

Gautam Majumdar and Another, Etc. Vs. Mithua Developments Private Ltd. and Another

Gautam Majumdar and Another, Etc. Vs. Mithua Developments Private Ltd. and Another

SooperKanoon Citation : sooperkanoon.com/857321

Court : Kolkata

Decided On : Jan-04-1996

Reported in : AIR1996Cal391,100CWN1048

Judge : Baboo Lall Jain, J.

Acts : West Bengal Societies Registration Act, 1961 - Sections 19, 24, 25 and 26;; [Societies Registration Act, 1860](#) - Sections 6 and 7;; Societies Registration Rules, 1860 - Rules 17;; [Code of Civil Procedure \(CPC\), 1908](#) - Section 80 - Order 22, Rule 1;; [Companies Act, 1956](#)

Appeal No. : Suit Nos. 10 of 1988 and 1036 of 1989

Appellant : Gautam Majumdar and Another, Etc.

Respondent : Mithua Developments Private Ltd. and Another

Judgement :

1. These are two suits. The first suit is Suit No. 10 of 1988 which has been instituted by Gautam Majumdar and Subhas Chandra Majumdar against (1) Mithua Developments Pvt. Ltd. and (2) Maghan Aboth and Yasheebath Jacob Benjamin Elias, a Society registered under the Societies Registration Act (hereinafter referred to as the said 'Society'). The said suit was filed on 11th January, 1988, inter alia, for the following reliefs:

'(a) A decree for Rs. 2,86,546/- for damages against the defendants Nos. 1 and 2 as pleaded in paragraphs 20, 21 and 23 hereof;

(b) An injunction restraining the defendants and each of them, their respective agents and/or representatives from interfering with and/or interrupting the lawful use, occupation and possession of the plaintiffs in the said premises No. 25, Black Burn Lane, Calcutta, the property in suit, in any manner whatsoever and/or from dispossessing the plaintiffs therefrom;

(c) An injunction restraining the defendants and each one of them, their respective agents and/or representatives from dealing with, alienating or disposing of the said premises in suit.'

2. The case made out in the said Suit No. 10 of 1988 is, inter alia, to the effect that since January, 1981 the plaintiffs have been and are still carrying on a business under the name and style of 'Gautam Majumdar and Associates' and running a factory at No. 25, Blackburn Lane, Calcutta-9. The plaintiff No. 1 is the sole proprietor of the said firm i.e. Gautam Majumdar and Associates and the plaintiff No. 2, the father of the plaintiff No. 1 looks after the said business and has the management and control of the business of the said firm as Constituted Attorney. The said firm has also a godown in its place of business. According to the plaintiff they obtained a tenancy of the said premises in January, 1981 from Mrs. Rosalind Jacob and Miss Lily Tewena who according to the plaintiffs were the occupiers thereof as heirs and successors-in-interest of J. Tewena and M. Tewena, the lawful occupiers of the said premises No. 25, Blackburn Lane, Calcutta since prior to 1938. The further case of the plaintiffs in the said first suit is that Rosalind Jacob and Lily Tewena became the owners of and derived title to the said premises and became owners thereof by adverse possession as a result of the termination of the suit in their favour being suit No. 4359 of 1940 (Eharanessa Bibi v. J. Tewena and M. Tewena) in the Court of the Small Causes, Calcutta. According to the plaintiffs in the said suit the plaintiffs obtained the said tenancy in January, 1981 mainly to repair the building and make it suitable for their business and factory.

3. Thereafter according to the aforesaid plaintiffs on January 27, 1983 the said Mrs. Rosalind Jacob and Miss Lily Tewena by a writing and/or agreement for

lease, demised the said premises and/or expressed their intention to create a lease for 99 years of the said premises in favour of the plaintiffs' said firm. It is also alleged that simultaneously with the said lease and/or agreement the said Rosalind Jacob and Lily Tewena delivered actual physical possession of the said premises to the plaintiffs and/or the said firm. The terms and conditions of the said tenancy and/or lease as alleged to be recorded in the said documents were, inter alia, to the effect that the period of lease would be for 99 years; the entire premises No. 25, Blackburn Lane, Calcutta would be demised; the rent would be Rs. 200/- per month; the said demised premises would be used by the lessee for their workshop (factory); the lessee would repair the said premises and make all additions and alterations of the old and new portions thereon; actual physical possession of the premises was delivered to the lessee. In support of the said contentions the plaintiffs rely on An-nexure-G to the plaint which has also been exhibited in this suit.

4. The said document is an unregistered document purported to be signed by Miss Lily Tewena and Mrs. Rosalind Jacob. The plaintiffs in the first suit has said that pursuant to the terms and conditions of the said lease they made repairs, additions and alterations and it is also alleged that in terms of the said tenancy and/or lease, the plaintiffs paid rents of the said premises No. 25, Blackburn Lane, Calcutta to the said Mrs. Rosalind Jacob and Miss Lily Tewena.

5. The further case of the plaintiff is that on 8th January, 1985 at about 10.35 p.m., the defendant No. 2 aided and abated by the defendant No. 1 trespassed and/or forceably entered into the plaintiffs said workshop and godown at premises No. 25, Black Bum Lane, Calcutta, where various valuable machineries, plant, assets, stock in trade including raw materials worth about -- Rs. 3,50,000/- were kept and ransacked the same, looted various valuable articles, wrongfully and illegally started breaking the roof and other portions of the said premises to demolish the building in order to oust and dispossess the plaintiff from their possession. It has been further alleged that the wrongful and illegal acts of the defendant continued unabated even on 9th January, 1985 during the day. Thereafter there were some criminal proceedings and police action.

6. According to the plaintiffs a civil suit was also instituted by Mithua Development Private Limited on or about January 15, 1985 against the plaintiffs being Title Suit No. 97 of 1985 (Mithua Development Pvt. Ltd. v. Subhas Majumdar and others) inter alia praying for declaration of title to the said premises and for injunction and an ex parte ad interim order of injunction was obtained by the plaintiffs in the said title suit on 16th January, 1985. The matter was heard on contest on 6th June, 1986 and by an order of the said date the application for injunction was rejected inter alia on the ground that the plaintiffs in suit No. 10 of 1988 were in actual physical possession of the said premises and was carrying on business and running a factory therein. According to the plaintiffs the learned Judge by his said judgment and order directed to maintain status quo till the disposal of the suit. The plaintiffs preferred an appeal from the said judgment and order dated 6th June, 1986 which according to the plaintiff was pending till the institution of the suit No. 10 of 1988. -- According to the plaintiffs they suffered substantial damages due to wrongful acts of the defendants and they claimed Rupees 2,86,546/- as damages.

7. On 22nd December, 1989 Maghen Aboth Yashibath Jacob Benjamin Elias and Mithua Development Private Limited instituted the suit being suit No. 1036 of 1989 (hereinafter also referred to as 'the second suit') against the aforesaid (1) Goutam Majumdar, (2) Subhas Chandra Majumdar, (3) Mrs. Rosalind Jacob at that time residing at 36, Aga Mehdi Street, Calcutta-700016 and the Official Trustee of West Bengal.

8. The case of the plaintiffs in the said second suit is inter alia to the effect that plaintiff no. Maghen Aboth Yashibath Jacob Benjamin Ellas is a Society duly registered under the Societies Registration Act, 1960 (hereinafter referred to as 'the said Society'). It has been alleged that Harry Moris is a member of the Governing Body and also the constituted Attorney of the said Society duly appointed by the Governing Body of the said Society and has been empowered and authorised to initiate and defend legal proceedings on behalf of the plaintiff Society. A company known as Mithua Developers Pvt. Ltd. was incorporated under the [Companies Act, 1956](#) and its name was changed to Mithua Development Pvt. Ltd. and a fresh certificate of incorporation has been issued to that effect by the Registrar of Companies.

9. According to the plaintiffs in the said second suit the premises No. 25, Black Burn Lane, Calcutta (hereinafter also referred to as 'the said premises') had been a synagogue of the Jews of Calcutta from end of last Century. In or about 1940 a committee was formed with a view to establishing a trust for the benefit of the members of the Jew Community and the same was to be known as Maghen Aboth Jacob Benjamin Elias. The said committee received donations including the purchase price of the said premises from Benjamin Nissim.

10. The further case of the plaintiff in the said second suit is that at the meeting of the said committee which was held on 5th July, 1942, it was agreed and decided inter alia that the said premises would be purchased and transferred in the name of the Official Trustee of Bengal as Trustee and after carrying out the necessary repair works to the said premises out of the donations received the surplus amount would be invested in Government securities had placed in trust with the Official Trustee of Bengal. Thereafter by a registered Deed of Conveyance dated 17th March, 1943 the said premises was purchased out of the donation received as aforesaid in the name of the Official Trustee of Bengal and the said premises was to be used for the poorer section of Jew Community for offering aids to poor. The said premises was continued to be used as a Synagogue. The said trust in the name of the plaintiff No. 1 was duly registered on 26-1-1948 as a Society under the Societies Registration Act, 1960. Thereafter by a registered Deed of Trust dated 14th September, 1949 executed by the members of the Committee representing the plaintiff Society on the one part and the Official Trustee on the other part and the Executor and the Donor as the confirming parties, it was inter alia agreed that the Official Trustee would hold the said premises upon trust and permit the same to be used and enjoyed by and for any of the objects of the said Society in the name of the plaintiff No. 1. The other terms and conditions of the said Deed of Trust will also appear from the said Registered Deed of Trust, some of the terms whereof are referred to in the plaint.

11. The said premises according to the plaintiff in the said second suit continued to provide at all material times a place of worship and a place for use by poorer section of Jews Community. The Committee of the said Society allowed persons of Jew Community who had no place to reside and/or were destitutes, to live in the

said premises only on leave and license basis. According to the plaintiffs in the said second suit two of such destitutes were Mrs. Lily Twena, since deceased and her adopted daughter Miss. Rosalind Jacob who were allowed to live in the said premises as they had no family to support them.

12. On or about 15th March, 1980 the said Society entered into a development agreement with the plaintiff No. 2 containing various terms and conditions as mentioned in the plaint. In terms of the said Deed of Trust the plaintiff approached the Official Trustee, for his approval and consent but the Official Trustee desired certain modification to the said agreement dated 15th March, 1980. Since the parties could not agree upon the modification, an application was moved on behalf of the plaintiff Society in this Hon'ble Court, for a direction upon the Official Trustee to approve and execute a supplementary agreement modifying the said agreement dated 15th March, 1980. By an order dated 21st December, 1981, this Hon'ble Court was pleased to pass an order directing the Official Trustee to execute a supplementary agreement a copy whereof was kept in the records of the Court. Thereafter pursuant to the order of Court, the Official Trustee executed the said agreement dated 15th March, 1980 as modified by the supplementary agreement dated 23rd February, 1982 and the same was duly registered. Thereafter the Official Trustee through the plaintiff No. 2 (in the second suit) applied to the Calcutta Municipal Corporation, for sanction of a plan.

13. In implementing the said plan, the old building standing on the said premises was to be demolished and a new building was to be constructed thereon. Copies of the agreement dated 23rd February, 1982 to which an agreement dated 15th March, 1980 was the annexure is annexed to the plaint in the second suit and marked with the letter 'B'. The Calcutta Municipal Corporation is said to have accorded sanction to the said plan being sanction No. 24 dated 8th October, 1982. According to the plaintiff in the said second suit the said Society had allowed two women destitutes of Jew Community to reside and occupy a small portion of the said premises i.e. Mrs. Lily Twena and Rosalind Jacob. Since the plaintiff. Society could not find an alternative accommodation for the two destitutes they could not give vacant possession to the plaintiff No. 2. Eventually on or about 8th January, 1985 the said two destitutes women moved out of the said premises and the

plaintiff No. 1 gave possession of the said premises to the plaintiff No. 2 on 8-1-95. Mrs. Lily Twena died in the middle of 1988 leaving and surviving her said adopted daughter Miss. Rosalind Jacob as her only heft.

14. The further case of the plaintiff in the said second suit is that the plaintiff No. 2 duly took possession of the said premises and through its contractor started demolition of the dilapidated building standing in the said premises on 8-1-1985.

15. After the plaintiff No. 2 had caused substantial portion of the old building to be demolished the defendants Nos. 1 and 2 with the help of some other persons obstructed/threatened and created a reign of terror to prevent contractor's men from carrying out any further demolition work in the said building as a result whereof the plaintiff No. 2 through its contractor was compelled to stop the demolition work in the evening of 9-1-1985. The plaintiff No. 2 had also initiated against the defendant No. 1 as pro forma defendant in Title Suit No. 97 of 1985 in the City Civil Court at Calcutta for inter alia restraining the defendants from entering into and/or trespassing in the said premises and causing obstruction, disturbance and/or interference etc. It has been further stated that neither the defendant No. 1 Gautam Majum-dar nor his alleged sole proprietorship concern by the name of Gautam Majumdar and Associates had or has any right or authority from the plaintiff Society to carry on any business at the said premises. They could not have any legal right of any kind whatsoever to come into and remain or continue in possession of any portion of the said premises. The said premises has been used as Jews Synagogue for over 80 years and the said Mrs. Lily Twena and Miss. Rosalind Jacob were permitted as mere licensee to occupy a small portion of the said old building which belonged to the plaintiff No. 1 in the said suit and was held in the name of the Official Trustee. According to the plaintiff in the said second suit after the plaintiff had entered into the said development agreement which had been approved and sanctioned by this Court and the Official Trustee, the plaintiff No. 1 revoked the permission of the said two destitutes to stay in the said premises or any part thereof. The further case of the plaintiff in the said second suit is that the said premises being a place of worship is exempted from payment of any rates and taxes to the Calcutta Municipal Corporation and the Official Trustee has been shown as the owner of the said premises in the record of

the Calcutta Municipal Corporation. According to the plaintiffs in the said second suit the defendant Nos. 1 and 2 and/or 3 were wrongfully and illegally denying and/or are interested to deny the plaintiff No. 2's right to occupy and enjoy the said premises as a monthly tenant under the plaintiff No. 1 and the plaintiff No. 2 is entitled to an appropriate direction in respect thereof.

16. The further case of the plaintiffs in the said second suit is that the defendants Nos. 1, 2 and 3 had no right to occupy or enter upon or use any portion of the said premises. According to the plaintiff in the said second suit the defendants Nos. 1 and 2 are wrongfully and illegally occupying and using the said premises without any authority from the plaintiff or either or them and they are liable to be evicted therefrom. The said defendants according to the plaintiffs in the second suit are occupying the said premises as trespasser and the plaintiffs are entitled to recover possession thereof from the defendants. The plaintiffs in the said second suit have also claimed against the defendants Nos. 1 and 2 mesne profits and/or occupation charges for wrongful and illegal occupation @ Rs. 300/-per diem from the defendants Nos. 1 and 2 until the said defendants hand over vacant and peaceful possession of the said premises to the plaintiffs.

17. The plaintiffs in the said second suit have inter alia prayed the following reliefs:--

'(a) a decree for Rs. 2,86,546/- for damages against the defendants Nos. 1 and 2 as pleaded in paragraphs 20, 21 and 23 hereof;

(b) an injunction restraining the defendants and each of them, their respective agents and/or representatives from interfering with and/or interrupting the lawful use, occupation and possession of the plaintiffs in the said premises No. 25, Black Burn Lane, Calcutta, the property in suit, in any manner whatsoever and/or from dispossessing the plaintiffs therefrom;

(c) an injunction restraining the defendants and each of them, their respective agents and/or representatives from dealing with, alienating or disposing of the said premises in suit:

(d) Receiver;

(e) Costs;

(f) Injunction;

(g) Further or other reliefs.'

18. By an order dated 15th December, 1992 by consent of the parties the two suits being suit No. 1036 of 1989 and the suit No. 10 of 1988 were consolidated and it was directed that the same will be heard together and the evidence will be adduced first by the plaintiff in suit No. 1036 of 1989. On 15th December, 1992 the following issues were framed in suit No. 1036 of 1989:--

ISSUES (framed on 15-12-92)

1. Have the plaintiffs any legal right to maintain the action?

2. Did the defendant No. 4 and the plaintiff No. 1 become the owners of the suit property by virtue of the conveyance dated 17-3-42. If so what are the mutual rights as between the plaintiff No. 1 and the defendant No. 4?

3. Was the premises in question, over used as Synagogue?

4. Were Miss. Lily Twena and the defendant No. 3 the Licencees of the plaintiff No. 1 as alleged by the plaintiffs?

5. Did Mrs. Rosalind Jacob and Miss Lilly Twena become the owners of the said premises by adverse possession?

6. Did the defendant No. 1 become a tenant and/or lessee of the premises in question? If so, when and how? Is the alleged tenancy binding on the plaintiffs and the defendant No. 4?

7. Are the defendants Nos. 1 and 2 in possession and occupation of the suit premises since January, 1981? If so is their possession lawful?

8. Are the plaintiffs or any of them entitled to mesne profit @ Rs. 300/- per diem?

9. To what relief if any, are the plaintiffs entitled?

19. During the course of hearing of the suit on April 1, 1993, the following issues were framed in suit No. 10 of 1988:--

ISSUES (dated 1-4-93)

1. Did the defendants damage or caused damages to be made to the premises in question as alleged in paragraph 20 of the plaint?

2. Are the plaintiffs entitled to claim damages or compensation from the defendants? If so, to what extent?

20. After 14th January, 1994 when the evidence on behalf of both the parties was over the plaintiffs in the suit No. 10 of 1988 made an application inter alia for framing of further issues. On 29th July, 1994, further issues were framed as prayed for on behalf of the plaintiffs in suit No. 10 of 1988. Further issues framed on 29th July, 1994, are as hereunder:--

ISSUES : (Issues dated 29th July, 1994)

1. Whether S. Tweena the father of Lily Tweena was the owner of the suit premises since 1913?

2. Whether the disputed premises was and still used continuously without break as a Synagogue? If not, when did it cease to be used as a Synagogue?

3. Whether Miss Tweena and Mrs. Jacob acquired indefeasible right, title and interest in the said property?

4. Whether the plaintiff No. 1 in suit No. 1036 of 1989 was and is a duly registered society? If so, whether it is still lawfully functioning and is still in existence?

5. Whether the disputed premises is an absolute Charitable and Religious Trust Property? If so, whether the plaintiff No. 1 in suit No. 1036 of 1989 was and is the beneficial or absolute owner of the suit property?

6. Are the plaintiffs Nos. 1 and 2 in suit No. 1036 in uninterrupted, continuous and equitable khas and legal possession of the suit premises to the knowledge of the lawful owner? If so, since when?

7. Whether the plaintiffs Nos. 1 and 2 in Suit No. 10 of 1988 and defendants Nos. 1 and 2 in Suit No. 1036 of 1989 were in khas possession and occupation of the entire suit premises on 8th January, 1985?

8. Whether plaintiff No. 2 in Suit No. 1036 of 1989 and Mithua Provisions Private Ltd. are one and the same Company? If so, whether such company can pursue and undertake the work of contractor and promoter?

9. Whether the agreements dated 15-3-1980 dated 23-2-1982 and legal, equitable, valid and binding upon the defendants Nos. 1 and 2 in suit No. 1036 of 1989?

10. Did Miss Lily Tweena and Mrs. Rosalind Jacob agree to grant perpetual lease for 99 years in favour of defendant No. 1 in suit No. 1036 of 1989? If so, whether defendants Nos. 1 and 2 are protected by the principles of part performance of contract?

11. Whether plaintiffs Nos. 1 and 2 in suit No. 10 of 1988 suffered damage and loss as alleged for the illegal demolition of the suit premises by the defendants, in suit No. 10 of 1988? If so, the amount of such damage and loss?

12. Are the plaintiffs in suit No. 10 of 1988 entitled to a decree for damages of Rupees 2,85,546/- as prayed?

21. The plaintiffs in the second suit called three witnesses i.e., Mr. Harry Moris, Mr. Chandra Prosad Kakrania and one Alope Newatia. The oral evidence on behalf of the plaintiffs in the second suit came to an end on 29th April, 1993 and the evidence on behalf of the defendants Nos. 1 and 2 in the second suit who were the plaintiffs in the first suit commenced on 7th December, 1993. The said defendants Nos. 1 and 2 in the second suit called as witnesses Mr. Suhash Chandra Majumdar, one Mr. Gaulam Gupta, Mr. Uma Shankar .Ghosh, Mr. Kedar Nath Dey, Mr. Jagadish Bose, Mr. Sudhir Chandra Pal, Mr. Loke Nath Kumar. The said Suhash Chandra Majumdar was recalled to give evidence in view of the

further issues framed on 29th July, 1994 and his evidence came to close on 5th June, 1995. The parties also tendered a large number of documents in evidence.

22. I shall now consider the documentary evidence tendered on behalf of the plaintiffs in the second suit Ext. 'A' is the certified copy of the deed of conveyance dated 17th March, 1993 executed by Mussamat Eranessa Bibi and others as vendors and Silas Joseph Nawe as the Official Trustee of Bengal as the purchasers.

23. From the said Deed of Conveyance it appears that the said Sailesh Joseph Nawe who was the Hony. Secretary of the said Maghan Aboth Fund nominated the Official Trustee of West Bengal as his nominee for the purchase of the said property and the same was conveyed to the said Official Trustee of West Bengal as Trustee of the said Maghan Aboth Fund his successor or successors.

24. Ext. B is the judgment of Justice G. K. Mitter dated May 1, 1953 passed in suit No. 3539 of 1951 (the Official Trustee of West Bengal and other v. J. Tewena and other). The said suit was instituted by (1) Official Trustee of West Bengal, (2) Mr. Ezra Meyer Missing Mushel, the Hony. Secretary of the Maghan Aboth and Yesheebath Jacob Bengamin Elias, a Society registered under the Societies Registration Act, 1960; (3) Ezekael Follow man and Abraham Ezekail for themselves and on behalf of the congregation of the prayer house or synagogue located at 25, Black Burn Lane, Calcutta. In the said suit it was, inter alia; alleged in the plaint that the said institution terminated the services of the defendant Jacob Tewena on 30th May, 1951 and called upon him to quit and vacate the portion of the premises in his occupation on the expiry of June, 1951. The plaintiffs further charged that the defendant No. 1 and Jacob Tewena was interfering with the daily prayer and performance of the religious rites by the duly appointed senior ministers; that the said defendant refused to make over the articles scheduled to the plaint to the said ministers and that the defendants Nos. 2 and 3 were assisting and encouraging the defendant No. 1 in his wrongful acts and causing annoyance to the members of the congregation. It was also alleged that the defendants had gone to the length of denying the title of the plaintiffs Nos. 1 and 2 to the said premises and to the property belonging to the institution in consequence whereof

the suit to be filed for the relief already mentioned. Immediately after the institution of the suit the defendant Jacob Tewena was restrained from interfering with the management and affairs of the institution. The defendant filed their written statement in the said suit, inter alia, denying the formation of the Society and alleged that the Society had acquired no legal right to own or to participate in the affairs of Maghan Aboth Synagogue or to manage the affairs thereof. They also alleged that after the properties were purchased out of the contribution from the members of Maghan Aboth fund certain rich and influential members of the Jews community hit upon a devise to swallow the said premises and prayer house by artful device of the Deed of Trust; that the defendant Jacob Tewena denied that he was appointed a warden of the institution by the Committee thereof; that from and after the death of Joseph Tewena the defendant Jacob Tewena had become the Chief Minister and had performed and discharged his duties as such minister regularly until he was restrained by an order of injunction of this Court on 23rd August, 1951; that the defendant Jacob Tewena denied ever having paid any rent to the institution. According to the said Jacob Tewena Amaz Abraham was wrongfully attempted to conduct worship in the house of prayer with the help of one E. Mushleh and in order to prevent the interference with the worship conducted by Jacob Tewena the defendants were obliged to apply to the Chief Presidency Magistrate for protection that the defendant Jacob Tewena was the only person who was entitled to carry on the worship at the said prayer house. In the said suit the following issues were framed :

- '1. Is the Official Trustee of West Bengal entitled to hold the property 25, Blackburn Lane as trustee of the Society known as Maghen Aboth Yasheebath Jacob Benjamin Elias?
2. Has the Society known as 'Maghen Aboth and Yasheebath Jacob Benjamin Elias' any right to perform the daily prayers and worship in premises No. 25, Blackburn Lane?
3. Are the plaintiffs entitled to delivery up by the defendant No. 1 of the articles mentioned in the schedule to the plaint?
4. Are the plaintiffs entitled to an injunction in terms of prayer (c) of the plaint?

5. To what reliefs, if any, are the plaintiffs entitled?'

25. The witness examined on behalf of the defendants were Jacob Tewena, his sister Lily Tewena and one employee of the Calcutta Electric Supply Corporation. Jacob Tewena, inter alia, stated in his evidence that he worked as Padri in Maghan Aboth; Maghan Aboth Synagogue was founded by his father Hakam Sholoman who used to conduct the prayer during his lifetime and after his death his brother Rosalind Tewena used to conduct religious performances.

26. After his death his brother Joseph Tewena used to conduct the religious services. After the ejectment suit was filed in 1940 his brother Joseph Tewena collected subscription for Maghen Aboth along with one Mordecai and the witness Silas Joseph Nawe. The property was purchased in the name of Maghen Aboth and not in the name of the Official Trustee. Even after the purchase of the property in 1943 and up to 1945 he himself used to conduct the services on all days including the sabbath day. He admitted having signed a large number of receipts for receiving of his remuneration. He also admitted that the Society was making payment of the electric bills but the payment was made from amount collected for Maghen Aboth. He also said that the object of receiving funds was that the Synagogue would be continued and the members of Tewena family would be allowed to live in the said premises. He also stated that the money which was collected by his brother were handed over to the Official Trustee and the Official Trustee was a trustee in respect of the funds but not of the prayer house. So far as the evidence of Jacob and Lily Tewena was concerned the Court held that both these witnesses are wholly unreliable and the greater part of their evidence is such that it could not be accepted without corroboration. The evidence on behalf of the plaintiff given by Nawe was considered by the Court to be very fair. The evidence of J. N. Bose, an employee of Calcutta Electric Supply Corporation Ltd. also shows that a letter addressed to the Secretary of Maghen Aboth Synagogue, 25, Black Burn Lane, Calcutta dated 21st July, 1920 and signed by one E S. Siman, Deputy Agent of Calcutta Electric Supply Corporation at that time. This document apparently proved that Maghen Aboth Synagogue had been in existence since a long time prior to 1941 or to the date of the registration of the Society which claimed to have the right to manage the affairs of the Synagogue at 25, Black Burn

Lane.

27. By the said judgment and decreedated 1st May, 1953 this Court held that Jacob worked as padri in Maghen Aboth, that Maghen Aboth Synagogue was founded by his father who used to conduct his prayer during the life time and that after his death his brother Joseph used to conduct religious services. The Court granted an injunction in terms of prayer (c) of the plaint i.e. injunction restraining the defendants, their servants and agents from interfering with or obstructing in any manner the committee of the said Society or its authorised employees in the management of the affairs of the house of prayer located in the said premises. A declaration was also made by the Court that the Official Trustee of the West Bengal is the owner of the premises No. 25, Black Burn Lane as trustee on behalf of the Society or its institution known as Maghen Aboth Yasheebath Jacob Benjamin Elias. Declaration was also made in terms of prayer (b) that the Society was entitled to carry on and perform or cause to be performed daily prayer and worship and religious rites and services mentioned in the plaint.

28. From the said judgment in Suit No. 3659 of 1951 dated 6th June, 1953 an appeal was preferred being Appeal No. 130/53 (Jacob Tewena and others v. Official Trustee of West Bengal and others). The said appeal was decided by the judgment dated 24-1-1957 of the Division Bench consisting of Justice S. R. Dasgupta and Justice Bachawat. It appears from the said judgment of the Appeal Court which is Exbt. C in the suit that the suit was against Jacob Tewena, Rosalind Tewena and Lily Tewena. The said Rosalind and Lily Tewena were the sisters of Joseph Tewena and were co-operating with the defendant No. 1 that is Joseph Tewena in wrongful acts and causing annoyance to the members of the Community. The defendants had filed a joint written statement. Some of the contents of the said written statement have already been referred to above. The principal point argued before the Appeal Court was that a trust had been declared by the conveyance dated 17th March, 1943 and the Trust declared by that conveyance would not be in any way altered or derogated from the subsequent or consequent deed of trust dated 14th September, 1949 which was according to the appellant including the Lily Tewena was totally void and inoperative inasmuch as it purported to create a new trust in derogation of the trust already declared by the

Deed of Conveyance dated 17th March, 1953.

29. The Appeal Court held that the Appeal Court was unable to accept the said argument. None of the parties to the Deed claimed to be the Settlor nor had claimed to settle any funds or any property in a certain trust. The Appeal Court agreed with the findings of the learned trial Judge that the conveyance dated 17th March, 1943 did not create any trust. The Appeal Court considered that the appellant had no case if it was held that the conveyance dated 17th March, 1943 did not create a trust. With regard to the findings aforesaid the appeal was dismissed with costs.

30. This is to be noted that the trial Court had held that the Official Trustee was only a custodian trustee and had nothing to do with the performance of the religious rites. The trusts are really declared by the 1949 document after the registration of the Society. The Appeal Court further held that the mere fact that the Societies Registration Act enables the Society to change its objects, affects the question at all. According to the Appeal Court ever since the Society came into picture it exercised its rights in a legitimate and constitutional fashion and the rights of the Society were acknowledged by the defendants. The Society appointed ministers and paid them. It took moneys from the Koopa. It paid electric bills and accounts of sales, privileges were rendered to it.

31. It is to be noted that the said suit was filed by the Official Trustee as also the said Society and Jacob Tewena, Lily Tewena and Rosalind were the defendants in the said suit. The findings in the said suit and the decree and order passed in the said suit and the appeal were and continued to be binding on the defendants including Lily Tewena.

32. Exbt. D is the agreement dated 15th March, 1980 between the said Society and the plaintiff No. 2. Exbt. E is the order dated 19th June, 1981 passed by Justice S. C. Deb whereby the Official Trustee of West Bengal was directed to accord its approval to the agreement dated 15th March, 1980 between the said Committee and the plaintiff No. 2 in the said suit. Exbt. F is the agreement dated 23rd February, 1982 between the said Society M/s. Mithua Provisions Pvt. Ltd. now known as Mithua Development Pvt. Ltd. and the Official Trustee of West

Bengal. The said agreement was executed pursuant to the order dated 19th June, 1980. Exbt. H is the letter dated 7-1-85 signed by Mrs. Rosalind Jacob, the defendant No. 3 in the said suit whereby she confirmed that she had vacated a portion occupied by her in the said premises No. 25, Black Burn Lane. She also wrote that some house-hold articles and other goods are still lying in the premises which she confirmed that she will remove the same within a fortnight. Exbt. I is the letter dated 7-1-1985 written by Miss Lily Tewena confirming that she had vacated the portion occupied by her in the said premises and she also confirmed that some house-hold articles and other goods were still lying in the premises which she confirmed that she will remove the same within a fortnight. The said two letters are written and addressed to the said Society. Exbt. J is the declaration made by Rosalind Jacob, the defendant No. 3 in the said suit dated 7-1-85 whereby she declared that she along with Miss Lily Tewena are Jews destitutes without any family or support and as such they had been permitted by the Committee of the Society to reside in the Synagogue at 25, Black Burn Lane, Calcutta. She also declared that Sri Subhas Majumdar had approached some time ago and has asked them to store a glass merchant of M/s. Goutam Majumdar and Associates/some of his goods in the said premises which we had done. He had also paid us some moneys and made us sign some papers. We have not been informed about the contents of the facts nor copies thereof were given to them. It was also declared that Miss Lily Tewena, over 80 years of age, is very ill for some time. The said Subhas Majumdar was consistently threatening them to give them possession of part of the said premises. The said premises is very old and may fall down at any time. As such they had been requesting the Committee to relocate them and also to make arrangement for treatment of the said Miss Lily Tewena. They also confirmed that Rosalind Jacob and Miss. Lily Tewena had only been permitted to reside in a portion of the said Synagogue at No. 25 Black Burn Lane and they had never nor had any tenancy or other right thereon in any manner whatsoever.

33. She also confirmed that the said Subhas Majumdar or any person whatsoever was ever in possession of the said premises or any part thereof other than the said committee of the Synagogue. Ex. L is a letter written by the said society to Mithua Developments Pvt. Ltd. that Miss. Lily Tewena with Miss. Rosalind Jacob have vacated the said premises and that vacant possession thereof has been delivered

to Mithua Development Pvt. Ltd. They were requested to start immediate demolition and reconstruction, they were also requested to take necessary proceedings for guarding the premises against encroachment and trespass. Exhibit M is a certified copy of the Deed of Trust dated 14th September, 1949. Exhibit N is the power of attorney granted by the Chairman of the Committee as also the honarary Secretary of the said society in favour of Harry Moriss. Exhibit P is the xerox copy of the Memorandum of Association and the Rules and Regulations of the said society. Exhibit O is the xerox copy of the certificate of registration of the said society which is dated 26th January, 1948. Exhibit P is the printed copy of the Memorandum of Association and Rules and Regulations of the said society. Exhibit Q is a certified copy of the municipal assessment book of the Calcutta Municipal Corporation, Assessment Department which, inter alia, shows the official trustee of West Bengal as the owner and the person liable to pay consolidated rate, the date of alteration as shown in the said certified copy in 27th May, 1983 and the date of effect of alteration is dated 1st April, 1981. The subsequent alterations as shown in the said certified copy shows that the said property was exempted from payment of Municipal rates and taxes with effect from 1-4-1981. Exhibit R is a xerox copy of the fresh certificate of incorporation consequent on change of name of Mithua Provisions Pvt. Ltd. to Mithua Developments Pvt. Ltd. The said certificate is dated 29th January, 1983.

34. I shall now deal with the documentary evidence tendered on behalf of the defendants Nos. 1 and 2 in the second suit (who are also plaintiffs in the said first suit) that is defendants Nos. 1 and 2 in the second suit i.e. Gautam Majumdar and Subhas Chandra Majumdar. Exhibit 1 consists of the certified copies of the proceedings in matter No. 868 of 1981 (Aron Arachy and others v. The Official Trustee of West Bengal and others). Exhibit 2 is the certificate of death of Miss. Mouzel Tewena which shows that the said Mouzel Twena died on 19th December, 1975. Exhibit 3 consists of certified copies of the order No. 59 passed by City Civil Court at Calcutta in Title Suit No. 97 of 1985 (Mithua Development Pvt. Ltd. v. Subhas Majumdar and others). The said order is dated 5th June, 1986, By the said order the City Civil Court rejected the petition of the plaintiff Mithua Development Pvt. Ltd. for interim injunction, however, the Court directed the parties to maintain status quo till the maintenance of the suit. Exhibit 5 is a letter

dated 2nd December, 1982 written by M/s. Jalan and Co. on behalf of the Harry Moriss of Maghen Abott Synagogue of 25 Black Burn Lane, Calcutta-12, that is a notice of filing a caveat in the High Court at Calcutta. That letter is addressed to M/s. Rosalind Jacob, Miss. Lily Twena, Messrs. Gautam Majumdar and Associates addressed at 25 Black Burn Lane, Calcutta. That letter shows that M/s. Gautam Majumdar and Associates were present at 25, Black Burn Lane, Calcutta as per the writer of the letter. Exhibit-M 1 is a copy of the letter dated 6th December 1982 addressed by the Advocate for Miss. Rosalina Jacob, Miss. Lilly Twena and M/s. Gautam Majumdar & Associates. By the said letter the receipt of caveat was acknowledged by them. It was alleged that the apprehensions of Mr. Harry Moriss had no basis whatsoever. It was also stated in the said letter by the learned Advocate that his clients Miss. Rosalina Jacob and Miss. Lilly Twena are there in the entire premises for decades. There is another copy letter dated 15th December 1982 written on behalf of Miss. Lilly Twena and Miss. Rosalina Jacob both of Number 25 Black Burn Lane, Calcutta, inter alia, asking M/s. Jalan & Co., Advocates for Harry Moriss to serve the writ of summons on the said Advocate for Miss. Lilly Twena and Miss. Rosalina Jacob, since his clients understood that this suit had been filed by Harry Moriss against the said Lilly Twena and the Rosalina Jacob. The said two copy letters 'dated 6th December, 1982 were marked for identification on 21st December, 1992.

35. Ext. 7 is the Memorandum and Articles of Association of Mithua Developments Pvt. Ltd. Ext. 8 is a copy of the Memorandum and Articles of Association of Mithua Provisions Pvt. Ltd. Ext. 9 is the affidavit of document affirmed by Harry Moriss, on 18th day of March, 1991. Ext. 10 is a xerox copy of Certificate of Enlistment dated 28th November, 1992 issued by the Municipal Commissioner for the year 1992-93 to M/s. Gautam Majumdar & Associates in which the address, 25 Black Burn Lane, is mentioned. Ext. 10 series consists of various licenses issued by the Licensing Officer of the Corporation of Calcutta, the earliest of which is dated 6-1-83 (Ext. 10L) which is for the year 1982-83. Ext. 10a is the document issued by the District Health Officer dated 16-12-83 to Gautam Majumdar in which the address 25, Black Burn Lane is mentioned, Ext. 11 is a xerox Copy of the certificate for permanent registration as a small scale industrial unit in favour of Gautam Majumdar & Associates giving factory location at 25, Black Burn Lane, Calcutta-

73. This is dated 12-1-84. Ext. 12 series consists of several bills and notice regarding telephone in the name of Gautam Majumdar & Associates, the earliest of which is dated 2nd December, 1991.

36. Exhibit 10 consists of various bills, and documents relating to the electrical connection in the name of Gautam Majumdar and Associates at 25, Black Burn Lane, Calcutta. Such bills seem to be dated 7-1-1984 for the sum of Rs. 8/ -. One bill is for the month of August '92 for the sum of Rs. 340/ -. Ext. 11 is a xerox copy of a certificate of S.S. Unit dated 16-1-84. Ext. 12 consists of 8 telephone bills and a statement of outstanding dues.

37. Exhibit 14 consists of duplicate chakans for payment of West Bengal Tax on Professional Trades and Employment, for the period from April '88 to March '93.

38. Exhibit 15 is another municipal license dated 28-11-1992 for the year 1992-93.

39. Exhibit 16 is a plan of proposed building at 25, Black Burn Lane, sanctioned by Calcutta Municipal Corporation on 26-8-1913. It appears that the said plan has got a writing and/or signature 'S. Twena', on it.

40. Exhibit 17 is a notice dated 3-10-1964 issued by Calcutta Municipal Corporation regarding 25, Black Burn Lane for the quarter of 62-63 reducing valuation. This letter is addressed to Miss Lilly Twena.

41. Exhibit 18 is a notice dated 7-1-1983 issued by Calcutta Municipal Corporation to the owner of premises 25, Black Burn Lane, asking for repairs. It consists of another notice No. 5646 issued to the owner at 25, Black Burn Lane, Calcutta to secure and repair the building.

42. Exhibit 19 is a notice dated 29-1-1983 whereby the Calcutta Municipal Corporation gives license for obstruction and encroachment etc. to Miss Lily Twena of 25, Black Burn Lane, Calcutta, from 29-1-83 to 28-2-83.

43. Exhibit 20 is a certified copy issued by Calcutta Municipal Corporation in respect of 25, Black Burn Lane, Calcutta for the year 1911-12. In the said certified copy FatehManesa Bibi has been shown as the owner and Saloma Twena has

been shown as the occupier and the premises is described as dwelling house.

44. Exhibit 21 is a letter signed by Miss Lily Twena and Mrs. Rosalind Jacob dated 27-1-83. The said letter was tendered subject to objection and is inter alia to the following effect :

'As per discussion with you we, Rosalina Jacob and my mother Miss Lily Twena, have decided today and hereby handing over the entire premises No. 25, Black Burn Lane, Calcutta-12 for repairing and constructing all additions, alternations old and new portions required for your workshop or let out by you, and we agree the tenancy leased, out for 99 years at the same rate that is Rs. 200/- per month.'

45. This letter is addressed to Goutam Majumdar and Associates. This of course is not a registered document.

46. Exhibit 22 is a death certificate showing that Miss Lily Twena of 36/B, Aga Mehda, Calcutta-16 died in Calcutta on 31 -3-1987.

47. Exhibit 23 consists of various receipts granted by Mrs. Rosalina Jacob and Miss Lily Twena. Some of the receipts are signed by Mrs. Rosalina Jacob. Such receipts appear to be for the month of January '87, onwards.

48. It reads as follows : 'dated November 1983 received from Gautam Majumdar and Associates a sum of Rs. 200/- being the amount due for the rent of the premises 25, Black Burn Lane, Calcutta-9 for the month of January, 1982.

Sd/- Mrs. Rosalina Jacob

Sd/- Miss Lily Twena.'

49. Ext. 24 is the copy of the letter, addressed by Subhas Chandra Majumdar dated 9-1-85 to the Hon'ble Chief Minister, West Bengal, inter alia, alleging that the roof of the house has been demolished to a considerable extent and the work of demolition are still going on. Ext. 25 is the copy of the Seizure List dated 12-1-85. This Seizure List which has been prepared on production of the rent receipts, municipal licenses, two bills of Miss Lily Twena, one electric bill in the name of Gautam Majumdar and Associates. Ext. 26 is a letter written by Subhas Chandra

Majumdar to the Officer in Charge, Bowbazar Police Station praying that the papers and documents which were seized by the Officer in connection with Sec. H Case No. 15 dated 10-1-85 on 12-1-85 be returned to him against the bond as documents were required for other purposes. This document apparently refers to the Seizure List being Ext. 25 dated 12-1-85. Ext. 27 consists of some of the photographs dated 12-1-85 showing the condition of the portion of the premises 25 Black Burn Lane after the demolition on or after 7th of January, 1985. Ext. 29 shows receipt of 10 bags of cement on 26-1-83 by Gautam Majumdar and Associates from Kamala Stores valued for Rs. 596.50 Ps. Ext. 30 consists of certain documents showing receipt, despatch of goods and/or carrying of work by Gautam Majumdar and Associates in respect of glass from June, 1984 onwards. It consists of series of documents, earliest of which are dated 12-8-82 in 19-7-83 and 31-8-83. This set of documents relate to business of Gautam Majumdar and Associates with the address 2A Akhil Mistri Lane, Calcutta-9. Ext. 31 consists of xerox copies of money orders sent by Gautam Majumdar and Associates to Mrs. Rosalina Jacob. By the said money orders Gautam Majumdar and Associates sent money as rent to Rosalina Jacob in respect of premises 25, Black Burn Lane, Calcutta-12 for the month of October, 1982. Other money orders are for remittance of rent for January, 1993 and February, 1993. Ext. 32 consists of two money order receipts signed by Mrs. Rosalina Jacob dated 28-12-1990. Ext. 33 purports to be a Will of Miss Lily Twena which was tendered subject to objection. The said Will has not been probated. The said Will is dated 9-8-1982 whereby she appointed Mrs. Rosalina Jacob as the sole executrix to the said Will. By the said Will the said Lily Twena purports to give and bequeath all her assets to the said Mrs. Rosalina Jacob absolutely. She also gave all her money including hundi money, cash certificates, deposit of shares which she left at her death to the said Mrs. Rosalina Jacob absolutely. She also purported to give to the said Mrs. Rosalind Jacob whatever immovable property she may have or possess on or before her death. The said Will does not purport to be a registered Will nor has it been probated and as such is inadmissible in evidence.

50. Ext. 34 is a certified copy of an order made by this Court in Matter No. 858 of 1981 of 22-6-1981. Ext. 35 is a copy letter dated 1st January, 1992 written by Gautam Majumdar and Associates to the Registrar of Firms and Societies. Exts.

36 and 37 is a letter issued by the Additional Registrar of Firms and Societies and Non-Trading Corporation, West Bengal dated 2nd February, 1993 stating that the page of Index Register shows that the society was registered on 26-1-1948 'under Registration No. 16260 while volume of register and folio are 14 and 25. Ext. 38 is a letter written by National Insurance Co. Ltd. to Officer-in-Charge, Bowbazar Police Station with regard to a burglary at 25, Black Burn Lane, Calcutta in February, 1987. Ext. 39 is a receipt dated 2nd December, 1982 issued by National Insurance Co. Ltd. in favour of Gautam Majumdar and Associates for Rs. 1,140/- for miscellaneous department policy. Exts. 40, 41 and 42 relate to the claim made by Gautam Majumdar for the burglary in 1987 and the payment of compensation amounting to Rs.95,325/-. Ext. 43 is a letter dated 18th of July, 1984 written by the Government of India, Small Industries Services Institute, Office of the Director regarding the application for registration of Gautam Majumdar as Small Scale Industries Unit. Ext. 50 consists of a series of documents which are dated between December, 1981 to February, 1982. These documents are in the nature of challans and/or vouchers and/or document " for purchase of goods or for payment of labour wages. Ext. 52 is a certified copy issued by the Court of Small Causes of Calcutta in connection with the Suit No. 4359 of 1940 which was an ejectment suit between Esharnnasa Bibi v. J. Tweena. This shows that the case was withdrawn and the application was by the parties that they had settled their dispute. Exts. 67 and 68 consists of some electric bills for the period 1993-94.

51. I shall now deal with the various issues that have been raised in these two suits. I shall first deal with the further issues that have been raised in Suit No. 10 of 1988.

Issues Nos. 1 and 3.

52. These issues are whether S. Tweena, the father of Lily Tweena was the owner of the suit premises since 1913 and whether Miss. Tweena and Mrs. Jacob acquired indefeasible right, title and interest in the said property.

53. The said Issues Nos. 1 and 3 were raised on 23rd July, 1994 as further issues Issue No. 5 as framed on 15-12-1992 is also taken along with those issues. Issue No. 5 :

'Did Mrs. Rosalina Jacob and Miss Lily Twena become owners of the said premises by adverse possession?'

54. It is to be noted that the said property was conveyed by a Deed of Conveyance dated 17th of March, 1943 in favour of the Official Trustee as Trustee for the Meghen Aboth and Yasheebath Jacob Benjamin Elias Fund. Such property had since been recorded in the records of the Corporation of Calcutta in favour of the Official Trustee. The heirs and legal representatives of S. Twena were parties in Suit No. 3539 of 1951 which was filed in this Court and was disposed of by judgment and decree dated May 1, 1953. By the said judgment and decree this Court granted a declaration in terms of prayers (a) and (b) and injunction in terms of prayer (c) of the plaint as against the parties to the suit' which consisted of Jacob Tweena, Lily Tweena, and Joseph Tweena. The said suit was contested and the Court by its said judgment granted a declaration that the Official Trustee of West Bengal is the owner of the premises 25, Black Burn Lane, Calcutta, as Trustee on behalf of the society or institution known as Meghen Aboth and Yasheebath Jacob Benjamin Elias and also to the effect that the said society is entitled to carry on and perform or cause to be performed daily prayer and worship of religious rites and services mentioned in the plaint. The Court also granted an injunction in terms of prayer (c) restraining the defendants their servants and agents from interfering with or obstructing in any manner the committee of said society or its authorised employees, in the management of the house of prayer located in the said premises i.e. 25, Black Burn Lane. On appeal the Appeal Court held the said property was held on trust by the Official Trustee in terms of Deed of Trust dated 14th of September, 1949. It was also held that the Official Trustee of the West Bengal in whose name the property stood could hold the premises No. 25, Black Burn Lane, Calcutta upon the trust to permit the same to be used and enjoyed by and for any of the objects of the said society known as Meghen Aboth and Yasheebath Jacob Benjamin Elias. As per observations made by the Appeal Court it was the case of the plaintiffs that the Committee or Institution appointed the defendant No. 1 J. Tweena as the Warden of the Institution on certain remuneration and that such J. Tweena was allowed to stay in a portion of the premises. According to the Appeal Court judgment the worship in the house and the affairs thereof was conducted by a duly appointed senior minister. The said

judgment of the Trial Court and as also of the Appeal Court which upheld and confirmed the decree passed by Trial Court, were binding on the parties to the said suit including Miss Lily Tweena, and there was an injunction against the said parties including Lily Tweena, their servants and agents from interfering with and/or obstructing in any manner the Committee or the said Society or their authorised employee in the management and affairs of the house of prayer created in the said premises. Rosalina Jacob's claim, if any, comes from Miss Lily Tweena and not otherwise. Rosalina Jacob claims himself to be the adopted daughter of Lily Twena. Lily Twena has also referred to in the Will executed by her that Rosalina Jacob has lived with her Since her birth and that she has developed a motherly affection for her. In any event Rosalina Jacob came into the said premises at the instance of Lily Jacob who brought him there and she is nothing but an agent of Lily Twena. As per the said judgment the said Lily Twena and her brothers and sisters only occupied a portion of the said premises and the said premises No. 25, Black Burn Lane was used as a Synagogue when the judgment was delivered and after the conveyance it was the said society who was entitled to control and manage the Synagogue or the prayer house. Miss Lily Twena land Mrs. Rosalina Jacob have not filed any written statement nor they have defended the suit being Suit No. 1036 of 1989, instituted by the ' said society. S. Twena, father of Lily Twena during his lifetime or since prior to the conveyance never claimed any right or ownership over the said premises. He never held any title deed in respect of the said premises and the suit was pending for eviction of his heirs and legal representatives instituted by the then landlords, and owners of the said premises as tenants prior to 1943, when the conveyance was executed. Though the pre-mises was used as a prayer house by S.. Tweena, it was merely held by him under tenancy. Neither Miss Lily Tweena nor Mrs. Rosalina Jacob, have come before this Court and asserted any right on the basis of alleged adverse possession. As a matter of fact, in view of the judgment in the previous litigation to which they were parties and in view of the injunction orders passed against Miss Lily Tweena neither Miss Lily Tweena nor Rosalina Jacob were entitled to claim any rights, of ownership, by any adverse possession against the said property. Such an act would have been in violation of the order of injunction passed by the Court which was in the nature of a permanent injunction. The

Issues Nos. 1 and 3 dated 29th July, 1994 are answered in the negative. Issue No. 5 dated 15-12-1992 is also answered in the negative.

55. I shall now take up the Issue No. 1 dated 15-12-92 which is to the effect as to whether the plaintiffs have any legal right to maintain the action. The plaintiff No. 1 Maghen Aboth and Yasheebath Jacob Benjamin Elias is a Society registered under the [Societies Registration Act, 1860](#). The certificate of registration of the plaintiff No. 1 is tendered and marked as Ext. O. The Memorandum of Association and Rules and Regulations of the plaintiff No. 1 is Ext. P. It was held by a Division Bench of this Court in the decision reported in : AIR1959 Cal361 (Nabadwip Bhajan Asram v. Commrs. of Nabadwip Municipality) as follows (para ' 16):

'In these circumstances we agree with Bhagawati, J. in the construction put by him on Sections 6 and 7 of the Societies Registration Act, namely, that the provisions contained therein for institution of suits by or against a registered society are not mandatory and do not militate against a registered society suing or being sued in its registered name. In the absence of any express provisions in the Statute barring the institution of suits by or against the society in its registered name, the first part of R. 17 cannot be held to be ultra vires of the Act. We hold accordingly that the suit as framed was maintainable.'

Section 19 of the Societies Registration Act, 1960 is permissive in nature and does not create a bar against a society suing in its own name. By another judgment reported in : AIR1960 Cal409 (Sonar Bangla Bank Ltd. v. Calcutta Engineering College) it was held by this Court that Section 6 does not make a suit against a registered Society incompetent. The Section is only permissive, The opening sentence of the Section uses the word 'may' and therefore, it is not mandatory but permissive. The language of the proviso to the Section uses the expression 'it shall be competent' i.e. only enabling expression. It also does not mean that if the registered society is sued as such, then the suit shall not be competent. Section 19 of the West Bengal Societies Registration Act is pari materia same as Section 6 of the [Societies Registration Act, 1860](#). So far as the plaintiff No. 2 in Suit No. 1036 of 1989 is concerned, the plaintiff No. 2 is a company within the meaning of the [Companies Act, 1956](#). The certificate of incorporation of the plaintiff No. 2 is

Ext. R. The Official Trustee is the trustee in respect of the said property and is holding the said property in trust for the plaintiff No. 1 in terms of the registered deed of trust dated 14th September, 1949. The said property is held by the Official Trustee in trust and for the benefit of the plaintiff No. 1 who was to be in the management and control of the said property. It was inter alia provided that the Official Trustee will be a Trustee and will not in any way interfere with the affairs of the Society (Ext. M). The case of the plaintiff inter alia is that there was an agreement between the plaintiff No. 1 and the plaintiff No. 2 dated 23-2-1982 which is Ext. F. According to the plaintiff the said agreement was entered into in pursuance of the order, dated 22-12-1981.

56. It was also sought to be submitted that no notice under Section 80 of the Code of Civil Procedure was served on the Official Trustee and as such the suit is not maintainable. It is to be noted that no relief has been sought against the Official Trustee by the plaintiffs in Suit No. 1036 of 1989. It is mentioned in paragraph 36 of the plaint that the plaintiffs do not claim any relief against the defendant No. 4 i.e. Official Trustee who has been impleaded in this proceeding so that all controversies involved in suit may be adjudicated in his presence. Though the Official Trustee is a public officer yet Section 80 only provides that no suit shall be instituted against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after the notice in writing has been delivered to and left with the public officer at his office stating the cause of action and the reliefs which the plaintiffs claimed. In the said Suit No. 1036 of 1989 it cannot be said that the suit is in respect of any act purported to be done by the Official Trustee in his official capacity or that any cause of action has been pleaded as against the Official Trustee.

57. In the facts of the case the plaintiffs are seeking to enforce their remedies and/or cause of action as against the defendants Nos. 1, 2 and 3 and in my opinion Section 80 of the Code of Civil Procedure has no application in the instant case and no notice under Section 80 could be said to be a pre-condition to the institution of the suit. Furthermore the Official Trustee has not taken any objection that the suit is not maintainable due to non-compliance with Section 80 of the Code of Civil Procedure. Defendants Nos. 1 and 2 who are private parties were

not entitled to any notice under Section 80 of the Code of Civil Procedure and they cannot challenge the maintainability of the suit on that ground in respect of reliefs sought for against them and/or the causes of action pleaded against them.

58. It was also submitted that Rosalind Jacob died during the pendency of the suit and that there has been no substitution since after her death. Rosalind Jacob did not appear in the suit nor did she file any written statement in the second suit. Order 22, Rule 1 of the Code of Civil Procedure provides that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. In the instant case plaintiff's case is that Lily Tweana and Rosalind Jacob had vacated the property and made over possession thereof to the plaintiffs. They did not make any claim against the plaintiff. There are documents signed by Lily Tweana and Rosalind Jacob stating that they are vacating the said premises and that they are making over vacant possession thereof to the plaintiffs. Lily Tweana died before the institution of the second suit. Rosalind Jacob neither appeared nor filed any written statement in the suit instituted against her. The cause of action against the surviving defendants to surviving (sic) and the plaintiff can proceed against the surviving defendants only. In essence it was the defendants Nos. 1 and 2 in the second suit who are denying and/or disputing the rights claimed by the plaintiffs in the second suit and there is no question of the suit abating against the defendants 1 & 2 in the second suit.

59. The defendant No. 3 never raised any dispute with the plaintiffs. Even if the defendant No. 3 died, the suit cannot be said to have abated as against the other defendants as in my opinion the cause of action as against the defendants Nos. 1 & 2 in the second suit survives. It was also sought to be submitted on behalf of the defendant Nos. 1 and 2 that the suit has been undervalued and that Court fees should be paid making valuation of the premises. The plaintiffs have valued the suit at Rs. 5,00,000/- and they have paid the appropriate Court fees and I do not find any substance or ground for the objection raised on the ground of alleged undervaluation. It was also sought to be submitted that the plaintiff No. 1 as beneficial owner has no right to sue, since the Official Trustee is the owner. As per the Deed of Trust the entire control and management and possession is vested in favour of the plaintiff No. 1 and the plaintiff No. 1 is entitled to use and enjoy the

said property as per Deed of Trust and the Official Trustee is the mere Trustee and legal owner. The Official Trustee has been made a party so that the suit will be decided in the presence of the Official Trustee. The Official Trustee never disputed nor disputes the existence or validity of the Deed of Trust. The plaintiff No. 2 is also claiming certain right as per the agreement entered into as between the plaintiff No. 1 and the plaintiff No. 2 in suit No. 1036 of 1989. For the sake of convenience I shall refer to the different parties as they are pleaded in Suit No. 1036 of 1989 being the second suit, respectively as plaintiffs or defendants as pleaded therein and such reference will also include reference to the respective parties in the said first and earlier suit, being Suit No. 10 of 1988 in their respective capacity in the said first suit i.e. reference to defendant Nos. 1 and 2 will also mean and include reference to the plaintiffs in Suit No. 10 of 1988 and referenced plaintiffs will mean and include the respective defendants in Suit No. 10 of 1988. In my opinion, there is no substance in the point raised as to the maintainability of suit No. 1036 of 1989, and the said second suit is maintainable and Issue No. 1 dated 15-12-1992 is decided accordingly.

I shall now deal with Issue No. 2 dated 15-12-1992.

'Did defendant No. 4 and the plaintiff No. 1 become owner of the suit property by virtue of the conveyance dated 17-3-1943. If so, what are the mutual rights as between the plaintiff No. 1 and the defendant No. 4?'

Certified copy of the conveyance dated 17-3-1943 has been exhibited in this suit and has been marked as Ext. I. The said Deed of Conveyance records that the vendors had conveyed the property to the Official Trustee as trustee for the Maghen Aboth Fund. Both the trial Court as also the Appeal Court in the aforesaid judgments held that the trust was created by the Deed of Trust dated 14th of September, 1949. A certified copy of the said deed of Trust is also exhibited as Ext. 'M' in this suit. Under the said Deed of Trust the plaintiff No. 1 is the beneficial owner of the said property and is entitled to use the house and enjoy the same and that the Official Trustee is the Trustee and legal owner thereof without any obligation to supervise and perform and control the affairs of the society. The aforesaid judgment of this Hon'ble Court dated 1-5-1953 in Suit No. 3539 of 1951

is Ext. 'E' in the suit. The judgment of the Court of Appeal in the Appeal preferred from the aforesaid judgment being the judgment dated 23-1-1957 in Appeal No. 130 of 1953 is Ext. C, Lily Tweena her sister as also her brother were all the parties to the said suit and the appeal and in their presence and on contest the Court held that the said society being the plaintiff No. 1 was the beneficial owner and the Deed of Trust was valid and binding and the Official Trustee was the Trustee in terms of the said Deed of Trust. The defendant Nos. 1 and 2 were never in the picture prior to 1980 and they have no right to challenge the said documents viz. the conveyance and/or the said Deed of Trust. So far as Lily Tweena is concerned, she was a party to the suit of 1951 along with her brothers and in the appeal and is bound by the same. Mrs. Rosalind Jacob did not claim any right except through Lily Tweena as her near relation living with her and with the permission of Miss Lily Tweena. Accordingly, I am of the view that the plaintiff No. 1 was and continued to be the beneficial owner in accordance with the Deed of Trust dated 14th September, 1949 with the right to possess, enjoy and control the property in terms of the Deed of Trust. The defendant No. 4 was and continued to be the Trustee and legal owner and that the plaintiff No. 1 and the defendant No. 4 have rights in terms of the said deed of trust. This Court need not go into any of the further enquiries as to the various provisions of the said documents and the Issue No. 2 dated 15-12-1992 is decided accordingly, as deserved herein above.

60. I shall now deal with issue No. 3 dated 15-12-92 and issue No. 2 dated 29th July, 1994. The certified copy of the Deed of Trust (Ext. M) which is dated 14th September, 1949 records that for the last 50 years the suit premises was used as a Synagogue for the Jews. Even before the defendants Nos. 1 and 2 had anything to do with the property in suit this Hon'ble Court in the aforesaid judgment in which Lily Tweena and her sister and brother were parties, held that the said property was used as a Synagogue and that the plaintiff No. 1 had the right to control the affairs of the said Synagogue. Jacob Tweena only claimed that he had a right to conduct the prayers. The Corporation of Calcutta also granted exemption from the consolidated rate. The certified copy of the entry in the Municipal assessment book of the Calcutta Municipal Corporation (Ext. Q) shows that the property was exempt property and it is recorded by the Corporation in the name of the Official Trustee of West Bengal. The aforesaid judgment of this Court is binding in so far

as Lily Tewena or any person claiming through Lily Tewena which included Rosalind Jacob. There is oral evidence of Hary Morris that the premises was used as Synagogue and it was held in trust by the Official Trustee in terms of the aforesaid Deed of Trust. The evidence on record of Hary Morris also shows that the population of Jews dwindled in Calcutta and the regular prayers could not be continued for some time past. There is no doubt in my mind on the basis of the evidence on record and the aforesaid Deed of Trust dated 14th September, 1949 and the judgment in said suit and Appeal that the property was a Synagogue and was used as such. There is also no doubt in my mind that the Deed of Trust was valid and operative and was being carried out since after the execution of the said Deed of Trust. In my opinion the rights of the plaintiff No. 1 continued in terms of the said Deed of Trust. There could be no change of right simply because the holding of the prayers could not be continued. Premises was used as Synagogue and it continues to be a Synagogue and discontinuance of the holding of prayers due to paucity in number of members of the society cannot operate to affect the rights in terms of the said Deed of Trust and/or the said Deed of Conveyance once the Deed of Trust became operative and and the plaintiff No. 1 was in control and management and the beneficial owner of the property. The property was in fact used as Synagogue since after the said Deed of Trust for quite some time and it cannot be said that the Synagogue ceased to be a Synagogue only because the prayers were not continued to be held. The Deed of Trust became operative and binding and the defendants Nos. 1 and 2 had no right to challenge the said Deed of Trust and/ or the binding character thereof. The issue No. 3 dated 15-12-1992 and issue No. 2 dated 29th July, 1994 are decided accordingly.

61. I shall now deal with the Issue No. 4 dated 29-7-1994 which is to the effect as to whether the plaintiff No. 1 in Suit No. 1036 of 1989 was and is a duly registered society If so, whether it is still lawfully functioning and is still in existence That the plaintiff No. 1 is a registered society is proved by Ext. O which is xerox copy of the certificate of registration of the society dated 26-1-1948. The society has not yet been dissolved in accordance with Sections 24, 25 or 26 of the West Bengal Societies Registration Act, 1961 or any provisions of the earlier Act or Act of 1860. Once registered a society continues to exist until its dissolution. Whether, and how and in what manner the society is functioning is immaterial for the purpose of this

issue. So far as the instant suit is concerned the only material thing is as to whether the suit was properly instituted on behalf of the society. The plaint has been signed by the constituted attorney of the society who has also verified the same and no member of the society has challenged the authority and power of the constituted attorney of the said society. In my opinion the suit has been duly and properly instituted on behalf of the said society and the defendants have no right to challenge either the existence of the society and/or the authority and/or power of the signatory to the plaint and/or verification thereof. The Issue No. 4 dated 29-7-1994 is answered accordingly.

62. So far as Issue No. 5 dated 29-7-1994 is concerned, it is sufficient to say that legal title to the suit property vests in the Official Trustee and the plaintiff No. 1 has the beneficial owner thereof having the right to use, enjoy and occupy, the suit property in terms of the said deed of trust dated 14-9-1949. The plaintiff No. 1 continues to be the beneficial owner of the said property in terms of the said deed of trust subject, of course, to the agreement entered into as between the plaintiff No. 1 and plaintiff No. 2 in terms of the order passed by the Court dated 19-6-1981 and/or the agreement dated 23-2-1982. The said property was and continues to be a Synagogue irrespective of the fact whether holding of the prayers therein has been discontinued or not. The fact that the premises is a Synagogue was decided in the said suit of 1951, in which Lily Tweana and her relations were parties. The defendants in the said suit of 1951 were restrained by a permanent injunction restraining them, inter-alia from disturbing or obstructing the plaintiff No. 1 in the use control and management of the Synagogue. The deed of trust continues to be binding and valid and so far as Miss Lily Tweana and persons claiming through her are concerned they continue to be bound by the judgment and decree including which was passed in the said suit No. 3539 of 1951 and/or the judgment and decree passed by the Appeal Court inter alia affirming the judgment of the trial Court. Miss Lily Tweana was a party to the said suit and certified copies of the said judgments are Exhibits 'B' and 'C' to this suit. Whether the said premises is an absolute charitable or religious trust property and what rights the plaintiff No. 1 has in the said property as beneficial owner thereof are to be governed by the said deed of trust and the defendants Nos. 1 and 2 have no right to challenge the same. It is only sufficient to state that plaintiff No. 1 had rights in the said property

in accordance with the said Deed of trust and the rights of the plaintiff No. 2 are to be governed by the agreement dated 23-2-1982 which was arrived at pursuant to the order of this Court dated 15-12-1982. The other questions sought to be raised in the said Issue No. 5 as to whether the said premises is an absolute religious and charitable Trust is irrelevant for the purpose of this suit and I do not think it necessary and/or proper to go into the said questions at this stage apart from holding that the said premises is govern-ed by the said deed of Trust dated 14-9-1949.

63. I shall now deal with Issue No. 4 dated 15-12-1992. Miss Lily Tweana was bound by the judgment and decree which are exhibits 'B' and 'C' and which have been referred to hereinabove. She was a party to the said suit and she was under a permanent injunction in terms of the judgment and decree referred to hereinabove. As per the said judgment Miss Lily Tweana was merely occupying a portion of the said premises and such occupation was permissive in nature. The evidence of Harry Morris on this point is there and the judgments and decrees also speak for themselves. So far as defendant No. 3 Rosalind Jacob is concerned, she was brought in by Lily Tweana and Harry Morris in his evidence has stated that Rosalind Jacob was also a destitute Jew lady and was permitted to occupy a portion of the said premises. The fact that the said Lily Tweana and Rosalind Jacob were in the said premises until 7-1-1985 has not been disputed even by Mr. Subhas Chandra Majumdar in his evidence.

64. Exts. H and I are letters signed by Mrs. Rosalind Jacob and Lily Tweana and they have confirmed by the said two letters dated 7-1-1985 that they have vacated the portions occupied by them in the said premises. Ext. 'J' is the notarial declaration by Rosalind Jacob dated 7-1-1985 and I do not find any reason to disbelieve the same. The said Rosalind Jacob during her lifetime and being a party to the suit did not file any Written Statement nor did she make out any case to the contrary in so far as the case of the plaintiffs in the second suit is concerned or in so far as Exts. H, J and I are concerned.

65. I shall now deal with Issue No. 6 dated 15-12-1992 and Issue Nos. 6 and 7 dated 29-7-1994. Issue No. 6 dated 15-12-1992 is,

'Whether the defendant No. 1 i.e. Gautam Majumdar became the tenant and/or the lessee of the premises in question. If so, then is the alleged tenancy binding on the plaintiffs and the defendant No. 4?'

Defendants Nos. 1 and 2 are relying on the receipts and/or documents purported to be signed by the said Lily Tweana and Rosalind Jacob. Ext. '21' is a letter dated 27-1-1983 which is the first document. By these said documents said Lily Tweana and Rosalind Jacob are alleging to have decided on the said date and are further stated that they are hereby handing over the entire premises No. 25, Black Burn Lane, Calcutta-12, for repairing and constructing all additions and alterations, old and new portions, required for your workshop or let out by you and they agree the tenancy leased out for 99 years at the same rate i.e. Rs. 200/- per month. There are various receipts signed by Mrs. Rosalind Jacob and Miss Lily Tweana which are collectively marked as Ext. '23'. Ext. 23 is dated November 19, 1983 or onwards. As stated neither the said Lily Tweana nor the said Rosalind Jacob had any right, title or interest in the said property nor was there any question of them or any of them becoming owner of the said premises by any alleged adverse possession. They were only allowed to reside in a portion of the said premises and their occupation was purely permissive occupation. Plaintiff No. 1 was and continued to be the beneficial owner of the said premises for use thereof for purposes of the said Trust of 1949. Lily Tweana and her servants and agents which included Rosalind Jacob were under permanent injunction in terms of the Judgment and decrees passed by this Court being Exts. 'B' & 'C'. Their occupation was merely in respect of the portion of the said premises and the said premises was and continued to be 'Synagogue' i.e. place for worship for Jewish Community. They had no right to let out or to sublet any portion of the said premises. They could not create any tenancy in respect of the premises or any portion thereof. It is clear from the facts that up to 7th of January, 1985 the said Lily Tweana and Rosalind Jacob were living at the said premises No. 25, Black Burn Lane, Calcutta-12. Harry Morris has stated so in his evidence. Mr. Subhas Majumdar has not disputed the said fact. If that was so, then the question of defendant No. 1 and/or defendant No. 2 being in possession or occupation of the entire premises could not and did not arise. As already stated above neither Lily Tweana nor Rosalind Jacob had any power to create or grant any tenancy or any right of

possession in respect of the said premises. They had no lawful right title or interest whatsoever in the said premises. In the premises, I hold that the defendant No. 1 did not become a tenant nor a lessee of the premises in question. The alleged Receipt and or purported document dated 27-1-1983, purported to have been signed by Miss Lily Tweena and / or Rosalind Jacob, in favour of the defendant No. 1 are non-est and of no legal effect whatsoever. Furthermore, Lily Tweena or any of the persons claiming through her i.e. Rosalind Jacob continued to be bound by the judgment and decree passed in the earlier suit against Lily Tweena. There is no registered Deed of Lease and the question of grant of lease in respect of immovable property without any registered deed for a period of 99 years could not and did not arise. Since Lily Tweena or Rosalind Jacob had no right to grant any tenancy or lease or possession in respect of the said premises, no tenancy or lease came into existence in favour of the defendants No. 1 or 2 or any of them. Issue No. 6 dated 15-12-1992 is answered accordingly. So far as Issue No. 6 is concerned, there is no question of the plaintiffs Nos. 1 and 2 in Suit No. 10 of 1988 and defendant Nos. 1 and 2 in Suit No. 1036 of 1989, acquiring any legal right, title or interest or of acquiring any tenancy or lease-hold interest or any interest whatsoever through conveyance or equitable or vest of legal possession of the premises. Lily Tweena or Rosalind Jacob or either of them as neither Lily Tweena nor Rosalind Jacob had any rights, title or interest in the said premises whatsoever. Their occupation was only in respect of a portion of the said premises which was merely in the nature of permissive occupation. To the full knowledge of Lily Tweena and Rosalind Jacob the Official Trustee was the legal owner of the said property and the right to use and enjoy the same vested in the plaintiff No. 1 in terms of the said deed of Trust. So far as the said premises is concerned, the said Lily Tweena and Rosalind Jacob were physically there in a portion of the suit premises up to 7th of January, 1985. It appears that the defendant No. 1 entered into the suit premises with the knowledge and consent of Lily Tweena, and/or Rosalind Jacob. However by this process the defendant No. 1 or 2 either of them could not affect the right title and interest of the plaintiffs in Suit No. 1036 of 1989 and/or of the Official Trustee.

66. So far as Issue No. 7 dated 29-7-1994 is concerned, I am of the view that the defendant No. 1 has alleged that he kept goods and carried on business from the

suit premises and such right is alleged to have been given by Lily Tweena and Rosalind Jacob. The said Lily Tweena during her lifetime and prior to her death i.e. on 7-1-1985 continue to hold the keys of the said premises. On or about 7-1-1985 Lily Tweena and Rosalind Jacob vacated the said premises and gave keys thereof to the plaintiff. In the, premises, it cannot be said that the defendant No. 1 or 2 or any of them were in possession or control or occupation of the entire suit premises or any portion thereof on 8-1-1985 or prior thereto. I have already said that the defendant No. 1 from the evidence on record entered into such premises with the consent of the said Lily Tweena and Rosalind Jacob. The said -Lily Tweena and Rosalind Jacob vacated the premises and made over the keys to the plaintiff No. 1 some time prior to 1983 and obtained receipts of the aforesaid document from them. All the said Acts by Lily Tweena and Rosalind Jacob were wrongful and even amounted to violation of the decree and orders passed against Lily Tweena. The defendant Nos. 1 and 2 did not and could not acquire any right, title or interest in the said premises. Further more from the facts that have come out in evidence it is quite clear the Lily Tweena and Rosalind Jacob were in occupation of a portion of the said premises and held the keys of the entrance door under permission of the plaintiff No. 1 and/or the defendant No. 4 and they had no right, title or interest in the said property and they could not confer any right, title or interest on the defendant No. 1 or 2 or either of them. On or about 7-11-1985 the said Lily Tweena and Rosalind Jacob vacated the said premises and made over the keys thereof to the plaintiffs and/or plaintiff No. 1, who was lawfully entitled to the possession of the said premises in its entirety.

67. So far as Issue No. 8 dated 29-7-1994 is concerned, a certificate of incorporation and certificate of change of name of Mithua Development Property have been exhibited in this suit and the plaintiff No. 2 is the changed name of the earlier company which was earlier known as Mithua Development Pvt. Ltd. Defendant Nos. 1 and 2 have no right to challenge the rights of the plaintiff No. 2 to change its name in terms of the memorandum of Articles of Association and/ or as per law. The physical possession of the said premises came into the hands of the plaintiffs pursuant to the letter and/or the notarial declaration of Miss Lily Tweena and/or the said Mrs. Rosalind Jacob. The constructive and legal possession of the said premises all along vested in the plaintiff No. 1, who alone

was entitled to possess and occupy the same in terms of the deed of Trust and decree and order passed in earlier suit and Appeal aforesaid. The fact as it appears to have taken place is that the defendant No. 1 and/ or 2 initially got access to a portion of the said premises during working hours with the premission or consent of Miss Lily Tweena and/or Mrs. Rosalind Jacob since prior to 1983, and the defendants No. 1 and/or 2 started keeping the goods and/or machine and/or to carry on business during working hours from such portion of the suit premises. In my opinion, the said Lily Tweena and Rosalind Jacob had no right to create any tenancy or to allow the defendant No. 1 to carry on any business from any portion of the said premises. Defendant Nos. 1 and 2 were not and are not entitled to claim that they became or are tenants in respect of any portion of the said premises or are entitled to possess or occupy the said premises or any portion thereof. Furthermore, the fact that the plaintiffs entered into the suit premises after Lily Tweena and Rosalind Jacob left and demolished a portion of the suit premises on or after 7th of January, 1985, is clear and proved with evidence and that also shows neither the defendant Nos. 1 and/or 2 were present nor objected to the entrance of the plaintiffs into the suit premises. The objections were of course raised by the defendantNos. 1 and 2, after the partial demolition of the suit premises was carried out by the plaintiff No. 2. As soon as Lily Tweena and Rosalind Jacob left the suit premises and made over keys and possession thereof to the plaintiffs, the permission if any by them to the defendants Nos. 1 and 2 to keep their goods or enter into the same or the permission to carry on business there from as allowed by Lily Tweena and Rosalind Jacob automatically came to an end. Furthermore, Lily Tweena and Rosalind Jacob did not even have the right to allow any third party to enter into the said premises or to claim any rights through them in respect thereof, nor could defendants Nos. 1 and 2 claim any such rights. With the observations made hereinabove Issue No. 7 dated 29-7-1994 is answered in the negative. On 8-1-1985 it were the plaintiffs who were in khas possession and occupation of the entirepremises.

68. Issue No. 8 dated 29-7-1994 is answered in the affirmative and in my opinion the defendants Nos. 1 and 2 have no right to raise any such issues. The documents issued by the Registrar of Companies which are in evidence amply prove and show that the name of Mithua Provisions (P) Ltd. was changed to

Mithua Developments (P) Ltd. and that with changed name the company continues to be the same.

69. I shall now deal with Issue No. 9 dated 29-7-1994. The agreements dated 15-3-1980 and 23-2-1982 were between the plaintiffs Nos. 1 and 2. So far as the agreement dated February 23, 1982 is concerned the same was entered into between the plaintiff Nos. 1, 2 and the defendant No. 4 pursuant to order of Court. Defendants Nos. 1 and 2 had no say in so far as the said agreements are concerned and did not have the right to challenge the same. Since the agreement dated 23-2-1982 has been entered into pursuant to order of Court, I am of the view that the same is valid and binding unless the same is set aside by any appropriate Court having jurisdiction to do so. Since in my opinion the defendants No. 1 and/or 2 did not and do not have any rights, in respect of the said premises the question of affecting any rights of the defendant Nos. 1 and 2 does not arise. Issue No. 9 dated 29-7-1994 is answered accordingly.

70. I shall now deal with Issue No. 10 dated 29-7-1994. As already held by me earlier neither Lily Tweena nor Rosalind Jacob had any rights in the suit property except that they were enjoying permissive occupation in respect of a portion of the said premises. Though the defendant Nos. 1 and 2 have tendered in evidence the document dated 27-1-1983 yet I am of the view neither the said Lily Tweena nor Mrs. Rosalind Jacob had any right to enter into any agreement to grant any lease for 99 years in favour of the defendant No. 1. I am also unable to believe that any person having any right, title or interest in the suit premises could write letter of the nature dated 27-1-1983. The said premises is situated very near to the Dalhousie Square and to Lal Bazar Police Station and none in his sense could agree to give lease of the entire premises for a period of 99 years. That the document dated 27-1-1983 does not represent the correct position as to facts is clear from the very fact that the said Lily Tweena and Rosalind Jacob continued to reside in the said premises and from the contents of the said letter itself it appears that even before the said letter the defendant No. 1 was allowed to enter into some portion of the said premises. In my opinion the said Lily Tweena and Rosalind Jacob had no right whatsoever to confer in favour of the defendant Nos. 1 and 2 and the defendant Nos. 1 and 2 did not and could not have any specific performance as

against the said Lily Tweena or Rosalind Jacob, who had no manner of right, title or interest in the said premises.

71. Except that the defendant No. 1 was wrongfully allowed entry into a portion of the suit premises for storing goods and keeping machines or for carrying on business during the working hours by the said Lily Tweena and Rosalind Jacob, I am of the view that the said Lily Tweena and Rosalind Jacob, had no right whatsoever to allow the defendant No. 1 and/or the defendants Nos. 1 and 2 to enter into and/or to carry on business and to keep the goods in the said premises and there is no question of the defendant No. 1 or the defendant No. 2 to be protected by any principles of law for alleged performance of any alleged contract, There was no agreement or contract with the plaintiffs or the defendant No. 4 so far as the defendant Nos. 1 and 2 are concerned and there was no privity of any contract as between the defendant Nos. 1 and 2 or the plaintiffs and/ or the defendant No. 4. As such there is no question of the defendant No. 1 or the defendant No. 2 to have acquired any right, title and interest whatsoever in respect of the suit premises and the issue No. 10 dated 39th July, 1994 is answered accordingly. The alleged agreement if any, to create any lease alleged to have been entered into by Lily Tweena and/ or Rosalind Jacob is not and could not be binding on the plaintiffs and the defendant No. 4.

72. I shall now deal with the Issue No. 7 dated 15th December, 1992. It is in evidence that Lily Tweena and Rosalind Jacob were residing at the said premises till 7th of January, 1985. Both Mr. Harry Morris and the said Suhash Chandra Majumdar did not dispute said fact. The defendant Nos. 1 and 2 were having access to the said premises and were keeping goods there and carrying on business from the said premises which is clear from the fact that even when caveat was filed the said Harry Morris, the plaintiff No. 1 gave notice to Messrs. Gautam Majumdar and Associates giving their address as 25, Blackburn Lane, Calcutta-12. I am of the view that the defendant No. 1 and/or the firm of Gautam Majumdar and Associates was having some sort of access to some portion of the said premises with the wrongful permission of Miss Lily Tweena and Rosalind Jacob. A large number of documents have been produced on behalf of the defendants Nos. 1 and 2 which show that the said defendants were carrying on

business from a portion of the said premises and were having access thereto with the wrongful permission of the said Lily Tweena and Rosalind Jacob. There is a certificate of registration as a small scale industrial unit of Gautam Majaumdar and Associates (proprietor Gautam Majumdar) dated 12-1-1984. There is a Municipal licence for the year 1982-83 in the name of Gaulam Majumdar and Associates which gives address including that of 25, Blackburn Lane and such licences have been obtained for several years from 1982-83 onwards. There is a letter issued by the Central Municipal Office, Health Department dated 16-12-1983 to Gautam Majumadar with the address of 25, Blackburn Lane, which shows that a workshop was run there with electricity (glass grinding novelty items). There is a receipt granted by the Licence Department dated 12th January, 1984. There is another receipt granted by the Municipal office dated 12th January, 1984 in favour of Gautam Majumdar with the address of the suit premises.

73. These documents go to show that Gautam Majumdar and his firm had access to a portion of the said premises. Apart from that there are receipts granted by Lily Tweena and Rosalind Jacob and there is the letter dated 27-1-1983 signed by Miss. Lily Tweena and Rosalind Jacob where the word entire premises has been used. In that letter it is also written that the writers thereto agreed the tenancy leased out for 99 years at the same rate that is Rs. 200 per month.

74. I am of the view that Miss. Lily Tweena and Rosalind Jacob did not have any right, title and interest in the said premises nor did they have any right to confer upon the defendant Nos. 1 or 2 or any of them in respect of the said premises. The defendant Nos. 1 and 2 were wrongfully having access to a portion of the suit premises with the unlawful consent of Lily Tweena and Rosalind Jacob, since prior to December, 1982 when the caveat was filed by Harry Morris. The said Lily Tweena and Rosalind Jacob continued to occupy the portion of the said premises which they were allotted to by the Society in the nature of permissive occupation and they continued to hold the keys of the main gate of the said premises with the permission of the plaintiff No. 1 that is the said Society. The beneficial ownership and the right of possession was vested in the plaintiff No. 1 and the said Lily Tweena and Rosalind Jacob had no right, title or interest in the said premises or to make over any possession or occupation of any portion thereof to the defendant

Nos. 1 and 2 or any of them. The defendant Nos. 1 and 2 were wrongfully having access to and entered into the said premises with the wrongful permission of the said Lily Tweena and Rosalind Jacob. The defendant No. 1 was carrying on some sort of business and keeping his goods or machineries therein. However, such entries of the defendant No. 1 or 2 or any of them into the said premises was unauthorised and illegal and the said Lily Tweena and Rosalind Jacob had no right to allow any such entry to them into or access to the suit premises or to create any tight of tenancy or lease in their favour. On or about 7-1-1985 the said Lily Tweena and Rosalind Jacob were still in physical occupation of a portion of the said premises and also in possession of the key of the main gate thereof and they on the said date made over possession to the plaintiff No. 1 who in turn allowed the plaintiff No. 2 to enter into the said premises and to demolish the constructions thereat. On 7-1-1985 some private movables of said Lily Tweena and Rosalind Jacob were still allowed to remain in the said premises and such goods also consisted of some of the goods of the defendants No. 1 and 2. That some goods belonging to the defendant No. 1 and/or the said firm were also there in the said premises at the time of making over possession thereof to the plaintiff No. 1 cannot be disputed. However, I am of the opinion that the plaintiffs on 7-1-1985 had the right and did take possession of the suit premises. On 7-1-1985 Lily Tweena and Rosalind Jacob vacated and made over possession of the suit premises to the plaintiff. The defendant Nos. 1 and 2 had no right in respect of the suit premises either to possess or to occupy the same. However, at the time when the possession was made over some goods belonging to the defendants were lying at the suit premises. In my opinion on and from 7-1-1985 the defedants had no right to enter into the suit premises without the consent of the plaintiffs. Prior to 7-1-1985 the defendants were having wrongful access to a portion of the suit premises with the wrongful and unauthorised consent of Lily Tweena and Rosalind Jacob. The said defendant Nos. 1 and 2 did not and could not acquire any right, title or interest in, the suit property, even before 7-1-1985. There was no question of the defendants having any lawful possession or lawful occupation in respect of the suit premises. At best on or after 7-1-1985 they could have a right as against Lily Tweena and Rosalind Jacob to demand back the goods belonging to them which were kept at and/or lying in the said premises.

75. Subject to the observations as aforesaid, I am of the view that the defendant Nos. 1 and 2 or neither of them had any lawful possession or lawful occupation in respect of any portion of the suit premises. The defendant Nos. 1 and 2 were having wrongful access to or entrance into the suit premises with the unauthorised consent of Lily Tweena and Rosalind Jacob since prior to December, 1982 and it is not necessary for this Court to find out the exact date from which such entry was permitted and the extent to which they were allowed to use the suit premises by Lily Tweena and Rosalind Jacob. However, the fact remains that neither Lily Tweena nor Rosalind Jacob had any right to allow any lawful possession or occupation to the defendant Nos. 1 or 2 or any of them in respect of the suit premises and there is no question of the defendants No. 1 and 2 having any lawful possession in respect of the suit premises. The said I issue No. 7 dated 15th December, 1992 is decided accordingly.

76. I shall now deal with Issue No.] 1 dated 29-7-1994 and Issue Nos. 1 and 2 dated 1-4-1993. It is quite apparent that on 7-1-1985 the said Lily Tweena and Rosalind Jacob vacated the suit premises and made over the keys to the plaintiff No. 1 and that the plaintiff No. 1 allowed the plaintiff No. 2 to enter into the suit premises and to demolish the structures thereat. It is also clear that the plaintiff No. 2 entered into the suit premises on 7-1-1985 and that there was no protest at the time of such entry or at the time when the demolition was commenced and was carried on to some extent. This fact is proved from the evidence of Harry Morris, Kakrania and S.C. Majumdar. The defendant Nos. 1 and 2 came to know about the said fact of demolition after some demolitions were carried out at the said premises. The making over of the possession to the plaintiff No. 1 by Lily Tweena and Rosalind Jacob is quite legal and valid and in any event the plaintiff No. 1 had the right to take possession. Lily Tweena and Rosalind Jacob were in permissive occupation of a portion thereof and if they themselves vacated the portion and made over the keys to the plaintiff No. 1 or its authorised representative there was no option left for the plaintiff No. 1 but to take physical possession or occupation of the suit premises. The plaintiff No. 1 did so by receiving the keys from Lily Tweena and Rosalind Jacob and by making over the same to the plaintiff No. 2 in terms of the agreement as between plaintiffs and asking the plaintiff No. 2 to demolish the structures for the purpose of rebuilding. At the time when the possession and

occupation was made over by Lily Tweena and Rosalind Jacob to the plaintiff No. 1 on 7-1-1985 some goods and/or machineries and/or furniture belonging to the defendant No. 1 and/or to the firm of Gautam Majumdar and Associates was lying at the suit premises. From the facts of the case, I am unable to hold that they had any lawful right to keep such goods and/or machineries and/or furniture at the suit premises but the fact remains that they were allowed to do so and they did so with the purported consent of Lily Tweena and Rosalind Jacob. I am also of the view that neither Lily Tweena and Rosalind Jacob had any right to allow any possession or occupation to the defendant No. 1 or 2 or to grant any tenancy to the defendant No. 1 or the firm of Gautam Majumdar and Associates and whatever was done either on the part of the Lily Tweena and Rosalind Jacob was unauthorised and illegal and in violation of the rights of the plaintiff No. 1 and/or in violation of the judgment and decree of this Court. Lily Tweena and Rosalind Jacob had no right to give any letter after the said judgment and decree and were merely allowed by the plaintiff No. 1 permissive occupation, in respect of a portion of the said premises. There was and is no privity of contract between the plaintiff and the defendant No. 1 and 2 and defendants No. 1 and 2 have no contractual rights as against the plaintiffs,

77. Though the defendants Nos. 1 and 2 were in fact having some goods at the suit premises, the same were kept at the suit premises with the consent of Lily Tweena and/ or Rosalind Jacob. The evidence of the defendant Subhas Chandra Majumdar is that the goods lying at the suit premises were quite valuable. That evidence has been disputed by Kakrania. Kakrania in, answer to the questions has denied that any damages were caused to the defendants Nos. 1 and 2. So far as the question of demolition of the suit premises by the plaintiffs is concerned, the plaintiffs had the right to do so and/or to act in terms of the agreement which was entered into between plaintiff Nos, 1 and 2 and the official trustee pursuant to the orders of this Court. In my opinion, whatever goods belonging to the defendant Nos. 1 and 2 were lying in the suit premises on 7th January, 1985 were kept by the defendants Nos. 1 and 2 in the custody of Lily Tweena and Rosalind Jacob. Lily Tweena and Rosalind Jacob vacated the premises and made over possession to the plaintiff No. 1. Whatever wrong was done in respect of the said moveable assets of the defendant No. 1 was by Lily Tweena and Rosalind Jacob with whose

permission the defendant Nos. 1 and 2 were having access to the suit property and with whose permission they were keeping the goods in the suit property.

78. Neither Lily Tweena nor Rosalind Jacob has any right, title and interest in the suit premises nor did they have any right to confer any rights in favour of the defendants Nos. 1 and 2 in respect of the suit premises. The defendants Nos. 1 and 2 did not acquire any right whatsoever in the said premises. The rights, if any, of the defendants Nos. 1 and 2 to claim damages, if any, as are alleged to have been suffered by the defendants Nos. 1 and 2 could be against Lily Tweena and Rosalind Jacob, However, they did not chose to make any claim against either Lily Tweena and Rosalind Jacob. After the plaintiffs took over the possession they were entitled to carry out their work and in my opinion even if the defendants suffered any damages in respect of any movable assets of theirs, the claim could not lie as against the plaintiffs in this suit. They could make a claim as against the said Lily Tweena and Rosalind Jacob, if at all they suffered any damages. Issue No. 11 dated 29-7-1994 is thus answered in the negative. The defendants could not prove any damages in so far as moveable properties or demolition of the structures thereon is concerned and there cannot be any question of assessing any amount so far as moveable properties are concerned. So far as Issue No. 1 dated April 1, 1993 is concerned I am of the view that the defendants in Suit No. 10 of 1988, who are also plaintiffs in the second suit had the right to demolish the existing structures on the said premises and there is no question of their causing any damages to the plaintiffs in the said Suit No. 10 of 1988. So far Issue No.2 dated April 1, 1993 is concerned I am of the view that the plaintiffs in Suit No. 10 of 1988 are not entitled to claim any damages or compensation from the defendants in the said suit. Even assuming that some of their goods belonging to them were lying in the said premises, in my opinion they have failed to prove such alleged damages. In any event the alleged cause of action if any of the plaintiffs in the said Suit No. 10 of 1988 was against the said Lily Tweena and/or Rosalind Jacob, the aforesaid issues are answered accordingly.

79. So far as the Issue No. 12 dated 29th July, 1989 is concerned, that is also answered in the negative. First of all the alleged claim, if any, of the defendants Nos. 1 and 2 could only be against Lily Tweena and Rosalind Jacob and secondly

on the ground that after police complaints and the filing of the civil suit some time after 8th of January, 1985 the defendants Nos. 1 and 2 entered into the suit premises and took physical possession and occupation of the entire premises wrongly and illegally and without having any right to do so. There were civil proceedings between the plaintiff No. 2 and the defendants Nos. 1 and 2 wherein there was an order inter alia for maintaining status quo. However, the defendants wrongfully entered into the said premises and are still Wrongfully holding possession thereof. It is apparent that after police complaints and/ or the civil proceedings the defendants Nos. 1 and 2 wrongfully took physical possession and/or occupation of the entirety of the said premises and thereafter they have been running business from the suit premises. The structures and the suit premises are lying in the state of demolition yet actual physical control over the entrance is being wrongfully exercised by the defendants without having any rights in respect of the suit premises. This is in violation of the rights of the plaintiffs.

80. The defendant No. 2 in Suit No. 10 of 1988 carried out the acts of demolitions in respect of immovable structures at the said premises. The plaintiffs had the right to carry out the work of demolition of the said premises and to make new constructions there. The defendants Nos. 1 and 2 had no rights in respect of the suit premises except that some goods or assets belonging to them were lying and kept at the said premises wrongfully by wrongful consent of Lily Tweena and Rosalind Jacob. In my opinion, it is quite possible that some of the goods belonging to the defendant No. 1 might have been damaged in the process of demolition of the suit premises. But I am unable to hold that the plaintiffs in Suit No. 10 of 1988 have got any rights as against the defendants in Suit No. 10 of 1988 or any of them. Whatever right the plaintiffs had in Suit No. 10 for damages could only be against Lily Tweena and Rosalind Jacob. Further more, on 7th and 8th January, 1985, the plaintiffs were in possession of the suit premises and it is after 8th January, 1995 that the defendants wrongfully entered into the suit premises in violation of the rights of the plaintiffs. There was no privity of contract between the plaintiffs in Suit No. 10 of 1988 and the defendants in Suit No. 10 of 1988. Whatever the goods belonging to the plaintiffs were lying at the suit premises were kept wrongfully and in violation of the rights of the plaintiffs and the plaintiffs in Suit No. 10 do not have and could not have any right as against the defendants in Suit

No. 10 of 1988. Furthermore, the witness on behalf of the plaintiffs in Suit No. 10 of 1988 could not prove the alleged damages since there is no specific evidence proving damages in respect of the articles alleged to be lying there and even the evidence with regard to the goods or articles lying in the suit premises at the time of the possession of plaintiffs are not proved by any reliable evidence. There is inconsistent evidence as to the goods lying at the suit premises and it varies at different places. Furthermore, as is evident the plaintiffs Nos. 1 and 2 in Suit No. 10 of 1988 obtained re-entry into the suit premises wrongfully sometimes after 8th January, 1985 and took possession of the movable goods lying there which included their own goods, In my opinion, the plaintiffs in Suit No. 10 of 1988 are not entitled to claim any damages or compensation from the defendants in Suit No. 10 of 1988. In any event in my opinion the extent of the alleged damages, if any, has not been proved to the satisfaction of Court by any reliable evidence.

81. I shall now deal with Issue No. 8 dated 15-12-1992. In my opinion on the basis of the evidence on record oral as well as documentary, it is apparent that on 7th January, 1985 the plaintiffs took possession of the suit premises. The said Lily Tweena and Rosalind Jacob vacated the suit premises. In my opinion, the defendants did not and could not have any right, title and interest in the suit premises from said Lily Tweena and Rosalind Jacob. From 7th January onwards the plaintiffs were in possession and occupation of the premises and several complaints were made by defendants No. 1 and 2 that the plaintiffs wrongfully took possession and/or, were wrongfully demolishing the suit premises. In my opinion the plaintiffs had the right to enter into the suit premises and take possession thereof. The defendants Nos. 1 and 2 did not have any right title or interest in the suit premises whatsoever on or before the 7th January, 1985 or thereafter, when the plaintiffs took possession thereof. It is apparent that after 8th January, 1985 the defendants wrongfully entered into the suit premises in violation of the rights of the plaintiffs in respect thereof. The witness on behalf of the plaintiffs Mr. Newtia stated in his evidence that the mesne profits and/or damages per day in respect of the suit premises which is situated in the centre of Calcutta near Dalhousie Square and particularly near to Central Avenue and Lalbazar P.S. and other places was more than Rs. 300 per day. In my opinion, the defendants entered into the suit premises after 8th January, 1985 wrongfully and in violation of the rights of the

plaintiffs. Such entrance was made by the defendants on or about 23rd day of Dec. 1986 and since then the defendants are continuing to remain wrongfully in the suit premises. The defendants entered into the suit premises without the consent and in violation of the rights of the plaintiffs such damages are assessed at Rs. 300/- per day on and from 23rd day of Dec. 1986. The defendants Nos. 1 and 2 are liable to pay such mesne profits and/or damages at the rate of Rs. 300/- per day on and from the 23rd day of Dec. 1986 and the Issue No, 8 is answered accordingly. The only issues that remain for consideration are as to what reliefs, if any, are the plaintiffs entitled- that is Issue No. 9 dated 15th Dec. 1992 and the Issue No. 12 dated 29th July, 1994 that is 'Are the plaintiffs in Suit No. 10 of 1988 entitled to a decree for damages of Rs.2,85,546 as prayed.'

82. So far as Suit No. 10 of 1988 is concerned, in my opinion, the plaintiffs Suit No. 10 of 1988 i.e. Gautam Majumdar and Subhas Ch. Majumdar are not entitled to any reliefs as against the defendants in the suit i.e. Mithua Development Private Ltd. and Maghen Aboth and Yasheebath Jacob Bengamin Elias or any of them either for damages or for any injunction as prayed for by them in Suit No. 10 of 1988 or for any relief whatsoever as against the said defendant or any of them. Suit No. 10 of 1988 (Gautam Majumdar v. Mithua Development Pvt. Ltd.) is hereby dismissed with costs. Interim orders, if any, made in Suit No. 10 of 1988 are hereby vacated.

83. So far as Suit No. 1036 of 1989 (Maghen Aboth and Yasheebath Jacob Bengamin Elias and another v. Gautam Majumdar) is concerned there will be a decree in favour of the plaintiffs against the defendants Nos. 1 and 2 in the said suit for khas possession of premises No. 25, Black Burn Lane, Calcutta more fully described in Schedule 'A' to the plaint filed in the said suit by evicting the said defendants from the said premises No. 25, Black Burn Lane, Calcutta.

84. There will be a declaration that the plaintiff No. 1 is the sole beneficial owner of the said premises 25, Blackburn Lane, Calcutta.

85. There would also be a declaration that the plaintiff No. 2 in the said suit No. 1036 of 1989 has the right to use and utilise the said premises No. 25, Blackburn Lane, Calcutta in terms of the agreement dated Feb. 23, 1982 being Annexure 'B'

to the plaintiff to the total exclusion of the defendants Nos. 1 and 2 and/or 3 and the said defendants have no rights whatsoever to interfere with the due implementation of the said agreement.

86. Injunction in terms of prayer (d) of the plaintiff filed in Suit No. 1036 of 1989, as against the defendants Nos. 1 and 2. There will be a decree against the defendants Nos. 1 and 2 in Suit No. 1036 of 1989 for mesne profits and/or damages at the rate of Rs. 300/- per diem on and from 23rd day of Dec. 1986 until peaceful and vacant possession is delivered to the plaintiffs and/or is recovered by the plaintiffs, or either of them.

87. There will also be a decree in favour of the plaintiffs in Suit No. 1036 of 1989 for costs, against the defendants Nos. 1 and 2.

88. Both the Suit No. 10 of 1986 (Gautam Majumdar v. Mithua Development Private Limited) as also Suit No. 1036 of 1989 (Meghen Aboth Yasheebath Jacob Benjamin Elias v. M/s. Gautam Majumdar) are disposed of in terms of the above decree.

89. Order accordingly.