IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 79 of 1992

1. Dilip David Hansda, son of Shri Lal Hansda, resident of Village – Narayanpur, PO- Balia Danga, PS- Maheshpur, District – Pakur (Jharkhand)
2. Shree Pravir Kumar Soren, son of Jadu Soren, resident of Village – 2240/BB7, Delatoli, P.O.- Bariatu, P.S.- Sadar, District - Ranchi (Jharkhand)
3. Bablu Kumar Murmu, son of Late Paul Murmu, resident of Village – Bandarjori, P.O. & P.S. Dumka, District - Dumka (Jharkhand).

… … Plaintiffs-Respondents-Appellants

Versus

1. Mr. Oddvar Holmedal, S/o Alf Holmedal, Koroyo Mission, P.O. Koroyo Madhuchachi, via – Gunhiajari, P.S.- Dumka Muffasil, District - Dumka.
2. Rt. Rev. Nityanando Borgawary, S/o. Rev. Romedo Borgawary, Gaurang Mission at Hattugoan, P.O.- P.S. and District – Kokarajhar (Assam) at present at Badrarjori Mission in Dumka town, District - Dumka.

... Defendants/Appellants/Respondents

WITH

L.P.A. No. 80 of 1992

1. Shree Pravir Kumar Soren, son of Jadu Soren, resident of Village – 2240/BB7, Delatoli, P.O.- Bariatu, P.S.- Sadarr, District - Ranchi (Jharkhand)
2. Rameshwar Hembrom, S/O Khade Hembrom, a Christian Santhal, resident of village – Kukurtopa, P.S. Jama, District – Dumka.
3. Dilip David Hansda, son of Shri Lal Hansda, resident of Village – Narayanpur, PO- Balia Danga, PS- Maheshpur, District – Pakur (Jharkhand)
4. Bablu Kumar Murmu, son of Late Paul Murmu, resident of Village – Bandarjori, P.O. & P.S. Dumka, District - Dumka (Jharkhand).
5. Nathaniel Murmu, S/o. Late Churmu Murmu, a Christian Santhal by profession a Lawyer at Dumka Court, Dumk,a District - Dumka.
6. Bishwanath Tudu, S/o Late Rambhai Tudu alias Ramai Tudu, a Christian Santhal, by profession Service holder, being head clerk at

Sahibganj Welfare Office, P.S. Sahibganj, District - Dumka (Bihar) (now Jharkhand).

7. Gopin Tudu alias Gupen Soren, S/o Late Suna Soren, a Christian Santhal, resident of Mohal Pahari Mission, P.S. Shhekaipara, District - Dumka.

... Defendants-Appellants-Appellants

Versus

1. Trust Association of the N.E.L.C. incorporated under the Companies Act, 1956 (1/56) having its registered office at Santhal Mission House, Dumka, P.S. Dumka Town, Sub-Division – Dumka, District - Dumka.

Plaintiff/Respondent/1st Party Respondent

2. Mr. Oddvar Holemdal, S/o. Alf Holmedal, Koroya Mission, P.O.- Koroyo Madhuchachi, Via- Gunhiajari, P.S.- Dumka Muffasil, District – Dumka.
3. Rt. Rev. Nityanando Borgawary, S/o. Rev. Romedo Borgawary, Gaurang Mission at Hattugoan, P.O.- P.S. and District – Kokarajhar (Assam) at present at Badrarjori Mission in Dumka town, District - Dumka.

... Plaintiffs/Respondents/2nd Party Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Appellants:	Mr Rajeeva Sharma, Sr. Advocate Mr Om Prakash, Advocate Mr Ritesh Kumar, Advocate
For the Respondents:	Mr Anil Kumar, Senior Advocate Mr Rahul Kumar, Advocate Ms Chandana Kumari, Advocate
For the Interveners:	Mr Sudhir Kumar Sharma, Advocate

Reserved on: 14.07.2026 **Pronounced on: 23/07/2026**

***Per* M. S. Sonak, C.J.**

1. Heard Mr Rajeeva Sharma, learned Senior Advocate, who appears with Mr Om Prakash and Mr Ritesh Kumar for the appellants in both appeals, and Mr Anil Kumar, learned Senior Advocate, who appears with Mr Rahul Kumar and Ms Chandana Kumari on behalf of the respondents in both appeals. Mr Sudhir Kumar Sinha appeared and was heard on questions of law after I.A. No. 11821 of 2024 in L.P.A. No. 80 of 1992 was dismissed.

2. L.P.A. No. 79 of 1992 challenges the learned Single Judge's common judgment, decree and order dated 30.06.1992 in First Appeal No. 564 of 1985 by which the learned Single Judge set aside the judgment and decree dated 28.06.1985 passed by this District Judge, Dumka (Trial Court) in Title Suit No. 05 of 1971 instituted by the appellants herein. Trial Court had decreed Title Suit No. 05 of 1971 in favour of the appellants herein (original plaintiffs).

3. L.P.A. No. 80 of 1992 challenges the learned Single Judge's common judgment, decree and order dated 30.06.1992 in First Appeal No. 197 of 1986 affirming the judgment and decree dated 05.02.1986 passed by the Additional District Judge, Dumka (Trial Court) in Title Suit No. 11 of 1971 instituted by respondents herein who were plaintiffs in Title Suit No. 11 of 1971. The Trial Court had decreed Title Suit No. 11 of 1971 in favour of the respondents herein, who were the plaintiffs in Title Suit No. 11 of 1971.

4. The records show that First Appeal Nos. 56 of 1985 and 197 of 1996 were disposed of by the learned Single Judge by a common judgment, decree and order dated 30.06.1992. Therefore, although two separate LPAs, i.e. L.P.A. No. 79 of 1992 and L.P.A. No. 80 of 1992 have been filed, the learned counsel for the parties agree that both these appeals could be disposed of by a common judgment and order.

GENESIS OF THE DISPUTE

5. The dispute in the two suits, i.e., Title Suit No. 05 of 1971 and Title Suit No. 11 of 1971, from which these appeals arise, relates to the year 1880, when Rev. Hans Peter Doerresen and Rev. Laurentius Olaves Skrefsrud, engaged in Evangelical Protestant Mission Work amongst the Native Santals, founded a missionary society, earlier called 'Indian Home Mission to the Santals', now known as 'Santal Mission of Northern Churches' (SMNC), 'for the education and civilisation of the local inhabitants'. They acquired movable and immovable properties for the purposes of the said mission and created a Trust by executing a Trust Deed dated 21st of April 1880 to secure the properties they had acquired and might acquire in the future.

6. The Trustees referred to in the Trust Deed dated 21st of April 1880 included not only Rev. Hans Peter Doerresen and Rev. Laurentius Olaves Skrefsrud, but also Mr Thomas Taylor Allen and Mr Robert Allen, Ex-trustees. They conveyed and assigned all the trust properties to be held in such manner as directed by them, their survivors, or persons appointed or nominated by them. To achieve the mission's objective, the Trustees were to hold the properties for the Christian Santal Churches established in the Santal Parganas by the said Mission. After the death and/or retirement of the original

Trustees, successor Trustees were appointed under deed polls to whom the trust properties were assigned, conveyed and transferred.

7. Title Suit No. 01 of 1914 was filed before the District Judge, Dumka for settling a scheme for the better management of the trust properties. The suit was disposed of in terms of the scheme agreed to by the parties, which was later incorporated in a Supplementary Trust Deed dated 8th of December 1920.

8. The Indian Home Mission to Santals, later SMNC, established some Christian Santal Churches in the Santal Parganas between 1950 and 1959. These Churches were known as Evangelical Lutheran Churches. Ultimately, they evolved into the "Trust Association of Northern Evangelical Lutheran Church" (NELC), a self-governing and independent Church with its own constitution, rules and regulations. After the coming into force of the Indian Companies Act, 1956, the above-referred Trust Association of Northern Evangelical Lutheran Church was registered as a Company under the said Act. This Company shall be referred to as 'NELC Pvt Ltd'.

9. On 10th of February 1968, the then-existing trustees of SMNC executed an instrument of transfer from one body of trustees to another under the provisions of Article 62(e) of the Indian Stamp Act. At that time, Rev. Gunnar Fossland, Rev. H. N. Riber and Rev. Jens Berner Alson were the trustees of SMNC. Under this Instrument of Transfer dated 10th of February 1968, NELC Pvt Ltd was introduced as a new trustee. There is considerable debate about the scope and import of the Instrument of Transfer dated 10th of February 1968.

10. Jacob Hembrom, Raghunath Kisku, Paraganait Bhim Murmu, Emanual Murmu, and Chunnu Murmu (appellants herein or their predecessors), claiming to be the beneficiaries of the 1880 Santal Mission of Northern Church trust (SMNC), instituted Title Suit No. 05 of 1971 under section 92 of the CPC in the Court of the District Judge at Dumka. The suit was instituted after obtaining the necessary consent of the Advocate General.

11. In Title Suit No. 05 of 1971, the above-mentioned persons (plaintiffs) prayed for the following reliefs: -

(i) *A decree be passed, settling a scheme for the proper management of the Trust generally known as the Santhal Mission of the Northern Churches, and a Receiver be appointed pendent lite and management of the said Trust be taken out of the hands of the present Trustees*

(ii) *a decree be passed declaring that the transfer dated 10.2.68 by defendants nos.1 to 3 in favour defendant nos. 4 to 13 is inoperative, invalid, and illegal ab initio and the plaintiffs are not bound by the same.*

(iii) *(b) a decree be passed that the properties cover by the trust dated 21.4.1980 and the deed dated 17.4.1909 incorporated in the decree dated 21.4.1914 in Title Suit No. 01 of 1914 and later incorporated in the deed dated 8.12.1920 and such other properties acquired for and on*

behalf of the trust, cannot be sold,, mortgaged or hypothecated and or transferred to any other persons in violation of the terms of the deed of agreement as aforesaid, and the defendants be permanently restrained from interfering with the rights and claims of the plaintiffs and the other beneficiaries belonging to the Santal Mission of the Northern Churches by an order of permanent injunction.

(iv) (c) The trustees being guilty of misconduct be removed.

(v) A decree for costs of the suit.

(vi) A decree for such other relief or reliefs to which the plaintiffs be entitled.

12. In Title Suit No. 05 of 1971, the plaintiffs impleaded 11 defendants described as "*All Directors of the Trust Association of Northern Evangelical Lutheran Church*". Crucially, NELC Pvt Ltd was never impleaded as a defendant to this suit, even though the plaint alleged that the Instrument of Transfer dated 10th February 1968 had unauthorisedly transferred the SMNC trust properties to NELC Pvt Ltd, and the relief sought was to declare the said Instrument of Transfer dated 10th February 1968 *"inoperative, invalid, and illegal ab initio and the plaintiffs are not bound by the same"*.

13. Title Suit No. 11 of 1971 was instituted by NELC Pvt Ltd, Rev. H. N. Riber, Rev. John Thoft Krogh and Miss Betzy Nordby, as trustees of SMNC, against about 12 defendants, who were sought to be sued in a representative capacity. Leave under Order 1 Rule 8 of the CPC was obtained, and necessary notices were also published in accordance with the law.

14. In Title Suit No. 11 of 1971, NELC Pvt Ltd and the other co-plaintiffs sought the following reliefs: -

(a) Declaration of title and confirmation of possession over the Mission compounds, as described in Scheduled 'A', A(1), A(2), A(3), A(4), A(5), A(6), A(7), A(8), A(9), A(10) & A(11) attached to this plaint,

(b) A declaration that the defendants got no right to enter into the Mission compounds as described in the said schedules A, A(1), A(2), A(3), A(4), A(5), A(6), A(7), A(8), A(9), A(10) & A(11) attached to this plaint, even for performing religious rites and offering their prayers within the said Compounds, except in accordance with the constitution and the Rules and Regulations framed by the plaintiff 1st party in this behalf, marked Annexure 'I' and 'II' to this plaint.

(c) Permanent Injunction restraining the defendants from entering upon the Mission Compounds, as described in the said Schedules A, A(1), A(2), A(3), A(4), A(5), A(6), A(7), A(8), A(9), A(10) & A(11), except with the permission of the proper Authorities and the Rule and Regulation framed by the plaintiff 1st party.

(d) Permanent Injunction restraining the defendants from describing themselves as different office bearers of the Santhal Mission of the Northern Churches, the plaintiff

2nd party and from getting printed pamphlets letter-heads and other documents describing themselves as the office bears of the Santhal Mission of the Northern Churches, the plaintiff 2nd party and from using the said pamphlets, letter-heads and other documents of distributing them amongst the Christians and the public in general.

(e) Costs of the suit and such other relief or reliefs as may be deemed fit and proper.

15. The Trial Judge partly decreed Title Suit No. 05 of 1971 vide judgment and decree dated 28.06.1985 granting the plaintiffs therein the following relief: -

"That the suit be decreed on contest in part with proportionate costs. Pleader's fee Rs.64/- and the Pleader's Clerk's fee as usual. The conveyance deed dated 10.2.68, Ext.N, is hereby declared illegal, inoperative and not binding upon the plaintiffs. The defendants are permanently injuncted from disposing of any of the properties covered by the Trust deed dated 21.4.1914 passed in Title Suit No. 1 of 1914 and such other properties acquired for and on behalf of the Trust by sale, mortgage or by hypothecation to any person in violation of the terms of the aforesaid documents. The plaintiffs are held liable for paying advalorem court fee. They are directed to pay the same within ninety days from this day, failing which the suit shall stand dismissed."

16. The Trial Court, by a separate judgment and decree dated 05.02.1986, decreed Title Suit No. 11 of 1971, granting the plaintiffs therein (respondents herein) substantially all the reliefs sought in that suit.

17. Against the judgment and decree dated 28.06.1985, by which Title Suit No. 05 of 1971 was decreed, the defendants in that suit preferred F.A. No. 564 of 1985 before the learned Single Judge of the Patna High Court. Similarly, as against the judgment and decree dated 05.02.1986, which decreed Title Suit No. 11 of 1971, the defendants therein preferred F.A. No. 197 of 1986 before the learned Single Judge of the Patna High Court.

18. Both these Appeals were preferred before the Learned Single Judge of the Patna High Court because, until the year 2000, the State of Jharkhand had not been founded, and the Trial Courts were subject to the appellate and supervisory jurisdictions of the Patna High Court.

19. The learned Single Judge of the Patna High Court, by a common judgment, decree and order dated 30.06.1992, disposed of F.A. Nos. 564 of 1985 and F.A. No. 197 of 1986. F.A. No. 564 of 1985 was allowed, and the judgment and decree dated 28.06.1985 in Title Suit No. 05 of 1971 were set aside, thereby restoring the Instrument of Transfer dated 10.02.1968. By the same judgment, decree and order, F.A. No. 197 of 1986 was dismissed, thereby affirming the judgment and decree dated 5th February 1986, by which Title Suit No. 11 of 1971 had been decreed.

20. The appellants, aggrieved by the learned Single Judge's common judgment, order, and decree, filed Letters Patent Appeals (LPAs) before the Division Bench of the Patna High Court. However, following the formation of the State of Jharkhand on 15.11.2000, these LPAs were transferred to the Division Bench of the High Court of Jharkhand and numbered as LPA No. 79/1992, which concerns Title Suit No. 05 of 1971 and F.A. No. 564 of 1985, and LPA No. 80/1992, which concerns Title Suit No. 11 of 1971 and F.A. No. 197 of 1986.

21. The record shows that these Appeals were argued before several Benches on several occasions. However, the arguments remained inconclusive for one reason or another. In our drive to address old cases, we did grant the learned counsel for the parties' accommodation to commence arguments on some occasions but clarified that we would not grant any long adjournments. The matters were ultimately argued on 07.07.2026, 08.07.2026, 13.07.2026 and 14.07.2026 and reserved for orders.

<u>APPELLANTS' CONTENTIONS</u>

22. Mr Rajeeva Sharma, learned Senior Advocate for the appellants in the context of L.P.A. No. 79 of 1992 contended as follows: -

(a) That the finding that Title Suit No. 5 of 1971 was not maintainable under Section 92 of the CPC or that no relief of declaration of nullity of the Instrument of Transfer dated 10.02.1968 could be granted therein, was erroneous and perverse. He submitted that the necessary consent was obtained from the Advocate General before instituting this suit. As beneficiaries of the SMNC trust, the plaintiffs sought the framing of a scheme to manage the affairs of the Trust and the removal of the existing trustees, who were mismanaging the Trust and its properties. One of the prime instances of mismanagement was the execution of the Instrument of Transfer dated 10.02.1968, by which the existing trustees unauthorisedly and fraudulently transferred the trust properties to NELC Pvt Ltd. He submitted that all the predicates of Section 92 of the CPC were duly fulfilled and, therefore, Title Suit No. 05 of 1971 was maintainable and was correctly decreed by the Trial Court.

(b) The First Appellate Court ignored the voluminous evidence on record regarding the misconduct of the existing trustees of SMNC and the unauthorised and fraudulent transfer of the trust properties to NELC Pvt Ltd. He submitted that the fraud and collusion of the existing trustees of the SMNC Trust were evident because, along with NELC Pvt Ltd, they joined as co-plaintiffs in Title Suit No. 11 of 1971, claiming a declaration that it had become the owner of the SMNC trust properties, relying upon the fraudulent Instrument of Transfer dated

10.02.1968 and a permanent injunction to restrain beneficiaries like the appellants from interfering with the SMNC trust properties. He contended that such conduct, or rather misconduct, was sufficient to conclude mismanagement of the Trust and the Trust properties. Once this was established, no fault could have been found with the Trial Court's judgment and decree dated 28.06.1985 setting aside the fraudulent Instrument of Transfer dated 10.02.1968.

(c) The collusive and fraudulent Instrument of Transfer dated 10.02.1968 was executed by only two of the three existing trustees of the SMNC Trust. The 3rd Trustee, in breach of Sections 47 and 48 of the Indian Trusts Act, purported to delegate his powers and duties to a Power of Attorney, who ultimately executed the fraudulent Instrument of Transfer dated 10.02.1968. He therefore submitted that the Instrument of Transfer, being in breach of Sections 47 and 48 of the Indian Trusts Act, was void and was correctly set aside by the Trial Court.

(d) The fraudulent Instrument of Transfer dated 10.02.1968 was void because it was contrary to the purposes of the SMNC Trust, founded in 1880. No such transfer was competent until the object of the SMNC Trust, namely the education and civilisation of the local inhabitants, was fully achieved. There is no record of the three existing trustees exercising their subjective satisfaction in the manner known to law. No document, such as a resolution of the Trust signed by all three trustees, was ever produced on record. He submitted that the existence of such a resolution was a *sine qua non* for the execution of the Instrument of Transfer dated 10.02.1968.

(e) There was no pleading in the suit that the fraudulent Instrument of Transfer dated 10.02.1968 was a transfer from one body of trustees to another, and therefore it was not the same as a transfer or conveyance of the Trust properties by one set of trustees to NELC Pvt Ltd. He submitted that there were also no pleadings in Title Suit No. 05 of 1971 to the effect that NELC Pvt Ltd had now become one of the Trustees of SMNC Trust. In the absence of such pleadings, the First Appellate Court was not justified in making out an entirely new case for the defendants in Title Suit No. 05 of 1971.

(f) He submitted that any evidence not supported by pleadings cannot even be considered by the courts of law. He submitted that it is well settled that there cannot be any variance between pleadings and proof. Any finding that is not supported by the pleadings warrants interference, as it may have been reached in breach of the principles of natural justice. He submitted that the impugned judgment and order dated 30.06.1992 deserve to be set aside on this ground as well.

(g) The non-joinder of NELC Pvt Ltd as a defendant in Title Suit No. 05 of 1971 was not fatal to its maintainability or to the grant of any relief, including the relief to set aside the fraudulent Instrument of Transfer dated 10.02.1968. He submitted that the fraudulent instrument created no rights or interest in favour of NELC Pvt Ltd. In any event, since Title Suit Nos. 05 of 1971 and 11 of 1971 were being tried together, and NELC Pvt Ltd was one of the plaintiffs in Title Suit No. 11 of 1971, it could claim no prejudice from its non-joinder in Title Suit No. 05 of 1971. Accordingly, impleadment of NELC Pvt Ltd in Title Suit No. 05 of 1971 was not necessary, more so since all the directors of NELC Pvt Ltd had been impleaded as defendants in Title Suit No. 05 of 1971.

23. In the context of L.P.A. No. 80 of 1992, Mr Rajeeva Sharma made the following submissions: -

(a) He submitted that the learned Single Judge, having held that the Instrument of Transfer dated 10.02.1968 did not transfer any of the trust properties to NELC Pvt Ltd, could not, at the same time, have decreed Title Suit No. 11 of 1971, in which NELC Pvt Ltd had sought a declaration of title and ownership in respect of the trust properties, or have issued any permanent injunction at the behest of NELC to permanently injunct the appellants, who are the beneficiaries of the SMNC Trust, from even entering upon the trust properties, which include churches and other places of worship;

(b) The learned Single Judge failed to appreciate that the Trial Court, in deciding Title Suit No. 11 of 1971, could never have decreed in favour of NELC Pvt Ltd, because by an earlier judgment and decree dated 28.06.1985 in Title Suit No. 05 of 1971, the Trial Court had set aside the transfer deed dated 10.02.1968. He submitted that NELC's entire case was based on the transfer deed dated 10.02.1968. Once that transfer deed was set aside, there was no question of the Trial Court decreeing Title Suit No. 11 of 1971.

(c) Accordingly, Mr Sharma submitted that the decree dated 28.06.1985 in Title Suit No. 05 of 1971 deserves to be restored and the decree dated 05.02.1986 in Title Suit No. 11 of 1971 deserves to be reversed. He submitted that the common judgment, decree and order dated 30.06.1992 passed by the learned Single Judge deserve to be interfered with.

24. Mr Sharma filed a synopsis and written arguments, which were taken on record. However, we note that all the contentions he urged have been set out hereinabove, and in addition to those contentions or grounds, no other contentions or grounds were urged or pressed before us, even though the appeal memos and the synopsis may have referred to several contentions or grounds.

25. Mr Sharma relied upon the following decisions in support of his contentions in both the Letters Patent Appeals: -

(i) **Bachhaj Nahar Versus Nilima Mandal**, (2008) 17 SCC 491,

(ii) **Sk. Abdul Kayum Versus Mulla Alibhai**, 1962 SCC OnLine SC 159

(iii) **Princes Famita Fauzia and another Versus Syeed Ul-Mulk Alias Nawab Saheb Chathari & Others**, [1979] 1 APLJ 264,

(iv) **Shree Shree Gopal Shreedhar Mahadeb Versus Shasheebhushan Sarkar**, 1932 SCC OnLine Cal 118

(v) **Bonnerji Versus Sitanath Das**, (1921) I.L.R. 49 Calc. 325; L.R. 49 I.A. 46

Mr SUDHIR KUMAR SHARMA's CONTENTIONS

26. By order dated 14.07.2026, we disallowed the intervention application, being I.A. No. 11821 of 2024, in L.P.A. No. 80 of 1992. However, we heard Mr Sudhir Kumar Sharma on the points of law he urged in support of L.P.A. No. 80 of 1992.

27. Mr Sudhir Kumar Sharma submitted that the provisions of the Indian Trusts Act, 1882 apply only to private trusts and their trustees. He further submitted that SMNC was a public trust governed by the Trust Deed dated 21.04.1880, together with the schemes formulated by the Court in Title Suit No. 01 of 1914. He therefore submitted that the Trial Court and the learned Single Judge grossly erred in applying the provisions of the Indian Trusts Act, 1882 to these matters.

28. Mr Sudhir Kumar Sharma submitted that Article 62(e) of the Indian Stamp Act, 1899, contemplates the transfer of trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary. Therefore, he submitted that the Instrument of Transfer dated 10.02.1968 made by the Trustees of SMNC to the Trustees of NELC Pvt Ltd was incompetent under Article 62(e) of the Indian Stamp Act, 1899. He insisted that NELC Pvt Ltd was also a public trust and not a private limited company under the Indian Companies Act, 1956. Therefore, he submitted that the Instrument of Transfer dated 10.02.1968 was void *ab initio.*

29. Mr Sudhir Kumar Sharma submitted that NELC Pvt Ltd, which, according to him, was a public trust, was not a necessary party to Title Suit No. 05 of 1971, and that the learned Single Judge erred in dismissing Title Suit No. 05 of 1971 on the ground of non-joinder of NELC Pvt Ltd.

30. Accordingly, Mr Rajeeva Sharma and Mr Sudhir Kumar Sharma, though on different grounds, submitted that both LPAs must be allowed, that the Trial Court's judgment and decree dated 28.06.1985 in Title Suit No. 05 of 1971 be restored, and that Title Suit No. 11 of 1971 be dismissed.

<u>RESPONDENTS' CONTENTIONS</u>

31. Mr Anil Kumar, the learned Senior Advocate for the respondents in both these appeals, defended the impugned common judgment, decree and order dated 30.06.1992 disposing of First Appeal Nos.

564 of 1985 and 197 of 1986 based upon the reasoning reflected therein.

32. Mr Anil Kumar submitted that the relief to declare the Instrument of Transfer dated 10.02.1968 as invalid and illegal *ab initio* was not at all maintainable in a suit purportedly instituted under Section 92 of the CPC. He submitted that in any event, after the Trial Court denied the relief of formulation of a scheme and removal of the trustees, Title Suit No. 05 of 1971 ceased to be a suit under Section 92 of CPC and should have been dismissed without even going into the issues of legality and validity of the Instrument of Transfer dated 10.02.1968.

33. Mr Anil Kumar submitted that, in any event, if, according to the appellants, the Instrument of Transfer dated 10.02.1968 had transferred the SMNC Trust properties to NELC Pvt Ltd, and the plaintiffs sought to have those properties transferred or restored to SMNC Trust, then NELC Pvt Ltd was a necessary party to Title Suit No. 05 of 1971. Without impleading NELC Pvt Ltd as a defendant, Title Suit No. 05 of 1971 could not have been decreed. The finding to this effect by the learned Single Judge is correct and warrants no interference.

34. Mr Anil Kumar submitted that in the plaint of Title Suit No. 05 of 1971, the plaintiffs had pleaded in paragraph 25 that a cause of action for the suit arose on 10.02.1968, when the Trust properties were transferred to NELC Pvt Ltd contrary to the terms and conditions of a Trust and also on subsequent dates when various other acts of breach of trust in respect of the said Trust, generally known as SMNC, were and are still being committed by the defendants.

35. Mr Anil Kumar submitted that Title Suit No. 05 of 1971 was filed only on 04.06.1971. Accordingly, he submitted that the same was *ex facie* barred by limitation. In any event, the prayer for declaring the Instrument of Transfer dated 10.02.1968 as illegal and void was *ex facie* barred by the law of limitation, since the same was not filed within three years from the date when the alleged right to sue first accrued. He submitted that it was the duty of the Court to have dismissed Title Suit No. 05 of 1971 given the provisions of Section 3 of the Limitation Act, 1963.

36. Mr Anil Kumar submitted that the learned Single Judge correctly held that the Instrument of Transfer dated 10.02.1968, when properly constituted, was merely a document appointing new trustees and effecting the transfer of trust properties from one Body of Trustees to another. He submitted that this was permissible under the law and under the 1880 SMNC's Trust Deed. He submitted that there was no breach of any of the provisions of the Indian Trusts Act, 1882, including Sections 47 and 48 now invoked by the appellants.

37. Mr Anil Kumar admitted that the Instrument of Transfer dated 10.02.1968 was not a transfer of property under the Transfer of

Property Act, 1882, but rather an instrument appointing a new trustee. He submitted that NELC Pvt Ltd was a company incorporated under the Indian Companies Act, 1956 and consequently a legal person. He submitted that there is no bar to a legal person like a company being appointed as the trustee. No such case was ever pleaded or even urged by the appellants-plaintiffs.

38. Mr Anil Kumar submitted that a 'Trust' *per se* is not a legal person. Therefore, in respect of a Trust or its property, it is always the Trustees who sue or are sued. He therefore submitted that Title Suit No. 11 of 1971, which was instituted by the then-existing and the new Trustees, was perfectly competent and correctly decreed by the Trial Court, and that such decree was correctly affirmed by the learned Single Judge in the impugned common judgment, decree and order dated 30.06.1992.

39. Mr Anil Kumar submitted that the contentions now raised by Mr Sudhir Kumar Sharma were never raised by the appellants either before the Trial Court, the First Appellate Court or in the LPA. He submitted that if Mr Sudhir Kumar Sharma's arguments about inapplicability of the Indian Trusts Act, 1882 are to be upheld, then there is no question of even considering the arguments based on Sections 47 and 48 of the said Act as were urged by Mr Rajeeva Sharma, the learned Senior Advocate for the appellants.

40. Mr Anil Kumar submitted that the argument based on Article 62(e) of the Stamp Act was also never raised before the Trial Court, the

First Appellate Court and in the LPA. In any event, such argument is entirely misconceived because it proceeds on the premise that NELC Pvt Ltd was not a private limited company incorporated under the Indian Companies Act, 1956, but that it was a Trust. He submitted that such a plea runs counter to the pleading in Title Suit No. 05 of 1971 wherein it was the categorical case of the plaintiffs that NELC Pvt Ltd was a private limited company.

41. Mr Anil Kumar also submitted a synopsis of the arguments on behalf of the respondents in the two appeals, covering, *inter alia,* the contentions referred to hereinabove.

<u>POINTS FOR DETERMINATION IN THESE APPEALS</u>

42. Based on the rival contentions, the following points for determination arise in these LPAs:

(i) Whether Title Suit No. 05 of 1971 under Section 92 of the CPC was maintainable and properly instituted?

(ii) Whether Title Suit No. 05 of 1971 or, in any event, the relief to declare the Instrument of Transfer dated 10.02.1968 as illegal, null and void was barred by limitation, even though the bar of limitation had not been set out as a defence by the defendants to the said suit?

(iii) Whether Title Suit No. 05 of 1971 warranted dismissal for non-joinder of NELC Pvt Ltd?

(iv) Whether the First Appellate Court travelled beyond the pleadings in the defendants' written statement in Title Suit No. 05/1971, and whether the finding that the

Instrument of Transfer dated 10,02,1968 did not transfer the Trust's properties to NELC Pvt. Ltd, or that it was only a transfer from one body of trustees to another, was vitiated?

(v) Whether there was any illegality or infirmity in the Instrument of Transfer dated 10.02.1968 warranting a declaration as to its illegality and inoperativeness?

(vi) Was Title Suit No. 11 of 1971 not maintainable because it was not instituted by the SMNC Trust, which was the owner of the Trust properties in respect of which the declaration was sought?

(vii) Whether the Trial Court was justified in decreeing Title Suit No. 11 of 1971 after decreeing Title Suit No. 05 of 1971 and holding that the Instrument of Transfer dated 10.02.1968 was illegal, inoperative and not binding on the plaintiffs in Title Suit No. 05/1971, who were the defendants in Title Suit No. 11/1971??

(viii) Consequently, was the First Appellate Court justified in dismissing First Appeal No. 197 of 1986, thereby affirming the patently illegal decree dated 05.02.1986 passed by the Trial Court in Title Suit No. 11 of 1971?

EVALUATION OF RIVAL CONTENTIONS AND DETERMINATION OF THE POINTS IN THESE APPEALS

43. We now proceed to determine the above-referred points, though there is bound to be some overlap in the points for determination in the two appeals.

SECTION 92 CPC ISSUE

44. The first point to be determined is whether Title Suit No. 05 of 1971 was maintainable and properly instituted under Section 92 of the CPC.

45. Admittedly, the Trial Court decreed Title Suit No. 05 of 1971, overruling the defendants' objections that the suit did not satisfy the conditions of Section 92 CPC.

46. The First Appellate Court, in its impugned common judgment, order and decree dated 30.06.1992, did not clearly hold that the suit, as instituted, was incompetent. But it held that once the two reliefs, i.e., the formulation of a scheme to administer the SMNC trust and the removal of the then-existing trustees, were declined for failure to establish any breach of trust, the remaining relief to declare the Instrument of Transfer dated 10.02.1968 as illegal, null and void, could not have been granted in such a suit.

47. The contention now raised by Mr Anil Kumar about maintainability of the suit under Section 92 CPC was considered and partly rejected by the learned Single Judge in paragraphs 24 and 25 of the impugned common judgment, decree and order dated 30.06.1992. Paragraph 24 refers to the contentions and paragraph 25 rejects such contentions.

48. Therefore, the contents of paragraph 25 are transcribed below for the convenience of reference: -

"25. It is difficult to accept the latter submission. The relevant part of sub-section (1) of section 92 is in the following terms:-

> *"In the case of any alleged breach of any express or constructive trust. ....or where the direction of the court is deemed necessary for the administration of any such trust...."*

(emphasis added)

In view of the wording of the provision, for invoking the jurisdiction of the court under section 92, it would be sufficient if facts are stated alleging breach of express or constructive trust or, in the alternative, seeking direction of the Court for the administration of the trust. It is well known that the jurisdiction of the Court is normally determined on the basis of the averments in the plaint. Thus, if such an allegation or averment is made in the plaint, it is enough to give jurisdiction to the court. Whether failure to prove the allegation would render the suit not maintainable was answered by a Division Bench of the Punjab & Haryana High Court in Sohan Singh Vs. Achhar Singh (AIR 1968 Punjab & Haryana, 463) in these words:-

> *"If once the Court has jurisdiction, it is not always necessary that a breach of trust must be proved as a condition precedent for the grant of any relief contemplated by section 97."*

I am in respectful agreement with this view. In Mt. Ali Begam v. Badr-ul-Islam Ali Khan (AIR 1938 Privy Council. 184), relied upon by Mr.Asghar Hussain, it was held that once a suit under section 92 is validly instituted, it is a representative suit subject to all the incidents affecting suits in general and representative suits in particular. But the question for consideration is whether

> *the averments made in the plaint of T.S. No.5 of 1971 do constitute 'alleged breach of trust' so as to bring the suit within the pale of section 92."*

49. No doubt, the First Appellate Court held that the averments in the plaint of Title Suit No. 05 of 1971, even if taken at their face value, do not make out any case of "*breach of trust"*. Therefore, the First Appellate Court suggests that, although the suit could not have been rejected on the ground of maintainability, no case had been made out to decree the suit by exercising jurisdiction under Section 92 CPC.

50. The First Appellate Court held that the two main reliefs, namely the formulation of a scheme for the administration of the trust and the removal of the existing trustees, which clearly relate to Section 92 CPC, were not granted even by the Trial Court. The appellants herein, who were the plaintiffs in Title Suit No. 05 of 1971, failed to file any cross-objections challenging the denial of these reliefs. Therefore, the suit, which sought only to declare the Instrument of Transfer dated 10.02.1968 illegal, null and void, could not have been decreed when the appellants invoked the jurisdiction under Section 92 of the CPC.

51. It is well settled that the foundation of a suit under Section 92 of the CPC is a breach of trust by the trustees or the mismanagement of the properties held in trust. However, to determine maintainability, the allegations in the plaint must be considered. Based on those allegations, we cannot hold that the suit was not maintainable or that it was not properly constituted or instituted. The procedural formalities prescribed under Section 92 of the CPC were duly complied with. But a finding that the suit was maintainable or properly constituted or instituted is never sufficient to decree the same. The veracity of the allegations needs to be ascertained before any relief can be granted.

52. The Trial Court and the First Appellate Court have denied the reliefs, namely the formulation of a scheme for the administration of the trust and the removal of the existing trustees. These were the two principal reliefs, which clearly related to a suit under Section 92 CPC. They were sought on the premise that the existing trustees had breached the trust and mal-administered the properties held in trust.

53. The question therefore was whether, after denying the two principal reliefs, the Trial Court could have issued a declaration that the Instrument of Transfer dated 10.02.1968 was illegal, null and void?

54. The Trial Court, without answering the above question, proceeded to declare the Instrument of Transfer dated 10.02.1968 illegal and null and void. The First Appellate Court held otherwise, as is evident from the reasoning in the impugned judgment and order dated 30.06.1992.

55. The First Appellate Court, after a detailed analysis of the 1880 Trust Deed, the schemes formulated by or with the leave of the Courts, supplementary trust deeds/polls, has held that the charge of breach of trust or maladministration of the properties held in trust was not established.

56. The First Appellate Court also analysed the scope of the Instrument of Transfer dated 10.02.1968 and held that it did not constitute a transfer of property within the meaning of the Transfer of Property Act, 1882, but rather a transfer from one Body of Trustees to another Body of Trustees under Article 62(e) of the Indian Stamp Act.

57. Based on this analysis and reasoning, the First Appellate Court held that the relief to declare the Instrument of Transfer dated 10.02.1968 illegal, inoperative and not binding on the plaintiffs could not be granted in Title Suit No. 5/1971.

58. In **Swami Parmatmanand Sarswati Vs. Ramji Tripathi,** AIR 1974 SC 2141**,** it was observed that a suit of special nature under section 92, which pre-supposes existence of public trust of religious and charitable character, can proceed only on the allegation that there was breach of such trust or that the direction of the court is necessary for administration of the trust and the plaintiffs must pray for one or more of the reliefs that are mentioned in the section.

59. In **Swami Parmatmanand Sarswati** (supra)**,** the Hon'ble Supreme Court explained what should be done in a case where allegation of breach of trust is not proved in a suit under Section 92 CPC, in the following words: -

> *"It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the trust, they very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights of the individual or personal rights of any other person or person in whose they are interested, then the suit would be outside the scope of Section 92…… A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section."*

60. Similarly, in **R.M. Narayana Chettiar and Another Vs. N. Lakshmanan Chettiar and Others,** (1991) 1 SCC 48**,** the Hon'ble Supreme Court, in the context of **Swami Parmatmanand Sarswati** (supra), held that to see whether the suit falls within the ambit of Section 92 CPC, only the allegations in the plaint should be looked into in the first instance. But, if, after the evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation of fact or reason but is made only with a view to bring the suit under the section, then such a suit must be dismissed.

61. In the present case, as noted earlier, the pleadings do suggest that the plaintiffs' foundation was alleged breach of trust by the defendants-trustees. Based upon this foundation, the two reliefs contemplated under Section 92 CPC were sought, namely, settling a scheme, and removal of the existing trustees. The third relief, which was introduced by way of amendment of the plaint, related to the Instrument of Transfer dated 10.02.1968. This was also founded on the alleged breach of trust by the existing trustees in allegedly transferring the Trust properties to NELC Pvt Ltd.

62. Even the Trial Court denied the relief of settling the scheme or removal of the existing trustees. This implies that the plaintiffs' case of breach of trust was not accepted even by the Trial Court. The denial of the relief of settling a scheme or removing the trustees, based on the finding that there was no breach of trust, was never challenged by the appellants/plaintiffs, either by filing any cross-appeals, or cross-objections in First Appeal No. 564 of 1985. The said finding and denial of relief of settling a scheme or removing the trustees, therefore, attained finality qua the plaintiffs/appellants herein.

63. In such circumstances, we fail to understand how the Trial Court could have proceeded with Title Suit No. 05 of 1971 under Section 92 of CPC and proceeded to declare the Instrument of Transfer dated 10.02.1968 as illegal, inoperative and not binding on the plaintiffs. The Trial Court failed to appreciate that this was not a suit simplicitor for declaring only the Instrument of Transfer dated 10.02.1968 as illegal, inoperative, and not binding on the plaintiffs for the reasons alleged in the plaint. In that sense, there is a contradiction in the judgment and decree of the Trial Court dated 28.06.1985 in Title Suit No. 05 of 1971.

64. Thus, Title Suit No. 05/1971 was maintainable, properly constituted and instituted. However, the relief to formulate a scheme for the administration of the Trust or its properties, or to remove its existing trustees, was correctly denied. Further, no case was made out for the relief to declare the Instrument of Transfer dated 10.02.1968 *illegal, inoperative and not binding upon the plaintiffs*.

The first point for determination is answered accordingly.

<u>LIMITATION ISSUE</u>

65. The second point for determination is whether Title Suit No. 05 of 1971, or, in any event, the relief to declare the Instrument of Transfer dated 10.02.1968 illegal, null and void, was barred by limitation, even though the defendants to the said suit had not pleaded limitation as a defence?

66. The Trial Court did not address the limitation issue, perhaps because limitation was not pleaded as a defence in the defendants' written statement in Title Suit No. 05 of 1971. The First Appellate Court noted the limitation contention but held that, since there were other substantial grounds for reversing the Trial Court's judgment and decree, the limitation issue need not be decided. Mr Anil

Kumar has again raised the limitation issue, contending that he will rely only on the pleadings in the plaint and the law on the subject.

67. At least prima facie, we do not think that the limitation bar was attracted to the reliefs for the formulation of a scheme for the administration of the trust and the removal of the existing trustees. However, there is some problem with the relief to declare the Instrument of Transfer dated 10.02.1968 illegal, null and void given the pleadings in the plaint and the relevant provisions and Articles in the Limitation Act, 1963.

68. Section 3 of the Limitation Act, 1963 provides that it shall be the duty of the Court to dismiss a suit instituted beyond the prescribed period of limitation, whether or not the bar of limitation has been set up as a defence.

69. No doubt, when the limitation bar is not raised before the Trial Court, the Appeal Courts are reluctant to consider such an issue, particularly where it involves the adjudication of facts or mixed questions of law and fact. But since the duty to examine the limitation issue is cast on the Court, the Appeal Courts cannot be precluded from considering it, particularly when it does not involve the adjudication of facts or mixed questions of law and fact.

70. In paragraph 25 of the plaint in Title Suit No. 05/1971, the Plaintiffs (present Appellants), have pleaded as follows:

> *"25. That the cause of action for this suit arose on 10.2.1968, when he Trust properties were transferred to the*

Trust Association of the N.E.L.C. contrary to the terms and conditions of the Trust and also on subsequent dates when various other acts of breach of trust in respect of the said trust, generally known as the Santhal Mission of the Northern Churches, were and are still being committed by the defendants. Part of the Trust Properties being situate in Dumka, Benagaria, Mohulpahari, Karikadar, Koraiya, Chandarpura, Masnia, Kaerabani, Saphadaha, Sal Dhorompur, Majdiha, Bhalsumia, Maharo, Rajpakhar, Basethkundi, Haripur and Hathi Bara, all in the District of Santhal Parganas, this Court has jurisdiction to entertain this suit."

71. The limitation period for seeking a declaration that the Instrument of Transfer dated 10.02.1968 is illegal, inoperative and not binding on the plaintiffs is governed by Article 58 of the Schedule to the Limitation Act. This article provides that the period of limitation for obtaining any other declaration shall be three years from the date on which the right to sue first accrues.

72. If, according to the plaintiffs (present appellants), the right to sue regarding the Instrument of Transfer dated 10.02.1968 arose on 10.02.1968, then the suit, which was instituted on 04.06.1971, was barred by limitation. Article 58 refers to the expression *"when the right to sue first accrues."* Therefore, the pleadings that the cause of action also arose on subsequent dates cannot come to the aid of the plaintiffs (present appellants).

73. If Article 113 of the Limitation Act, which contains the residual provisions, applies, even then, the period of limitation would be three years, from when the right to sue accrues. At least, in the context of reliefs, qua the Instrument of Transfer dated 10.02.1968, there are no pleadings about the cause of action accruing on subsequent dates. The reference to subsequent dates is clearly in the context of allegations of breach of trust and to sustain the reliefs of formulating a scheme to administer the trust properties and to remove the existing trustees.

74. Again, the cause of action is stated to have arisen on 10.02.1968, and the suit is admitted having been instituted on 04.06.1971, i.e. beyond the prescribed three-year period from the date of accrual of the cause of action.

75. Incidentally, we must note that in the suit as originally instituted, no relief was sought to declare the Instrument of Transfer illegal. Such relief was sought by an application dated 06.01.1972 to amend the plaint. This amendment was allowed much later.

76. However, even if we were to accept Mr Rajeeva Sharma's contention that it relates back to the date of institution of the suit, the relief regarding the Instrument of Transfer dated 10.02.1968 was still barred by limitation, given the pleadings in paragraph 25 of the plaint and the provisions contained in Section 3 of the Limitation Act read with Article 58 and/or 113 of the Schedule to the Limitation Act, 1963.

77. Neither in the written statement nor before the Trial Court, the plea that Title Suit No. 05 of 1971 was barred by limitation, or at least the relief regarding the Instrument of Transfer dated 10.02.1968, was barred by limitation, appears to have been raised. Therefore, it was contended by Mr Rajeeva Sharma that we should not delve into this issue of the suit being barred by limitation or the relief regarding the Instrument of Transfer dated 10.02.1968 being barred by limitation.

78. In this case, the Trial Court did not address the issue of limitation at all, possibly because it was not raised. As noted earlier, the provisions of Section 3 of the Limitation Act, 1963, do not absolve a court from the requirement of considering the issue of limitation, even though the same may not have been raised by way of defence by the defendants.

79. Before the First Appellate Court, the issue of limitation was squarely raised in First Appeal No. 564 of 1985. However, in paragraph 28 of the impugned judgment, decree and order dated 30th of June 1992, the learned Single Judge, after noting several points on which First Appeal No. 564 of 1985 deserved to succeed, observed: -

> *"Since F.A. No.564 of 1985 arising therefrom has to succeed on these grounds alone, it is not necessary to examine the only remaining question, namely, limitation."*

80. Again, given the provisions of Section 3 of the Limitation Act, and the law on the subject, the First Appellate Court was required to answer all the issues, including that of limitation.

81. Upon considering the pleadings in the plaint in Title Suit No. 05 of 1971, including, in particular, the averments in paragraph 25 of the plaint, it is apparent that Title Suit No. 05 of 1971, based upon the statement in the plaint itself, was barred by limitation at least insofar as the relief to declare the Instrument of Transfer dated 10.02.1968 as illegal, inoperative and not binding on the plaintiffs to the said suit. Since that was the only relief granted by the Trial Court in Title Suit No. 05 of 1971, the Trial Court's decree warranted reversal, even on the ground of bar of limitation.

82. In **Draupadi Devi & Ors vs. Union of India & Ors,** AIR 2004 SC 4684, the Hon'ble Supreme Court has held that the Court would be bound to dismiss the suit if it is found that, *"on the plaintiff's own pleading his suit is barred by limitation. When the plaintiff does not plead clearly as to when the cause of action arose and the defendant also did not raise the plea of limitation, if evidence is found is that the suit is barred, the Court is bound to dismiss the suit."*

83. Since the plea of limitation was raised for the first time before the First Appellate Court, we have not adverted to any material, other than the pleadings/statements in paragraph 25 of the plaint. As was held in **Draupadi Devi & Ors** (supra), where on the plaintiffs' own pleadings the suit is bound to be barred by limitation, the court is bound to dismiss the suit.

84. In **Kamlesh Babu & Ors Vs. Lajpat Rai Sharma & Ors,** (2008) 12 SCC 577, the Hon'ble Supreme Court was concerned with the situation where the plea of limitation was not raised before the First Appellate Court or the High Court but was sought to be raised in the Special Leave Proceedings under Article 136 of the Constitution.

85. The Hon'ble Supreme Court held at paras 21, 22 and 23 that if the plea of limitation is a mixed question of law and fact, the same cannot be raised at the appellate stage. However, if there was no dispute on facts, then, given the provisions in Section 3(1) of the Limitation Act, and even Order 7 Rule 11(d) of CPC, which casts a mandate upon the court to reject a plaint when the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation, then, such a plea can be entertained.

86. The Hon'ble Supreme Court cited with approval the decision of the Privy Council in **Lachhmi Sewak Sahu Vs. Ram Sup Sahu,** AIR 1944 Privy Council 24, wherein it was held that a plea of limitation is prima facie admissible even in the court of last resort, although it had not been taken in the lower courts. The Hon'ble Supreme Court explained that the reasoning behind the said proposition was that certain questions relating to the jurisdiction of a Court, including limitation, go to the very root of the Court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction would be a nullity.

87. In **Rajendra Singh & Ors Vs. Santa Singh & Ors,** (1973) 2 SCC 705, the Hon'ble Supreme Court held that it was the duty of the Court, in view of Section 3 of the Limitation Act, to apply the bar of limitation, whereon patent facts, it is applicable even though not specifically pleaded.

88. In **Manindra Land and Building Corporation Vs. Bhutnath Banerjee and Ors,** AIR 1964 SC 1336, the Hon'ble Supreme Court reiterated that under Section 3 of the Limitation Act, it is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed.

89. A plea of limitation may be raised for the first time in a First Appeal **(Dhanji Jairam Mali Vs. The Secretary of State for India,** AIR 1921 BOM 381, or in a Second Appeal **(Narsingha Bana Goswami vs. Pralhodman Tevari,** ILR 48 Cal 455, and **Siddalingaiah Vs. H.K. Kariappa,** 2009 AIHC 1202 (Karn)**).** A plea of limitation, though not raised in the Trial Court, can be raised in a Second Appeal, and it is the duty of the Court to examine the question of limitation irrespective of the fact that the same was not raised in the suit before the Trial Court. There cannot be any waiver of the provisions of limitation. However, when limitation is pleaded in an appeal for the first time, all facts necessary to support the plea must be apparent on the record **(Hem Chandra Roy Chowdhury Vs Srimati Biraja Sundari Chowdhurani,** AIR 1923 Cal 283**)**.

90. An Appellate Court is entitled to decide a point of limitation even if the respondent has not brought it up **(Tiku Vs. Kripa,** AIR 1952 Bilaspur 12**)**. Whether limitation is raised or pleaded or not in the Trial Court, the Appellate Court before which the plea is raised must take notice of it, if it appears to the Court that the suit is barred by time (**Byomkesh Mukherji Vs. Madhabji Mepa Maru,** AIR 1939 Patna 421, and **Karim Ismail Vs. Abdul Rahiman,** 55 BOM LR 119)**.**

91. **Accordingly, the second point for determination is answered by holding that** the only relief granted by the Trial Court regarding the Instrument of Transfer dated 10.02.1968 in Title Suit No. 05 of 1971 was barred by limitation and consequently, such relief could not have been granted by the Trial Court.

NON-JOINDER OF NECESSARY PARTY

92. The third point for determination is whether Title Suit No. 05 of 1971 warranted dismissal for non-joinder of NELC Pvt Ltd?

93. In the plaint of Title Suit No. 05 of 1971, it was the appellants' clear and categorical case that the Instrument of Transfer dated 10.02.1968 had illegally, fraudulently and collusively transferred to SMNC Trust to NELC Pvt Ltd, which was a private limited company incorporated under the Indian Companies Act, 1956.

94. Thus, according to the appellants, the existing trustees of SMNC Trust were the "transferors" in the Instrument of Transfer dated 10.02.1968 and NELC Pvt Ltd was the "transferee".

95. Given the above clear and categorical pleadings, it was incumbent on the appellants/plaintiffs in Title Suit No. 05 of 1971 to have impleaded the transferee, i.e. NELC Pvt Ltd, as a defendant in that suit. The declaration sought in the suit, if granted, would have seriously affected NELC Pvt Ltd and visited civil consequences upon it.

96. NELC Pvt Ltd was thus a necessary party, without whom Title Suit No. 05 of 1971 could not have been decreed, and, in any event, no relief could have been granted to declare the Instrument of Transfer dated 10.02.1968 illegal or inoperative.

97. The appellants' contention that, because all the directors of NELC Pvt. Ltd. had been impleaded as defendants, there was no serious infirmity in not impleading the company in the suit, cannot be accepted.

98. It is well settled that the company has its own legal identity, independent of its shareholders or directors. [See **LIC v ESCORTS**, 1986 (1) SCC 264, and **DHANSINGH PRABHU V. CHANDRASHEKHAR,** 2026(1) SCC On LINE 1419]. Therefore, impleading some or even all the directors, without impleading the company itself, cannot cure the defect of non-joinder of a necessary party.

99. Similarly, the contention that because Title Suit Nos. 05/171 and 11/1971 were being tried together, and because NELC Pvt. Ltd. was one of the plaintiffs in Title Suit No. 11/1971, there was substantial curing of the defect of non-joinder cannot be accepted. The First Appellate Court has correctly held in paragraph 27 of the impugned Judgment, Decree and Order that the two suits were never consolidated or tried together. Rather, they were tried separately throughout and disposed of by separate judgments, decrees, and orders. The records also support this position.

100. Thus, the learned Single Judge was justified in holding that NELC Pvt Ltd was a necessary party to Title Suit No. 05 of 1971 and, for want of joinder of the necessary party, the suit could not have been decreed and the Instrument of Transfer dated 10.02.1968 declared illegal and inoperative. **The third point for determination is answered in the above terms.**

DID THE FIRST APPELLATE COURT TRAVEL BEYOND THE PLEADINGS IN ALLOWING FIRST APPEAL NO. 564/1985?

101. The fourth point for determination is whether the First Appellate Court travelled beyond the pleadings in the defendants' written statement in Title Suit No. 05/1971, and whether the finding that the Instrument of Transfer dated 10.02.1968 did not transfer the Trust's properties to NELC Pvt. Ltd, or that it was only a transfer from one body of trustees to another, was vitiated.

102. Mr Rajeeva Sharma elaborated that there were no pleadings about the Instrument of Transfer dated 10.02.1968 not transferring or conveying the trust properties to NELC Pvt Ltd. Therefore, the finding in the impugned order that the Instrument of Transfer dated 10.02.1968 had recorded only a transfer from one Body of Trustees to another or that NELC Pvt Ltd was a new trustee, admitted to the SMNC Trust, travelled beyond the pleadings, and therefore, was unsustainable.

103. In the plaint as well as in the written statement in Title Suit No. 05 of 1971, the issue of true & correct interpretation or rather the scope and import of the Instrument of Transfer dated 10.02.1968 was squarely pleaded. This is from a holistic construction of the pleadings in the suit. Therefore, no argument based on any allegation of variance between pleadings and proof was raised by the present appellants before the First Appellate Court. No such clear grounds have also been raised in the memos of Letters Patent Appeals.

104. Though Mr Rajeeva Sharma argued that there was violation of natural justice because of the absence of pleadings, no prejudice whatsoever has been pleaded or demonstrated by the appellants. The appellants had full scope to and did argue on the scope and import of the Instrument of Transfer dated 10.02.1968.

105. According to them, said instrument was nothing but a conveyance of the SMNC Trust properties by the existing trustees to NELC Pvt

Ltd. The Trial Court accepted this case and, therefore, referred to the Instrument of Transfer dated 10.02.1968 as a "conveyance" and declared the same as illegal, inoperative and not binding on the appellants and others. The First Appellate Court, however, did not agree that the Instrument of Transfer dated 10.02.1968 was a conveyance but held that the same was only a transfer from one Body of Trustees to another or the admission of a new trustee, in addition to the existing trustees.

106. In **Bachhaj Nahar v. Nilima Mandal & Ors,** (2008) 17 SCC 491**,** relied upon by Mr Rajeeva Sharma**,** the Hon'ble Supreme Court held that no amount of evidence can be investigated upon a plea which was never put forward in the pleadings. A Court cannot make out a case not pleaded. Obviously, there can be no dispute regarding this proposition. However, this is not a case of absence of pleadings. Rather, both the appellants as well as the respondents have squarely raised the issue about the true scope and import of the Instrument of Transfer dated 10.02.1968. Therefore, any decision or finding thereon cannot be said to be beyond the scope of the pleadings.

107. In **Bachhaj Nahar** (supra), the Hon'ble Supreme Court has referred to its earlier decision in **Bhagwati Prasad Vs. Shri Chandramaul,** AIR 1966 SC 735, in which it was held that if a plea is not specifically made and yet is covered by an issue by implication and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitled a party from relying upon if it is satisfactorily proved by evidence.

108. The Hon'ble Supreme Court held that the general rule, no doubt, is that the relief should be founded on pleadings made by the parties. But where the substantial matter relating to the title of both parties to the suit was touched, though indirectly, or even obscurely, in the issue, and evidence has been led about it, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case.

109. The Hon'ble Supreme Court held that a case not specifically pleaded can be considered by the court where the pleadings, in substance though not in specific terms, contain the necessary averments to make out a particular case, and the issues framed generally cover the question involved, and the parties proceed on the basis that such case was at issue and have led evidence thereon.

110. In the present case, there was no dearth of pleadings. The parties were very much aware of each other's case, though there may have been no agreement on the scope and import of the Instrument of transfer dated 10.02.1968. Therefore, this was not a case of the First Appellate Court travelling beyond the pleadings. In any event, considering the law laid down in **Bachhas Nahar** (supra), relied upon by the Appellants, this plea cannot be upheld.

111. Thus, the argument that the findings of the First Appellate Court in the impugned judgment, decree and order go beyond the pleadings cannot be accepted. **The fourth point for determination is answered accordingly.**

ILLEGALITY OF THE INSTRUMENT OF TRANSFER DATED 10.02.1968.

112. The fifth point for determination is whether there was any illegality or infirmity in the Instrument of Transfer dated 10.02.1968 warranting a declaration as to its illegality and inoperativeness?

Conduct of existing trustees, whether Fraudulent, collusive and Malafide?

113. The appellants contend that the conduct of the existing trustees in joining NELC Pvt Ltd as co-plaintiffs in Title Suit No. 11 of 1971 was sufficient to conclude *mala fides*, fraud and collusion in the execution of the Instrument of Transfer dated 10.02.1968.

114. The arguments about *mala fides,* fraud and collusion were raised by the plaintiffs (present appellants) in the context of the reliefs for the formulation of a scheme to administer the Trust and its properties and for removal of the existing trustees. Admittedly, these two reliefs were never granted even by the Trial Court in Title Suit No. 05 of 1971.

115. The denial of such reliefs was not even challenged by the appellants by filing any cross-objections in First Appeal No. 564 of 1985.

Therefore, there is no point in once again raising or pressing the very same pleas in the context of the Instrument of Transfer dated 10.02.1968.

116. Even otherwise, the fact that the existing trustees joined the co-plaintiffs in Title Suit No. 11 of 1971, by itself, cannot be regarded as proof of *mala fides,* fraud or collusion. NELC Pvt Ltd and the existing trustees explained that the Trust properties which were vested in the existing trustees also vested in the new trustees, i.e. NELC Pvt Ltd, by virtue of the Instrument of Transfer dated 10.02.1968. Accordingly, since the appellants and others were interfering with such properties, they had to file a suit in a representative capacity to restrain interference.

117. Similarly, even if it is assumed that the properties were divested from the existing trustees and now vested in the new trustee, i.e. NELC Pvt Ltd, there was nothing improper in the existing trustees joining the new trustee as co-plaintiffs in Title Suit No. 11 of 1971. From such joinder, there was no basis for inferring fraud, *mala fides* or collusion.

118. At this stage, it is necessary to note that though the Trial Court had granted a blanket permanent injunction restraining the defendants in Title Suit No. 11 of 1971 (present appellants) from interfering with the Trust properties, such a blanket injunction was modified by the First Appellate Court by the impugned judgment, decree and order by reading it down to conform to the mandate of Article 25 of the Constitution of India.

119. In fact, Mr Chatterjee, who had appeared for the plaintiffs in Title Suit No. 11 of 1971, had agreed that no one can be prohibited from entering the Church, provided the person concerned accepts the authority of the Church, and that, if necessary, a clarification to this effect can be made. Accordingly, the First Appellate Court issued such a clarification in the impugned judgment, decree and order.

Transfer, whether contrary to objects and purposes of 1882 SMNC Trust and to its subsequent modifications?

120. The Appellants' next contention that the transfer of the SMNC Trust properties being contrary to the purposes and objects of the 1882 SMNC Trust and to its subsequent modifications, was considered in some detail by the First Appellate Court. Even otherwise, no specific clause of the SMNC Trust Deed of 1882 and its subsequent modifications was pointed out to elaborate upon this omnibus contention.

121. Mr Rajeeva Sharma, however, argued that until the mission of 1882 SMNC Trust was completed in all respects, the existing trustees had no power to either divest themselves of the Trust properties or to transfer such properties to NELC Pvt Ltd.

122. The above argument rests on a misconstruction of the scope and import of the Instrument of Transfer dated 10.02.1968. Even otherwise, the provisions referred to by Mr Rajeeva Sharma must be read and construed holistically. One of the missions of the 1882 SMNC Trust was to educate, or (as the wording of the 1882 Trust Deed states) to civilise the Santals. The suggestion that the existing trustees must not even admit a new trustee or make provisions for the Trust to continue to operate even after the demise of the existing trustees cannot be accepted, nor can it be held to constitute a breach of any terms or objects of the 1882 SMNC Trust or of its modifications.

123. The contention that the instrument of transfer divests the SMNC Trust properties has not been substantiated by reference to proven facts, the law, or both. The appellants appear to have misconstrued the instrument's import and scope. The basic premise of breach of trust by the trustees or maladministration of the properties held in trust was also not established, even though the burden of proving it lay with the appellants. Therefore, we see no good reason or grounds to interfere with the First Appellate Court's reasoning or finding on this issue. As noted earlier, the First Appellate Court has considered this issue in some detail and upon evaluating the reasoning, we find no good ground to interfere with the same.

Transfer, whether it breaches Sections 47&48 of the Trusts Act?

124. The appellants next contended that there was a breach of Sections 47 and 48 of the Indian Trusts Act, 1882 involved in the execution of the Instrument of Transfer because one of the existing trustees did not personally sign the Instrument, but his power of attorney did.

125. Mr Rajeeva Sharma argued that two out of the three existing trustees are the signatories to the Instrument of Transfer dated 10.02.1968. However, the third, then existing trustee, executed a Power of Attorney and it is this Attorney who has signed or executed the Instrument of Transfer dated 10.02.1968. He contended that the very execution of a Power of Attorney amounts to delegation of the functions by the trustees which was prohibited under Sections 47 and 48 of the Indian Trusts Act, 1882.

126. Mr Rajeeva Sharma also argued that there was no evidence that the three trustees held a meeting or passed any resolution to execute the Instrument of Transfer dated 10.02.1968. He submitted that the execution of the Instrument of Transfer dated 10.02.1968 without there being any formal resolution authorising them to do so vitiates the Instrument of Transfer dated 10.02.1968.

127. Section 47 of the Indian Trusts Act, 1882 provides that the 1882 Trust provides that a trustee cannot delegate his office or any of his duties either to a co-trustee or a stranger, unless (a) the instrument of transfer so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to delegation. The explanation to this section provides that the appointment of an attorney or a proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

128. Section 48 provides that a co-trustee cannot act singly. This means that when there are more trustees than one, all must join in the execution of the Trust, except where the instrument of trust otherwise provides.

129. Mr Sudhir Kumar Sharma also urged that the provisions of the Indian Trusts Act were not applicable. If this is so, then Mr Rajeeva Sharma's argument based on Sections 47 and 48 of the Indian Trusts Act, 1882, would fail. Thus, there was a contradiction between the arguments of Mr Sudhir Kumar Sharma and Mr Rajeeva Sharma, though both were purporting to espouse the cause of the appellants in L.P.A. No. 80 of 1992.

130. Sections 47 and 48, at least in the facts of the present case, are required to be considered conjointly. Apart from the fact that the true scope and import of the Instrument of Transfer dated 10.02.1968 does not amount to delegation by the existing trustees of their office or any of their duties to a stranger, the explanation to Section 47 clearly provides that the appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

131. Therefore, the fact that one of the trustees executed a Power of Attorney, and that it was this Attorney that signed and executed the Instrument of Transfer dated 10.02.1968, could not have been construed as a delegation for purposes of Section 47 of the Indian Trusts Act, 1882. In this case, there are pleadings backed by evidence that all the trustees exercised their independent discretion and together determined that the admission of a new trustee would be in the interest of the Trust. In such circumstances and based upon the bare pleadings in the plaint, no breach of Section 47 can be inferred.

132. Further, in this case, all the co-trustees have not acted singly, but have joined in the execution of the Instrument of Transfer dated 10.02.1968. In any event, Section 48 of the Indian Trusts Act, 1882 provides that when there are more trustees than one, then all must join in the execution of the Trust, except where the instrument of trust otherwise provides. Mr Rajeeva Sharma did not explain how, in the facts and circumstances of the present case, the provisions in Section 48 of the Indian Trusts Act, 1882 were at all attracted.

133. In **Sheikh Abdul Kayum and Others v. Mulla Alibhai and Others** (supra), the existing trustees delegated all their functions and powers in favour of the new Body of Men. The Hon'ble Supreme Court therefore held that this was nothing sort of abdication in favour of a new Body of Men. The issue involved before the Hon'ble Supreme Court was not whether the grant of a Power of Attorney by one of the trustees to execute an instrument of transfer would amount to delegation for purposes of Section 47 of the Indian Trusts Act, 1882. In fact, such an issue never arose in

Sheikh Abdul Kayum (supra). Therefore, the said decision would be of no assistance to the appellants.

134. In **Princes Fatima Fauzia and another v. Syeed Ul-Mulk Alias Nawab Saheb Chathari and others** (supra), the Division Bench of the Andhra Pradesh High Court was concerned with conveyance of one of the Trust properties. The finding of fact recorded therein was that some of the trustees, who sold the Trust properties, did not act reasonably and in good faith, though they may have acted honestly without any *mala fides* or corrupt motives. Further, there was a finding that they did not discharge their statutory duties or perform their functions, and that they did not exercise their powers diligently as reasonable prudent men would have dealt with their own property.

135. In the above case, there was only a contract for sale, but it was never a concluded contract within the meaning of Section 2(h) of the Contracts Act. In these facts, *inter alia,* by referring to Sections 47 and 48 of the Indian Trusts Act, 1882, it was held that the unconcluded contract for sale of the trust properties was neither valid nor proper and, therefore, the same would not bind either the trustees or the beneficiaries. Again, the fact situation in the present case is completely different and, therefore, this decision cannot assist the appellants herein.

136. The facts in **Bonnerji v. Sitanath Das** (supra) are not comparable to the facts in the present matter. This decision, however, holds that neither a trustee nor a person in a representative capacity can delegate his authority. Consequently, a lease of trust property would be invalid if it is granted by a person as an attorney for one who is either a trustee or a manager of the property leased and who did not negotiate or consider the lease or any of it until it is executed.

137. There is no evidence that the trustee who had given a Power of Attorney for the execution of the Instrument of Transfer dated 10.02.1968 failed to exercise his independent discretion alongside the other two trustees. The facts show that the three existing trustees acted together, but one of the trustees authorised his attorney to execute only the Instrument of Transfer.

138. In **Shree Shree Gopal Shreedhar Mahadeb** (supra), only **Bonnerji v. Sitanath Das** (supra) follows. The facts in the said decision are also not even remotely comparable to the facts in the present case. Therefore, even this decision cannot assist the case of the appellants herein.

139. Therefore, in this case, the First Appellate Court, after coming into close quarters with the reasoning of the Trial Court, was justified in holding that there was no infirmity or illegality in the Instrument of Transfer dated 10.02.1968 warranting a declaration as to its illegality or inoperativeness by the appellants.

140. Similarly, after evaluating the reasoning of the Trial Court and the First Appellate Court, we are satisfied that the First Appellate Court was justified in holding that there was no legal infirmity in the Instrument of Transfer. **The fifth point for determination is answered accordingly.**

<u>Whether Title Suit No. 11 of 1971 was not maintainable because the same was not instituted by the SMNC Trust?</u>

141. The sixth point for determination is whether Title Suit No. 11 of 1971 was not maintainable because the same was not instituted by the SMNC Trust, which was the owner of the Trust properties in respect of which the declaration was sought by the plaintiffs, i.e. the appellants herein.

142. Mr Rajeeva Sharma argued that no relief could have been granted in Title Suit No. 11 of 1971 because SMNC Trust, the owner of the properties forming the subject-matter of the suit, had not filed the suit. With respect, such an argument cannot be accepted, given the legal position that a Trust does not have a separate legal existence of its own, making it incapable of suing or being sued.

143. Such a contention was never raised by the Appellants before the Trial Court or the First Appellate Court. In any event, it is well settled that a trust does not have a separate legal existence of its own and is therefore incapable of suing or being sued.

144. Recently, in **Sankar Padam Thapa v. Vijaykumar Dineshchandra Agarwal**, 2025 SCC OnLine SC 2194, the Hon'ble Supreme Court has held that a trust does not have a separate legal existence of its own, making it incapable of suing or being sued. The obligation to maintain and defend suits is placed on the shoulders of a trustee and not the trust itself.

145. The Hon'ble Supreme Court, after considering the judgments of the Kerala, Delhi, Madras, Gujarat, Calcutta and Karnataka High Courts, affirmed the view taken therein that a Trust is not a 'legal entity' or 'juristic person'. A Trust is also not like a Corporation which has a legal existence of its own. The Trust operates through its Trustees, who are legal entities.

146. Therefore, a Trust, not being a legal person, and the Code of Civil Procedure not providing any enabling provision for the trust to sue or for being sued in its name, there was no merit in the contention that the trust is to be arrayed as a co-nominee party. The arraying of the trust in its own name is otiose or redundant. It is the trustees who are to be impleaded to represent the Trust.

147. Mr Sudhir Kumar Sharma urged that NELC Pvt Ltd was also a trust rather than a private limited company. This is contrary to the records, and this line of argument was not even supported by Mr Rajeeva Sharma, the learned counsel for the appellants in L.P.A. No. 80 of 1992.

148. Therefore, Title Suit No. 11/1971, instituted by the trustees, was very much competent and could not have been held as not maintainable because the Trust itself was not one of the plaintiffs to this suit.

149. The sixth point for determination is answered in the above terms.

ABOUT TITLE SUIT NO. 11/1971

150. The seventh point for determination is whether the Trial Court was justified in decreeing Title Suit No. 11 of 1971 after having decreed Title Suit No. 05 of 1971 declaring that the Instrument of Transfer dated 10.02.1968 was illegal and not binding upon the appellants herein.

151. This point is now only academic. Admittedly, in First Appeal No. 564 of 1985, the First Appellate Court reversed the Trial Court's judgment and decree dated 28.06.1985 in Title Suit No. 05 of 1971 holding that the Instrument of Transfer dated 10.02.1968 was illegal, inoperative and not binding upon the appellants herein.

152. Upon such reversal, there would be no inconsistency between the judgments, orders and decrees in Title Suit No. 05 of 1971 and Title Suit No. 11 of 1971. The very basis of Mr Rajeeva Sharma's contentions, therefore, fails. **The seventh point for determination is accordingly answered in the above terms.**

153. The **eighth point for determination is whether the First Appellate Court was justified in dismissing First Appeal No. 197 of 1986, thereby affirming the patently illegal decree dated 05.02.1986 passed by the Trial Court in Title Suit No. 11 of 1971.**

154. Given the finding on the seventh point for determination, even this point must be answered against the appellants herein. Once the decree dated 28.06.1985 in Title Suit No. 05 of 1971 was set aside by the First Appellate Court in First Appeal No. 564 of 1985, there was nothing wrong with the First Appellate Court dismissing First Appeal No. 197 of 1986, thereby affirming the Trial Court's decree dated 05.02.1986 in Title Suit No. 11 of 1971.

155. In fact, that was a natural consequence, and no fault can be found with the First Appellate Court's judgment, decree and order on this score. **The eighth point for determination is answered accordingly.**

CONCLUSIONS

156. For all the above reasons, we are satisfied that there is no merit in both these appeals. Consequently, we dismiss these appeals without any order as to costs. IAs, if any, pending in these appeals will not survive and are disposed of.

(M. S. Sonak, C.J.)

(Rajesh Shankar, J.)

July 23, 2026

A.F.R.

Manoj/Cp.2

Uploaded on 23.07.2026