly, issue No.3 is answered in the Affirmative.**

30. ISSUE NO.4: That in order to prove this issue it is specific case of the plaintiff that, the defendants have

illegally encroached the suit schedule property and illegally constructed the building and compound in the suit schedule property. In this regard the suggestion made by the defendants to the P.W.1 in para 11 that,

ಬಾಶಲ್ ಮಿಷನ್ ಸಂಸ್ಥೆಯ ಸ್ವತ್ತುಗಳನ್ನು ಸ್ವಾಧೀನ ಇರುವವರು ಸದರಿ ಮನೆಗಳನ್ನು ರಿಪೇರಿ ಮಾಡಬೇಕಾದರೆ ಬಾಶಲ್ ಮಿಷನ್ ಸಂಸ್ಥೆಯ ಅನುಮತಿ ಪಡೆದು ರಿಪೇರಿ ಮಾಡಬೇಕು ಎಂದರೆ ಸರಿ. ದಿ: **15.11.2015** ರಂದು **1** ನೇ ಪ್ರತಿವಾದಿಗೆ ದಾವಾ ಸ್ವತ್ತನ್ನು ರಿಪೇರಿ ಮಾಡಲು ಅನುಮತಿ ನೀಡಿದ್ದೇನೆ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

Further it is relevant to evidence of D.w.1 in his evidence D.W.1 has deposed that,

ದಾವಾ ಸ್ವತ್ತು ಹಿಂದೆ ತಗಡಿನ ಮನೆ ಆಗಿತ್ತು ಎಂದರೆ ಸರಿ. ಸದರಿ ಮನೆಯ ಸುತ್ತಲೂ ಕಲ್ಲು ಮತ್ತು ಮಣ್ಣಿನ ಗೋಡೆ ಇತ್ತು ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಸದರಿ ಕಲ್ಲು ಮತ್ತು ಮಣ್ಣಿನ ಗೋಡೆಯನ್ನು ನಾನು ತೆಗೆದಿದ್ದೇನೆ. ಸದರಿ ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಹಳೆ ಗೋಡೆಯನ್ನು ತೆಗೆದು ಹೊಸ ಮನೆ ಕಟ್ಟಿದ್ದ ಬಗ್ಗೆ ದಾಖಲೆ ಹಾಜರುಪಡಿಸಿದ್ದೇನೆ. ನಾನು ಯಾವುದೇ ಹೊಸ ಮನೆ ಕಟ್ಟದಿದ್ದರೂ ಸಹ ನಗರ ಸಭೆಗೆ ಯಾವುದೇ ದಾಖಲೆ ಹಾಜರುಪಡಿಸದಿದ್ದರೂ ಸಹ ಸುಳ್ಳು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಮನೆ ಸಂಪೂರ್ಣವಾದ ಬಗ್ಗೆ ನಗರ ಸಭೆಯಿಂದ ಪ್ರಮಾಣ ಪತ್ರ ಪಡೆದಿಲ್ಲ. ನಗರ ಸಭೆ ಅರ್ಜಿ ನೀಡಿರುವ ಬಗ್ಗೆ

ದಾಖಲೆಯನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿದ್ದೇನೆ. ನನ್ನ ಮನೆಯ ದಕ್ಷಿಣಕ್ಕೆ ವಾಯ್ ಎಮ್ ಸಿ ಕಟ್ಟಡ ಬಿದ್ದಿದೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಜಾಗದಲ್ಲಿ ನಾನು ಕಾರನ್ನು ನಿಲ್ಲಿಸುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

31. On looking into the evidence of D.W.1 it clearly discloses that, the defendant has alter the house and constructed the building in the suit schedule property and also constructed the compound and put the gate, the defendant without obtaining the prior permission from the competent authority that is city municipality and as well as the plaintiff being the owner of the suit schedule property. So the any construction made by the defendants without permission of the plaintiff is amount to illegal without any power and right. Even the defendants has deposed in his cross examination that, he has obtained the license from the competent authority, but no such documents is produced by the defendants to shows that, he has obtained the valid license from the competent authority and constructed the building and compound in the suit schedule

property. **Hence, issue No.4 is answered in the Affirmative.**

32. ISSUE No.6 and 7: These Issues are inter-linked to each other, are taken for common discussion to avoid the repetition of facts.

The plaintiff has filed this suit against the defendant s for the relief of recovery of possession of the suit schedule property and also seeking the relief of Mandatory injunction to remove the new constructions made in the suit schedule property and compound and restraining the defendants permanently not to put up the any car shed as mentioned in the hand sketch map EFGH annexed to the plaint. Firstly the plaintiff has establish that, plaintiff No.1 is the owner of the suit schedule property and plaintiff No.2 is the manager of the trust and care taker of the plaintiff No.1 property and also further plaintiff has proved that, the defendant is the tenant in the suit schedule property and also further

proved that, the defendants have illegally constructed the building and compound in the suit schedule property.

33. On the other hand the defendant has failed to prove that, he has obtained the suit schedule property from one Smt. Leela S. Bower through the relinquishment deed. So in such circumstance the plaintiff is entitle for the relief of recovery of possession and Mandatory Injunction for remove the illegal construction made in the suit schedule property and also remove the compound illegally constructed and also defendants are to be permanently restrained from put up any car shed in the suit schedule property as shown in the hand sketch map.

34. At this stage the learned counsel for the defendant has argued that, the plaintiff No.2 has no power or authority to file the suit against the defendants. further plaintiff has argued that, the documents produced by the plaintiffs have clearly establish that, the plaintiff No.2 is the manager and care taker of the suit schedule property and managing the affairs of the plaintiff No.1. trust the

trust act abolished in the year 2003 as per sec.59 of the Indian trust act 1882 Beneficiary of the trust may institution to suit for the execution of the trust and title appointment of trustee or new trustee. Even though the said question is pending before the Hon'ble high court of Karnataka Dharwad. The plaintiff is not precluded from file the suit from protection trust property. On looking into the sec. 59 of the Indian trust Act, no doubt that, Where no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the So sec.59 of Indian trust Act empower the plaintiff No.2 file suit in respect of trust property. **Hence, issue No.6 and 7 are answered in the Affirmative.**

35. ISSUE NO.8: For the above discussion this court, proceed to pass the following-

ORDER

The suit of the plaintiffs are hereby decreed with cost.

Defendants are hereby directed to vacate suit schedule property and directed to remove illegal construction made in the suit schedule property and remove the compound and new construction, within 6 months from the date of this order and defendants are permanently restrained not to put up any car shed in the suit schedule property.

Draw decree accordingly.

(Dictated to the stenographer transcribed by her, corrected signed & then pronounced by me in open Court on this 17th day of January 2022).

(S. Chinnaswamy)
Prl. Civil Judge & JMFC, Gadag

- ANNEXURES -

LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFFS

P.W.1 - Veeranaggouda s/o. Sangnagouda @
Policepatil @ Patil.

LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFFS

Ex.P.1 - Certified Copy of Sy No.4069/42
Ex.P.2 - Certified copy of Sy No.4069/50.
Ex.P.3 - Certified copy of Sy No.4069/1B.
Ex.P.4 - Permission letter (license letter)
Ex.P.5 - Notice
Ex.P.6 - Postal receipt
Ex.P.7 - Postal acknowledgement
Ex.P.8 to 11 - House Rent receipts
Ex.P.12 - letter send by the defendants to the city
Municipality
Ex.P.13 - legal Notice
Ex.P.14 - Postal receipts
Ex.P.15 - Postal acknowledgement
Ex.P.16 - Certified copy PTR Sheet
Ex.P.17 - Authorized Letter
Ex.P.18 - Rent agreement
Ex.P.19 - Letter given by the Leela S. Bower
Ex.P.20 - Summons
Ex.P.21 - Notice

- Ex.P.22 - Letter (Bassel Mission chairman issued
by the letter)
- Ex.P.23 - Paper publication

LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANT

D.W.1 - Manohar Nirmanika S/o. Jems Nirmanika.

LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT

Ex.D.1 - Paper Publication of Vijaya Karnataka Daily
news paper

Gadag
17.02.2022.

(S. Chinnaswamy)
Pril. Civil Judge & JMFC, Gadag

(Judgment typed separately and
Order pronounced in the open Court)

—:O R D E R:—

**The suit of the plaintiffs are hereby
decreed with cost.**

**Defendants are hereby directed to vacate
suit schedule property and directed to remove
illegal construction made in the suit schedule
property and remove the compound and new
construction, within 6 months from the date of
this order and defendants are permanently
restrained not to put up any car shed in the
suit schedule property.**

Draw decree accordingly.

Prl. Civil Judge & JMFC, Gadag.