

(2015) 04 KAR CK 0028

In the Karnataka High Court

Case No : Regular First Appeal No. 423 of 2009

Shamsundar L. Asrani and Others

APPELLANT

Vs

Shankha Brita Das and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(6)
Evidence Act, 1872 — Section 40, 41, 42, 43
Income Tax Act, 1961 — Section 80G
Karnataka Societies Registration Act, 1960 — Section 15

Citation : (2015) 04 KAR CK 0028

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Ananthram C., for the Appellant; T.V. Vijay Raghavan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—This appeal was originally filed by plaintiff Nos. 4 and 6. During the pendency of this appeal Defendant No. 5, who had supported the case of the plaintiffs before the trial court, has transposed himself as appellant No. 3, at his instance, by virtue of an order of this court, dated 8.12.2009.

2. The facts of the case as stated by the plaintiffs was that in the year 1965, Shri A.C. Bhakthi Vedanta Swami Prabhupada, (Hereinafter referred to as "Shn Prabhupada", for brevity) had travelled to the United States of America, when he was aged 70, and within a year he is said to have established the International Society for Krishna Consciousness (ISCKON) at New York. The object of ISKCON was to spread and propagate the Krishna Consciousness Movement (Hereinafter referred to as the "Movement", for brevity). Within a few years, the Movement is said to have spread to many countries of the world.

It is stated that Shri Prabhupada established temples in Mumbai initially and later in other cities and towns in India, to initiate the Movement in India. In the year

1971, the International Society for Krishna Consciousness, (ISKCON), Mumbai, was said to have been registered under the Societies Registration Act, 1860 and as a Trust under the Bombay Public Trusts Act, 1950 (Hereinafter referred to as the "BPT Act", for brevity). He is said to have been the first Chairman of the Governing Body Commission.

The first and the second plaintiffs claimed that they were ordained into the religious order by Shri Prabhupada and that he had given them their religious names. They were, as his disciples, missionaries entrusted with the task of spreading the Movement in India.

The first defendant was also said to be an initiate of Shri Prabhupada. It was acknowledged that he was one of the first missionaries to organize activities in furtherance of the Movement, in Bangalore. The first and second plaintiffs claim to have supported him in his endeavours. The activities were said to have been guided by the ISKCON Bureau or the Governing Council, an unregistered body established under the Chairmanship of Shri Prabhupada at Mumbai and the Governing Body Commission, an over arching body, also unregistered, said to have been established by Shri Prabhupada, to supervise and manage the Movement, worldwide.

On the demise of Shri Prabhupada, in November 1977, it is said the activities continued in Bangalore. In May 1978, it is claimed, that the first defendant had persuaded the plaintiffs 1 and 2 to establish a Society for Krishna Consciousness at Bangalore. And that he had taken the initiative of preparing the draft Memorandum of Association and the Rules and Regulations to form a Society under the Karnataka Societies Registration Act, 1960, and is said to have persuaded one Bhaktha Dasa Brahmachan, one Bharati Devi, the plaintiffs 1 to 3 along with the second defendant himself, to subscribe to the Memorandum of Association as the founders and the same was said to have been registered before the Registrar of Societies in Karnataka. Thus, the Society under the name and style of the International Society for Krishna Consciousness, with its registered office at 39, Crescent Road, Bangalore, had been established. The said Society was arraigned as Plaintiff No. 6.

The first Managing Committee of the sixth plaintiff is said to have consisted of the following, Plaintiff Nos. 1 to 5, Defendant Nos. 1 to 10 and 7 others, who were not parties to the suit. The first Defendant was said to be the President and the second plaintiff the Vice-President, the first plaintiff- Secretary and the third defendant - the Treasurer and the remaining were said to be members of the Governing body.

It is stated that in their enthusiasm to establish the sixth plaintiff, they had not obtained prior permission of the ISKCON Bureau and the Governing Body Commission. The third plaintiff claims that he had no reason to believe that anything was amiss, on the assurances of the first defendant who was leading the group.

It is stated that notwithstanding, the registration of the sixth plaintiff, the first defendant continued the activities at Bangalore without involving the sixth plaintiff or its governing body in the same. The group raised funds, enrolled life members and carried on other activities as per the directions of the ISKCON Bureau and was regularly said to be submitting accounts to it. This group, it was claimed became the Bangalore branch of ISKCON - Mumbai. It was stated that for purposes of raising donations, ISKCON -Mumbai had permitted the Bangalore branch to utilize the exemption granted to ISKCON- Mumbai under Section 80G of the Income Tax Act, 1961 (Hereinafter referred to as "the IT Act", for brevity). The Bangalore branch is also said to have had its bank accounts and the first defendant was said to have been operating the same as the President, ISKCON, Bangalore. According to the plaintiffs, the said defendant was only acting as the President of the Bangalore branch of ISKCON - Mumbai.

It is claimed that some time after the registration of the sixth plaintiff, since it was not at all functioning as a body, as no meetings were conducted or any decisions taken, it is said that some leaders of the Movement had advised Plaintiffs 1 and 2 that it was not a good idea in the sixth plaintiff having been established as an independent entity, as such existence would affect a cohesive growth of the Movement. It is claimed that it is only then that the second defendant and plaintiffs 1 and 2 had realized the impropriety in having established the sixth plaintiff And that this realization had resulted in the sixth plaintiff remaining a Society only on paper. And that it was never allowed to function as an entity.

It is claimed that the first defendant moved to Tirupati in the year 1980, and continued to serve the Movement from there. And that at or about the same time, plaintiffs 1 and 2 and Defendants 3 to 5, are also said to have moved away from Bangalore. There were hence no office bearers of the sixth plaintiff at Bangalore to even attend to statutory compliances in respect of the sixth plaintiff Nor did the remaining members, constituting the General body of the sixth plaintiff choose to elect a new Governing body. It is thus stated that the sixth plaintiff was rendered defunct. It is the case of the plaintiffs, that in the above background, they were shocked to learn, just prior to the filing of the suit, that Defendants 11 to 17 were claiming to be the Office bearers of the Managing Committee and members of the Governing Body of the sixth plaintiff And that they had also filed a civil suit in the name of the sixth plaintiff, with Defendant No. 13 representing it, seeking certain declaratory and injunctive reliefs against ISKCON -Mumbai, in O.S. No. 7934/2001, before the City Civil Court, Bangalore, which was said to be pending as on the date of the present suit. They claimed that they were shocked on account of the fact that there was no indication of Defendants 11 to 17 having been enrolled as members of the sixth plaintiff in accordance with the Rules and Regulations of the sixth plaintiff And that Plaintiffs 1 to 5 and Defendants 1 to 10 had not admitted them to the membership of the sixth plaintiff Seven other members had died by then. Therefore it was alleged that defendants 11 to 17 were impostors and had illegally labeled themselves as

the Office bearers and members of the sixth plaintiff it was their belief that the said defendants had managed to lay their hands on the records pertaining to the defunct sixth plaintiff and had fraudulently manipulated the records to inveigle themselves into the sixth plaintiff, unilaterally, and by such devious means.

It was emphasized that the dysfunctional sixth plaintiff was firstly established without the permission of the Governing Body Commission, (a body which is later said to have been registered as the ISKCON Governing Body Commission Society, under the West Bengal Societies Registration Act, 1960) and since no one could use the name of International Society for Krishna Consciousness or the acronym, "ISKCON", the acts of Defendant Nos. 11 to 17 was patently illegal and that they ought to be prohibited from acting any further in the capacity that they were claiming, till such time that the sixth plaintiff was formally dissolved and wound up in the manner known to law. It was stated, that if the said defendants were not curbed, they would, with impunity hoodwink devotees and followers of ISKCON and make unlawful gains. Hence the suit.

The plaintiffs claimed that the cause of action for the suit arose on 19.1.2003, when they learnt of the suit in O.S. No. 7934/2001 filed on behalf of the sixth plaintiff

The plaintiffs sought for the following declaratory and injunctory reliefs, namely,

"i) to declare that plaintiffs 1 to 5 and defendants 1 to 10 constituted the governing body of the sixth plaintiff;

ii) to declare that defendants 11 to 17 have no right to manage or control the sixth plaintiff;

iii) for a mandatory injunction to direct the defendants 11 to 17 to make over to the plaintiffs and defendants 1 to 10 all assets, records and all such material pertaining to the sixth plaintiff;

iv) to restrain by way of permanent injunction, defendants 11 to 17 from interfering in the management and control of the sixth plaintiff."

Shankha Brita Dasa, the first defendant, had entered appearance and admitted the case of the plaintiffs. He had asserted that as the President of the sixth plaintiff, he had never convened any meetings after its registration and had not carried on any activity. That it did not enroll any members and remained only on paper and should remain so till it is officially dissolved.

It was also asserted that it was the Bangalore branch of ISKCON -India at Mumbai, as originally headed by him that had collected funds and enrolled life patrons and had acquired properties, both movable and immovable. That Defendant No. 11 became the President of the branch in the year 1984 and continued to be so, as on the date of suit.

It was denied by him that he had issued notices dated 25.5.1984, calling for any general body meeting and that any such meeting was held.

K.N. Haridasan Nambiar, the second defendant in his written statement, had claimed that the suit was an attempt of ISKCON -Mumbai to take over the assets and management of the sixth plaintiff it was denied that plaintiff No. 1 had any authority to represent the sixth plaintiff.

It was asserted that Plaintiff No. 6 was established in accordance with law as an independent entity by defendant No. 1 along with himself and others, in the year 1978. It was claimed that the said Society was functioning and was holding regular meetings which were attended by him. And that during the annual general meeting in 1984, the office bearers had resigned en masse. It was then that defendant No. 11 was elected as the President. And he had continued to be elected as such in all consecutive years.

It was further asserted by defendant No. 2 that during 1989, the Bye-laws of plaintiff No. 6-Society were amended and only missionaries connected with the ISKCON Movement were to be admitted as members. Consequent upon the same, the second defendant is said to have ceased to be a member of Plaintiff No. 6.

Though he had ceased to be a member of the Governing body, he had continued to be associated with the Movement and that he was aware of allotment of land in favour of plaintiff No. 6, at the present Hare Krishna Hill, where its office is presently located. It is by the sheer dint of hard work of defendant No. 11, that the land could be acquired and the present temple complex could be constructed. It is this development and the popularity of plaintiff No. 6 that had prompted the members of ISKCON - Mumbai to lay claim over the assets and management of the same.

The claim of the plaintiffs and others that though they did not conduct any meetings of plaintiff No. 6 for over 23 years, but still continue to be the office bearers, is pointed out as being an illegal and untenable claim. It is also a contradiction in terms to claim that plaintiff No. 6 had not functioned at all and in the same breath to claim that the assets and account books of plaintiff No. 6 be handed over to the plaintiffs and others. It is asserted that plaintiff No. 6 is carrying on its affairs in a legal and transparent manner and its charitable activity apart from its main religious activity, as for instance the prestigious Akshaya Pathra Scheme under which thousands of poor students of government and village schools are provided mid day meals, involving herculean efforts and expense, is a notable endeavour appreciated by all sections of society.

It is pointed out that the second defendant was himself the legal counsel who had represented plaintiff No. 6 in a civil suit instituted by it in the year 1979, in OS No. 1936/1979, as an instance to indicate that plaintiff No. 6 was active and functioning

Purna Brahma Das, the third defendant in his written statement has stated that Shri Prabhupada had accepted him as his disciple in the year 1976, after he had been part of the Movement for over two years. He is said to have worked in

various capacities, including as the President, ISKCON, Mumbai. He is also said to have visited the Bangalore Centre, often. And that in the year 1978, he was the Treasurer, of the sixth plaintiff. He claims that it did not occur to him that Shri Prabhupada never intended that there should be more than one independent entity carrying on the Movement. He had also claimed that the centre at Hyderabad, with which he was familiar, was a branch of ISKCON, Mumbai and that it functioned as such. But since he had placed complete confidence in defendant No. 1, who had joined the Movement along with him at Hyderabad, he had trusted his wisdom in having established the sixth plaintiff and did not feel that it may be amiss. He had reiterated the fact that in a short while after establishing the sixth plaintiff, the folly was realized and hence the Society was allowed to lie dormant. It is also reiterated that the Movement at Bangalore was carried on by the group as a branch of ISKCON -India at Mumbai. It was also reiterated that there were never any meetings of the sixth plaintiff society and there were no enrollments made. And that defendant Nos. 11 to 17 were never made members of the Society.

C.K. Gupta, the sixth defendant has in his written statement denied that he was one of the members of the Managing Committee of the sixth plaintiff, as claimed in the plaint and has distanced himself from the proceedings.

B.N. Krishnaiah Setty, the seventh defendant, in his written statement had contended that the suit was an attempt foisted by the ISKCON Society at Mumbai to take over the assets of the sixth plaintiff society. It was asserted that Plaintiff No. 1 had nothing to do with Plaintiff No. 6, as on the date of the suit. And that it was not tenable that Plaintiff Nos. 1 to 5 and Defendant Nos. 1 to 10 constituted the Governing Body of the sixth plaintiff.

It was asserted that the 11th defendant became the President of the sixth plaintiff in the year 1984 and that he had continued to act in that capacity on his election from time to time. It was claimed that in 1989, the Bye laws of the sixth plaintiff were amended, whereby - committed devotees and specially nominated persons could be admitted to membership and that he had been enrolled as a member.

It was asserted that as a General Body member, he had regularly attended meetings and he was also aware of the allotment of land at Hare Krishna hill, where the Society now has its office and temple. And that it was the initiative and sustained effort of Defendant No. 11 which translated into the allotment of the land and the establishment of the prestigious temple. The huge following and the popularity of the temple had tempted ISKCON, Mumbai to set its eyes on usurping the assets of the sixth plaintiff. An earlier attempt in this regard, it was claimed, had been foiled by the Society filing a civil suit in O.S. No. 7934/2001, for a Permanent Injunction. The present suit was hence stated to be a second attempt in that regard.

It was pointed out that the plaintiffs seeking to claim that even after 23 years of

non-functioning, the plaintiffs and others continued to be members of the Society and admittedly without having collected any funds or having acquired properties, to claim the relief of seeking accounts from the defendants was clearly illegal and inexplicable.

It was stated that the plaintiffs had managed to convince some donors to join as plaintiffs, and that he had also been approached by the plaintiffs and that he had flatly refused to assist them in the present endeavour to usurp the sixth plaintiff society. He had strongly opposed the suit and claimed that the sixth plaintiff was rendering yeoman service just by its Akshaya Pathra Scheme and should never be wound up.

Khoday Ramachandrasa, the eighth defendant had in his written statement completely disowned the plaintiffs and his involvement in the Movement. And had declared that he was not a proper or necessary party to the suit.

B.S. Vishwanath, the tenth defendant had supported the case of the plaintiffs and adopted the stand taken by the first defendant.

Madhu Pandit Dasa, defendant No. 11, in his written statement had stated that after obtaining a Degree in Engineering in the year 1981, from IIT, Mumbai, he had immediately joined the Movement.

It was stated that according to him it was Shri Prabhupada's belief that independent legal entities should be established in each city or town to propagate the Movement, and that any centralization would stunt and restrict the growth and health of the Movement. It was pointed out that there were thus units all over the world with no central body supervising the functioning of each unit. Though it was necessary to closely co-ordinate and adhere to the path shown by Shri Prabhupada in propagating the Movement. Therefore, it was contended that the basic premise on which the suit was filed to claim that the Bangalore Centre was a branch of ISKCON, Mumbai, was false and fallacious.

Defendant No. 11 had further stated that he had worked at Bangalore when the Movement was taking root here and then had worked at Kerala, before coming back to Bangalore in the year 1983. He had found that the first defendant had established the sixth plaintiff society and was functioning then from its Crescent Road address. It is stated that the first defendant and other governing body members had decided to work for the Movement elsewhere and as they would be moving out of Bangalore, the first defendant is said to have requested the eleventh defendant to take over the activities of the sixth plaintiff, as its President. Accordingly, it is claimed, that an Annual General Body meeting is said to have been convened in the year 1984 and the entire office bearers are said to have resigned en masse and it is said that he was elected as the President. The first defendant is said to have presided over the meeting. It was said that he had been elected as President, over the years, unanimously and continued to be the President even as on the date of the suit. And it was thus emphasized that the plaintiff No. 1 and the other plaintiffs, had severed all connection with the

Society and had no right to bring the suit on behalf of the Society.

It was stated that the sixth plaintiff had several bank accounts operated by its present office bearers. It was stated that the sixth plaintiff through Defendant No. 11, had approached the Bangalore Development Authority ("BDA" for brevity) on 5.2.1987 to allot suitable land for the construction of a temple and the land comprising several hillocks, now known as Hare Krishna Hill was said to have been allotted with defendant No. 11 named as the President representing the sixth plaintiff Society under the Sale deed that was executed by the BDA. It is claimed that Defendant No. 11 himself had prepared the plans for the building complexes that were thereafter constructed on the Hill. The temple complex is said to have received wide acclaim as a magnificent architectural monument. Devotees are said to have grown in large numbers and the coffers of the Society received generous contributions and the Movement had accelerated.

In course of time, it is stated, that a unique project of providing free mid-day meals to thousands of poor school children on a daily basis, known as - Akshaya Patre" is said to have been conceived, which is said to have received world wide attention.

It is also stated that there existed the ISKCON Society at Mumbai, which was the first centre to be established in India, by Shri Prabhupada himself. There was said to be co-ordination of activities of centres all over India with the Mumbai centre, which even made available the tax exemption for donors which it granted under Section 80G of the IT Act - for the benefit of donors of other centres.

It is stated that with the increasing fame and prosperity of the sixth plaintiff society and its activities, defendant No. 11 claims that the members of the Mumbai society set their mind on usurping the assets and management of the sixth plaintiff society. It was also alleged that the brotherly love and cordiality that prevailed in the Movement during the time of Shri Prabhupada, is said to have waned and was replaced by personal aggrandizement. Defendant No. 11 had cited the incident said to have occurred at Calcutta centre of ISKCON, where the members of the Mumbai Society are said to have enacted a violent and brutal removal of the President of the Calcutta Society, and taking over of the temple and management. which is said to have been widely reported in the media. And it is that success which had prompted the Mumbai Society to now make attempts at taking over the sixth plaintiff. Sensing mischief, the sixth plaintiff is said to have filed a civil suit for Permanent Injunction in O.S. No. 7934/2001, restraining the Mumbai Society from interfering with the sixth plaintiff and an order of temporary injunction is said to have been granted in favour of the sixth plaintiff, and though the application is said to have been dismissed later. The injunction order is said to have been confirmed by this court in MFA 998/2002 and by the Supreme Court as well, when that judgment of this court had been challenged by the Mumbai Society in a special leave petition.

It is hence the case of defendant No. 11 that the Mumbai Society having failed in

its attempts earlier, had set up the plaintiffs who are again members of the governing body of the Mumbai Society and who have furnished misleading addresses, to file the suit. It is also pointed out that the plaintiffs claiming to be the office bearers of the plaintiff society should suddenly evince such interest - 23 years after the Society was said to have been established and abandoned.

This defendant had also sought to explain the circumstance that the filing of income tax returns of all the centres through the Mumbai Society was because all entities engaging in propagating ISKCON movement in India had the benefit of Section 80G of the IT Act that was made available to the Mumbai Society which represented that the said benefit was to the ISKCON movement as a whole, where-ever it was carried out. Since the Society at Mumbai represented that exemption under the said provision is available to the ISKCON Movement as a whole in India, it was claimed, that it was by tacit agreement that the several independent centres should make available the accounts to be consolidated, in order to reflect the benefit of tax exemption by all the centres in India. This, it is asserted, was the only reason for the consolidation of accounts. It is contended for otherwise it is legally not permissible for one registered entity to be the branch of another registered entity.

It was also sought to be elaborated that defendant No. 11 had embarked on his life's mission from the Mumbai Society and under the direct guidance of his Guru, Shri Prabhupada and therefore his emotional and spiritual association with the Mumbai Society was to regard it as one would regard a respected elder and it is this, according to defendant No. 11, which had prompted him to even instruct his counsel while drafting the pleadings in earlier civil suits, such as in O.S. No. 2180/1999, O.S. No. 1483/2001 and O.S. No. 4467/2001 to have incorrectly stated that the Bangalore Society was a branch of the Mumbai Society. That was the degree of influence his initial association with Mumbai Society had left behind. Those statements would not however, efface the actual legal position with the establishment and continued existence of the sixth plaintiff as an independent legal entity, being a Society registered under the KSR Act. In any event, it is pointed out that defendant No. 11 had made those statements in proceedings initiated in his individual capacity and not on behalf of the Society or other members of the Society.

In so far as defendant No. 1 is concerned, it is pointed out that he had left the ISKCON Movement in the year 1984 itself. Though he was temporarily sought to be rehabilitated at Tirupathi, he was later said to have been expelled from the Movement in the year 1990. And significantly, just prior to the filing of the suit and after 13 years, the Mumbai Society is seen to have withdrawn his expulsion to use him in the present suit, against the sixth plaintiff.

Defendant No. 11 has specifically met the plaint allegations in his detailed written statement.

Defendants Nos. 12, 13, 15, 16 and 17 had filed a common written statement

and have firmly supported the pleadings on behalf of defendant No. 11. They had furnished particulars of the allotment of land made by the BDA for the benefit of the sixth plaintiff society, in an extent of 6 acres and 8 guntas of land at Kethamaranahalli, which is now part of Rajajinagar. It is asserted that Defendant No. 11 has been functioning as the President of the plaintiff Society over the years which is disclosed from undisputed independent documents such as the allotment of land by the BDA to the sixth plaintiff Society, represented by defendant No. 11 as its President, in the year 1988, against his application of the year 1987; the Urban land Ceiling Authorities having granted exemption in respect of the land holding, in the year 1989; the commencement of construction of the temple complex, as per plans prepared by defendant No. 11; and the completion of construction of the temple in the year 1997. All the while there was no assistance or aid in these activities by the plaintiffs or the Mumbai Society.

The sixth plaintiff society has been continuously functioning and has been filing its annual returns, regarding the annual general body meetings and the elections to the governing body and other particulars, before the Registrar of Societies regularly.

In the earlier suit for Injunction filed against the threatened interference by the Mumbai Society, defendant No. 13 is said to have represented the sixth plaintiff throughout the proceedings, and even before the apex court, and there was no objection raised by anyone as to his authority to represent the sixth plaintiff. It was a bitterly fought out proceeding with very wide publicity and no member of the ISKCON Movement could have remained ignorant of it.

The defendants have questioned the authority under which the suit has been filed, as the Rules are silent as regards the person who is authorized to sue on behalf of the Society. In which event unless there was a resolution of the governing body naming a person who could represent the society, the first plaintiff would have no authority to represent the society.

3. On the basis of the above pleadings the trial court had framed the following issues:

"1. Whether the plaintiffs prove that the 1st to 5th plaintiff and 1st to 10th defendant constitute the general body of the 6th plaintiff?

2. Whether the plaintiffs prove that the 11th to 17th defendants have no right to manage or control the 6th plaintiff?

3. Whether the defendants 11 to 17 prove that in the general body meeting held on 1.7.1984, a governing body was elected?

4. Whether the plaintiffs are entitled to the declarations sought for?

5. Whether the plaintiffs are entitled to mandatory injunction sought for?

6. Whether the plaintiffs are entitled to permanent injunction sought for?

7. To what order or decree?"

The trial court had answered Issues No. 1,2,4,5 and 6 in the negative and Issue No. 3 in the affirmative, it is that which is under challenge in the present appeal.

4. The learned Senior Advocate, Shri Udaya Holla appearing for the counsel for the appellant No. 2, would contend as follows:

"It is not in dispute that the International Society for Krishna Consciousness (ISKCON) was registered as a Society under the Societies Registration Act, 1860 and as a Public Trust, under the Bombay Public Trusts Act, 1950, by the founding father of the Movement, Shri Prabhupada, at Mumbai, in the year 1971. The said Society was the only one in India at that point of time. Its activities spread to other centres at Hyderabad, Bhubaneshwar, Vrindavan, Calcutta, Bangalore, Hyderabad and other places.

The several centres where the missionaries of the Society propagated the Movement also collected donations for and on behalf of ISKCON and accounted for the same. That the centres were under the supervision and control of ISKCON, Mumbai, is evident from the consistent Accounting procedures that were followed since inception. The branch office bearers including that of the branch at Bangalore maintained the branch accounts and got the same audited every year. Thereafter, all branch accounts of the ISKCON Mumbai Society were consolidated and merged at the Mumbai Head Office to prepare the final accounts of the Society, which were audited and filed with Income Tax Department as part of the IT Returns every year. The same audited accounts were also filed before the Charity Commissioner at Mumbai.

This hierarchy and account procedure had been stated by defendants 11 and 12 themselves in civil suits which were brought by them earlier in O.S. No. 2180/1999, Exhibit P-13 and O.S. No. 4467/2000, Exhibit P-14. Hence their contention to the contrary that notwithstanding such admitted position to now claim that ISKCON, a society also registered at Bangalore under the Karnataka Societies Registration Act, 1960, could co-exist, is impermissible and illegal. It is emphasized that the centre having grown from strength to strength by its association with the registered body ISKCON, Mumbai, has by the folly committed by the plaintiffs in having brought into being an entity, namely, the sixth plaintiff, has proved to be a vehicle into which defendants 11 to 17 have diabolically inveigled themselves and have blatantly hijacked the same, thereby laying claim to vast assets, which is the subject matter of independent proceedings which is now pending before the Apex court. It is emphasized that the plaintiffs are now only ensuring that there are no loose ends and would only want to ensure that the Frankenstein's monster which they have unwittingly created is dissolved and defendants 11 to 17 are curbed from furthering their illegal activities.

Shri Holla would contend that the court below has overlooked certain glaring circumstances and has also overlooked established principles of law in

appreciating the material on record. Firstly, it is pointed out that the claim of defendants 11 to 17 of being the present office bearers and the governing body of the sixth plaintiff stems from the claim that there was a General Body Meeting of the sixth plaintiff held on 1.7.1984 at which the first elected body of office bearers had resigned en masse and defendant No. 11 was duly elected as the President and others in other capacities, is clearly untenable. It is sought to be pointed out that the written statement filed by the defendant Nos. 11, 12, 13, 15, 16 and 17 alleges that an AGM of the 6th plaintiff was held on 1.7.1984 and in the AGM, all the Original office bearers and Governing Body members resigned en masse and Madhu Pandit Das was elected as the President of the 6th Plaintiff

However, the plaint filed in O.S. No. 7934/2001 (Ex. P4) by the same defendant Nos. 11 to 17 does not state about any AGM of the 6th plaintiff Rather in para 4 of the plaint, they state that Madhu Pandit Das was the President of the 6th Plaintiff since its inception i.e. 1978.

The written statement of defendant Nos. 11 to 17 and the alleged minutes of the AGM of the 6th plaintiff (Ex-D1) state that Madhu Pandit Das, defendant No. 11 took over from Shankhbhrit Das as the President. However, in 1986, Madhu Pandit Das himself deposed before Civil Court, stating that he took over from Sattvik Das.

Further, the alleged meeting of the AGM on 1.7.1984 never saw the light of the day till the year 2003 i.e., the filing of the written statement in the O.S. 1758/2003 whereas Ex. P22 which is a deposition of Madhu Pandit Das (defendant No. 11) before the City Civil Court, Bangalore has been a public Document available from 1986 i.e. 17 years before the dispute arose. Therefore it can be very safely concluded that Ex. D1 is a fabricated document created by Madhu Pandit Das and others (Defendant Nos. 11 to 17) to support their false and fraudulent claim that they are in control of ISKCON Karnataka Society, the 6th plaintiff from 1984.

It is further stated that Defendant No. 2, who is D.W. 1, while giving evidence, took a new contention, which was not pleaded by him in his written statement, that a managing committee meeting was held on 26.06.1979 and an Annual General body meeting was held on 1.9.1979 and at that time some old members left the 6th plaintiff and new members were admitted to the society. This new contention was taken to overcome the difficulty created by the KSR Act which states that non conducting of the first AGM within 18 months after Registration of a society will make that society irrevocably defunct.

The above new contention, apart from being supported by the pleading, also nullifies and runs contrary to the Ex. D1, the alleged minutes of the alleged AGM held on 1.7.1984, as these minutes indicate that all the original members of the 6th plaintiff continued till 1.7.1984.

Further, that Defendant Nos. 11 to 17 with the help of defendant No. 2 had fabricated documents as the need arose and to suit their designs. Therefore,

these documents were neither filed with any public authority like the Registrar of Societies nor any action was taken in filing the list of new office bearers with the Registrar of Societies as required under the KSR Act.

It is contended that Madhu Pandit Das, defendant No. 11 had deposed before City Civil Court, Bangalore, in O.S. No. 4165/1984, in a suit filed by a life member of the ISKCON Mumbai Society that he became the President in July, 1984 and prior to him Sattvik Das was the President from 1983 to 1984. During 1977, the Hyderabad branch of ISKCON Mumbai Society had been conducting the activities of ISKCON at Bangalore. ISKCON Temple at Bangalore is having its administrative office at Bombay and functioned under the direct control of the Bombay office and that in March, 1985 the temple was shifted to No. 210, Bellary road. And that in India, ISKCON is registered at Bombay.

The above statements, made at an undisputed point of time, on oath, before a Civil Court, goes to show beyond any doubt that what functioned as ISKCON in Bangalore is the ISKCON Mumbai Society only and Madhu Pandit Das, defendant No. 11 was the Branch President of ISKCON Mumbai Society. And he had nothing to do with ISKCON Karnataka Society which never functioned.

Madhu Pandit Das, defendant No. 11 along with Chanchalapathi Das - defendant No. 12 had filed O.S. No. 2180/99 at Bangalore, and in the plaint they had categorically stated the following:

a) The ISKCON temple at Bangalore is functioning as the branch of the ISKCON Mumbai Society and that it is under the administrative control of the ISKCON Mumbai Society.

b) Madhu Pandit Das (defendant No. 11) and Chanchalapati Das (defendant No. 12) were designated as the President and Vice President of the Bangalore branch of ISKCON Mumbai Society in 1984 and they continue to be so.

c) The Bangalore branch accounts are audited and sent every year to Bombay for consolidation with the accounts of the other branches of the ISKCON Mumbai Society to prepare the final accounts of the ISKCON Mumbai Society. And these accounts are filed with income tax department at Mumbai and in those consolidated accounts and in the assessment orders passed by the Income Tax Department, Bangalore Temple is reflected as a branch of the ISKCON Mumbai Society.

d) Temple/property at Hare Krishna Hills was allotted to the Bangalore branch of the ISKCON Mumbai Society by the BDA.

It is stated that in the said plaint, Madhu Pandit Das-defendant No. 11 and Chanchalapati Das-defendant No. 12 did not even whisper about the existence of the 6th plaintiff i.e., the second appellant society, (ISKCON Karnataka Society). This clearly showed that, at this point of time i.e., in 1999, Madhu Pandit Das (defendant No. 11) and Chanchalapati Das (defendant No. 12) were either unaware of the existence of the ISKCON Karnataka Society or they knew that it

was a defunct entity having no relevance with the activities carried on in the name of ISKCON in Bangalore. This further showed that the claim they made in 2001 that they were President and Vice President of the ISKCON Karnataka Society is a false claim.

Madhu Pandit Das and Chanchalapathi Das, had claimed the relief of injunction that the defendant i.e. the ISKCON Mumbai Society should be restrained from initiating any action to disturb their position as the Branch President and Branch Vice President, but no interim order was granted.

It is also contended that some devotees attached to the Bangalore branch of the ISKCON Mumbai Society due to their differences with Madhu Pandit Das - defendant No. 11, sought to open a second Temple/branch of the ISKCON Mumbai Society in Bangalore at Seshadripuram.

Defendant No. 11 filed O.S. No. 4467/2000 in the City Civil Court, Bangalore, against those persons stating that the Governing Council, also known as the Bureau of the ISKCON Mumbai Society, had exclusive authority to open branches of the ISKCON Mumbai Society and it was not permissible to open a second branch in Bangalore without a resolution of the Bureau. In the above said suit, defendant No. 11 had again stated that he was the Branch President of the Bangalore branch of ISKCON Mumbai Society. That the Accounts of the said Bangalore branch are regularly sent every year to the head office of the ISKCON Mumbai Society at Mumbai, where these accounts are consolidated with the accounts of the other branches of the ISKCON Mumbai Society and are filed before the Income Tax Department at Mumbai. That the property at Hare Krishna Hill, Rajajinagar was allotted to the ISKCON Mumbai Society by the BDA. That no one could use the name of ISKCON without the permission of the Governing Council (Bureau) of the ISKCON Mumbai Society.

A notice of the meeting of the Governing Council (Bureau) of the ISKCON Mumbai Society was issued with an agenda item to suspend Madhu Pandit Das, defendant No. 11 from the post of President of the Bangalore branch of the ISKCON Mumbai Society. Challenging the above notice, defendant No. 11 with two others filed O.S. No. 1483/2001. In this suit, defendant No. 11 again clearly stated that he was the Branch President of Bangalore branch of the ISKCON Mumbai Society which had about 40 branches all over India. And the Accounts of the said Bangalore branch were regularly sent every year to the head office of the ISKCON Mumbai Society at Mumbai where these accounts are consolidated with the accounts of the other branches of the ISKCON Mumbai Society and are filed before the Income Tax Department at Mumbai. Further, the property at Hare Krishna Hill, Rajajinagar was allotted to the ISKCON Mumbai Society by the BDA. In the said plaint also, there was no statement about the existence of the ISKCON Karnataka Society, the sixth plaintiff.

Defendants 11, 12 and their colleagues filed accounts of the Bangalore branch of the ISKCON Mumbai Society with the Registrar of Societies, Bangalore, for

twelve years (from the year 1989 to 2000) by falsely claiming that those are the accounts of the ISKCON Karnataka Society i.e., the sixth plaintiff.

Defendants 11 and 12 by falsely claiming to be the President and Vice President of the sixth plaintiff, filed names of themselves, their wives and friends as the members of the Governing Body of ISKCON Karnataka Society i.e. the sixth plaintiff, with the Registrar of Society (from the year 1989 to 2000) for a period of 12 years in one stroke.

Later, Defendant No. 11 withdrew O.S. No. 1483/2001.

Defendants 11 and 12 also withdrew O.S. No. 2180/1999.

Defendant No. 13 - Stoka Krishna Das by falsely claiming to be the Secretary of the sixth plaintiff, filed O.S. No. 7934/2001 and claimed that Defendant No. 11 has been the President of the sixth plaintiff since 1978.

The plaint was a replica of the earlier suits filed by Defendant No. 11, except that the phrase "Bangalore Branch" was replaced by "Plaintiff Society".

That the suit O.S. No. 7934/2001 was a fraud played by the said Defendant No. 11. As the ISKCON Karnataka Society - the sixth plaintiff has an identical name as that of ISKCON Mumbai Society, it was fraudulently claimed that what has been functioning all along in Bangalore as ISKCON is not a branch of ISKCON Mumbai Society but it was the sixth plaintiff And all along, Madhu Pandit Das had nothing to do with ISKCON Mumbai Society and he has been acting only as the President of the sixth plaintiff.

It is contended that Defendant No. 11 and his colleagues had started using the sixth plaintiff as a cover to fraudulently and illegally usurp the properties, funds and the organization of the ISKCON Mumbai Society in Bangalore. And defendant No. 11 had fabricated various antedated documents to support such claims.

Further, the suit in O.S. 1758/2003, the judgment against which this appeal is filed, was instituted by the fourth plaintiff, sixth plaintiff and four other members of the Governing Body of the sixth plaintiff in the City Civil Court, Bangalore against ten members of the Governing Body of the sixth plaintiff and against defendant No. 11 to 17, who are now falsely claiming themselves to be members of the Governing Body of the sixth plaintiff in O.S. No. 7934/2001.

The plaint in O.S. 1758/2003 clearly stated that defendant Nos. 11, 12 and 13 were impostors. They were not even members of the sixth plaintiff herein. The plaint also stated that the sixth plaintiff herein stopped functioning right after its registration and what has been functioning in Bangalore as ISKCON is the branch of the ISKCON Mumbai Society.

The prayers in the plaint, inter alia, included a declaration "that the eleventh to seventeenth defendants have no right to manage or control the sixth plaintiff and restraining "the eleventh to the seventeenth defendants from interfering with the management and control of the sixth plaintiff.

Defendants 12, 13, 15, 16 and 17 had filed written statement. Defendant No. 12, in this Written Statement has not mentioned even a word about the statements made by him in O.S. No. 2180/1999 that ISKCON functioning in Bangalore is only a branch of the ISKCON Mumbai Society. He had also offered no explanation, about him not even mentioning about the existence of ISKCON Karnataka Society in the plaint in O.S. No. 2180/1999.

Further, Defendant No. 11 had not even entered the witness box to explain his statements made by him in his previous suits.

While Defendant No. 11 filed the above written statement in O.S. 1758/2003, he still maintained O.S. 4467/2000 in which he continued to stick to his stand that what was functioning as ISKCON in Bangalore was the Bangalore branch of the ISKCON Mumbai Society and he was the Bangalore branch President of the ISKCON Mumbai Society. So, he simultaneously held two contradictory and mutually destructive stands.

Defendant No. 11 withdrew O.S. No. 4467/2000 at a time when the trial had commenced and four witnesses were examined on behalf of the plaintiffs and one witness was examined on behalf of the defendants. The counsel for the plaintiffs had even started their final arguments.

Defendant No. 1 after taking no objection from his advocate, filed a statement stating that he admitted that he sent notice dated 25.5.1984 to convene the meeting of the General body of the sixth plaintiff and the said meeting was convened on 1.7.1984 and that the signature appearing on the alleged minutes of the alleged AGM dated 1.7.1984 (Ex. D1) was his signature.

It may be noted that the same Shankha Brita Das -Defendant No. 1 in para 8 of his written statement had stated that "this defendant categorically, emphatically and unequivocally avers that he did not send out notices, whether dated 25.5.1984 or otherwise, for any annual general meeting and that no general meeting was held whether on 1.7.1984 or otherwise, that the alleged minutes are a fabrication got up by forging this defendant's signature"

Further till the end of the proceedings (even till today) he has not withdrawn or gone back on the written statement filed by him in this suit nor did he enter the witness box to explain his sudden volte face.

In December 2008, Plaintiff No. 2 had taken no objection from his counsel and had filed memo seeking withdrawal from the suit.

It is contended that it is pertinent to note that plaintiff No. 2 has neither entered the witness box nor given any statement contradicting the statements made by him in the plaint.

On 10.12.2008, Plaintiff No. 1 also had taken no objection from his counsel and had filed a memo stating that he does not press the suit and prayed that the suit may be dismissed as not pressed.

It is pertinent to note that the said plaintiff No. 1 examined himself as PW2 and fully supported the case of the plaintiff.

It is pertinent to further note that the plaintiff No. 1 (PW2) did not enter the witness box after filing withdrawal memo, to state as to what was stated earlier by him in the plaint or in the evidence given by him in support of the plaint was false. The trial court, without giving any opportunity for the counsel of the other plaintiffs to make submissions in this respect, granted permission to the first plaintiff to withdraw the suit.

Plaintiff No. 3 also had obtained no objection from his counsel and had filed a memo of withdrawal on 11.12.2008.

On 19.12.2008, Defendant No. 3 had filed a memo stating that he now realized that meetings were held in 1979 and 1984 and 11th to 17 defendants were duly elected and prayed that the suit may be dismissed.

The learned Senior counsel points out that the same defendant No. 3 in para 9 of his written statement had stated that, "This defendant did not receive any notice of any meeting either of the general body or of the Governing Body of the sixth plaintiff any time precisely because there was no meeting of either general body or of the Governing Body of the sixth plaintiff since its coming into existence."

Further, in para 13 of his written statement he had stated that, "There was no meeting of the General Body of the sixth plaintiff on 1.7.1984. Any documents purporting to be the minutes of the such alleged meeting is sheer forgery and fabrication."

It is further contended that in the face of the above overwhelming circumstances, the court below has proceeded to dismiss the suit on unsustainable premises. It is pointed out that it is the case of the plaintiffs that there was no meeting ever held on 1.7.1984 as claimed by defendant Nos. 11 to 17. The court below has, however held that the plaintiffs have failed to produce any documentary evidence that such meeting was not held. This is an impossibility. The plaintiffs could not be expected to produce any document if there was no meeting at all. In so far as the document sought to be relied upon by defendants 11 to 17 in that regard, is concerned, the infirmities and the dubious nature of the same is already highlighted.

On the other hand the trial court has accepted the claim of defendants 11 to 17 that the first plaintiff had resigned from the post of Secretary of the sixth plaintiff society. But the said defendants had not produced any letter of resignation by plaintiff No. 1. And further, the evidence of PW-2 who was the Secretary of the sixth plaintiff society in the year 1978 that the first plaintiff had not resigned from the post is not denied. But the trial court has glossed over the same.

It is further contended by Shri Holla, that the contention as to any statements made by defendant No. 11 in his individual capacity would not bind the other members of the Society or the Society itself, is concerned, it is pointed out that,

PW-3 in his evidence has stated that all inmates and other devotees of ISKCON, Bangalore, knew about the contents of the several suits filed by defendant No. 11 and none had raised any objection as to the correctness or otherwise of the same. Hence it is not possible to sustain the contention that the statements attributed to defendant No. 11 would not bind the other defendants 12 to 17.

It is contended that defendants No. 11 and 12 were co-plaintiffs in the suit filed in O.S. No. 2180/1999 and they had made statements therein which cannot be resiled from. They were persons at the helm of affairs when these statements were made and therefore were expected to know on whose behalf they were functioning from 1984 till the year 2001 and this would clinch the controversy as to the fact that, what functioned as ISKCON in Bangalore was the Mumbai Society and not the sixth plaintiff and hence the suit ought to have been decreed.

Significantly, defendant No. 11 whose evidence before the court was most essential, did not choose to examine himself as a witness, though he had attended the court proceedings on many occasions during the pendency of the suit and hence it is contended that an adverse inference be drawn as regards his conduct and intentions. But, Shri Holla would point out that the court has on the other hand held that the plaintiffs ought to have summoned him as a witness, when it was defendants 11 to 17 who were seeking to utilize plaintiff No. 6 as a vehicle for their nefarious purposes.

It is contended that the reliance placed on Exhibit - D-7, the purported minutes of the meeting allegedly held on 1.9.1979 has been accepted by the trial court as establishing that the sixth plaintiff had commenced functioning. This was a document produced by the defendants as an after thought. There was no mention of the same in the pleadings. It was produced only to get over the primary requirement of the sixth plaintiff having compulsorily held a general body meeting within 18 months of its registration. It was the plaintiffs' specific case that no meetings were ever held after the registration of plaintiff No. 6. Hence, the said document having been fabricated and produced by defendants 11 to 17 has been rather tamely accepted by the trial court.

Attention is also drawn to the judgment of a division bench of this court in RFA 421/2009, dated 23.5.2011, which was an appeal preferred against the judgment and decree dated 17.4.2009, in O.S. No. 7934/2001, City Civil Court, Bangalore. The said suit had been instituted on behalf of ISKCON, Bangalore, or the sixth plaintiff in the present proceedings, against ISKCON, Mumbai, for a declaration of title and injunction, with a counterclaim of the defendant therein for permanent injunction. The suit having been decreed and the counterclaim having been dismissed, the appeal was allowed reversing the judgment of the trial court.

It is highlighted that the Division bench in its judgment has held that ISKCON, Bangalore, the sixth plaintiff had failed to prove it had legal existence as an independent autonomous body - at Bangalore. And that what exists in Bangalore

is only a branch of ISKCON, Mumbai. That Madhu Pandit Das - Defendant No. 11 herein, had worked only as the President of the branch of ISKCON, Mumbai at Bangalore. That the movable and immovable properties held by ISKCON, Bangalore, are held on behalf of ISKCON, Mumbai - who is the owner thereof. That ISKCON, Bangalore, through Madhu Pandit Das and others had fraudulently laid claim to the properties and management.

Shri Holla has drawn specific attention to certain caustic remarks and findings showing, defendants 11 to 17 herein, and others supporting them, in poor light.

It is on the above and other incidental contentions that Shri Holla would seek that the judgment and decree of the court below be set aside and to decree the suit as prayed for."

5. Shri Srinivas Raghavan, learned counsel appearing for defendants 11 to 17 on the other hand, contends as follows:

"He would firstly draw attention to an anomalous situation that has arisen. The present appeal was filed by plaintiff No. 4, one Shamsundar L. Asrani, in his individual capacity and as representing Plaintiff No. 6, ISKCON, Bangalore, appellant No. 2. He had sought to represent the said appellant as its Governing body member.

A memorandum dated 1.6.2013 filed on behalf of appellant No. 1 by his counsel, Ananthram C, (with a "No Objection" endorsement by the erstwhile counsel, M.P. Shrikanth) which read as follows:

"The undersigned counsel appearing on behalf of the Appellant No. 1 in the above case, herewith humbly submit that due to old age and ill health of 1st appellant have no longer interest in continuing the aforesaid Regular First Appeal No. 423/2009 filed against Shanka Brita Das and others before this Hon"ble Court is herewith prays that this Hon"ble Court pleased to permit the Appellant No. 1 to withdraw the claims of Appellant No. 01 and 02 in RFA 423 of 2009 in the interest of justice and equity." Appellant No. 1 had also affixed his signature to the said Memorandum. The said appellant had also filed an affidavit dated 1.6.2013, which read as follows:

"AFFIDAVIT

I Mr. Shamsundar L Asrani, S/o. Sri Lachmandas Asrani, aged about, No: 54 Palace Road, Bangalore 560 052 do hereby solemnly affirm and state on oath as follows:

1. I submit that, I am the first appellant in the above Regular First Appeal as such am acquainted with the facts of the case. I am also representing the appellant No. 2 in the above said case. Hence I am swearing this affidavit on behalf of the appellant No. 02.

2. I submit that I have filed Regular First Appeal against the Shanka Brita Das and others in RFA No. 423 of 2009 before this Hon"ble Court. I being the First

appellant had also executed Vakalath to represent the appellant No. 2, to my previous counsel Mr. M.P. Srikanth.

3. I submit that my previous counsel was representing on behalf me (appellant No. 1) as well as on behalf of appellant No. 2 in the aforesaid Regular First appeal.

4. I submit that on 26th April 2013, due to my old age and ill health I have no longer interest in continuing the aforesaid Regular First Appeal. I had requested my previous counsel (M.P. Snkanth) to issue No-Objection Vakalath for me (appellant No. 1) and appellant No. 2 as I does not want to prosecute the above Regular First Appeal No. 423/2009. However, said counsel have issued No Objection Vakalath only in respect of me i.e. appellant No. 1 namely Shamsundar L Asrani. However, he declined to issue No Objection Vakalath in respect of Appellant No. 02 which is indeed represented by me.

5. I submit that now I am filing NOC vakalth to represent me and Fresh Vakalath to represent appellant No. 2 in the above case. I am engaging Mr. Anantharam C., advocate Bangalore to represent on behalf of me and appellant No. 2 in the above said case.

Wherefore, it is humbly prays that this Hon"ble Court be pleased permit the appellant No. 1 to file NOC vakalath to appellant No. 1 and Fresh Vakalath to appellant No. 02 in the interest of justice and equity.

What are all stated above are true and correct to the best of my knowledge and information.

Identified by me

Sd/- Advocate

Sd/- Advocate

Dated: 1.6.2013"

On 3.6.2013 Shri M.P Srikanth had filed a fresh vakalath on behalf of ISKCON, Bangalore, the second appellant, represented by H.H. Amiya Vilas Swamy. And by a Memorandum dated 5.6.2013 sought to retire on behalf of appellant No. 1.

And by yet another Memo dated 5.6.2013, claimed that on account of the ill health of Appellant No. 1, on instructions from respondent No. 17, who was plaintiff No. 1 in the suit and the Secretary of ISKCON, Bangalore had sought to enter appearance for Appellant No. 2, in terms of the Memorandum of Association and the Bye-laws of the Society and also Section 15 of the Karnataka Societies Registration Act.

On a consideration of the above developments, this court by its Order dated 7.6.2013, recorded as follows:

"Objections to Misc. Cvl. 12002/2010 if any within two weeks.

Misc. Cvl. 13055/2010 is rejected for the present.

The memo filed by Sri. M.P. Snkanth, learned Advocate to retire from the case on behalf of Appellant No. 1 is allowed. Office is directed to delete his name as representing Appellant No. 1 in the cause list.

The memo dated 1.6.2013 is partially allowed. The appeal is dismissed only insofar as appellant No. 1 is concerned. The memo is kept open in respect of appellant No. 2.

Post again next week.

On 17.6.2013, an application under Order I Rule 10(6) of the Code of Civil Procedure, 1908 was filed in I.A. 1 of 2013, on behalf of the second appellant seeking the transposition of the 17th Respondent (incorrectly stated as the 16th Respondent) Amiya Vilas Swamy, as Appellant No. 4.

Another application in IA No. 2/2013 was also filed seeking to amend the address of the registered office of the second appellant -Society.

An affidavit dated 12.6.2013, of Amiya Vilas Das, is filed seeking to withdraw an Affidavit and memos filed by him during the pendency of the suit and seeking to explain the circumstances under which he had abandoned the suit and withdrew from the proceedings and seeking leave to now prosecute the appeal and to represent the Society.

Shri Raghavan would hence contend that in the above circumstances, the court below having negated the claim of the plaintiffs in so far as their claim to be the Governing body of plaintiff No. 6, along with defendants 1 to 10, it was imperative that the appeal is shown to be prosecuted by individuals competent to do so. In this regard, attention is drawn to the fact that the Memorandum of Association and the Rules and Regulations of the sixth plaintiff is silent as to which of the Office bearers could sue or be sued on behalf of the Society, in which event, Section 15 of the KSR Act would apply. Therefore, a suit could have been brought only by such person as appointed by the Governing Body. By the very frame of the suit, it was evident that there did not exist a governing body consisting of the plaintiffs along with defendants 1 to 10. Hence, the suit could not be entertained in the absence of such authorization. It would be even more so in the case of the present appeal, which was sought to be presented by a person claiming to be a member of the governing body, and having filed the appeal in his individual capacity apart from seeking to represent the sixth plaintiff unilaterally without any kind of authorization, has chosen to withdraw from the case.

In that background, the attempt now on the part of the 17th respondent to represent the plaintiff No. 6- Society, while seeking to take a complete "u-turn" on his stand in having withdrawn from and having abandoned the suit, on the specious plea that he would not be precluded from doing so as the trial court had not passed any orders on his assertion to withdraw from the suit. This the

learned counsel would contend is wholly impermissible and would make a mockery of the proceedings for the following reasons:

"The applicant has no locus standi to prosecute the appeal, let alone file an application to transpose 17th respondent as an appellant. It is submitted that the person swearing to the affidavit in support of the application was the first plaintiff in the court below. In the course of the proceedings before the trial court, he filed a memo dated 10.12.2008 wherein he prayed that the suit be dismissed as not pressed. In addition, he also filed an affidavit wherein he categorically admitted that he was not representing the sixth plaintiff society, that he was in complete darkness about the correctness of the contents of the Plaint and as such sought for the dismissal of the suit. In dismissing the suit, the trial court has taken into consideration the said memo and has also held that it diminishes the plaintiffs' claim in the suit. The trial court has thus relied on and accepted the memo and has treated that he has no claim. Having sought for dismissal of the suit as not pressed in the light of the judgment and orders of the trial court, Amiyavilas Swamy lost all rights to prosecute the suit and the appeal that has flowed from it. Therefore, it is not open to him to seek to transpose himself as the appellant in the present appeal, either by himself or as purportedly acting on behalf of second appellant. He does not have the locus standi to prosecute the present appeal as an appellant." The application will have the effect of allowing a respondent to challenge the judgment of the trial court long after the period of limitation is over for the same. Hence, that it is impermissible to seek transposing at this length of time.

Amiyavilas Swamy did not choose to file an appeal after the judgment of the trial court. He thus accepted and acquiesced in the judgment and elected to abide by it. He cannot be permitted to approbate and reprobate and hence by application of the doctrine of election and estoppel the application ought to be dismissed.

The allegation that Amiyavilas Swamy is representing the second appellant Society in the present appeal or that he was representing the sixth plaintiff Society in O.S. No. 1758/2003, is denied as false. The second appellant has not authorized anyone to either file the suit nor to file the present appeal. Therefore, the appeal itself ought to be dismissed, when the appeal itself is not maintainable.

Even if the application is to be treated as that filed by the second appellant, even then such an application is not maintainable. There is no authority from the society to Amiya Vilas Swamy to represent it or engage a counsel or to prosecute the appeal. There is no authority from the society or its governing body to file an appeal on behalf of the society or to represent it or file the present application. There is no court permission also taken, for Amiya Vilas Swamy to represent the Society.

Further, that the Seventeenth respondent was the first plaintiff in the court below. In the course of the proceedings before the trial court, the seventeenth

respondent had filed a memo dated 10.12.2008 wherein he prayed that the suit be dismissed as not pressed. In addition, he also filed an affidavit wherein he categorically admitted that he was not representing the sixth plaintiff society, that he was in complete darkness about the correctness of the contents of the plaint, that Sri Jayapataka Swami had asked him to follow the instructions of one Mr. Rama Bhadra Dasa and that he signed the plaint as instructed by Mr. Rama Bhadra Dasa and as such sought for the dismissal of the suit. While dismissing the suit, the trial court has taken into consideration the said memo and has also held that it diminishes the plaintiffs' claim in the suit. The trial court has thus relied on and accepted the memo and has treated that he has no claim. Having filed the affidavit before the Court earlier, he cannot now file another affidavit contrary to what has already been stated earlier. Therefore, the present affidavit ought to be rejected. The present affidavit is being filed with the sole intention of assisting ISKCON Mumbai in their illegal acts. And that he is guilty of abuse of process of the court and of committing perjury.

The allegation that after the closure of evidence and when the final arguments in O.S. 1758/2003 was to be addressed, the tenth defendant i.e. Madhu Pandit Dasa approached the seventeenth respondent and told him that because of the pendency of the proceedings, he was not in a position to settle the matter with ISKCON Society registered in Mumbai and had promised him that if he filed certain documents withdrawing from O.S. 1758/2003, then he would immediately settle the matter with ISKCON Society registered at Mumbai as well as help him close the sixth plaintiff society, is denied as false. It is contended that neither did the tenth respondent approach Amiya Vilas Swami nor did he promise him anything. The contents of the affidavit dated 10.12.2008 filed by Amiya Vilas Swami are self-explanatory. Nowhere has he stated anything about the tenth respondent approaching him or making any promises to him.

In so far as the application seeking amendment of the cause title is concerned, it is contended that the applicant seeks to amend the cause title, wherein he seeks to delete the name of the person allegedly representing the Society. Further, that the Governing Body of the Society has neither authorized the suit to be filed nor the present appeal. In addition, the applicant has not been authorized to file the present application. The Society was earlier portrayed to be represented by one Mr. Asrani. He was also not authorized by the Governing Body of the Society to act on behalf of the Society. Based on a memo filed by Mr. Asrani, the appeal in so far as he was concerned was dismissed by this Hon'ble Court vide Order dated 7.6.2013. Therefore, the present application and the appeal itself ought to be dismissed.

The Society i.e., International Society for Krishna Consciousness, Bangalore is a registered Society registered under the Karnataka Societies Registration Act, 1960. It is contended that the applicant is in no way concerned with the Society. He is not a member of the Governing Body of the Society and that the Governing Body for the Society has not authorized any one to either file the suit in O.S.

1758/2003 or to file the present appeal. In the absence of a resolution authorizing any person to file the present appeal, the appeal itself was not maintainable.

The allegations that Amiyavilas Swamy requested Mr. M.P. Srikant to continue to represent the second appellant Society and accordingly file vakalath for the second appellant, that he was requested by the other members to do so, is denied as false. Nothing is produced to substantiate the same and that there is no question of the Society continuing to be a party to the present appeal when the Governing Body of the second appellant had not authorized anybody to file the suit or appeal in the first place.

Shri Raghavan would hence contend that the appeal ought to be dismissed as appellant No. 3 would also be incompetent to prosecute the appeal for the very infirmity which renders the suit and the appeal as being unauthorized.

Further, while seeking to justify the judgment of the trial court, he would canvass the following propositions to contend that there can be no fault found with the reasoning of the trial court notwithstanding the elaborate arguments canvassed on behalf of the non-existent appellants.

It is contended that the allegations in the plaint of Defendants 11 to 17 having committed fraud, can hardly be sustained. It is asserted that fraud has to be pleaded with full particulars and is to be proved beyond reasonable doubt, mere suspicion vague allegations cannot take the place of proof:

"Suggestions of complicity in fraudulently filing forms have to be proved by positive acceptable evidence. It is not possible on mere suggestions and suspicion to ask a court to hold a state of affairs to be true. (See Khaje Khanavar Khadskhan Hushenkhan and Another Vs. Siddavanhalli Nijalingappa and Another,

A charge of fraud whether made in civil or criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be placed on suspicions. (See A.L.N. Narayanan Chettyar and Another vs. Official Assignee, AIR 1941 93 (Privy Council)

A charge of fraud whether in civil or criminal proceedings must be established beyond reasonable doubt. However suspicious may be the circumstances, however strange the coincidences, however grave the doubts, suspicion only cannot take the place of proof (See Union of India (UOI) Vs. Chaturbhai M. Patel and Co.,

It is further contended that much is sought to be made of the statements made by defendant No. 11 in the previous suits. It is asserted that, statements of Madhu Pandit Dasa in previous suits do not bind the Society, they are not admissions and admissions are not conclusive, they can be shown to be untrue or made by mistake or erroneous:

Where public institutions are involved, the personal conduct of one of the trustee cannot be allowed to prejudice the case materially and questions have to be decided on the merits of the whole of evidence (See *Balkram High School v. Nanumal*, AIR 1930 Lah 579)

No provision of law makes admissions of a person other than the person making them unless such person can be said to be bound by such admission. The act of the agent will only make the principal liable if and so long as the agent does the act within the scope of his authority or does so under the actual control of the principal. (See *Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt*,

An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence. Weight to be attached to it must be determined on the circumstances under which it is made. It can be shown to be erroneous or untrue if it has been acted upon by a person to his detriment. (See *Nagubai Ammal and Others Vs. B. Shama Rao and Others*,

Admission by a party in a plaint in a prior suit may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive and it is open to the party to show that it is not true (See *Basant Singh Vs. Janki Singh and Others*,

Admission is only a piece of evidence and can be explained. It does not conclusively bind a party unless it amounts to an estoppel. Value of an admission has to be determined keeping in view the circumstances in which it is to be made and to whom. (See *Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others*,

An admission must be examined as a whole and not in parts. It has to be read in entirety. The court may reject the admission if it is satisfied from other surroundings, that it is untrue. (See *M. Ethiraj Vs. Smt. Farida Khanum*,

Admission by one defendant is not binding on others when he did not represent the others and they had independent rights. (See *Kishan Singh v. Lachandas* AIR 1930 Lah 238)

Admissions by party in pleadings in previous suits are evidentiary admissions and are not conclusive and can be shown to be wrong and party can show under what circumstances it was made. (See *R. Dilip Kumar Vs. S. Ramu*,

In so far as the contention that non-examination of the long standing President and the leader amongst defendants 11 to 17, Madhu Pandit Dasa, being fatal to the case of the defendants, is concerned, it is urged that the non-examination of a material witness need not always lead to an adverse inference being drawn. It is contended that adverse inference for non-examination of witness can be drawn if there is no evidence on that behalf When there is evidence on their behalf, non-examination of a witness will not permit the court to draw adverse inference. (See *Noorulla Amin Musuba and Others Vs. Chandru Sheniyar Naik*,

If the testimony of witnesses and evidence appears to be truthful, reliable and acceptable, the mere fact that some other witness was not examined, will not affect the case. (See *Pohlu Vs. State of Haryana*,

Where it was urged that a trustee did not get into the witness box to explain his earlier admission it was held that personal conduct or admission of a trustee cannot be allowed to prejudice the case of the institution and the question has to be decided on the merits of the whole of evidence. (See *Balkhram High School v. Nanumal AIR 1930 Lah 579*)

Question of drawing an adverse inference on account of non-examination of material persons would arise only when there is no evidence on record on the point in issue. (See *Pandurang Jivaji Apte Vs. Ramchandra Gangadhar Ashtekar (Dead) by Lrs. and Others*,

Where case depends on documentary evidence and if for some reason a witness is not examined, that would not introduce any infirmity. (See *Bali Ram Prasad Vs. State of Mysore*,

Before a right of a party can be considered to be defeated by an admission, the implication of a statement must be clear and conclusive. There should not be any doubt or ambiguity and it would be necessary to read the other part of the evidence and the stand taken in the pleadings. (See *Parameshwari Bai Vs. Muthojirao Scindia*,

Before a right of a party can be considered to be defeated by an admission, the implication of a statement must be clear and conclusive. There should not be any doubt or ambiguity. (See *Chikkam Koreswara Rao Vs. Chikkam SubbaRao and Others*,

In so far as the reliance sought to be placed on the findings and observations as to the alleged mala fides on the part of defendants No. 11 to 17 in RFA 421/2009, by a Division bench judgment of this court is concerned, it is contended that a finding of fact arrived at on the evidence before this Court in one case is not evidence of that fact in another case.

The Evidence Act does not make a finding of fact arrived at on the evidence before the court in one case, evidence of that fact in another case. (See *Kumar Gopika Raman Roy vs. Atal Singh and Others AIR 1929 99 (Privy Council)*

The Evidence Act does not make a finding of fact arrived at on the evidence before the court in one case, evidence of that fact in another case (See *Shankar Ganesh vs. Kesheo and Others AIR 1930 1 (Nagpur)*

An earlier judgment cannot be relied upon as it was based upon evidence that was separately recorded and separately considered. (See *Kharkan and Others Vs. The State of Uttar Pradesh*,

Production of a previous decision does not indicate the correctness of the decision, but only the fact that there was a previous decision. There is no

presumption that a prior judgment is a correct adjudication. Court in subsequent case has to decide it on the materials before it, exercising its own independent judgment. (See Gopalkrishna Gupthan Vs. Ammalu Ammal and Others,

The rule of res judicata applies if "the matter directly and substantially in issue" in a suit or proceeding was directly and substantially in issue in the previous suit between the same parties and had been heard and finally decided by a competent court. (See Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy,

Judgments other than those mentioned in Sections 40 to 43 of the Indian Evidence Act are irrelevant. The decision in each case has to be decided on the evidence adduced therein. (See Rajan Rai Vs. State of Bihar,

Judgments that are not inter parties, are inadmissible in evidence barring certain exceptional cases. The question of admissibility of judgments that are not judgments in rem does not arise. (See State of Bihar Vs. Radha Krishna Singh and Others,

Earlier order is not admissible to prove the truth of the facts therein stated, except that it may be relevant to prove the existence of the judgment itself. It will not be admissible in evidence. (See S.M. Jakati and Another Vs. S.M. Borkar and Others,

The learned counsel Shri Raghavan hence seeks that the appeal be dismissed."

6. In the light of the above contentions and on an examination of the record, without having to reiterate the background to the controversy, the crux of the matter is that the plaintiffs and defendants No. 1 to 10, apart from seven others who had died as on the date of the suit, had together, founded the International Society for Krishna Consciousness, (ISKCON) as an entity registered under the KSR Act and Rules, with its registered office at 39, Crescent Road, Bangalore in the year 1978. The object, apparently was to carry on the activities in which the very group was carrying on as missionaries, devotees and patrons respectively, of the Bangalore Centre of ISKCON, Mumbai, a body registered under the Societies Registration Act, 1860 and as a Trust under the Bombay Public Trusts Act, 1950, which was said to have been established in the year 1971. It was the further case of the plaintiffs that the formation of the Society as an independent entity when the group were involved in activity in furtherance of the objectives of ISKCON, Mumbai, was an incongruity, as it would no longer be subject to the control and management of that institution, especially in the absence of any indication to that effect in the Memorandum of Association and the Rules and Regulations of the Bangalore Society. This glaring reality having dawned on the plaintiffs and others - soon after the registration of the said society at Bangalore, they had desisted from any kind of activity in the name of the said Society. There were no meetings or decisions taken in its name. Not even ministerial acts of statutory compliances pursuant to registration, were performed.

It is for the first time in the suit that the plaintiffs are seeking to come together on having learnt that the Society they had formed was functioning through defendants No. 11 to 17, when to their knowledge there had been no enrollment of members, general body meetings or elections at any point of time, for the said defendants to have purportedly succeeded to the office. The plaintiffs have hence concluded that the said defendants had surreptitiously and fraudulently utilized the registration of the dormant Society as a vehicle to usurp the assets and management of the properties and affairs of ISKCON, Mumbai, at Bangalore and hence to prevent further mischief and to expose the actions of Defendant Nos. 11 to 17 and in order to effectively dissolve ISKCON, Bangalore, the present suit had been brought.

The above circumstance is apparently the explanation for the suit having been brought without the necessary authorization of the governing body, and of the plaintiffs not even being sure of whether the erstwhile composition of the general body continued to exist. This is evident from the following averments in the plaint:

"24. Besides the need to bring about the liquidation and winding up of the sixth plaintiff, the actions of the eleventh to the seventeenth defendants in claiming to constitute the Governing Body of the sixth plaintiff and in allegedly functioning in that capacity, apart from being illegal and fraudulent, have infringed the rights of the first to the fifth plaintiffs, and of the first to the tenth defendants, as the members of the Governing Body. Until the sixth plaintiff is liquidated and wound up, its management and control have to be with the first to the fifth plaintiffs, and such of the first to the tenth defendants as may wish to join the said plaintiffs, and not with the eleventh to the seventeenth defendants who have no right to such management and control and have been acting in fraud of the Movement, its devotees and followers and the public at large." And though Defendant No. 11 is said to have functioned as the President of the Society at Bangalore since the year 1984, having been elected as such from time to time, along with other elected office bearers - though none of the plaintiffs or defendant Nos. 1 to 10 are said to have had an inkling of the same, and hence the uncertain manner in which the plaintiffs were seeking the suit relief, not even sure of who would constitute the Governing body and the manner in which the cause of action for the suit is stated as having arisen, is evident from the following averments:

"27. The claim of the plaintiffs in the suit is for a declaration that the first to the fifth plaintiffs and the first to the tenth defendants constitute the Governing Body of the sixth plaintiff, for a declaration that the eleventh to the seventeenth defendants have no right to manage or control the sixth plaintiff, for mandatory injunction directing the eleventh to the seventeenth defendants to make over to the Governing Body comprising the first to the fifth plaintiffs and the first to the tenth defendants or such of the latter as might be willing to be on the Governing Body, all the assets, effects, affairs, books of account, records and the like of the

sixth plaintiff and for perpetual injunction restraining the eleventh to the seventeenth defendants from interfering with the management and control of the sixth plaintiff by the Governing Body comprising the first to the fifth plaintiffs and the first to the tenth defendants or such of the latter as might be willing to be on the Governing Body. All the reliefs are legally tenable and granting thereof is within the competence of this Hon''ble Court.

28. The cause of action for the suit arose on or about January 19, 2003, when the plaintiffs learnt of O.S. No. 7934/2001 in this Hon''ble Court and the claim made therein, within the City of Bangalore, within the jurisdiction of this Hon''ble Court. The suit is in time."

It is pertinent to note that of defendants 1 to 10, whom the plaintiffs claimed were the original members along with them, of the nascent society formed in 1978, only defendant Nos. 1, 3 and 10 have supported the case of the plaintiffs by filing their individual written statements. On the other hand Defendant Nos. 2, 7 and 8 in their respective written statements, have asserted that defendants 11 to 17 were genuine elected members of the sixth plaintiff society and that they have succeeded the earlier elected bodies that have been functioning continuously from 1984. Defendant No. 6 has denied any connection with the Society, or the plaintiffs. In view of the lack of consensus as to the serious allegations made against defendants 11 to 17, which acts if proved would certainly be punishable in criminal law, the burden was heavy on the plaintiffs in establishing their case.

The plaintiffs had examined four witnesses in support of their case. Plaintiff No. 3 was examined as PW-1. This witness did not offer himself for cross examination. Further, he chose to withdraw from the case - without assigning any reason, by filing a memorandum dated 18.12.2008.

Plaintiff No. 1 had been examined as PW-2. The trial court has discussed his evidence at length only to indicate that it did not really evoke the confidence of the court nor did it advance the case of the plaintiffs. More significantly, the said plaintiff also chose to disown the case and filed a memo dated 10.12.2008, seeking dismissal of the suit. He had also filed an affidavit wherein he had admitted that he was not representing the sixth plaintiff society and that he was completely in the dark about the correctness of the contents of the plaint. That one Jayaprakash Swami had asked him to follow the instructions of one Rama Bhadra Dasa and that he had merely affixed his signature to the plaint and hence sought dismissal of the suit. This change in the stand of the said plaintiff is pointedly noticed by the trial court in observing that the case of the plaintiffs was considerably diluted by PW-1 and PW-2 withdrawing from the case and their evidence being rendered nugatory. The memorandum filed by Plaintiff No. 1 seeking dismissal of the suit has not been opposed by the other plaintiffs nor the supporting defendants. The trial court has acted with prudence and circumspection in not acting on the said memo, but having proceeded to sift the evidence notwithstanding an affidavit of the said witness also accompanying the

said memo explaining the manner in which he was said to have been involved.

The evidence of PW-3 and PW-4 was found to be peripheral and was intended to support the contention that in so far as the ISKCON Movement in India was concerned, it was intended to function under the supervision and control of ISKCON, Mumbai, with all other centres of ISKCON in other cities and towns being its branches. The trial court has discussed their evidence at length and has held that the same was inadequate to project such a case and on the other hand, the evidence brought on record would rather advance the case of defendants 11 to 17. The said observation is found to be correct. PW-3 had not tendered any evidence in support of the primary contention of the plaintiffs that they along with defendants No. 1 to 10 constituted the governing body of the sixth plaintiff. The examination-in-chief of the said witness running into 12 pages does not contain a word in this regard. PW-4 has made many assertions without any supporting documents and inexplicably states that he never knew about the existence of the sixth plaintiff Society and that it was non-existent.

Further, and more importantly, the entire case of the plaintiffs was on the footing that defendant No. 11 had acted fraudulently in having engineered the seeming metamorphosis of the erstwhile Bangalore branch of ISKCON, Mumbai, into ISKCON, Bangalore, with its independent managing body. This serious allegation was further sought to be magnified by Shri Holla, at the hearing of the appeal, in claiming that apart from defendant No. 11, his close family members also form part of the managing body, thereby suggesting that ISKCON, Bangalore and its properties had become the fiefdom of defendant No. 11. This, however, is not supported by appropriate pleadings and full particulars. A charge of fraud whether in civil or criminal proceedings would certainly have to be proved beyond reasonable doubt. A finding as to fraud cannot be placed on suspicious circumstances.

In so far as the several admissions made over a period of time by defendant No. 11 in the several civil suits filed by him, as to ISKCON, Bangalore being a branch of ISKCON, Mumbai, is sought to be explained by him in his written statement. Even if that explanation is to be rejected, the question would be whether in fact and in law there was a registered body managing the affairs of ISKCON, Bangalore. That there was a Society registered as ISKCON, Bangalore, is not in dispute. The controversy was whether the Society continued to function and could legitimately lay claim to the movable and immovable assets of ISKCON, Bangalore on that basis. In this regard the only Issue, of the several Issues framed by the trial court, the burden of proving which was placed on defendants No. 11 to 17, was Issue No. 3, namely:

"3. Whether the defendants 11 to 17 prove that in the general body meeting held on 1.7.1984, a governing body was elected?" In answering the above Issue in the affirmative, the reasoning and findings of the trial court can be found at Paragraphs 57 to 91 of the impugned judgment. The sole witness, D.W.-1, who was defendant No. 2 in the suit was examined on behalf of Defendants 11 to 17,

in support of their defence and particularly with reference to the above issue. He was a practicing advocate who had been closely associated with the ISKCON Movement in Bangalore from inception. He was one of the members of the Governing body as reflected in the Memorandum of Association of the sixth plaintiff Society and was its draftsman.

One instance to indicate that the sixth plaintiff was carrying on day to day functions, was the evidence tendered of a civil suit for injunction filed on behalf of the sixth plaintiff society in O.S. No. 1936/1979, on the file of the City Civil Court Bangalore, against the land lord of the premises under its occupation. The plaint in that suit was duly signed by the first defendant as the President of the Society. Exhibits D-2 and D-3 were produced in this regard.

It was asserted that as legal counsel, he had to repeatedly bring it to the attention of defendant No. 1 the need for holding the first annual general body meeting of the sixth plaintiff Society, within 18 months of its registration. And ultimately, a notice of the meeting as drafted by D.W.-1 is said to have been issued to all the members, vide notice dated 29.6.1979 and the minutes of the meeting held pursuant thereto, as on 1.9.1979, duly signed by Defendant No. 1 as the President of the Society, are produced as Exhibits D-6 and D-7.

The witness was also competent to speak of events that transpired thereafter. It was his deposition, that the first defendant left Bangalore in mid 1980 to carry on the Movement at Tirupati. One Gown Ranga Das and Mahashringa Das were said to be functioning as the acting Presidents of the sixth plaintiff during that time. It was also his evidence that by the time the first General body meeting was convened, the first and second plaintiffs, who were Governing body members, also left Bangalore and a new Governing body of 20 members had been constituted. From 1982, one MP Das was said to be functioning as the acting President.

It was further disclosed that from 1980 to 1984 no annual general body meetings were convened. It was his further assertion that he was constantly reminding the respective acting presidents the need for the same. It was also asserted that the first defendant who had learnt of this lacuna had finally arranged for a meeting to be convened on 1.7.1984. Defendant No. 1, Bharati Devi, Jayapataka Swami and he apart from others had attended the meeting on 1.7.1984 and a fresh Governing body is said to have been elected, consisting of 17 members. Since this is the point of time from which defendant No. 11 in particular claims to have been elected as the President, the trial court has focused its attention in particular to the evidence in this regard, as follows:

"71. Because of the very nature of the claim projected to the effect that after its registration, there were no members enrolled, no annual general body meeting convened and thus, the 6th plaintiff became defunct and non-functional, the proof of annual general body meeting dated 1.7.1984 is of crucial importance, as it decides the probability or truthfulness of the claim advanced and the defense

raised. In other words, I may say that it decides the fate of both of them.

72. Ex. D9 is a certified copy of the notice dated 25.5.1984 sent to the members by the first defendant and Ex. D1 is a certified copy of the proceedings of the annual general body meeting dated 1.7.1984 and Ex. D13 is its original and it bears the signature of the 1st and 11th defendant as per Ex. D13(a) and (b), as spoken to by D.W. 1. A bare look at Ex. D9 would suggest that the first defendant had sent notices, as per it for holding general body meeting of the 6th plaintiff on 1.7.1984, as reflected in Ex. D10 which is a certified copy of certificate of posting pertaining to Ex. D9. Thus, Ex. D10 has also contributed its own might in pointing out that there was general body meeting held on 1.7.1984, it was followed by general body meeting dated 1.7.1984, as reflected in Ex. D1. Thus, Ex. D9 has lent some more support to the annual general body meeting held on 1.7.1984, because the say of D.W. 1 on Ex. D9 is not disputed in the cross-examination. Of course, his testimony is questioned at length in the cross-examination. The cross-examination has assumed different faces. The first and the foremost that invites my attention is the number of members of the 6th plaintiff. Of course, even though D.W. 1 has mentioned that there were 30 members in 1980, he has admitted that it was not 350. But in order to find out whether there was an annual general body meeting held on 1.7.1984 or not, the controversy generated over the number of members cannot assume much importance. It is curious to that D.W. 1 is allowed to reiterate his stand that in the election held on 1.7.1984, the 11th defendant had exercised his right of franchise. It is also brought out from him that the word T used in page 2 of Ex. D1 refers to the 1st defendant and the presidential report referred to therein must be with the office-bearers of the 6th plaintiff in particular, he is also allowed to emphasize that he was personally present in the meeting held on 1.7.1984 and in it, the 1st defendant ceased to be the president. Of course, he has pleaded his inability to name the vice-president, secretary and treasurer who ceased to be so on that day. But looking at the long time gap between 1.7.1984 and the date of his deposition, his inability is really understandable. Moreover, when D.W. 1 had asserted that he was associated with Harekrishna movement from February 1978 to 1988, as reflected in Ex. P21 which is a certified copy of his deposition given in O.S. 7934/2001. With it, it is too much to expect reproduction of events that had taken place right from 1984."

The trial court has also observed a glaring circumstance that would boggle any reasonable person's mind, as follows:

"85. In contrast, Sri. S.K.V. Chalapathy contended that the scope of the suit is determined by the reliefs claimed and to grant the declaration sought for, in the first instance, the 6th plaintiff should be held to be in existence. I find a great deal of force in his contention, for when the plaintiffs themselves have projected the claim that within a few months of its registration, the 6th plaintiff became defunct and non-functional, at this distant time, the plaintiffs 1 to 5 could not have been the governing body of the 6th plaintiff. Even otherwise, such a

situation is really unthinkable. When the 6th plaintiff itself has become defunct, the question of existence of a governing body comprising of 1st to 5th plaintiff and 1st to 10th defendant cannot be visualized. From another angle also, I do not find any substance in the claim projected. It is not in dispute that the 6th plaintiff was registered in 1978 and according to the plaintiffs 1 to 5, for want of any activity, it became defunct within a few months of its registration. But as borne on record, the plaintiffs 1 to 5 did not take any steps to see that 6th plaintiff is wound up, though it was within their power. The suit was instituted in 2003 after lapse of more than 25 long years. When the 6th plaintiff was defunct and non-functional, it is really surprising and shocking to find the institution of the suit after 25 long years. This would naturally bolster the defense raised to the effect that the suit is engineered by Ramabhadrapnya with the help and co-operation of 1st defendant. In fact, Sri. S.K.V. Chalapathy contended that in the absence of the 6th plaintiff and other governing body members the suit which is a proxy suit is vexatious and it needs to be dismissed. Even Sri. M.R. Vijayaraghavan also contended that because plaintiffs 1 to 3 and 6 have withdrawn themselves from the suit and only the 4th and 5th defendant have remained on record and as they have not given any evidence, the suit prosecuted by 4th and 5th defendant themselves is a proxy suit and as much, it cannot be maintained. The long time gap of more than 25 years coupled with the fact that the suit was instituted more than 3 years after the institution of O.S. 7934/2001 would lend enough credence to the defense taken up and the arguments addressed in support of it. At the cost of repetition, I have to point out that the withdrawal of plaintiffs 1 to 3 and 6 has added some more strength to the view taken up. Further, the very evidence taken out from P.W. 2 to the effect that when the 6th plaintiff was functioning, it had a telephone connection in its name would also go a long way in negating the plaintiffs' claim and lending credence to the defense raised. Of course, in the next breath, P.W. 2 has asserted that the 1st defendant had applied for and obtained the said connection. But unfortunately, the plaintiffs have not placed on record any evidence in support of his assertion. His next answer that bank accounts standing in the name of the 6th plaintiff were operated by the 1st defendant would also make it clear that bank accounts were in the name of the 6th plaintiff erasing or eliminating the plaintiffs' claim that the 6th plaintiff became defunct and nonfunctional." In so far as the admissions said to have been made by Defendant No. 11 is concerned, the trial court has rightly concluded thus:

"90. When the plaintiffs are not able to lay on record any evidence worth its name to show that the 11th defendant was appointed as the president of the branch of Bombay society at Bangalore and records of his activities or transactions carried on by him in the said capacity, I do not think the admissions made by him in Ex. P13 to P15 would enure to the benefit of the plaintiffs. Moreover, as already said above, when plaintiffs 1 to 3 and 6 have withdrawn themselves from the suit, besides admitting that the allegations made with regard to the 6th plaintiff are false, Ex. P13 to P15 cannot help the plaintiffs 4

and 5 to any extent. I mean to say with them, they cannot establish the existence of a branch of Bombay society at Bangalore and its functioning. Even otherwise, at the cost of repetition, I should say that the existence of such a branch at Bangalore is not in issue and cannot be gone into, as it falls outside the circumference of the suit." In the light of the above, the application in I.A. No. 1/2013, is concerned, is filed on behalf of plaintiff No. 1, (Respondent No. 17, incorrectly mentioned as Respondent No. 16) as seen from the sequence of events and the conduct and vacillating stand of the applicant, his bona fides are suspect and once having abandoned the proceedings, as having been falsely instituted without being completely aware of the true facts and circumstances, he cannot now be permitted to transpose himself and seek to prosecute this appeal. Hence, the application is rejected.

I.A. 2/2013 is filed seeking to describe appellant No. 2 as under:

"Amendment sought in Cause Title:--

2. International Society for Krishna Consciousness, A Society registered under Societies Registration Act, 1960, formerly having registered office at 39, Crescent Road, Bangalore-560 016. Now Temporarily at C/o. M. Sekaran, 625 Uchamma Temple Street, 2nd Cross, Rs. Pallya, Bangalore - 560 033."

If this amendment is allowed, it would only render the appeal even more confounding. Any amendment of the address of a Society registered under the KSR Act, would require to be preceded by the necessary formalities prescribed under the Act. In the absence of which the same cannot be considered. Further, it is noticed by the amendment it would seem that the Society is not to be represented by any soul. The application is counter productive and is hence rejected.

In so far as Shri M.P. Srikanth seeking to file vakalath for Appellant No. 2 on the instructions of Respondent No. 17, who was plaintiff No. 1, and who had abandoned the suit and sought for its dismissal, cannot be entertained. For the reason that there is no material produced to indicate that the said plaintiff was duly authorized to present the plaint in the first instance. Secondly, having regard to his willful action as aforesaid, a plea of having been misled by defendant No. 11 etc., cannot be accepted on the basis of his affidavit as he has placed no sanctity on the statements made earlier, on oath. There is no guarantee that he would abide by his statements, even if there was any merit in the appeal, his request would have been certainly turned down. He has proved himself to be untrustworthy. The request is rejected.

Since one Shamsundar L. Asrani, said to be a member of the sixth plaintiff society had taken the initiative of filing the appeal and had sought to represent the Society, but had subsequently sought for the dismissal of the appeal, the appeal could have been dismissed on that basis.

However, on a consideration of the appeal on merits, there is no case made out

and hence, the appeal is dismissed.