

**Banwarilal Vs. EdwIn Bhagirathi and anr.**

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**Court :** Madhya Pradesh

**Decided On :** Sep-25-1980

**Reported in :** AIR1981MP116

**Judge :** G.P. Singh, C.J. and ;B.C. Varma, J.

**Acts :** [Trusts Act, 1882](#) - Sections 3, 6, 35, 39 and 55

**Appeal No. :** First Appeal No. 224 of 1977

**Appellant :** Banwarilal

**Respondent :** EdwIn Bhagirathi and anr.

**Advocate for Def. :** R.K. Pandey, ;L.C. Gupta and ;B.P. Agarwal, Adv.

**Advocate for Pet/Ap. :** Y.S. Dharmadhikari, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

B.C. Varma, J.

1. This appeal is by the plaintiff whose suit for possession and mesne profits of a bungalow known as Ashley bungalow and appurtenant plot situate in Bilaspur has been dismissed.

2. Sometime in the year 1912 in U.S.A., two bodies by names Christian Women Board of Mission, America, and Foreign Christian Missionary Society, America, were formed. These two bodies were amalgamated to form a Society by name United Christian Missionary Society, America (U.C.M.S. (U.S.A.)), in the year 1920. At the same time in India operated two associations bearing like names, that is, Christian Women Board of Mission, India, and Foreign Christian Missionary Society, India. These two bodies in India joined together to form Indian Mission Disciples of Christ (I.M.D.C.). The evangelistic part of the I.M.D.C. was carved out as a separate society known as Convention of Churches of Disciples of Christ (C.C.D.C.). This body was registered as a Society in India under the Indian Societies Registration Act in 1942. In the year 1943, the United Christian Missionary Society in India was registered as a Society. This body was popularly known as U.C.M.S. (India). It was dissolved in the year 1968. In the year 1962, the India Church Council of Disciples of Christ (I.C.C.D.C.) was registered as a Society and in the year 1971 another institution bearing the name Service Association of Christian Church Disciples was registered as a Company. This I.C.C.D.C. was the defendant in the suit and is respondent No. 2 here. The other

defendant in the suit (respondent No. 1) is Edwin Bhagirathi who was sued as Secretary of the I.C.C.D.C.

3. The appellant-plaintiff by a registered sale deed, dated 17-9-1971 (Ext. P-1), purchased the Ashley bungalow and the appurtenant land. The sale deed is executed by Shri F. C. Zonathan as agent of the U.C.M.S. (U.S.A.) on the strength of a power of attorney, dated 1-12-1976 (Ex. P-10A). At the time of the purchase, the defendants were in possession of the suit property and the plaintiff-appellant could not get its possession. He, therefore, brought the suit for possession and also claimed mesne profits. The defence was twofold, namely, that the property never belonged to U.C.M.S. (U.S.A.) and, therefore, the sale deed Ex. P-1 conveyed no right, title or interest in the suit property to the appellant and that in any case Shri F. C. Zonathan did not have the requisite power or authority to execute the sale deed on behalf of U.C.M.S. (U.S.A.). For these reasons, it was urged by the defendants that despite the sale deed, the appellant has acquired no title to the suit property and should, therefore, be non-suited. This defence prevailed with the lower Court which has found that the plaintiff could not prove that the property in suit belonged to U.C.M.S. (U.S.A.) and that Shri F. C. Zonathan was not clothed with due authority to transfer the property on behalf of U.C.M.S. (U.S.A.).

4. The appellant's success in this appeal depends upon affirmative answers to the two questions namely, (i) whether the property in suit was owned by U.C.M.S. (U.S.A.) on the date of transfer in appellant's favour on 17-9-1971 and (ii) whether Shri F. C. Zonathan held a due power of attorney to transfer title on behalf of the U.C.M.S. (U.S.A.). The answer to the first question depends upon the appreciation of evidence adduced by the parties. The appellant's plea in this behalf is that the land is nazul and bears Sheet No. 4 of Nazul Plot No. 85/1. The suit bungalow was erected out of the funds advanced by the appellant's vendor in whose name the land was recorded in the relevant nazul papers. The lease of the plot was renewed in favour of U.C.M.S. (U.S.A.). The U.C.M.S. (India) was in occupation of the suit property as a licensee of the appellant's predecessor. According to the appellant, neither the U.C.M.S. (India) nor any of the defendant-respondents ever acquired any title to the suit land and their occupation was unlawful. On the other hand, the respondents' plea is that the land in suit was acquired somewhere prior to 1913 by the I.M.D.C. which was an Indian Society and it constructed the suit bungalow out of the funds contributed by Indian disciples and from donations obtained from the members of the family of a Ashley. The possession of I.M.D.C. and thereafter from the year 1943 that of U.C.M.S. (India) up to 1962 and thereafter that of I.C.C.D.C. is said to be in their own right. The title of U.C.M.S. (U.S.A.) and consequently that of the plaintiff is denied. The lease is said to have been obtained by the U.C.M.S. (India).

5. After a perusal of the entire oral and documentary evidence on record, we have reached the conclusion that the first question has to be answered in the affirmative. The U.C.M.S. (India) was formed in the year 1943. Any lease of the nazul plot in suit or the nazul papers prior to the year 1943 bearing the name of U.C.M.S. cannot, therefore, be in favour of U.C.M.S. (India), as prior to the year 1943, the only body existing was U.C.M.S. (U.S.A.) and no other and all such documents must be construed as referring to U.C.M.S. (U.S.A.). It is common ground that there is no body like U.C.M.S. (Bilaspur) or U.C.M.S. (Jabal-pur). The lease in respect of the suit plot was renewed, vide Ex. P-8. That document shows the existence of a prior lease subsisting up to the year 1955. The nazul khasra for the year 1933-34 (Ex. D-44) shows that the plot in suit was leased out to the United Christian Mission Society,

Bilaspur. The date of expiry of the lease is shown to be 31-3-1955. The same is reflected in yet another nazul-khasra for the years 1941-42 to 1944-45 (Ex. D-52). The necessary inference from a reading of the nazul-khasra Ex. D-44 and the lease deed Ex. P-8 is that the lease existed in favour of U.C.M.S. from the year 1933-34 and was to expire on 31-3-1955 and that it was renewed vide Ex. P-8 in favour of the same Society. As U.C.M.S. (India) was not in existence in the year 1933-34 and as the lease was renewed in favour of the existing lessee, it has to be inferred that the lease of the suit plot was in favour of U.C.M.S. (U.S.A.). The mention of the word 'Bilaspur' is of no consequence as it is nobody's case that there is any society or body like U.C.M.S. (Bilaspur). Our conclusion is also supported by the oral evidence including that of the defendants. Murar Masih Scot (D.W. 2) has stated in quite unequivocal term that the U.S.M.S. (India) held no property in India and that the entire property belonged to U.C.M.S. (U.S.A.). He has also deposed that probably in 1968-69 Shri Zonathan started managing the properties of U.C.M.S. and that the properties belonged to the American Society. The defendant, Edwin Bhagirathi in para 13 of his deposition as D.W. 1 has deposed that it is provided in the constitution of I.C.C.D.C. that the property belonged to U.C.M.S. (U.S.A.) or its successor. Phillip James (D.W. 3) has also deposed that the entire property in India was acquired by the funds sent by U.C.M.S. (U.S.A.) and that the U.C.M.S. (India) used to manage that property. In paragraph 6 of his deposition, this witness has admitted that in Bilaspur all the schools and hospitals belonging to the Missionary have been acquired out of the funds belonging to U.C.M.S. (U.S.A.) through I.M.D.C.

6. Learned counsel for the respondents-defendants drew our attention to certain documents, i.e., Ex. D-19, Ex.D-15 (which are minutes of 1943 Convention of I.M.D.C.), Ex. D-5 (minutes of Convention of I.M.D.C. of the year 1918), Ex. D-7 (minutes of a like Convention of I.M.D.C. of the year 1923) and Ex. D-47 which is a report of the Nazul Officer. On the strength of these documents, it was argued that the suit property was acquired by local congregations out of the funds collected by them and also by funds contributed by foreign missionaries in America. In our opinion, these documents really render no help to the respondents in establishing their alleged title to the suit plot and the bungalow. It is true that Exs. D-5 and D-7 show that a proposal was approved for purchase of the plot and construction of the bungalow and that certain funds were allocated for that purpose. However, in Item No. 5 at page 88 of Ex. D-7, it is reflected that money for the purchase of that property was received from America in American currency. Similarly, Ex. D-47, which is the report of the Nazul Officer, shows that it relates to Plot No. 65 in Sheet No. 6 of Jarhabhata in Bilaspur. It appears that there was a combined order of the Deputy Commissioner relating to Sheet No. 4 of plot No. 85 and Sheet No. 6 of plot No. 65, but what is exhibited as Ex. D-47 is only a report of plot No. 65, Sheet No. 6, which is not the suit land. From the documents referred to by the respondents, we are unable to draw any inference that the property belonged to I.C.C.D.C. or its predecessor. The learned counsel for the respondents also drew our attention to the deposition of Zonathan (D.W. 4) where he stated that the documents relating to the acquisition of the suit plot and the bungalow are in his office and that he has not brought them in Court. It was suggested that for non-production of these documents an adverse inference must be drawn against the appellant. While advancing this argument, it was forgotten that the witness was not the plaintiff himself. This witness was not summoned to bring any such document and the plaintiff himself had never relied upon any such document. In our opinion, no adverse inference can be drawn against the appellant as suggested by the respondents' learned counsel. For all these reasons, we disagree with the trial Court that the appellant has not been able to establish the

title of his predecessor, i.e., U.C.M.S. (U.S.A.) in respect of the suit plot and the bungalow. Instead our finding is that the suit plot and the bungalow belonged to U.C.M.S. (U.S.A.) on 17-9-1971 when Shri Zonathan (P.W. 4) purported to transfer it by sale to the appellant as attorney and agent on behalf of U.C.M.S. (U.S.A.) by sale deed Ex. P-1.

7. In order to succeed, the appellant has to overcome yet another hurdle in that he must establish that Shri Zonathan who has executed the sale deed (Ex. P-1) on behalf of the U.C.M.S. (U.S.A.) possessed the necessary authority in that behalf. For this the appellant relies upon the power of attorney (Ex. P-10-A). On the other hand, the respondent contend that since the U.C.M.S. (U.S.A.) is a corporation, the property was held by it in trust for its beneficiary including the believers of the faith propagated by it and, therefore, the right to transfer vested only in the trustees who must act jointly or in the manner provided in the constitution of that body. In absence of anything in the form of resolution or the like regarding disposal of the property, contends the learned counsel, the transfer by Shri Zonathan is bad and does not have the effect of validly transferring title in the suit property to the appellant. Contention on behalf of the respondents has force and must be accepted. 'A trust is an equitable obligation, binding on a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestui que trust), of whom he may himself be one. and any one of whom may enforce the obligation. Trusts are either the creature of statute or are either created intentionally by the act of settler in which case they are called express trusts or by implication of a Court of enquiry where the legal title to the property is in one person and the equitable right to the beneficial enjoyment of it in another, in which case they are called constructive trusts.' This definition of trust by Underbill includes various kinds of trusts known to and recognised in English Law. In restatement of trusts. 3 'trust' is defined as a fiduciary relationship with respect to the property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Our definition of 'trust' as given in Section 3 of the Indian [Trusts Act, 1882](#) is nearer to this definition. It defines 'trust' as follows:

'A 'trust' is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.' To know that a 'trust' is created, the author of the trust has to be ascertained. Further his intention to create a trust must be indicated by words or acts with reasonable certainty. The purpose of the trust, the trust property and the beneficiaries must be indicated in such a way that the trust could be administered by the Courts if the occasion arose. (See *Chhotabhai v. Jnan Chandra Basak*, AIR 1935 PC 97).

8. The definition in the Indian Trusts Act deliberately excludes the idea of equitable estate and provides for 'obligation' which constitutes trust under Chapters 1 to 8 and 'obligation in the nature of trusts' in Chapter 9. Whatever difference there may be regarding the definition of 'trust' in England, America and India, trusts for charitable and religious purposes are recognised by all. A Hindu religious or charitable trust is governed by the rules of Hindu Law and not by the provisions of the Trusts Act. A charitable trust in America is defined in the Restatement of Trusts as under:

'A charitable trust is fiduciary relationship with respect to property arising as a result

of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose.'

A 'charity' in legal sense means a gift, to be applied consistently with the existing laws for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, or by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or otherwise lessening the burden of the Government. Lord Macnaghten in Pemsel's case 1891 AC 531 classified charity under four heads: (i) trusts for the relief of poverty, (ii) trusts for the advancement of education, (iii) trusts for the advancement of religion and (iv) trusts for the purposes beneficial to the community not falling under any of the preceding heads. May be as pointed out by the Supreme Court in Laxman Balwant v. Charity Commr., AIR 1962 SC 1589 it may not be safe to seek guidance from English decisions or from Lord Macnaghten's classification for interpreting the term 'charitable purpose' as appearing in Indian Statutes or in a document executed in India under totally different circumstances, yet it cannot be denied that the activity to advance education and to relieve poverty is charitable. At the same time it is also clear that the activities of the Mission (U.C.M.S., U.S.A.) carried out in India in propagating a particular faith in imparting free education, free medical aid and the like are both religious and charitable. In Commr., Lucknow Division v. Deputy Commr. of Partapgarh, AIR 1937 PC 240 it was held that where subscriptions are paid to the committee of some persons chosen by the subscribers from amongst them for the purpose of fulfilling a specific and well-defined charitable purpose, a complete trust is created to apply the funds in carrying out the object mentioned.

9. The evidence adduced in the present case well establishes that the society (U.C.M.S., U.S.A.) through its foreign as well as Indian disciples is engaged in propagating a particular faith and in imparting free education to the poor. Charitable hospitals have been established to afford free medical assistance to needy persons. The property purchased in India is being used for such purposes. Subscription is raised both abroad as also in India to acquire properties for fulfilling the objects and the purposes sought to be accomplished by the mission. (See: Deposition of Philip James (D.W. 3) para 6, Robert Henri (D.W. 4) (paras 1 & 8). This is also spelled out from the averments in para 4 (b) of the plaint which are as follows:

'The parent said Society used to raise various funds for being spent on Mission work in India and elsewhere. From a part of such funds made available by U.C.M.S. (U.S.A.) to I.M.D.C. the suit bungalow known as Ashley Memorial bungalow was constructed at the instance of the said Missionary Society organised under the laws of the State of Ohio having headquarters at Mission buildings in Indiana-polis.'

When the properties were acquired and purchased out of the funds raised by donations and subscriptions, and were/are put to such use as we have shown above by the missionary in India for carrying out its such objects and purposes, a trust is created and those in management and in charge of such properties are impressed with a trust. In the present case, a 'trust' is clearly spelled out, the managing body or the board of U.C.M.S. (U.S.A.) being the trustee and the disciples including the Indian disciples being the beneficiaries. The purpose of the trust is religious as well as charitable. Learned counsel for the appellant, however, urged that such a plea was not advanced in the Court below and would tantamount to enlarging the scope of the

suit. This objection is devoid of any substance. The defendant-respondent has raised specific plea in paras 8, 27 (a) and (c) of the written statement. The plaint averments in para 4 (b) as quoted above give like indication. Our finding, therefore, is that suit plot and the bungalow styled as Ashley Bungalow (we are told that Ashley was a clergyman) are trust property,

10. If, as we have found, the suit property is a trust property, then, in our opinion, the power of attorney (Ext. P-10-A) did not furnish requisite authority to Shri Jonethan to transfer the same by sale or otherwise on behalf of the U.C.M.S. (U.S.A.). It is true that the power of attorney does contain a stipulation authorising Shri Jonethan to sell the properties of U.C.M.S. (U.S.A.). But neither the constitution of the U.C.M.S. (U.S.A.) nor any other material has been placed on record to enable us to know the manner in which the said Corporation functions. A trustee as such, no doubt, is legal owner of the property, the beneficial ownership vesting in cestui qua trust. Nevertheless he is not the full owner of the property in the real sense of the term, because there is a beneficial interest and the ownership therein is carved out in the property. The legal ownership which rests in the trustee is for the purposes of the trust and the administration of the provisions of the trust. (See: Ramabai Govind v. Raghunath Vasudeo, AIR 1952 Bom 106). Therefore it is only for the provident administration of a particular charity that the trustees have the power to sell the trust properties. Much will depend upon the provisions in the constitution governing a particular trust. In any case the confidence so reposed in the trustee or the board of trustees and the fiduciary duties, so imposed cannot be made the object of delegation. (See: K.S. Bannerji v. Sita-nath Das, AIR 1922 PC 209). Quite recently the Supreme Court in the matter of H.E.H. The Nizam's Jewellery Trust, AIR 1980 SC 17 has held that the concurrence of all the trustees is in general necessary in a transaction affecting trust property and in order to bind the trust estate, the act must be the act of all. The trustees constitute one body in the eye of law and must act together. In paragraph 28 of the report it is laid down as under:

'It follows as a necessary corollary, that where there are several trustees they must act unanimously in making a sale or a contract of sale, unless it is provided otherwise by the terms of the deed. In exercising the power of sale, as in the exercise of other powers, a trustee cannot, therefore, properly delegate the performance of the acts which he ought personally perform.'

It has further been observed in that case that even where absolute power is conferred on the Board of Trustees to effect sale of Trust Property, when discretionary power is not exercised reasonably and in good faith, such power may be controlled by the Court.

11. Under such a state of law, the material placed on the record is not enough to hold in favour of existence of due authority in Shri Jonethan to sell the property belonging to U.C.M.S. (U.S.A.). The power of Attorney (Ex. P-10-A) does not give the least indication if the Board of Trustees or the management ever, resolved sanctioning the sale of the properties of the U.C.M.S. (U.S.A.) in India. On the other hand, it is in the evidence of Shri Jonethan himself that the U.C. M.S. (U.S.A.) never resolved to disposed of the suit property (see deposition of Shri Jonethan (P.W. 4), para (12)). He has further stated at the end of para 15 of his deposition that he did not even in-form any one of the sale of the suit property. He has also deposed that he received no instructions from the managing body of U.C.M.S. (U.S.A.) in America for sale of this property. What he stated was that he had an absolute power to sell it. In the face of

such statement we cannot possibly hold that the sale of the suit property to the appellant/plaintiff was by the U.C.M.S. (U.S.A.). In our opinion, the sale deed executed by Shri Jonethan conveyed no right, title or interest in the suit property to the appellant/plaintiff, The suit must, therefore, fail.

12. During the course of argument, the appellant presented an application seeking to amend the plaint. As we have permitted the plaintiff's counsel to address us on the plea sought to be raised by amendment, we reject that application.

13. The appeal fails and is dismissed with costs. Counsel's fee as per schedule.

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