®

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 11th day of October, 2013

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE V SURI APPA RAO

R.F.A. No. 2011 OF 2005

BETWEEN:

Janatha Dal Party
Represented by]
Karnataka Pradesh Janatha Dal (Secular)
No.3, Race Course Road
Bangalore – 560 009
Rep. by its President
Shri N. Thippanna ...Appellant

(By Sri Udaya Holla, Senior Counsel for
G. Krishna Murthy, Advocate)

AND:

1. The Indian National Congress
Having its Office at No.24
Akbar Road, New Delhi
Represented herein by the
All India Congress Committee

General Secretary
Shri M. Sathyanarayana Rao

2. Karnataka Pradesh Congress
Committee
Having its Office at No.210
Bellary Road, Sadashivanagar
Bangalore -80
Represented herein by its President
Shri K.T. Rathod

3. N. M. K. Sogi, Adult
C/o: Karnataka Pradesh Congress
Committee No.210
Bellary Road, Sadashivanagar
Bangalore – 80

4. Bhagavandas V. Talathi
Adult, President
Bijapur District Congress Committee
C/o: Karnataka Pradesh Congress
Committee No.210
Bellary Road, Sadashivanagar
Bangalore – 80

5. Janatha Party
Represented herein
By the President of the
Karnataka Pradesh Janatha Party
Having its Office at No.3
Race Course Road
Bangalore - 9

6. S.R. Bommai
Adult
Father's name now known to Plaintiff
President of the
Karnataka Pradesh Janatha Party

No.3, Race Course Road
Bangalore – 9

7. R.S. Umesh
C/o R. Subbanna
Aged about 34 years
Residing at No.15, 18th Cross
Cubbonpet
Bangalore – 560 002

8. M/s. Five Stars Investment &
Construction Company
A Partnership Firm
Having its Office at No.23
Magarath Road
Bangalore – 560 025
Represented herein by its Partners
Respondents 9 to 12 herein

9. Mohanlal Jindal
S/o Shivalal Jindal
Aged about 38 years
Businessman
Address: No.61/2
Silver Jubilee Park Road
Bangalore – 560 002

10. N.A. Mohammed
S/o Abdul Khadar Hajee
Aged 42 years
Businessman & Contractor
Address: No.23, Magrath Road
Bangalore – 560 025

11. C.M. Mustaq
S/o C.M. Sattar Khan
Aged about 38 years
Businessman

Address: No.36, Berlie Street
Bangalore – 560 042

12. Hyderali Jeewabhai
S/o Jeewabhai
Aged about 42 years
Businessman
Address No.17/1
Church Road, Basavangudi
Bangalore – 560 004

13. M/s. Chand & Company
Publishers Ltd., No.3
(Old Building), Race Curse Road
Bangalore – 560 001

14. M/s. Kailash Printers & Publishers
At No.3 (New Buidling)
Race Course Road
Bangalore – 560 001

15. Agricultural Training Wing
No.3, Race Course Road
Bangalore – 560 001

16. C.P.C. Lorry Service
Old Congress Annexe Building
No.3, Race Course Road
Bangalore – 560 001

17. Janatha Dal (United)
No.5, Subramanya Temple Street
Kumara Park
Bangalore – 560 020
By its President
Shri C. Byre Gowda ...Respondents

(By Sri. S.S. Naganand, Senior Counsel
For C/R-2 and R-1
Sri Adinath Narde for R-6 & 7
M/s S. Shekar Shetty and
Anil Kumar Shetty for R-8
M/s Esskay Assts for R-16, R-3 dead)

This RFA filed under Section 96 Order 41 Rule 1 of CPC against the judgment and decree dated 28-10-2005 passed in OS No.920/1982 on the file of the XXIV Additional City Civil Judge, Bangalore (CCH-6) decreeing the suit for declaration, delivery of possession, injunction, direction, enquiry under order 20 Rule 12 CPC and appointment of receiver.

This RFA coming on for hearing this day, ***N. KUMAR J.,*** made the following:

J U D G M E N T

This is a 13th defendant's appeal against the judgment and decree of the trial Court granting the relief of declaration of title, recovery of possession, mesne profits, etc.,

2. For the purpose of convenience, the parties are referred to as they are referred to in the suit.

FACTS OF THE CASE

PLAINT

3. The case of the plaintiffs' is that the Indian National Congress, the 1st plaintiff for short hereinafter referred to as the "Congress" is the first and foremost political party in India. It comprises All India Congress Committee which is the Apex Body at the Centre and the Pradesh Congress Committees at State levels. Karnataka Pradesh Congress Committee– 2nd plaintiff herein for short hereinafter referred to as "KPCC", is the constituent unit of the Congress in the State of Karnataka and is as such incharge of the affairs of the Congress in the State of Karnataka. Smt. Indira Gandhi was the President of the Congress, Sri. K.T. Rathod is the President of KPCC. The KPCC was called Mysore Pradesh Congress Committee before the name of the erstwhile new State of Mysore was changed as Karnataka. Plaintiff No.3 is the Indian National Congress Committee and plaintiff No.4 is the member of the KPCC.

4. The plaintiff Nos.1 and 2 are not registered bodies. The number of members of the Congress are numerous, running in to several lakhs. This suit is filed for and on behalf of and for the benefit of the entire body of members of the Congress, all of whom have same interest in the subject matter of the suit. Hence, the plaintiffs sought permission of the Court to bring the suit on behalf of all the members of the Indian National Congress Committee and the KPCC.

5. The 1st defendant is an unregistered body with numerous members. Plaintiffs are not aware of the names of all of them. It is also not practicable to implead all the members of the 1st defendant as parties. Second defendant is the President of the Karnataka Unit of the 1st defendant party adequately representing the 1st defendant party as a whole and all its members.

6. A separate application for permission to bring the suit in a representative capacity and to sue the 1st and 2nd defendants in a representative capacity was also filed.

7. The suit is for recovery of the property belonging to the KPCC of the Congress, namely., Premises No.3, Race Course Road, Bangalore and for other incidental reliefs. The said property is morefully described in Schedule 'A' and hereinafter referred as 'A' schedule property.

8. In the year 1969 there was a split within the Congress Organisation giving rise to two groups within it. One of them was led by Smt. Indira Gandhi and came to be then referred to as the Congress (J), claiming that Sri. Jagjivan Ram was the President of the Congress. The other group was led by Sri. S. Nijalingappa and came to be referred to as Congress (O), claiming that Sri. S. Nijalingappa was the President of the Congress. Within the State of Karnataka also, a split took place in the same pattern. The then Mysore

Pradesh Congress Committee broke up into Congress (J) and Congress (O), corresponding to those groups in the All India Congress Committee at the Centre. Each of these two groups claimed to be the real Congress to which they all belonged before the split. The question as to which of these two groups, Congress (J) and Congress (O) within the Congress Party should be recognized as the Congress came up for consideration before the Election Commission of India. After applying the test of majority at the organizational level and legislative wings, the Election Commission of India by an order dated 11.01.1971 held that the Congress (J) was Congress. That decision was upheld by the Hon'ble Supreme Court by its Judgment dated 11.11.1971 in Civil Appeal No.70/1971 and connected cases in the case of **Sadiq Ali Vs. Election Commission of India reported in AIR 1971 SC 187.** Accordingly, the Congress (J) group of the Congress came to be recognized as the Congress for all purposes. Later, Congress (J) came to be known as Congress (R). Both referred to the same group led by Smt. Indira Gandhi.

9. In the year 1977 by a General Election to the Lok Sabha, one of the contestants was the Congress Party then in power at the centre and most of the states. Majority of the parties in opposition joined hands to fight the Congress party at the Elections. The opposition parties which so joined included the Congress (O) Group of the Congress then led by Sri. S. Nijalingappa; Lok Dal; headed by Sri. S. Charan Singh; Jana Sangh led by Sri. A.B. Vajapayee and Congress for Democracy led by Sri. Jagjivan Ram. All these different parties fought the Election together as one front jointly under the name of Janata Party.

10. In the said Lok Sabha elections of the year 1977, the Congress party suffered defeat. In the mid-term poll held in the same year in some of the states also, the Congress party suffered defeat. The Janata Party formed the Government at Centre but it did not take long for it to break up. How the members representing the different constituent units of the Janata Party wrangled amongst themselves for

power and position, resulting in the Janata Party going out of power and the Lok Sabha getting dissolved is matter of history. After this, the Janata Party has no doubt continued as a political party and lead by Sri. M. Chandrashekar, as President. But the Congress (O) faction of the Congress, or for that matter, the other parties which were its constituent units at the inception, have ceased to be parts of it.

11. In January 1978 there was a further split within the Congress. At the National Convention of Congressmen held at New Delhi on the 1st and 2nd day of January 1978 consisting of members of All India Congress Committee, Members of the Parliament, Members of the State Legislatures and Congress candidates who had contested in the preceding Lok Sabha and Assembly Elections as also the organizational bodies within the Congress, Smt. Indira Gandhi was unanimously elected as President. By a letter dated 07.01.1978 Smt. Indira Gandhi brought this fact to the notice of Election Commission. But Sri. K. Brahmananda

Reddy, who had been elected in the year 1977 as President and whose term had expired on 31.12.1977 claimed to continue as President of the Congress. He represented before the Election Commission that he and not Smt. Indira Gandhi was the President of the Congress and wanted the Election Commission to reserve the symbol of calf and cow for the Congress Party, of which he claimed to be the President, during the ensuing elections. The Election Commission was therefore, called upon to go into the question as to who represented the Congress i.e. whether the group led by Smt. Indira Gandhi or whether the group led by Sri. Brahmananda Reddy, though in the context of reservation of the cow and calf symbol. By the time this question came to be heard, Sri. D. Devaraj Urs succeeded Sri. Brahmananda Reddy as the President of that Group which came to be known as Congress (U). Smt. Indira Gandhi continued to be the leader of the main body which was identified as the Congress (I). As the matter could not be finally decided before the election, the Election

Commission ordered that the symbol of cow and calf be frozen. Separate symbols were allowed to the Congress (U) and (I) groups. Elections to the Lok Sabha took place in December 1979. The Congress (I) was voted back to the Lok Sabha with a thumping majority. The same was the position in the States where the mid-term poll was held. Smt. Indira Gandhi, the President of the Congress (I) became the Prime Minister again. The Election Commission disposed of the matter as to which group was to be recognized as the Congress, by its order dated 23.07.1981. It was held after due enquiry, that the group led by Smt. Indira Gandhi as the President and known by the name of Congress (I) shall be recognized as the Congress. It also held that the group led by Sri. D. Devaraj Urs and known by the name of Congress (U) was not the Congress, leaving liberty to that group to approach the Commission, for its recognition as a party, taking a different name for itself. Sri. D. Devaraj Urs purporting to be the President of Congress (U) filed a petition for Special Leave to appeal to the Supreme Court against the

said order dated 23.07.1981. The Supreme Court after notice to all the parties and after hearing Counsel for both sides passed an order dated 14.08.1981 dismissing the Special Leave Petition. Consequently, the order of the Election Commission dated 23.07.1981 and the finding given therein and referred to above, stood affirmed. The said order is binding on all members of the Congress and others claiming through or under them and operates as res judicata. It is no longer open to any one to claim that any party other than the 1st plaintiff herein of which Smt. Indira Gandhi was the President, is the Congress. Any other group within the Congress whosoever may have led it at different times, has no right to call themselves as Congress. They are defectors and cannot claim the name of Congress and have no authority to represent it.

12. All properties and funds belonging to or referred to as belonging to the Congress are thus the properties and funds of the 1st plaintiff herein. Similarly, all properties and

funds belonging to or referred to as belonging to the erstwhile Mysore Pradesh Congress Committee or the KPCC thus belong to the 2nd plaintiff herein. Neither the erstwhile Congress (O), Congress (U) group, any other group for that matter, the Congress nor the Janata Party with which it had an electoral alliance has any right, title, interest or claim to the properties of the Congress or KPCC. Persons who claimed to have remained in possession of any of the properties or funds of Congress did so only in their capacities as Office bearers of the Party, holding the same for and on account of the party and as Trustees thereof. When once they have ceased to possess that character, they have no right to be in possession or management or to deal with the same contrary to the wishes of the office bearers lawfully in office. None of the breakaway groups within the Congress nor the Janata Party with which the said groups had collaborated in order to defeat the Congress led by Smt. Indira Gandhi has any right to the said properties or the possession thereof.

13. The 'A' schedule property is owned by the KPCC of Congress, 2nd and 1st plaintiffs herein. The land comprised therein was acquired by the erstwhile Mysore Pradesh Congress Committee as it was then called and it constructed the buildings now standing therein for the purposes of the Congress Party many decades ago. After the building was constructed it was named as 'Congress Bhavan'. The Congress was using the same for housing its Pradesh Congress Committee offices and carrying on its activities. After the name of the State was changed from Mysore to Karnataka, the name of the Pradesh Congress Committee, was changed as KPCC. Both the names Mysore Pradesh Congress Committee and KPCC refer to one and the same body, namely, the 2nd plaintiff which is a part of the Congress, the 1st plaintiff. Whatever properties are acquired or are held by the Pradesh Congress Committees are so held for and on account of the Congress of which they are but a part.

14. The Mysore Pradesh Congress Committee was in possession and enjoyment of Congress Bhavan and was using it for its purposes. Upon the split within the Congress Party in the year 1969, the group which called itself Congress (O) continued to use the property claiming that it is the Mysore Pradesh Congress Committee of the Congress. After the formation of the Janata Party with the Congress (O) group as an electoral ally, the schedule property came to be used by the Janata Party from the end of the year 1977. It then changed the name of the premises as 'Janata Bhavan' from 'Congress Bhavan'.

15. Towards the end of 1979 when the different collaborating parties who had joined hands to fight the Congress in the Elections of 1977 by the name of Janata Party broke up, the Congress (O) party also went its way and ceased to be part of the Janata party. The Janata Party with Sri. M. Chandrashekar as President continued to be a political party, but it was a new party without the Congress

(O) being part of it. The Janata Party having come to the possession of the schedule property in the year 1977 in the circumstances narrated above, however, continued in possession. The 1st defendant has no right, title, interest or claim of any kind to the schedule property.

16. During the period the property was under the control of the Congress (O) group claiming to be the Congress, it appears to have granted two leases of portions of the vacant land under leases dated 22.01.1971 and 10.04.1971 in favour of R.S. Umesh, 3rd defendant herein. The said leases have been granted purportedly by the Mysore Pradesh Congress Committee of the Congress represented by Dr. K. Nagappa Alva of Congress (O) group. Congress (O) group was in truth not the Congress, as they passed off to be. They had no authority to act on behalf of the real Mysore Pradesh Congress Committee of the Congress Committee and to grant the leases on its behalf. The said leases relate to the portions of the grounds lying to the south of the

existing building in the schedule 'A' property and the same are described as items 1 and 2 in Schedule 'B'. These portions are parts of the grounds appurtenant to the premises known as 'Congress Bhavan' and bearing Municipal No.3, Race Course Road, Bangalore, the whole of which is described in Schedule 'A' to the plaint. The said leases have been granted by persons purporting to act on behalf of the Mysore Pradesh Congress Committee of Congress, though they had no authority whatever to do so are illegal and invalid in law and are not binding on the plaintiffs.

17. After the Janata Party came into possession in 1977, the Pradesh Janata Party, a unit of the 1st defendant purports to have granted a lease in favour of a firm called Five Stars Investment Construction Company – 4th defendant herein in respect of a portion of 'A' schedule property. Defendant Nos.5 to 8 are stated to be the partners of the 4th defendant and the recitals in the lease deed show that the

lease is granted to them also in their individual capacity. The lease deed is registered on 04.08.1981. The property which is the subject matter of the said lease is described in schedule 'C' to the plaint. The Janata Party or the Pradesh Janata Party has no right, title or interest in the property which they have purported to let out and have no authority to grant any lease. The said lease is illegal and invalid in law and plaintiffs are not bound by the same. Ideologically the Congress and the Janata Party have nothing in common. Indeed its programmes and policies are opposed to those of the Congress party. What is still more significant is that it all along professed to fight the Congress and wrest power from that party. Even the defector group – Congress (O) has left it. Having eventually failed in that attempt, it has no justification to retain the property of the Congress. To permit it to do so would result in unjust enrichment to them. No buildings have been erected by the lessees. But they are proposing to erect some buildings shortly. It is permitted to be done which is unlawful. Commercial exploitation by

others is not the purpose of the acquisition of the schedule property by the Congress party. Defendant Nos.9 to 12 are stated to be tenants in portions of the building constructed in plaint 'A' schedule property, having taken the same on lease from 1st defendant or Congress (O) group and are said to be paying rents to 1st defendant now, neither of whom has any right or authority to grant the lease or confer any right of occupation in law. The said leases are equally illegal and invalid and are not binding on the plaintiff. Therefore, the plaintiff was constrained to file the suit for declaration that the KPCC is the owner of the plaint 'A' schedule property and for declaration that the leases as per the deeds dated 22.01.1971 and 10.04.1971 in favour of the 3rd defendant and the lease dated 10.08.1981 in favour of defendant Nos.4 to 8 in respect of portions of the plaint 'A' schedule property as also the leases granted to defendant Nos.9 to 12 in respect of the portions of the buildings constructed in the plaint 'A' schedule property are all illegal, invalid, unauthorized and are not binding on the plaintiffs and for

delivery of possession; injunction restraining the defendant Nos.1 to 8 from putting up any constructions; a decree directing them to pay to 2nd defendant a sum of Rs.36,000/- by way of mesne profits accrued upto the date of suit; for an enquiry under Order 20 Rule 12 of C.P.C. and any other consequential reliefs.

WRITTEN STATEMENT

18. After service of summons, defendant Nos.1 and 2 entered appearance and they have filed their detailed written statement. It is stated that the description of 1st plaintiff in the cause title as Congress, etc., represented by All India Congress Committee General Secretary Sri. M. Satyanarayana Rao is incorrect. Sri. M. Satyanarayana Rao is the General Secretary of a group in politics called as Congress (I) headed by Mrs. Indira Gandhi. Sri. M. Satyanarayana Rao has no right to represent the Congress. After the group headed by Mrs. Indira Gandhi and others broke away from the

Congress and formed their own association, the Congress came to be known as Congress (O) which finally merged itself into the Janata Party. Similarly, the description of plaintiff Nos.2, 3 and 4 is also not correct. Sri. K.T. Rathod, Sri. NMK Sogi and Sri. Bhagawandas V. Talothi never represented any organization under the Congress. The Congress later on came to be known as Congress (O) got merged into the Janata Party. None of the plaintiffs have any right to represent the Congress and as such the suit is liable to be rejected in limine.

19. Thereafter, in their written statement they have denied the allegations made in the plaint. However, in addition to denying the allegations in the plaint they have also stated as under:-

The organization led by Mrs. Indira Gandhi goes with the name Congress (I). They want to mischievously describe it as Congress and wants to make it appear that it represents

various bodies as set out in paragraph 2 of the plaint. Plaintiff No.1 and plaintiff Nos.2 to 4 do not represent the Congress or its various constituencies as set out in paragraph 2 . Neither the 1st plaintiff nor plaintiff Nos.2 to 4 are competent to represent the Congress and other committees as set out in the plaint. Congress (I) a political group headed by Mrs. Indira Gandhi is an impost and they want to mislead this Court by describing it as Congress. The plaintiffs are not entitled to file a suit on behalf of the Congress and are not entitled to seek permission of this court to bring a suit on behalf of the members of the Congress or the KPCC through Sri Sathyanarayana and Sri K.T.Rathod and Sri N M K. Sogi and Sri Bhagavandas V. Talathi, who represent unregistered bodies under the Congress (I). They are not entitled to institute a suit and such a suit is liable to be dismissed.

20. The Congress was a mighty organization consisting of millions of persons through out the length and

breadth of this country. Such a mighty organization cannot be said to be represented by a political group of individuals headed by Mrs. Indira Gandhi viz., Congress (I). Mrs. Indira Gandhi heads the organization of defectors called by name Congress (I) and it is not right to bring the present suit, since the persons mentioned as plaintiffs 1 to 4 are salient unregistered bodies and the present suit is not maintainable and the same is liable to be dismissed. The Janata Party has its State Headquarters housed in No.3, Race Course Road, Bangalore – 560 009, and it came into being as a result of merger of Congress (O) and several other parties. As a result of merger all the properties belonging to the Congress (O) which originally belonged to Congress became the properties of the Janatha Party. The erstwhile Congress which came to be known as Congress (O) and the Janatha Party has a very large following through out the length and breadth of the country running into several lakhs. The plaintiffs have not taken adequate steps to bring the suit in a representative capacity. Further they are not entitled to sue

for and on behalf of the erstwhile Congress. The plaintiffs are not entitled to apply for permission to bring the suit in a representative capacity and sue the defendants 1 and 2 in a representative capacity and sue the defendants 1 and 2 as set out in paragraph 5. The plaintiffs are not entitled to bring the present suit for recovery of properties belonging to the Janatha Party and for other incidental reliefs described in Schedule 'A' to the plaint. Schedule 'A' property never belonged to the plaintiffs at any point of time and they have no right to claim the suit property.

21. It is no doubt true that in the year 1969 a group headed by Smt. Indira Gandhi broke away from the parent organization and formed themselves into a separate group. The parent organization viz., Congress came to be known as Congress(O). It was in possession and enjoyment of the properties belonging to the Congress throughout the length and breadth of the country. Immediately after the split the organization headed by Smt. Indira Gandhi came to be

known by the names of the Presidents which it had from time to time and subsequently Congress (I) and established different offices in the State and throughout the country. In the State of Karnataka after 1969 the group headed by Mrs. Indira Gandhi established offices in premises different from the office where the Janatha Party has its headquarters in the State viz., at No.3, Race Course Road, Bangalore, which is Schedule 'A' property. At no point of time, the organization headed by Mrs. Indira Gandhi or persons claiming various posts under it were in possession and enjoyment of the suit property i.e., 'A' schedule property. From 1969 onwards till today the Congress (O) and after the formation of Janatha Party are in exclusive possession and enjoyment of the 'A' schedule property, where at present the Janatha Party's State Head Quarters are situated. Throughout, all the taxes, telephone bills, electricity charges and other incidental charges are paid and maintained by the Congress (O) and after it merged itself into the Janatha Party, by the office-bearers of the Janatha Party. It is crystal

clear that the Janatha Party and the Congress (O) were in exclusive possession and enjoyment of the suit property ever since 1969 till the date of the suit. 'A' schedule property is the absolute property of the 1st defendant and they are entitled to be in possession. The Janatha Party and its predecessors Congress (O) have perfected their title by adverse possession. The organization headed by Mrs. Indira Gandhi tried to trespass into 'A' Schedule property in the year 1971 which culminated in the proceedings initiated under section 145 of Cr.P.C. and it was decided by the High Court of Karnataka in Crl.R.P. No.544/1972 that the Congress (O) are the members of the Congress party, who are entitled to be in possession of 'A' schedule property. It was further held that as on the date of the preliminary order and even prior to that it was Congress (O) which was in possession of the 'A' schedule property. After the said decision finding of the High Court has not been challenged and the same has become conclusive and it establishes the possession of the Congress (O) and the Janatha Party. The

allegation that the group of Congress i.e., Congress (J) came to be recognized as Congress for all purposes is a clear attempt on the part of the plaintiffs to mislead this Court to the effect that they represent Congress. In the judgment reported in 1972 SC 187 in paragraph 31 it has been clearly laid down that "The Commission while deciding the matter under paragraph 15 does not decide dispute about property." The dispute that went on before the Election Commission, which was subsequently challenged in appeal merely pertained to the election symbol and by no stretch of imagination that could be pressed into service for the purpose of laying claim to the suit property. The Election Commission only adverted to the matter of symbol and nothing else and there is no declaration with regard to other rights. The Congress which latter on came to be known as Congress (O) along with other parties as mentioned in paragraph 9 merged together and formed the Janatha Party and fought the party headed by Smt. Indira Gandhi and defeated her as well as her party in the Elections. The

allegation that in the Lok Sabha Elections in the year 1977, the Congress party suffered a defeat is incorrect and mischievous. The party that was routed at the polls was a group of defectors headed by Smt. Indira Gandhi, who had nothing to do whatsoever with the Congress. In the 1977 Elections, the fight was mainly between the Janatha Party and the party headed by Mrs. Indira Gandhi. As stated earlier, at no point of time the Congress (J), Congress (R), Congress (U) or Congress (I) had anything to do with the former Congress and they never represented the Congress. The Congress a mighty organization built by Mahatma Gandhi and other great leaders during the freedom struggle, after the split in 1969 it came to be known as Congress (O) under the Presidentship of Sri S Nijalingappa, which subsequently merged into Janatha Party along with other National parties. The Janatha Party headed by Sri Chandrashekar as President is formed by merger of Congress (O) - representatives of Congress; Jan Sangh, Lok Dal and Congress for Democracy led by Sri Jagjivanram and

millions of other patriotic citizens of India, who rebelled against the authoritarian tyranny and subversion of democracy in the country.

22. In January 1978, there was a split in the Organization headed by Smt. Indira Gandhi and there was no split in Congress as set out in the plaint. It is unfortunate that there is a clear attempt on the part of the plaintiffs to mis-state the facts with a view to mislead the court in their anxiety to lay claim to the property to which they are not entitled. It would be pertinent to point out that Smt. Indira Gandhi through out political career is at the bottom of all splits and she never believes in any democratic set-up and she wants to be authoritarian wherever she is and that is the reason why she and her henchmen broke away from the Congress and it is ridiculous that the group of defectors headed by Smt. Indira Gandhi have come up before this Court parading themselves as Congress.

23. The Election Commission by its order dated 23.7.1981 has only chosen to resolve the dispute which arose between the group headed by Smt. Indira Gandhi which came to be known as Congress (I) and group headed by Mr. Devaraj Urs. The decision came to be of no avail to the plaintiffs and by no stretch of imagination that decision could be relied upon by the plaintiffs. After the dispute between the group headed by Smt. Indira Gandhi and Mr. Devaraj Urs was decided by the Election Commission, the group headed by Mr. Devaraj Urs approached Supreme Court by way of Special Leave and the same was dismissed. These facts have no relevance so far as the present suit is concerned and they are pleaded only with a view to confuse the court. The allegation that the order passed by the Election Commission and subsequently affirmed by the Supreme Court is binding on all the members of the Congress and others claiming through or under them and operates as *res judicata* is wholly incorrect. The members of Congress, which subsequently came to be known as

Congress (O) were never parties to the proceedings referred to above either before the Election Commission or before the Supreme Court and as such there is no question of *res judicata*. The defendants emphatically deny that Mrs. Indira Gandhi is the President of Congress. She represents only a group of defectors which broke away from the Congress and at present she happens to be the President of that group which is known as Congress (I). After the group headed by Mrs. Indira Gandhi broke away from the parent organization in the year 1969, the Congress came to be known as Congress (O) and it is preposterous to describe the members of the organization as defectors and further maintain that they cannot claim the name of Congress and have no authority to represent it. It is like a devil quoting the scriptures. Mrs. Indira Gandhi and her party of defectors have no right to represent the Congress as they cannot claim the name of Congress. Mrs. Indira Gandhi never presided over the Congress as she only presided a group of her own supporters after the split and they had nothing to do with

the Congress. During her stay in the Congress she violated its Constitution and went out of the party.

24. The plaintiffs are not entitled to lay a claim to the properties and funds belonging to the Congress and the properties and funds belonging to Congress after the split in the year 1969 vested in Congress (O) they were in exclusive possession and enjoyment of the properties and funds belonging to the Congress. Subsequently they have all become properties of the Janatha Party headed by Sri Chandrashekar. The suit schedule property is the absolute property of the Janatha Party. The party headed by Mrs. Indira Gandhi and the plaintiffs have no right, title or interest in the schedule property and they by no stretch of imagination could lay claim to it. The Mysore Pradesh Congress Committee was in possession and enjoyment of 'A' schedule property, which was known as Congress Bhavan. After the split, the group housed by Mrs. Indira Gandhi and the present plaintiffs had to establish their own offices. The

'A' schedule property was throughout in possession of the erstwhile Mysore Pradesh Congress Committee which came to be known as Congress (O) and through out it has been in possession and enjoyment of Congress (O) and the Janatha Party. It is true that after the Janatha Party was formed, it came to be known as Janatha Bhavan. The allegation that Congress (O) has ceased to be part of the Janatha Party is absolutely false and mischievous. It continues to be merged in the Janatha Party of which Sri Chandrashekar was the President. To maintain that the Janatha Party is a new Party without the Congress (O) being a part of it is, to say the least, ridiculous. Congress (O) was in possession and enjoyment of the suit schedule property and it was merged with the Janatha Party and as a result of such merger all its properties and other rights belong to the Janatha Party and Janatha Party is in absolute possession and enjoyment of the schedule properties as absolute owner.

25. Congress (O) has granted leases of the vacant lands under Deeds dated 22.1.1971 and 10.4.1971 in favour of the 3rd defendant. The said leases have been granted in their own right and the plaintiffs are not entitled to question the same. The defendants deny that the Congress (O) was not the Congress and further Dr. Nagappa Alva had no authority to act on behalf of the erstwhile Mysore Congress Committee of the Congress to grant leases. The grant of leases is perfectly legal and the plaintiffs have no right to question the said leases. The allegation that the 1st defendant got into possession in collusion with the defector group of the Congress i.e., Congress (O) is denied as incorrect. After the split the Congress (O) in its own right as representative of the Congress merged with the Janatha Party and Janatha Party in turn got into possession and prior to that the Congress (O) was in possession of the same and has been enjoying the property as absolute owner. The allegation that ideologically the Congress and the Janata Party have nothing in common is not correct. The party

headed by Mrs. Indira Gandhi is not the Congress. It is true that there are ideological differences between the Congress (I) party headed by Mrs. Indira Gandhi and the Janatha Party. A Democratic party like the Janatha Party, which is wedded to democracy and rule of law and which is out to safeguard the individual liberty, can have nothing in common with a party headed by Mrs. Indira Gandhi. Congress (O) once and for all merged with the Janatha Party and it has not left the same. It is preposterous to maintain that there is unjust enrichment if Janatha Party continues to enjoy and possess in its own right as absolute owner thereof. The present plaintiffs and the party headed by Mrs. Indira Gandhi are making a desperate attempt to get hold of the suit schedule property and it would be high time to permit them to lay claim to the suit schedule property to which they have no right.

26. These defendants emphatically deny that after the formation of the Janatha Party, the Congress (O)

abandoned its identity with the Congress. After the formation of the Janatha Party, the Plaint 'A' schedule property came to be known as Janatha Bhavan. Throughout, it was in the possession of the Congress (O) and after its merger it is in the possession of the Janatha Party. The plaintiffs have no locus standi to question these leases because they are all leases granted by first defendant as absolute owner. The defendants are not bound to deliver possession to the 2nd plaintiff of the portions of the 'A' schedule property in their respective occupation. Second plaintiff has no right in the suit schedule property and they are not entitled to claim possession. The contract in favour of defendants 3 and 4 for purposes of improving the property would be highly beneficial to the Janatha Party and the plaintiffs, who have no right, title or interest in the property, are not entitled to question the same.

27. There is no cause of action for the suit and the cause of action alleged in paragraph 27 and the valuation set

out in paragraph 28 are wholly incorrect. The suit is barred by law of limitation. The plaintiffs are not entitled to any relief and therefore, have sought for dismissal of the suit.

28. The defendants 4 and 6 have also filed a separate written statement reiterating the allegations made in the written statement of defendants 1 and 2. They contend that with a valid authority the 1st defendant leased the suit schedule property to the 4th defendant and the 4th defendant is in lawful possession and made all arrangement for the construction. The plaintiffs cannot interfere with the construction nor seek for any injunction to prevent the 4th defendant's construction or enjoying the property it possessed. The plaintiffs have no locus standi to prevent them from proceeding with the construction and enjoying the property in any manner they like.

29. The defendants 5, 7 and 8 filed a memo stating that they adopt the written statement filed by the defendants 4 and 6.

30. Karnataka Pradesh Janata Dal (Secular), by its President Sri Siddaramaiah, filed an application to implead it as defendant No.13 in this suit. In the affidavit filed in support of the application it was sworn to the fact that, there was a split in Janata Dal Party at the national level in the year 1999, resulting in the formation of Janata Dal (Secular) and Janata Dal (United). The Election Commission of India issued a Gazettee Notification to this effect on 9-8-1999. The suit schedule property is continued in possession and enjoyment of Janata Dal (Secular) headed by Sri Siddaramaiah as its State President. Sri Siddaramaiah was also the State President of the erstwhile Janata Dal in Karnataka. Despite having knowledge that the Janata Dal (S) is in possession and enjoyment of the suit schedule property, the Janata Dal (S) has not been brought as a defendant in

this suit. The plaintiff ought to have brought the applicant Janata Dal (S) as a party in the suit. Therefore, a request was made to implead Janata Dal (S). The plaintiffs said no objection for allowing the impleading application. Therefore, an order came to be passed on 14.10.2003 allowing the application in the modified form and thus Janata Dal (S) was impleaded as the 13th defendant. 13th defendant did not file any separate written statement. It defended the suit on the basis of the written statement filed by the 1st defendant and examined their office bearers as their witnesses.

ISSUES

31. On the aforesaid pleadings the trial court framed as many as 24 issues which are as under:-

a. *Whether the suit filed in a representative capacity by the plaintiffs is maintainable?*

b. *Whether the plaintiffs prove that the 'A Schedule Property belongs to the KPCC of the Congress?*

c. *Whether the Plaintiffs prove that all the properties and funds belonging to the Congress are the properties of the plaintiffs?*

d. *Whether the Plaintiffs prove that all the properties and funds belonging into erstwhile Mysore Pradesh Congress Committee or KPCC belongs to the 2nd plaintiff?*

e. *Whether the Plaintiffs prove that Mysore Pradesh Congress Committee represented by Dr. Nagappa Alva of Congress (O) had no authority to lease 'B' Schedule Property as per Deeds dated 22.2.1971 and 20.4.1971 in favour of the 3rd Defendant?*

f. *Whether the Plaintiffs prove that the said lease granted in favour of the 3rd Defendant is invalid and not binding on the Plaintiffs?*

g. *Whether the plaintiffs prove that the 1st Defendant or Pradesh Janatha Party had no right or authority to grant any lease of the 'C' schedule property in favour of 4th Defendant?*

h. *Whether the Plaintiffs prove that the said lease in favour of the 4th Defendant is illegal, invalid and not binding on the plaintiffs?*

i. *Whether the Plaintiffs prove neither the 1st Defendant nor congress (O) had any right to grant*

leased portions in the 'A' schedule property in favour of Defendants 9 to 12 and the said leases are illegal, invalid and not binding on the Plaintiffs?

j. Whether the Plaintiffs prove that defendants 3 and 4 have no right to put up any construction in the lease-hold property granted to them?

k. Whether the defendants prove that the suit is barred by limitation?

l. Whether the defendants prove that the 1st defendant and its Predecessor Congress (O) have perfected their title to the suit properties by adverse possession?

m. Whether the persons who have signed the plaint have no authority to sign the plaint and file the suit?

n. Whether the defendants 1 and 2 prove that all the properties belonging to Congress (O) which originally belonged to Congress became the properties of the 1st Defendant?

o. Whether the defendants 1 and 2 prove that the 1st Defendant is the owner and in possession of the suit properties?

p. *Whether the suit is not properly valued and the court fee is not proper?*

q. *Whether the Plaintiffs are entitled to declaration that the 2nd Plaintiff is the owner of the 'A' schedule property?*

r. *Whether the Plaintiffs are entitled to declaration that the leases as per deeds dated 22.1.1971 and 10.4.1971 in favour of the 2nd Defendant and the lease as per deed dated 10.8.1981 in favour of Defendants 4 to 8 and the leases granted in favour of defendants 9 to 12 are illegal, invalid and not binding on the Plaintiffs?*

s. *Whether the Plaintiffs are entitled to recover possession of the suit schedule properties?*

t. *Whether the Plaintiffs are entitled to permanent injunction restraining defendants 1 to 8, their agents, or servants from putting up any construction on the suit schedule properties?*

u. *Whether the Plaintiffs are entitled to a decree against the 1st Defendant in sum of Rs.36,000/- towards mesne profits up to date of suit?*

v. *Whether the Plaintiffs are entitled to future mesne profits?*

w. Whether the Plaintiffs are entitled to get a Receiver appointed to take possession and manage the 'A' schedule property?

x. To what reliefs parties are entitled to?

EVIDENCE

32. The plaintiffs in order to establish their claim examined Sri C.K. Jaffer Shariff as PW.1, Sri K.B. Krishnamurthy as PW.2, Sri Haranahalli Ramaswamy as PW.3 and Sri M. Satyanarayana Rao as PW.4 and Sri Hanumanthappa as PW.5. They also produced 17 documents which are marked as Exs.P.1 to 17. On behalf of the defendants Sri C.Narayanaswamy was examined as DW.1 and Sri M.Chandrasekhar was examined as DW.2. One Sri Chikka Muniyappa, who was examined as CW.1 is the Asst. Commissioner. Defendants also relied upon 18 documents which are marked as D1 to D18.

FINDING OF THE TRIAL COURT

33. The Trial Court on appreciation of the aforesaid oral and documentary evidence on record held the suit filed by the plaintiffs in representative capacity is maintainable. Plaintiffs have proved that 'A' schedule property belongs to KPCC i.e., Congress. Further they have proved that all the properties and funds belonging to the Congress are the properties of the plaintiffs. Similarly they have proved that all the properties and funds belonging to the erstwhile Mysore Pradesh Congress Committee or KPCC belongs to the 2nd plaintiff. They also proved that Mysore Pradesh Congress Committee represented by Dr. Nagappa Alva of Congress (O) had no authority to lease 'B' schedule property as per the lease deed dated 22.1.1971and 10.4.1971 in favour of 3rd defendant. Therefore, the said leases granted in favour of the 3rd defendant is invalid and not binding on the plaintiffs. Similarly the 1st defendant or the Janatha Party had no right or authority to grant 'C' schedule property in favour of 4th defendant and accordingly the lease deed executed by them

in favour of 4th defendant is illegal, invalid and not binding on the plaintiffs. The plaintiffs have also proved that the 1st defendant nor Congress (O) had any right to lease the 'A' schedule property in favour of defendants 9 to 12 and the said lease is illegal, arbitrary and not binding on the plaintiff. Consequently, defendants 3 and 4 have no right to put up construction in the lease hold property granted to them. The defendants have failed to prove that the suit is barred by limitation. Further the defendants have failed to prove that the 1st defendant or its predecessors have perfected their title by adverse possession. The defendants have failed to establish that the persons, who have signed the plaint have no authority to sign the plaint and file the suit. The suit schedule properties originally belonged to the Congress as it existed prior to the split in the year 1969 and therefore, the defendants failed to prove that all the properties belonging to Congress (O) which originally belonged to Congress became the properties of the 1st defendant. Defendants have failed to prove that the 1st defendant is the owner and in possession

of the suit schedule property. The suit is properly valued. Court fee paid is proper. The plaintiffs are entitled to the declaration as sought for. Plaintiffs are also entitled to a declaration that the lease deeds dated 22.1.1971, 10.4.1971, 10.8.1981 executed in favour of defendants 4 to 8 and 9 to 10 is illegal and not binging on the plaintiffs. Plaintiffs are entitled to recovery of possession of the suit schedule properties from the defendants. Plaintiffs are also entitled to a decree of permanent injunction restraining defendants 1 to 8 from putting up any construction in the suit schedule property. The plaintiffs are also entitled to a decree for directing the 1st defendant to pay to the 2nd defendant a sum of Rs.36,000/- up to the date of the suit. They are entitled to future *mesne* profits. In those circumstances, the question of appointment of receiver would not arise and therefore, the trial court decreed the suit of the plaintiffs as prayed for.

34. Aggrieved by the said judgment and decree of the trial court, the 13th defendant in the suit has preferred this appeal. The other defendants have not preferred any appeal against the judgment and decree of the trial Court and as such in so far as they are concerned it has become final and binding.

RIVAL CONTENTIONS

35. **Sri Udaya Holla**, learned Senior counsel appearing for the appellant, assailing the impugned judgment and decree contended as under:

(a) In the entire plaint, the plaintiffs have not referred to their source of title. They only contend that plaintiffs 1 and 2 are the owners of the `A' Schedule property. Along with the plaint, as a suit document, no document of title was produced. However, in the course of evidence, for the first time, the certified copy of a gift deed, which is marked as Ex.P10 is produced in support of the plaintiff's title. A reading of the said

document makes it clear that the said gift deed was executed by one C.Rangaswamy in favour of the Bangalore City Congress Committee. The Bangalore City Congress Committee is not the plaintiff. In the entire plaint, it is not mentioned whether the plaintiffs 1 and 2 are the successors of the Bangalore City Congress Committee or is it a part of plaintiffs 1 and 2. It is settled law that in a suit for declaration of title, the plaintiff has to specifically plead the acquisition of title so that the defendant would have ample opportunity to meet the case of the plaintiff. Seen from that angle, in the absence of specific pleading regarding source of title, the original title deed not being produced before this Court as the suit document along with the plaint and the documents on which now reliance is placed, do not show that the plaintiffs are the owners of the property. The Trial Court committed a serious error in decreeing the suit of the plaintiff as prayed for.

(b) The learned Trial Judge proceeded on the assumption that the `A' schedule property is a property belonging to the Congress and that the said fact is not disputed. The allegations that `A' schedule property belongs to Congress or the KPCC has been specifically denied in the written statement, which in fact gave raise to the issue and therefore, there is an error apparent on the face of the record and the judgment of the Trial Court requires to be set-aside.

(c) The limitation for the suit for declaration of title is governed by Article 58 of the Limitation Act, 1963. Three years is the period prescribed for filing the suit from the date when the right to sue first accrued. The plaintiffs' title to the property was denied in the year 1969 in November 1969 when there was spilt within the Congress Organization. Therefore the trial Court committed serious error in decreeing the suit on that ground.

(d) The suit being one for recovery of possession on the basis of title, it is governed by Article 65 of the Limitation Act. The period prescribed is 12 years from the day when possession of the defendant became adverse to the plaintiff. In paras 15, 17, 18 and 27 of the plaint and at page 58, 65 and 94 there is a clear admission that the plaintiff has lost possession of the A schedule property in the year 1969. Within 12 years from that date they ought to have filed the suit. The suit is filed beyond 12 years. By virtue of Section 27 of the Limitation Act, plaintiffs not only lost the remedy but even the right to property and the suit is clearly barred by limitation.

(e) Admittedly from November 1969 when the Congress Organization spilt, the plaintiffs are not in possession of the A schedule property. Initially Congress (O), subsequently Janata Party, thereafter Janata Dal and thereafter the 13th defendant-Janata Dal (S) is in exclusive possession of the A schedule property

openly, continuously and with hostility. Therefore the 13th defendant has perfected his title by adverse possession. Therefore seen from any angle the suit of the plaintiffs should have been dismissed.

36. Per contra **Sri Naganand,** learned Senior Counsel appearing for the plaintiffs submitted as under:

(a) No doubt, in a suit for declaration of title, the plaintiffs have to specifically plead the source of title. But in considering the application of this principle to the facts of a particular case, the Court must bear in mind the other principle that considerations of form cannot override the legitimate considerations of substance. The whole object of a plea is the other side should have due notice so that they can meet their case effectively. In the instant case, it is not in dispute that both the parties are claiming title under the very same title deed. In the facts of this case having regard to the pleas, both in the plaint and in the written

statement, non-mentioning of the source of title specifically in the plaint would in no way effect the interest of the defendants.

(b) The Congress consisted of Mysore Pradesh Congress and City Congress as per their bylaw. Mysore Pradesh Congress Committee in turn consisted of the City Congress Committees. Therefore, the property gifted in favour of Bangalore City Congress Committee became the property of the Mysore Pradesh Congress Committee as well as the Congress. The Bangalore City Congress Committee was part and parcel of Mysore Pradesh Congress Committee as well as the Congress.

(c) In the year 1969 there was a split in the Congress, one faction led by Smt. Indira Gandhi and another faction led by Sri S.Nijalingappa, who were claiming to represent the Congress. Both the parties approached the Election Commission for allotting the symbol of the

Congress to them. After elaborate enquiry, the Election Commission held that the group led by Smt.Indira Gandhi is the Congress. The said finding was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court upheld the said contention in the year 1971. Till such time the possession of 'A' schedule property by one group is the possession of the other group as both of them were claiming to be representing the Congress. If at all, it is only after the judgment of the Hon'ble Apex Court when it was declared that group led by Smt. Indira Gandhi, is the Congress, it could be said that the group led by S.Nijalingappa which was in physical possession of the 'A' schedule property were totally different. He further submitted that the 13th defendant cannot take advantage of the possession of the 'A' schedule by Congress (O) led by Sri S.Nijalingappa. The evidence on record shows that in the year 1977 the said Congress (O) merged with Janata Party. When they

say it merged with the Janata Party it ceased to exist. The Janata Party continued in possession of the 'A' schedule property. It was not claiming to be the Congress or successor of Congress. Between 1969 till the date of the suit, the title to the property was not in dispute. What was in dispute was as to who was in actual possession of the property. It is only after the pronouncement of the judgment of the Hon'ble Apex Court, that the dispute regarding who is the real Congress was decided. The Apex Court in the said judgment left open the question of dispute regarding the property. Even then the defendants did not dispute the title of the plaintiffs to the schedule property. Dispute to the title for the first time was put forth when katha of the property was made out in the name of the 1st defendant, and thereafter when 1st defendant leased the property to the 4th defendant. Then a cloud was on the title of the plaintiffs which became necessary for the plaintiffs to seek a

declaration and consequential possession. Therefore the suit filed for declaration as well as for possession of the 'A' schedule property is well within time and is not barred by the law of limitation as contended by the defendants.

(d) He further contended that it is well settled that once when plaintiff establishes his title, the burden of showing that defendant is in exclusive possession adverse to that of plaintiff is on the defendant. The defendant has to specifically plead the date from which his possession became adverse to that of the plaintiff and from that day onwards, the defendant has been in possession continuously for a period of more than 12 years openly and with hostile intention by denying the title of the plaintiff. In the instant case, there is no specific plea for adverse possession. Defendant does not admit that plaintiffs are the owners of the A schedule property. On the contrary, the first defendant contend that defendant is the owner of the

A schedule property. Therefore, the trial Court was justified in holding that the case of the defendant that they perfected title by adverse possession, has no substance.

POINTS FOR CONSIDERATION

37. In the light of the aforesaid facts and rival contentions, the following points arise for our consideration:

(1) Whether the finding of the trial Court that the second plaintiff is the owner of the plaint schedule property is correct?

(2) Whether the suit of the plaintiff is barred by the law of limitation in view of Articles 58 and 65 of the Limitation Act, 1963,

or

In the alternative whether the 13th defendant proves that it has perfected its title to the 'A' schedule property by way of adverse possession?

(3) Whether the suit filed in a representative capacity under Order 1 Rule 8 of CPC is in accordance with law?

(4) Whether the plaint is properly presented?

POINT NO.1 -- DECLARATION OF TITLE

38. The suit is one for declaration of title. In the plaint, it is pleaded that the property described in Schedule A is owned by the KPCC of Congress, the second and the first plaintiff. The Congress, comprises All India Congress Committee which is the Apex Body at the Centre and the Pradesh Congress Committees at State levels. KPCC, the 2nd plaintiff herein, is the constituent unit of the Congress in the State of Karnataka and is as such, incharge of the affairs of the Congress in the State of Karnataka. The land comprised therein was acquired by the erstwhile Mysore Pradesh Congress Committee, as it was then called and it constructed the building now standing therein for the

purposes of the Congress Party many decades ago. After the building was constructed it was named Congress Bhavan. The Congress was using the same for housing its Pradesh Congress Committee offices and carrying on its activities. After the name of the State was changed from Mysore to Karnataka, the name of the Pradesh Congress Committee was changed as KPCC. Both the names, Mysore Pradesh Congress Committee and KPCC refer to one and the same body namely, the second plaintiff. The second plaintiff is a part of Congress, the first plaintiff. Whatever properties are acquired or are held by the Pradesh Congress Committees are so held for and on account of the Congress for which they are but a part. All properties and funds belonging to the Congress or referred as belonging to the Congress are thus the properties and funds of the first plaintiff. Similarly all properties and funds belonging to or referred as belonging to the erstwhile Mysore Pradesh Congress Committee or the KPCC thus belong to the second plaintiff. The Mysore Pradesh Congress Committee was in possession and

enjoyment of Congress Bhavan, i.e., Schedule A property and was using it for its purposes. The suit is filed for recovery of a property belonging to the KPCC of the Congress, namely premises No.3, Race Course Road, Bangalore and for other incidental reliefs. The said property is morefully described in Schedule A to the plaint and hereinafter referred to as the A Schedule property.

39. In the written statement traversing the aforesaid allegations, it has been specifically pleaded that the plaintiffs are not entitled to lay claim to the properties and funds belonging to the Congress. After the split in 1969 it vested in Congress(O) party and they were in exclusive possession and enjoyment of the properties and funds belonging to the Congress. The A Schedule property was never owned by the KPCC described as plaintiff No.2. Plaintiffs-1 and 2 were never the representatives of the Congress. In paragraph 4 of the written statement, it is stated that Janata Party has its Head Quarters housed in No.3, Race Course Road.

Bangalore-9 and it came into being as a result of merger of Congress (O) and several other parties. **As a result of the merger, all the properties belonging to the Congress (O) which originally belonged to Congress became the properties of the Janata Party. The suit schedule property is the absolute property of the Janata Party after the Congress (O) which was originally Congress merged with that organization.** The building was erected by the erstwhile Mysore Pradesh Congress Committee which later on came to be known as Congress (O) and the same was being used by Congress (O) and subsequently by the Janata Party. Congress (O) was in possession and enjoyment of the suit schedule property and it was merged with the Janata Party and as a result of such merger all its properties and other rights belong to the Janata Party and Janata Party is in absolute possession and enjoyment of the schedule properties as absolute owner. The erstwhile Congress came to be identified as Congress (O) and was in possession and enjoyment of the properties ever since and

after the merger with the Janata Party. The Janata Party is in possession and enjoyment as absolute owner. These defendants emphatically deny that after the formation of the Janata Party, the congress (O) abandoned its identity with the Congress. The party headed by Mrs. Indira Gandhi have no right, title or interest in the schedule property and they by no stretch of imagination could lay claim to it. The Mysore Pradesh Congress Committee was in possession and enjoyment of A schedule property which was known as Congress Bhavan. After the split, the group headed by Mrs. Indira Gandhi and the present plaintiffs had to establish their own offices. This written statement was filed by defendants-1 and 2, i.e., Janata Party and S.R. Bommai, the president of Karnataka Pradesh Janata Party on 10.11.1983. After the formation of the Janata Party, the plaint A schedule property came to be known as Janata Bhavan. Throughout, it was in possession of Congress (O) and after its merger it is in possession of the Janata Party. It is in the light of these

pleadings, issue regarding title of the A schedule property was framed.

40. From the aforesaid pleadings it is clear that plantiffs-1 and 2 and defendants-1 and 2 are claiming to be the owners of A schedule property. In other words, both of them are asserting their title to the schedule property. However, both of them admit that the 'A' schedule property originally belonged to the Congress. Both of them have not set out in their pleadings how the Congress acquired title to the schedule property? and whether there was any instrument evidencing the title to the property? But both of them are claiming title under the Congress.

LAW ON PLEADINGS

41. Order 6 Rule 1 of the Code of Civil Procedure 1908, defines what the pleading means. Pleadings shall mean plaint or written statement. Order 6 Rule 2 of CPC states what the pleadings should contain. Every pleading

shall contain and contain only a statement in a concise form of the material facts on which the party pleadings relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Therefore pleading must state facts and not law. It must state material facts and material facts only. It must state only the facts on which the party pleading relies for his claim or defence and not the evidence by which they are to be proved. The material facts on which the party pleading relies for his claim or defence are called *facta probanda*. The evidence or the facts by means of which they are to be proved are called *facta probantia*. Every pleading should contain only *facta porbanda*, and not *facta probantia*. The distinction is taken in the very rule itself between the facts on which the party relies and the evidence to prove those facts.

42. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. Provisions relating to pleadings are meant to give each side

intimation of the case of the other so that it may be met, to enable the court to determine what is the real issue between parties and to prevent deviation from the course which litigation, on particular of causes of action, must take. It is to ensure that the litigants came to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. To ensure that each side is fully alive to the question that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise.

43. When the facts necessary to make out a particular claim, or to seek particular relief, are not found in the plaint, the Court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. The general rule, is that the

relief should be founded on pleadings made by the parties. It is equally well settled that in the absence of pleadings, evidence if any produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.

44. The pleadings however should receive a liberal construction. No pedantic approach should be adopted to defeat justice on hair splitting technicalities. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case, it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question

about lack of pleading is raised, the enquiry should not be so much about the form of the pleadings, instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. The pleadings have to be interpreted with latitude and not with formalistic rigour. In order to determine the precise nature of the action, the pleadings should be taken as a whole. Stray or loose expression, which abound in inartistically drafted plaints should not be taken into account. Real substance of the case should be gathered by construing the pleadings as a whole. It is the settled legal position that if the parties have understood the pleadings of each other correctly, issue was also framed by the Court, the parties led evidence in support of their respective cases, then the absence of specific plea would make no difference.

45. A case not specifically pleaded can be considered by the Court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. This should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon if it is satisfactorily proved by evidence.

46. But where the substantial matters relating to the title of both parties to the suit are touched, though

indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is, did the parties know that the matter in question was involved in the trial? and did they lead evidence about it? If it appears that the parties did not know what the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.

47. Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must

specifically plead it. In order to claim a decree for declaration of title and for recovery of possession in the civil suit, the plaintiff has to essentially plead necessary facts so that the defendant could meet that case in the written statement and the parties could adduce evidence on such claims.

48. In this context it is necessary to notice the law declared by the Apex Court regarding pleadings in Civil Suits.

49. In ***SHEODHARI RAI & OTHERS V. SURAJ PRASAD SINGH, AIR 1954 SC 758*** the Apex Court held as under:-

> *"Where the defendant in his written statement sets up a title to the disputed lands as the nearest reversioner, the Court cannot, on his failure to prove the said case, permit him to make out a new case which is not only not made in the written statement, but which is wholly inconsistent with the title set up by the defendant*

in the written statement. The new plea on which the defendant sought to rely in that case was that be was holding the suit property under a shikmi settlement from the nearest reversioner. It would be noticed that this new plea was in fact not made in the written statement, had not been included in any issue and, therefore, no evidence was or could have been led about it. In such a case clearly a party cannot be permitted to justify its claim on a ground which is entirely new and which is inconsistent with the ground made by it in its pleadings."

50. The Apex Court in the case of ***Sri Venkataramana Devaru And Others v. The State of Mysore And Others*** reported in **1958 SCR 895** held at page 905 as under:

"xxxx The object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence

adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of parties on the basis of that finding."

51. The Apex Court in the case of ***NEDUNURI KAMESWARAMMA VS. SAMPATI SUBBA RAO*** reported in ***1963 (2) SCR 208 at page 213*** held as under:

"On the first point, we do not see how the suit could be ordered to be dismissed, for, on the facts of the case, a remit was clearly indicated. The appellant had already pleaded that this was jeroyti land, in which a patta in favour of her predecessors existed, and had based the suit on a kadapa, which showed a sub-tenancy. It was the respondent who had pleaded that this was a Dharmila inam and not jeroyti land, and that he was in possession of the kudiwaram rights though his predecessors for over a hundred years, and had become an occupancy tenant. Though the appellant had not mentioned a Karnikam service inam, parties well understood

that the two cases opposed to each other were of Dharmila Sarvadumbala inam as against a Karnikam service inam. The evidence which has been led in the case clearly showed that the respondent attempted to prove that this was a Dharmila inam and to refute that this was a Karnikam service inam. No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer. We therefore, proceed to consider the central point in the case, to which we have amply referred already."

52. In ***KUNJU KESAVAN V. M.M.PHILIP***, ***(1964 SCR 3 Pg.634)*** this Court has stated (as summarized in the headnote at p. 637):

> *"The parties went to trial, fully understanding the central fact whether the succession as laid down in the Ezhava Act applied to Bhagavathi Valli or not. The absence of an issue, therefore, did not lead to a material sufficient to vitiate the decision. The plea was hardly needed in view of the fact that the plaintiff stated in his replication that the "suit property was obtained as makkathayam property, by Bhagavathi Valli under the Ezhava Act". The subject of exemption from Part IV of the Ezhava Act, was properly raised in the trial court and was rightly considered by the High Court."*

53. The Apex Court in the case of ***BHAGWATI PRASAD V. CHANDRAMAUL*** reported in ***AIR 1966 SC 735*** held at para 10 as under:

> *"10. … … It is necessary to bear in mind the other principle that considerations of form cannot over-*

ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question, was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a

different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

54. the Apex Court in the case of ***Ram Sarup Gupta (dead) by L.Rs., v. Bishun Narain Inter College and others*** reported in **AIR 1987 SC 1242** at paras-6 and 7 it is held as under:

"6. … … It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a

liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal."

55. The Apex Court in the case of ***KALI PRASAD AGARWALLA (DEAD) BY LRS. AND OTHERS VS. M/S.BHARAT COKING COAL LIMITED AND OTHERS***

reported in ***1989 Supp (1) SCC 628*** held at paras-19 and 20 as under:

> *"19. It was, however, urged for the appellants that there is no proper pleading or issue for determination of the aforesaid question and the evidence let in should not be looked into. It is too late to raise this contention. The parties went to trial knowing fully well what they were required to prove. They have adduced evidence of their choice in support of the respective claims. That evidence has been considered by both courts below. They cannot now turn round and say that the evidence should not be looked into. This is a well accepted principle."*

56. The Apex Court in the case of ***HARI SINGH V. KANHAIYA LAL,*** reported in ***AIR 1999 SC 3325*** at para-16 held as under:

> *"16. ... ... It is not in dispute that there is pleading that the disputed premises was sub-let. The detail, if any, can be supplemented through evidence. ... ..."*

57. The Apex Court in the case of ***KONDA LAKSHMANA BAPUJI VS. GOVT. OF A.P. AND OTHERS*** reported in ***AIR 2002 SC 1012*** at para-70 held as under:

> *"70. ... ... It is a settled position that if the parties have understood the pleadings of each other correctly, an issue was also framed by the Court, the parties led evidence in support of their respective cases, then the absence of a specific plea would make no difference."*

58. It is in the light of the aforesaid legal position we have to consider the argument of the learned Counsel for the appellants, i.e., in the plaint, whether the plaintiff has not mentioned the source of title under which the second plaintiff is claiming title to the A schedule property. The deed under which the claim is made is not mentioned. The said deed is not produced along with the plaint. The said deed would be in the nature of suit document. The deed on which reliance is placed in the evidence is a registered gift feed executed in the name of Bangalore City Congress

Committee, which is not the plaintiff in the suit. Therefore, it was contended that on the ground of want of specific pleading regarding title, the suit of the plaintiff ought to have been dismissed.

59. Liberal construction of the plaint makes it clear that plaintiffs-1 and 2 are claiming title to A schedule property. They have further pleaded that A schedule property is owned by them. The land was acquired by erst while Mysore Pradesh Congress Committee. The plaintiff constructed the building now standing therein for the purpose of Congress Party many decades ago. After the building was constructed, it was named as Congress Bhavan. The Congress was using the same for housing its Pradesh Congress Committee offices and carrying on its activities. Whatever properties are acquired or held by the Pradesh Congress Committee are so held for and on account of the Congress for which they are but a part.

60. The suit being a suit for declaration of title, the plaintiffs have specifically pleaded that they are the owners of the property. They have put up constructions. After construction, they were in possession. The claim is, they have acquired title. How they have acquired title, what is the mode of acquisition, what is the deed evidencing the acquisition, are all matters of evidence. The pleading should contain only facts and not evidence. Therefore the contention that there is no specific plea regarding title is untenable. More over, that is not the grievance made out by the defendants in the written statement. On the contrary, the defendants have set up title to the suit property. Issue is also framed regarding title to the property. The defendants are not taken by surprise by the plaintiffs' claim. Defendants have understood the pleadings and in fact, both the parties have adduced evidence in respect of their respective cases. Both of them admit in their pleadings that the 'A' schedule property belongs to the Congress. Both of them claim they are the successors of the Congress and

therefore they are the owners of the 'A' schedule property. The real controversy is who is the successor of the Congress.

61. It is plain and well-settled that in order to claim a decree for declaration of title and for recovery of possession in the civil suit, the plaintiff had to essentially plead necessary facts so that the defendant could meet that case in the written statement and the parties could adduce evidence on such claims. The suit is one for declaration of title and for possession. In a suit for declaration of title, the plaintiff has to establish his title. Title cannot be established by oral evidence. It has to be established by producing documents under which he is claiming title, most of the time under a registered document. In so far as documents are concerned, Section 61 of the Evidence Act, mandates that the contents of the document may be proved either by primary or secondary evidence. Primary evidence means, documentary evidence produced for inspection of the Court. Therefore, when a particular fact is to be established by production of

documentary evidence, there is no scope for leading oral evidence and there is no scope for personal knowledge. What is to be produced is the primary evidence, i.e., the document itself.

62. In this context, it is necessary to look into the oral evidence as well as the documentary evidence adduced in the case in support of the claim of the plaintiffs. Plaintiffs in support of their case examined one Sri Jaffer Shariff as PW1. He was a member of All India Congress Committee as well as KPCC. He deposed that All India Congress Committee is an Apex Body. The State Committee is a subordinate committee to the All India Congress Committee. He knows the suit property. He was living in the said property. The said plaintiff is the owner of the said property. Previously it was called Mysore Pradesh Congress Committee (MPCC). There is a building and a vacant space in the said property. The plaint schedule property originally belonged to Congress. There is a name of Smt. Yeshodara Dasappa, the Congress

President in those days, who laid the foundation. There is a document on the basis of which the property is built. The Congress party is having it. He has been cross examined. This evidence is of no assistance in proving the title of the 2nd plaintiff to the schedule property.

63. The 2nd witness of the plaintiff is Sri K.B. Krishnamurthy, who is examined as PW2. He was a member of Congress Party and member of Youth Wing of the Congress Party and also Member of Parliament (Rajyasabha). He was also the member of KPCC and All India Congress Committee. He has deposed that the schedule premises belongs to Congress i.e., the 1st plaintiff. The 2nd plaintiff is the constituent unit of the Congress in the State of Karnataka and as such he is incharge of the affairs of the Congress in the State of Karnataka. The Mysore Pradesh Congress Committee was in possession and enjoyment of Congress Bhavan, namely A-schedule property and was using it for its purposes. The name of Congress Bhavan is

still available and engrossed on the granite stone on the top of the building to show that the property belongs to the Congress. Through him the certified copy of the gift deed dated 22-04-1949 was produced and marked as Ex.P10. In the cross examination he has deposed that he is not aware as to where is the original of Ex.P10 They have obtained the certified copy. In 1982 and prior there to when they were working out to file the suit, they applied to the Corporation for the relevant extract. They came across the gift deed Ex.P10. It was within his knowledge that there was a registered document to this effect as per Ex.P10. The said property was gifted to the Congress Party. Out of the party funds the suit property was built. It was gifted to Congress Party. He does not remember who was the donor but donee is the Congress Party. From his evidence, it is clear that the title is traced to the gift deed Ex.P10.

64. The plaintiffs have also examined one more witness by name Sri Haranahalli Ramaswamy as PW3. It is

his evidence that he was the member of Congress Party. He joined the aforesaid party during 1942 - Quit India Moment. He had participated in the Country's freedom struggle which was spearheaded by the Congress. He had served as member of the Legislative Council from 1960 to 1966 and also from 1990 to 1998. He was elected to the Karnataka Legislative Assembly during 1978 elections. He had also served as Law Minister from 1992 to 1994. He has deposed that the suit schedule premises belongs to Congress i.e., the 1st plaintiff. The 2nd plaintiff is the constituent unit of the Congress in the State of Karnataka which runs parallel to the Congress. The Mysore Pradesh Congress Committee is the absolute owner and was in possession and enjoyment of Congress Bhavan namely A schedule property and was using for its purpose. The aforesaid property was gifted to the Congress by one Sri Rangaswamy in the year 1949 by way of a registered gift deed. During 1940 to 1947 the Congress Party was the main Party which fought for the cause for independence. After 1947, the individual leaders of the congress party joined

some other parties. After 1947, several other congress units such as Indian Science Congress, Indian Historical Congress and the like who were not political parties were in existence. The word Congress itself denotes assembly of group of persons. Upon the split in the Congress Party in the year 1969, the group which called itself Congress (O) continued to use the property claiming that it is the Mysore Pradesh Congress Committee of the Congress. After the formation of Janata Party with Congress (O) faction, as an electoral ally, the schedule property came to be used unauthorisedly by the Janata Party from the end of 1977. Now the suit property is in possession of Janata Dal (S), which is in unauthorized possession.

65. One more witness on behalf of the plaintiff by name Sri Sathyanarayana Rao as P.W-4 was examined. He has deposed that he was also the member of Congress Party. He was the General Secretary of the All India Congress Committee for three years from 1980-83, when the suit was

filed. He was the Member of Parliament for 14 years from 1971 to 1985. He was Advocate by profession. He had served as Senior Counsel for Union Government in Supreme Court of India from 1985 to 1988. He served in various Parliamentary Committees. He also led the Indian delegation to Geneva in 1985 and New York in 1986 for the United Nations Organization Conference. As member of the plaintiff Party he has filed the suit in a representative capacity. He has also deposed that schedule premises belongs to the KPCC, which is the State unit of All India National Congress, i.e., the first plaintiff. Plaintiff is an Association of People and is a National Party registered with the Election Commission of India. He has filed the suit as the general Secretary of the Congress (I) Committee in a Representative capacity. The second plaintiff is the constituent unit of the Congress in the State of Karnataka. All the assets at the State units and the District units will be the properties of the State Committee and all the assets of the State units will be the assets of the Congress. The same is the position in every

political party. The Mysore Pradesh Congress Committee and the KPCC are one and the same. After the name of the State was changed from Mysore to Karnataka, the name of the Mysore Pradesh Congress Committee was also changed to KPCC. Therefore, whatever properties were acquired or held by the Mysore Pradesh Congress Committee vests in KPCC which is nothing, but a State Wing of the Congress. The land was gifted by one Mr. Rangaswamy to the Bangalore District Congress (I) Committee and then the building was constructed and was being used by the Mysore Pradesh Congress (I) Committee out of the funds of All India National Congress (I) Committee. The carvings on the stone at the top of middle portion of the building shows that the Bhavan is a Congress Bhavan, which is still existing even to this day. Upon the split within the Congress Party in the year 1969, a group which called itself as Congress (O) continued to use the property claiming that it is the Mysore Pradesh Congress Committee of the Congress. After the formation of Janata Party with the Congress (O) group as an

electoral ally, the schedule property came to be used by the Janata Party from the end of 1977. It then changed the name of the premises as 'Janata Bhavan' from 'Congress Bhavan'. It is not Janata Party or Janata Dal or Janata Dal (Secular) which constructed the building. They are not the owners of the schedule property. The Janata Dal Secular came into existence only in the year 1999-2000. Therefore the question of they putting up the building or owning the building and the property does not arise.

66. The last witness examined on behalf of the plaintiff is by name Hanumanthappa who was also the member of Congress. He was the Vice President of the KPCC on the date he was deposing. He also has stated that one Mr. Rangaswamy gifted the land to Bangalore District Congress (I) Committee and then the building was constructed and was being used by the Mysore Pradesh Congress Committee out of the funds of All India National Congress (I) Committee.

67. From the aforesaid oral evidence, it is clear that the plaintiffs are relying on Ex.P-10, the registered gift deed as source of title seeking declaration of title in favour of second plaintiff. In the cross examination of these witnesses the defendants have not denied the execution of this document nor have they denied the title of the Donor.

68. The certified copy of the gift deed is marked as Ex.P-10. The gift deed is executed by one Sri C. Rangaswamy, S/o Chikkanna, aged about 45 years, residing at No.54, Hospital Road, Balepet, Bangalore City. It is dated 22nd April, 1949. It is executed in favour of Bangalore City Congress Committee, having its office at No.142, Cottonpet, Bangalore City, represented by its president Sri K. Shamaraja Iyengar. The recital in the gift deed discloses that A schedule property was the ancestral property of the donor, Sri Rangaswamy, he having acquired the same from his great grand father, in whose name the khata of the land stands. For three generations they have been in open,

peaceful, uninterrupted possession and enjoyment of the same. He being a sole surviving member of his coparceners and being the sole and lawful owner of the schedule property, **out of pure appreciation of and regard for the noble institution represented by the donee, he was anxious to make an absolute gift of the said valuable piece of immovable property to the City Congress Committee for the building of Congress Bhavan**. It is further stated in the said deed that the institution represented by the donee was desirous of having a habitation of its own and proposed to construct a decent building on a proper site. Therefore the donor **was anxious to take the said opportunity to gift the land and was anxious not to miss this opportunity for doing some good services to the noble institution represented by the donee.** Therefore in consideration of the great appreciation and regard the donor had in respect of the institution represented by donee, the said gift was made.

69. Therefore, from recitals of the said gift deed, it is clear that the gift was given to a noble institution for building the Congress House. It was made in the year 1949 immediately after the Country acquired Independence. Though the Donor is described as Bangalore City Congress Committee, when we read the entire document as a whole, the gift is for the noble institution for the purpose of building of Congress House. It is to be remembered that the Congress was in the forefront of the freedom struggle. The defendant No.1 in the written statement has categorically pleaded that the Congress is a mighty organization built by Mahatma Gandhi and other great leaders during the freedom struggle. The Congress had its representative institutions or branches at every province and even at districts, city, town and taluk levels. It is a firm belief of the people of this Country that the Congress led by Mahatma Gandhi was instrumental in getting Independence to this Country. Therefore, it is described as noble institution. The said institution had no building of their own. They were searching for a place. It is at

that juncture that the donor, who did not want to miss the said opportunity and who had appreciation and regard in the noble institution has gifted the land for the building of Congress House. Therefore, though the gift deed describes the donee as the Bangalore City Congress Committee, it was a gift in favour of the said Congress which got independence to this Country. In this context, let us see what is the oral evidence on record.

70. Defendants have also set up their title to the schedule property. However no evidence was adduced on behalf of defendants-1 and 2, who had set up a rival title. The evidence was adduced on behalf of 13th defendant – Janata Dal (Secular), who was impleaded as a defendant on 14-10-2003. In the affidavit filed in support of the impleading application by the 13th defendant-Janata Dal (Secular), its then President Sri Siddaramaiah has sworn to the affidavit to the effect that there was a split in Janata Dal Party at the national level in the year 1999, resulting in the

formation of Janata Dal (Secular) and Janata Dal (United). The Election Commission of India issued a Gazette notification to this effect on 09.08.1999. The suit schedule property continued in possession and enjoyment of Janata Dal (Secular) headed by Siddaramaiah as its State President. Sri Siddaramaiah was also the State President of the erstwhile Janata Dal in Karnataka. It is on behalf of the 13th defendant, the evidence was adduced. On the date of leading of the evidence it is Janata Dal(S) who was in possession of the A schedule property. They examined one witness C. Narayanaswamy as D.W-1. On the date of his evidence, he was the Secretary General of Karnataka Pradesh Janata Dal (S). In examination in chief at para 4 he has deposed that the suit property was gifted by one C. Rangaswamy in favour of an organization formed by some eminent persons, namely the Bangalore City Congress Committee (BCCC) headed by Sri Shamaraja Iyengar in the year 1949. The property was gifted to and owned by Bangalore City Congress Committee. Therefore, the building

came to be known as Congress Bhavan. Based on the gift deed, katha was made in the name of Bangalore City Congress Committee. Katha was changed in favour of Karnataka Pradesh Janata Party and subsequently in favour of Karnataka Pradesh Janata Dal. Katha endorsement dated 23.02.1995, certificate dated 25.03.1988 and certificate dated 23.02.1985 were marked as Exs.D-1, D-2 and D-3 respectively.

71. In cross examination, he admits that prior to independence, Congress Party was a recognized political party. More than that it was considered as a movement for attainment of independence. Prior to 1969, the Congress Party was operating as an Apex Body headed by All India Congress Committee, at the national level. Prior to 1969 the All India Congress Party had its state units. The State level bodies for the Pradesh Congress Committee were affiliated to the All India Congress Committee. The District level Congress Committees were affiliated to concerned Pradesh

Congress Committee. The KPCC was affiliated to the All India Congress Committee prior to 1969. Prior to KPCC, it was known as Mysore Pradesh Congress Committee and after an amendent introduced to change the name of State of Mysore as State of Karnataka, it is known as KPCC. The Congress party has lakhs of members all over the country. The disputed property was known as Congress Bhavan till the formation of the Janata Dal in the year 1977. It consists of buildings with stone constructions and brick constructions. The big stone building facing north is the original stone building. Western portion thereto is of brick construction. Stone building has ground and first floor. The brick building has ground, I floor, 2nd floor and 3rd floor. This building was being used by the Congress party headed by Sri. S. Nijalingappa till the Janata Party was formed. The Mysore Pradesh Congress Committee office was situated in that building. From 1977 the Janata Party started paying the taxes to the Corporation concerning the suit property

even before the katha was transferred in the name of Janata Party in Karnataka in 1980.

72. The 13th defendant also examined one more witness by name M. Chandrashekar as D.W-2. He deposed that the political movement in Karnataka was for social justice and for responsible Government under the rule of Maharaja and for the State to become part of Indian Federation. The Bangalore City Congress Committee was one of the parties active in the former State of Mysore. He was working for them from the early 40's. In the early days of the Congress movement acquisition of property by the political parties was unthinkable because even the slightest infraction of the law could result in the confiscation of such properties. In 1949, i.e., two years after India became free, a supporter of the freedom movement in Bangalore Mr. C. Ramaswamy, donated a part of his vacant land to the Bangalore City Congress Committee. The then Congress Government encouraged the construction of a building for

the Congress Organization. Sri R. Subbanna was the then Treasurer of the Mysore Pradesh Congress Committee. The construction of the building made by M/s Kempaiah & Sons and it was completed in the year 1954. All this is noticeable from the inscription in stone embedded in the front wall of the stone building and on the right side of the main entrance door to the building. The same building was renovated in 1998 as noticeable from another stone tablet mentioning the same and embedded in the stone wall on the left side of the main door. Five photographs of the same with negatives and receipts were produced and marked as Ex.D-13. The said photographs show that the site belonged to the Mysore Pradesh Congress Committee and the construction was made by the Mysore Pradesh Congress Committee in 1954. The vacant land was gifted to the then Bangalore City Congress Committee by Sri C Ramaswamy in 1949 and the stone building built on the said site in 1954 remained with the Mysore Pradesh Congress Committee with Sri. Nagappa Alva as the then President and Sri. S. Nijalingappa as the

President of the Congress (O). Taxes were paid and telephone bills were remitted by the MPCC and some leases were granted under the presidentship of Mr. Nagappa Alva, who represented the Congress (O) in the State. The Mysore Pradesh Congress Committee became KPCC in 1971.

73. He further deposed that by looking into Ex.D-16-photograph that the Congress Bhavan was constructed in 1954 and the inscription put on the Congress Bhavan shows that R. Rangaswamy and Subbanna are relatives. R. Subbanna was also President of Bangalore City Congress Committee. The building was constructed in 1954. The building has undergone some alterations and modernization. The modernized building was inaugurated on 06.05.1998. At the inaugural time and prior thereto, Janatadal Paty was in possession of the said premises. Its office is situated there. The new inscription/memorial stone is as per Ex.P-17. The Organization of Congress Party was at the National level, State level, District level and later it was

extended to Taluka level known as Block level. Janata Party was formed in 1977. Janata Dal was formed in 1988.

74. From the oral and documentary evidence on record, it is clear that both the parties are claiming title to 'A' Schedule Property under a registered gift deed dated 22nd April, 1949, executed by C. Ranga Swamy in favour of Bangalore City Congress Committee, which is registered as Document No.3599, Book No.1, Volume 1007, Pages 171-174 in the Office of the Sub-Registrar, Bangalore City. The original of the said document is not produced. What is produced is only a certified copy of the original as Ex.P10. The plaintiffs are not in possession of the original document, as is clear from their evidence. If the said document was kept in A schedule property, with the split in the Congress Organization in 1969, the group headed by Sri. S. Nijalingappa at National level and Sri. Nagappa Alva at the State level continued in possession of the A schedule premises obviously, they must be in possession of the said

original document. The said Cong-(O) merged with other three political parties and formed Janata Party in the year 1977. Subsequently, the said Janata Party became Janata Dal. In 1998-99 the said Janata Party was divided into Janata Dal (S) and Janata Dal (U). Janata Dal (S), the 13th defendant is in possession of the property. Therefore, when the plaintiffs produced the certified copy of the registered gift deed, the same was marked. Now when the defendants also are relying on the very same document in support of their title and the said document is not in dispute, the due execution of the said registered gift deed is established. That is the document under which the plaintiff is claiming title as well as defendants-1, 2 and 13. It is in this background, the argument that the plaint does not mention about this gift deed, the original of the gift deed is not produced, the gift deed in the suit document which ought to have been produced along with the plaint and in default of the same, the suit is liable to be dismissed, has no substance.

75. However, it was contended that if the said document is treated as the document of title, the said gift deed is executed in favour of Bangalore City Congress Committee, which is not the plaintiff in this suit. It is an independent legal entity. Plaintiffs-1 and 2 have nothing to do with the said entity. Therefore, a property which belongs to the Bangalore City Congress Committee cannot be declared as the property of plaintiffs-1 and 2. Therefore, the trial Court committed a serious error in declaring the second plaintiff as the owner of the A schedule property when the gift deed does not stand in their name. When the 13th defendant is also claiming title to A schedule property under the very same gift deed, the same argument holds good to them also. The said gift deed is not in the name of the 13th defendant. Therefore, they also cannot claim title. It was argued that the plaintiff who has come to Court should succeed in the suit on its strength. It cannot depend upon the weakness of the defendant. Therefore, the plaintiff has to prove its title to the property. There cannot be any doubt

or dispute about this legal proposition. Therefore, it is necessary to find out whether the declaration granted by the trial Court that the second plaintiff is declared to be the owner of the A schedule property when the gift deed stands in the name of the Bangalore City Congress Committee, is sustainable?

76. From the oral evidence set out above, the witnesses of both plaintiffs and defendants have given evidence on this aspect. The evidence on record shows that the first plaintiff - Congress is a political party which was in the fore front of freedom struggle of this country. After independence, the Congress formed the Government. It was continuously in power from the date of independence till the year 1969 when there was a split in the Congress. It is also on record that the Congress was a national party. In every State it had Pradesh Congress Committee. In every District there was a District Congress Committee and in cities and town they were having City Congress Committees. In this

regard, Ex.P-15, the constitution of Congress, an undisputed document requires to be looked into.

77. Article 1 deals with the object of Congress. It provides that the object of Congress is the well-being and advancement of the people of India and the establishment in India, by peaceful and constitutional means, of a Socialist State based on Parliamentary Democracy in which there is equality of opportunity and of political, economic and social rights and which aims at world peace and fellowship.

78. Article 3 deals with the constituents of Congress. It includes plenary and special sessions of the Congress and

i) The All India Congress Committee,

ii) The Working Committee,

iii) Pradesh Congress Committees

iv) District/City Congress Committees

v) Committees subordinate to the District Congress Committee like Block or Constituency Congress

Committee and other subordinate Committee to be determined by the Pradesh Congress Committee concerned.

79. A note appended to the said article reads that in this constitution wherever the word "Pradesh" occurs, it will include "Territorial", the word "District" will include "City" as required by the context.

80. Article 5 deals with membership. It reads as under:

"Any person of the age of 18 or over, who accepts article, I, shall, on making a written declaration in form 'A' and on payment of biennial subscription of Re.1.00 only, become a primary member of Congress provided that he is not a member of any other, political party, communal or other, which has a separate membership constitution and programme."

81. Article 19 of the said constitution deals with the Working Committee. Article 19(F)(I) empowers the working

committee to frame rules for the proper working of the organization. Accordingly, the All India Congress Working Committee framed the Rules of the Congress.

82. Article III (iv) of the said Rules provides that the Pradesh Congress Committee with previous approval of the Working Committee will have the right to constitute City Congress Committee in the cities with population of over one lakh. The City Congress Committee thus formed will have the status of a D.C.C.

83. The KPCC also has the constitution. Article 1 deals with Functions, Jurisdiction and Headquarters. It provides that subject to the General Supervision and control of the All India Congress Committee, the KPCC shall be in charge of the affairs of the Congress within the Karnataka Pradesh. The provisions of the Constitution of the Congress and of the Rules framed thereunder by the All India Congress Committee and the Working Committee shall be

deemed to be part of the Constitution of the KPCC. The KPCC shall exercise jurisdiction in the territories of the Karnataka State and in such other territories as may be assigned to it by the Working Committee. The Head Quarters of the KPCC shall be located in the City of Bangalore.

84. Article 2 deals with constituents of KPCC. It provides that the KPCC will include:

1. The Karnataka Pradesh Congress Committee (K.P.C.C.)
2. District Congress Committees
3. Block Congress Committees
4. Town or City Congress Committees
5. other Subordinate Congress Committees.

85. Article 3 provides the ultimate authority in all matters relating to the management of the affairs of the K.P.C.C shall vest in the General Body of the K.P.C.C.

86. Article 15 deals with Town or City Congress Committees. It provides that, A Town Congress Committee shall be constituted in the same manner as a Block Congress Committee, for every urban area which has a population of fifty thousand or above and does not exceed one lakh and a City Congress Committee shall be constituted in the same manner for every urban area which has population of a lakh or above and does have a District Congress Committee of its own.

87. These provisions would make it very clear that the Bangalore City Congress Committee is part of not only KPCC but also part of All India Congress Committee. All of them put together represent a political party. Though for the purpose of convenience, proper management and to reach out the people of this country they have formed committees at the National level, State level, District level and City and Town level and even at Taluk level as well as Block level, it is a harmonious unit and all of them put together represent

a political party. In otherwords the Congress Party is a compendium of all these units.

88. From the aforesaid evidence on record, it is not in dispute that though this property was the subject matter of gift in the year 1949, it was a gift of vacant land. The oral and documentary evidence on record, in particular, the evidence of D.W-2, establishes that in 1949, i.e., two years after India became free, a supporter of freedom movement in Bangalore, Sri. C. Rangaswamy donated a part of his vacant land to the Bangalore City Congress Committee. The then Congress Government encouraged the construction of a building for the Congress Organization. Sri. R. Subbanna was the then Treasurer of the Mysore Pradesh Congress Committee. The construction was made by M/s Kempaiah and Sons and it was completed in 1954. This is noticeable from the inscription in stone embedded in the front wall of the stone building and on the right side of the main entrance door of the building. Ex.D-16 is the photograph of the said

inscription on the stone tablet. It states 'Land Donated by Sri. C. Rangaswamy, Sri. R. Subbanna, Treasurer, Mysore Pradesh Congress Committee, Constructed by M/s Kempiah & Sons, 1954. The stone building built in the said land in 1954 remained with the Mysore Pradesh Congress Committee till 1969. The katha of the said property in the municipal records was made in the name of Bangalore City Congress Committee. These facts are not in dispute. The dispute starts in 1969.

89. The evidence on record shows that in 1969 Sri. S. Nijalingappa was the president of the Congress. Sri. Nagappa Aiva was the president of Mysore Pradesh Congress Committee. In 1969 there was a vertical split in the Congress in a convention held at Bangalore. Two groups belonging to Congress claimed that they represent the Congress. However, the Congress led by Smt. Indira Gandhi who was the then Prime Minister of the country was identified as Cong-J because Mr. Jagajeevan Ram was its

first President. The group led by Sri. S. Nijalingappa who was the president of undivided Congress was identified as Congress (O). The word 'O' represents Organization. Therefore, though Sri. S. Nijalingappa was admittedly the president of Congress prior to the split, after the split, he was not recognized as the president of the Congress. But he was recognized as the president of Congress (O). It is understandable because both these groups were claiming that they represent the real Congress. This dispute was agitated before the Election Commission of India.

90. In the State of Karnataka also the Mysore Pradesh Congress Committee broke up into Cong-J and Cong-O corresponding to those groups in the All India Congress Committee at the centre. Each of these groups claimed to be the real Congress to which they belonged before the split. The question as to which of these two groups, Cong-J and Cong-O within the Congress Party should be recognized as the Congress came up for

consideration before the Election Commission of India. The Election Commission, after enquiry, after applying the test of majority at the organizational level and legislative wings, by order dated 11.11.1971 held that the Cong-J was the Congress. Aggrieved by the said order, Cong-O preferred an appeal before the Supreme Court of India. By that time, Sadiq Ali had been appointed as the president of Congress-O. The Supreme Court after hearing both the parties, by its judgment dated 11.11.1971 in Civil Appeal No.70/71, which is reported in ***AIR 1972 SC 182 (SADHIQ ALI Vs. ELECTION COMMISSION OF INDIA)*** held that the Cong-J with Sri Jagajeevan Ram as its president and the group led by Smt Indira Gandhi, the then Prime Minister of India is the Congress for all purposes. Thus with the pronouncement of the Apex Court, the dispute between these two warring factions of the Congress came to an end with the declaration that Cong-J the faction led by Smt. Indira Gandhi as the Congress, the first plaintiff herein. The relevant observations of the Supreme Court in this regard is as under:-

"The Congress, hereinafter referred to as 'Congress' is a recognized national party under the Election Symbols (Reservation and Allotment) Order 1968. A symbol of "Two Bullocks with Yoke on" was exclusively reserved for the Congress for the purposes of election to the house of Parliament and the Legislative Assemblies of the States and Union Territories. The Congress is a voluntary association. It is neither a statutory body nor a registered society under the Societies Registration Act. It has framed its own constitution and rules. Shri S. Nijalingappa was elected President of the Congress with effect from 1st January, 1968 for a period of two years. Dr. Zakir Hussain, President of India, died in 1969. Split then took place in the Congress Party following differences over the choice of Congress nominee for the office of the President of India. Each group claimed to represent the Congress Party. One of the groups elected Shri C. Subramaniam as the President of the Congress. Subsequently, Shri Jagjivan Ram was elected President by this group in place of Shri Subramaniam. This group was referred to as Congress (J). Shri Nijalingappa continued to be

the President of the party represented by the other group which is referred to as Congress 'C'.

The dispute as to which of the two groups is the recognised political party known as the Congress for the purposes of the Election Symbols (Reservation & Allotment) Order, 1968 arose before the Election Commission. After permitting both the parties to put their respective cases and produce documents, the Election Commission came to the conclusion that total number of AICC members who attended the Bombay meeting of the Congress 'J'. AICC was 423 out of 707 elected members and 56 out of 95 nominated and co-opted members. Resolutions passed at the requisitioned meeting of Congress 'J' at Delhi were ratified unanimously at the Bombay session. For determining as to who were members of AICC and delegates, the Commission accepted those persons as members of AICC and delegates who held that position in the earlier session of the Congress at Faridabad before the split. Therefore it held that Congress (J) is the recognized political party known as Congress for the purposes of Symbols Order.

The figures found by the Commission of the members of the two Houses of Parliament and of the State Legislatures as well as those of AICC members and delegates who supported Congress 'J' have not been shown to be incorrect. In view of those figures, it can hardly be disputed that substantial majority of the members of the Congress in both its legislative wing as well as the organisational wing supported the Congress 'J'. As Congress 'J' is a democratic Organisation, the test of majority and numerical strength, was a very valuable and relevant test. Whatever might be the position in another system of government or Organisation, numbers have a relevance and importance in a democratic system of government or political set up and it is neither possible nor permissible to lose sight of them. Indeed it is the view of the majority which in the final analysis proves decisive in a democratic set up.

According to paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of

votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats in the Parliament and State Legislatures held by the supporters of a group of the political party can be considered to be relevant. There is no error in the approach of the Commission in applying the rule of majority and numerical strength for determining as to which of the two groups, Congress 'J' and Congress 'O' was the Congress party for the purpose of paragraph 15 of Symbols Order.

The Commission has been clothed with plenary powers by the Conduct of Election Rules in the matter of allotment of symbols. If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbol and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the

allotment of the symbol of a political party is made by two rival claimants.

If a dispute arises between two rival groups for allotment of symbol of a political party on the ground that each group professes to be that party, the machinery and the manner of resolving such a dispute is given in paragraph 15. Paragraph 15 is intended to effectuate and subserve the main purposes and objects of the Symbols Order. The paragraph is designed to ensure that because of a dispute having arisen in a political party between two or more .groups, the entire scheme of the Symbols Order relating to the allotment of a symbol reserved for the political party is not set at naught. The fact that the power for the settlement of such a dispute has been vested in the Commission would not constitute a valid ground for assailing the vires of and striking down paragraph 15. The Apex Court held that the Commission is an authority created by the Constitution and according to Article 324, the superintendence, direction and control of the electoral rolls for and the conduct of elections to Parliament and to the Legislature of every State and of elections to the office of President and

Vice- President shall be vested in the Commission. The fact that the power of resolving a dispute between two rival groups for allotment of symbol of a political party has been vested in such a high authority would raise a presumption, though rebuttable, and provide a guarantee, though not absolute but to a considerable extent, that the power would not be misused but would be exercised in a fair and reasonable manner. However, Cong-O maintained a separate identity.

91. In the year 1977, many parties who were opposed to Indira Gandhi decided to give up their separate entity and merge into one party called Janata Party. Congress(O), Jan Sangh, Socialist Party and Lok Dal of Sri. Charan Singh merged to constitute a new party called Janata Party with Sri Chandrashekar as its president. Sri Jagjeevan Ram who was the president of the Congress (J) after the split in 1969 left that party on the eve of the general elections to Parliament in 1977 and found a separate party called Congress for Democracy with himself as president.

This party also merged with the newly formed Janata Party. The Karnataka State unit of Janata Party was led by Sri Veerendra Patil and later by Sri Deve Gowda as the president. D.W-2 became the president of Janata Party of Karnataka State thereafter.

92. D.W-1-C. Narayanaswamy, in his examination in chief has deposed that the property was gifted to and owned by Bangalore City Congress Committee. Therefore the building came to be known as Congress Bhavan. Sri. S. Nijalingappa was the president of the Congress during the year 1969. There was a vertical split in Congress resulting in the formation of Congress (O) and Congress (J). The Congress (O) headed by Sri. S. Nijalingappa continued to be in possession of the plaint schedule property and at no time the plaintiffs, AICC, KPCC or MPCC claimed property as theirs and instead katha stood in the name of Congress (O), Janata Party and later Janata Dal, the 13th defendant. Undisputed possession is with the Janata Dal (S). Based on

the gift deed, katha was made in the name of Bangalore City Congress Committee. Katha was changed in favour of Karnataka Pradesh Janata Party and subsequently in favour of Karntaka Pradesh Janata Dal. Janata Dal split in 1999 into two as Janata Dal (Secular) and Janata Dal (United). The suit schedule property continued in possession and enjoyment of Karnataka Pradesh Janata Dal (S). The defendant No.13, secured exemption from the State Congress Government under Urban Land Ceiling Act. Letter dated 19.01.1981 addressed by the then Minister for Urban and Housing Development to the authorities under the Karnataka Town and Country Planning Act, granted commencement certificate on 02.07.1988. Necessary amount was paid towards change of land use. Just before 1977, the General Election to Lok Sabha was announced. Congress (O), Lok Dal, Jan Sangh and Congress for Democracy merged to form Janata Party. By virtue of the said merger, the Janata Party continued in possession of the schedule property. Consequent upon subsequent

developments, the Janata Party gave place to the formation of Janata Dal at the National level. Janata Dal was split during the year 1999 resulting in the formation of Janata Dal (Secular) and Janata Dal (United). Sri Siddaramaiah who was the president of Karnataka Pradesh Janata Dal continued as the President of Karnataka Pradesh Janata Dal. The suit property has continued in possession of Janata Dal(S). Janata Dal has invested huge amounts of money for development/renovation of the property. Janata Dal are absolute owners in actual possession of the properties.

93. The disputed property was known as Congress Bhavan till the formation of the Janata Party in the year 1977. It consists of buildings with stone constructions and brick constructions. The big stone building facing north is the original stone building and the western portion thereto is of brick construction. Stone building has ground and first floor. The brick building has ground, 1st floor and 2nd floor

and 3rd floor. The building was being used by the Congress party headed by Sri. S. Nijalingappa till the Janata Party was formed and even after formation of the Janata Party it continued as Janata Party office. The Mysore Pradesh Congress Committee office was situated in that building. That Mysore Pradesh Congress Committee was affiliated to the Congress headed by S. Nijalingappa. While Janata Party was formed in 1977 at the National level, there is documentation regarding merger of four political parties as Janata Party. From 1977 the Janata Party started paying the taxes to the corporation concerning the suit property even before the katha was transferred in the name of Janata Party in Karnataka, in 1980. As on today there is a political party by name Janata Party with the election symbol HALDAR within wheel. Dr. Subramanianswamy is heading the said party. In 1977 when the Janata Party was formed, its election symbol was HALDAR within wheel. The Janata Party headed by Dr. Subramanianswamy is not a part of Janata Dal (S). He was aware that the Janata Party has a

constitution of its own as it is recognized political party by the Election Commission of India. Likewise Janatadal (S) has also its own constitution. Janata Dal (S) maintains accounts, which has been audited. The Janata Dal (S) in Karnataka owns immovable property and some district units Janata Dal (S) have separate properties under their ownership and possession. Some renovation of the building was made by the Janata Party, subsequently by the Janata Dal Party and some small constructions are done. Since the ceiling and plastering of the room of the original building had disintegrated and was leaking, they had to replaster the same and strengthen the building. The Janata Dal (S) and Janata Dal (U) have maintained separate identity at the National level. Except defendant No.13 Karnataka Pradesh Janata Dal (S) no other party or persons have any right over the suit schedule property.

94. D.W-2 – M. Chandrashekar in his evidence has deposed that the Mysore Pradesh Congress Committee

became KPCC in 1971. Earlier Janatadal (S) was called as Janata Dal. He was a member of it. Janata Dal was formed in 1988. As he knows there is no separate constitution for Janata Dal. But the same constitution of the Janata Party continued. Janata Party was formed in 1977. Because he was the member of Congress (O), he continued as an automatic member of Janata Party. The Janata Party was renamed as Janata Dal in 1988.

95. Therefore from his evidence, it is clear that Janata Party and subsequently Janatadal and subsequently Janatadal (Secular) are tracing their title to the schedule property from Congress (O) after its merger with the Janata Party in the year 1977. If Congress (O) was the owner of this property at any point of time, there may be some substance in their contention. In fact, there is no evidence on record to show that even the katha of the property was made out in the name of Congress (O). Similarly, when Congress (O) merged with other three parties to form Janata Party, there

is nothing to show that Congress (O) contributed this property towards the Janata Party. However after formation of Janata Party, the Janata Party started functioning in the schedule premises. That by itself would not confer title to the property on Janata Party. At best, it can be said that Janata Party came into possession of the schedule property after its formation. On the contrary, Ex.P-10, the gift deed shows that it was executed in favour of Bangalore City Congress Committee, which was part of Mysore Pradesh Congress Committee and Congress. After the split in 1969, there was no dispute regarding title to the property. The dispute was, which is the real Congress. That dispute is finally decided by the Apex Court by its judgment dated 11.11.1971. Once that dispute is finally settled, the Schedule property belongs to Congress and KPCC as their title was never in dispute. Therefore, after the judgment of the Apex Court, Congress (O) cannot claim to be the successor of either Mysore Pradesh Congress Committee or the Congress. However, after the judgment of the Apex

Court, the Congress (O) maintained its identity as a separate political party. Merely because the Congress (O) continued in possession of the schedule property, after the split in 1969 and they maintained a separate identity after the judgment of the Supreme Court, it does not mean that schedule property became the property of Congress (O). After the judgment of the Apex Court, the claim of the Congress (O) that they are the real Mysore Pradesh Congress Committee and the Congress is unsustainable. Therefore the schedule property never belonged to Congress (O). If the property never belonged to Congress (O), when Congress (O) merged with other three political parties to form Janata Party, though the political party merged lost its identity and it became a part of Janata Party, the property where they were functioning as such political party did not become the property of Janata Party. They could not have conveyed the title or any right in an immovable property which they did not possess in law. Because they were in possession of the property on the date of split in the Congress and continued

in possession till the date of judgment of the Apex Court and further continued in possession till the date of merger and formed Janata Party and Janata Party continued in possession of the property, all these did not confer any title either on the Congress (O) or on the Janata Party. If Janata Party was not the owner of this property, in 1988 when again there was a split in Janata Party, which resulted in the formation of Janata Dal, continued in possession of the schedule property, they did not acquire any title to the property. When the original Janata Dal itself did not have any title, when there was a further split in Janada Dal in 1999 as Janata Dal (S) and Janatha Dal (U), both of them did not acquire any title to the schedule property. It is to be noticed the Janata Dal (S) and Janada Dal (U) came into existence after the filing of the suit, and their claim is hit by doctrine of *lis pendense*.

96. Therefore, in the light of these admitted facts it is clear that neither Congress (O) nor Janata Party nor

Janata Dal nor Janata Dal (S) ever acquired title to the suit property. It is interesting to notice at this stage that if on merger of Congress (O) with other three parties and on formation of Janata Party, the property came to Janata Party, even to this day, the said Janata Party with the election symbol of HALDAR within Circle, continues to exist as Dr. Subramanianswamy as its president. It is a recognized political party by the Election Commission. Therefore if Congress (O) with its merger with other three parties became Janata Party, then Janata Dal acquired no title to the property. Jan Sangha which also merged its identity in 1977 to form Janatha Party, came out of the said conglomeration and formed Bharathiya Janatha Party. By merger of Congress (O) in Janatha Party in 1977, if the schedule property has become the property of Janatha Party, the said property should equally belong to one of its constituent Jana Sangha, which later became Bharathiya Janata Party. They are not claiming any title to the said property. Consequently Janata Dal (S) also cannot claim any

title to the property. Moreover, the suit is filed in the year 1982. On the date the suit was filed, it was filed against Janata Party, before the formation of Janata Dal. Subsequent split in Janata Dal and formation of Janata Dal (S) and Janata Dal (U) are all events which are subsequent to the date of the suit and therefore these parties were never in existence on the date when the suit was filed. Therefore they cannot, relying on the subsequent events, subsequent to the filing of the suit, claim title to the suit property, which is the subject matter of the suit. These are all *post litem* events and whatever right they are claiming has to be necessarily subject to the result of the suit and hit by doctrine of *lis pendens*. If Janata Party, which is the first defendant in the suit is able to establish that it is the owner of the suit property, then only Janata Dal and Janata Dal (S) can claim to have acquired title to the property. As stated earlier, even today, the Janata Party with the original symbol allotted to it by the Election Commission headed by Dr. Subramanianswamy continues to exist and they have not

put forth any claim whatsoever to the schedule property, till today. Janatha Party, Janatha Dal or Janatha Dal (S) or (U) are not claiming to be the successor of the Congress. On the contrary it is an alternative political formation to the Congress. It is not the case of any one of them, that the Bangalore City Congress Committee is part of their organization. On the contrary each one of them have their respective Bangalore City Unit. Even to this day the Bangalore City Congress Committee is part of the second plaintiff which is a part of the 1st plaintiff.

97. Therefore, it is clear that the property was gifted to "the Congress" noble institution for building "Congress House" which was represented by Bangalore City Congress Committee, which was part of KPCC and the Congress. The property being situated within the State of Karnataka, rightly this property belongs to KPCC, which includes Bangalore City Congress Committee. It is nobody's case that the Bangalore City Congress Party was a part of Janatha Party

or Janata Dal or Janata Dal (S) at any point of time. The katha of the schedule property stood in the name of the Bangalore City Congress Committee till it was changed to Janata Party in the year 1981. By mere change of katha or payment of property tax, title to the property is not acquired. Therefore, neither by transfer nor by operation of law the schedule property was transferred to Janata Party and it acquired no title to the schedule-A property at any time. Therefore the first defendant, nor Janata Dal which came into existence after the suit nor the 13th defendant which is a faction of Janatha Dal acquired title to the schedule property. Realising this hard reality, the defendants have put forth the case of limitation and adverse possession.

POINT NO.2 - LIMITATION, FOR DECLARATION – SUIT ARTICLE 58

98. This suit is filed on 30.03.1982 for the relief of declaration that the second plaintiff is the owner of the plaint A schedule property. Part III of the Limitation Act

1963 deals with suit relating to declaration. The relevant Article applicable to declaration of title is Article 58. It reads as under:

58. To obtain any other declaration	Three years	When the right to sue first accrues.

99. The period prescribed under law for a suit for declaration of title is three years when the right to sue first accrues. The question is when the right to sue first accrues. Section 34 of the Specific Relief Act, 1963 deals with declaration of status or right. It reads as under:

> *"**Section 34. Discretion of court as to declaration of status or right**.- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.- A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee."

100. A perusal of the aforesaid Section makes it clear that a suit for declaration may be instituted against any person denying or interested to deny his title to such character or right. Therefore it is clear that a suit may be brought under this Section not only against a person denying but a person interested to deny the plaintiff's right to the property. The words 'interested to deny' have been interpreted to mean that the person interested to deny a legal character or a right to property is a person with a rival claim of some sort and with some interest resembling in its nature that of the person whose legal character or right is

denied. There must be a plaintiff having a legal character and a defendant interested to deny it. The plaintiff has to allege and prove that defendant has denied or is interested in denying the legal character or right to property, before the filing of the suit. A suit for declaration does not lie where there has been no denial, express or implied, of the plaintiff's legal character, or right to property. No cause of action accrues to the plaintiff until there is some infringement or threatened infringement of his right. There must be an overt, hostile or adverse act calculated to prejudice the plaintiff's title. Anything which has a tendency even to a slightest degree, to cast a doubt upon the free exercise of the plaintiff's right is a cloud, which may entitle the plaintiff to claim declaration. Even a verbal denial is sufficient. However, the plaintiff need not seek declaration where the defendant merely claims, in a manner that is not serious, that the defendant is in adverse possession, the plaintiff can seek possession without declaration. The denial of title must be communicated to the plaintiff in order that any cause of

action my arise. Where there is a denial of rights, the plaintiff needs to seek declaration. A plaintiff may seek declaration where an adverse claim has been set up to his absolute title, under a deed, an alienation, a fraudulent conveyance, an order of an officer or authority, acts of trespass or encroachment. A plaintiff may have a cause of action because of an entry effected by revenue officers in the revenue records, but not where it does not affect the rights of the plaintiffs.

101. It is in this background, when we look at the facts of this case, now the evidence on record clearly establishes that the gift deed was executed in favour of Bangalore City Congress Committee by a registered document Ex.P-10 dated 22.04.1949. The said Bangalore City Congress Committee was part of Mysore Pradesh Congress Committee, which is a part of Congress, plaintiffs-1 and 2 respectively. Till 1969, the Congress and the Mysore Pradesh Congress Committee were in possession of A

schedule property. In 1969, there was a vertical split in Congress, which gave rise to Congress (J) and Congress (O). Congress (O) claiming to be the real Congress continued in possession of the A schedule property. The dispute as to out of Congress (J) and Congress (O), which is the Congress, was ultimately decided by the Apex Court in its judgment dated 11.11.1971. On the date of the said judgment, Congress (O) was in possession. After the judgment, an attempt was made by Congress (J) to take possession of the property. It lead to proceedings under Section 145 of the Cr.P.C. Ultimately, the Hon'ble High Court by its order dated 6th April 1973 in Criminal Revision Petition No.544/1972 resolved the dispute by holding that it is the petitioners, office bearers of Congress (O) were in possession of the whole of the premises on the date of the preliminary order and prior to that day also. It further held that the members of the second party, i.e., Youth Congress, were not in possession of any portion of the schedule property. The Tahsildar was directed to hand over possession of the

portion of the premises that still remained in its possession to the members of the first party.

102. Therefore, it is clear that the dispute was not regarding title, but the dispute was regarding possession, because both the parties were claiming that they are the real Congress, which is the owner of the schedule property. Thereafter in the year 1977, Congress (O) along with three other political parties came together and formed Janata Party, the first defendant in the suit, in the year 1977. During the period, the property was in possession of Congress (O). The katha of the property continued to stand in the name of Bangalore City Congress Committee. Even after the formation of Janata Party in the year 1977, the katha continued to stand in the name of Bangalore City Congress Committee. After the formation of Janata Party, the Janata Party was in possession of the schedule property. After the formation of Janata Party, in the year 1978, there was one more split in the Congress. Sri K. Bramhananda

Reddy had been elected in the year 1977, as the president of Congress in the National Convention of Congressmen held at New Delhi on the 1st and 2nd day of January, 1978, consisting of members of All India Congress Committee, Members of Parliament, Members of State Legislatures and Congress candidates who had contested in the preceding Lok Sabha and Assembly Elections as also the organizational bodies within the Congress and Smt. Indira Gandhi was unanimously elected as president. By letter dated 07.01.1978, Smt. Indira Gandhi brought this fact to the notice of the Election Commission. However, Sri. K. Brahmananda Reddy claimed to continue as the president of the Congress. He wanted the Election Commission to reserve the symbol of calf and cow for the Congress Party, of which he claimed to be the president, during the ensuing elections. Therefore, again the Election Commission was called upon to go into the question as to who represented the Congress, i.e., whether the group led by Smt Indira Gandhi or whether the group led by Sri. Brahmananda Reddy, in the

context of reservation of cow and calf symbol. By the time this question came to be heard, Sri D. Devaraj Urs succeeded Sri Brahmananda Reddy, as the president of that group, which came to be known as Congress (U). Smt. Indira Gandhi continued to be the leader of the other faction which was identified as the Congress. As the matter could not be finally decided before the elections, the Election Commission ordered that the symbol of cow and calf be frozen. Separate symbols were allotted to the Congress (U) and (I) groups. Elections to the Lok Sabha took place in December 1979. The Congress (I) was voted back to Lok Sabha with a thumping majority. The same was the position in States where mid-term poll was held. Smt. Indira Gandhi, president of Congress (I) became the Prime Minister again. The Election Commission again disposed of the matter as to which group was to be recognized as the Congress, by its order dated 23.07.1981. It held after due enquiry that the group led by Smt. Indira Gandhi as the president and faction by name Congress (I) shall be recognized as the Congress.

This order was again challenged by Sri. D. Devaraj Urs by filing Special Leave Petition in SLP No.5672/1981 before the Supreme Court of India. After hearing both the parties, the Supreme Court passed an order on 14.08.1981 dismissing the Special Leave Petition. Therefore the finding given by the Election Commission on 23.07.1981 became final and affirmed and is binding on all members of the Congress and others claiming through or under them. Therefore not once, but on two occasions the Apex Court has declared that the Congress headed by Smt. Indira Gandhi is the real Congress.

103. When things stood thus, on an application made on 16.06.1980 by the president of the Karnataka Pradesh Janata Party, the Corporation of the City of Bangalore, transferred the katha of the A schedule property to the name of the first defendant by its endorsement dated 16.06.1980 as per Ex.D-1. This was done behind the back of the plaintiffs. This is the first act on the part of the first defendant in denying the title of the plaintiffs or in other

words, it is the first overt, hostile or adverse act done by the first defendant, which is calculated to prejudice the plaintiffs' title. Asserting title, the 1st defendant leased a portion of A schedule property, under a registered lease deed dated 04.08.1981, in favour of the 4th defendant of which defendants 5 to 8 are partners. This is the second act of the denial of title of the plaintiffs by the 1st defendant. Therefore, as the first defendant denied or interested to deny the plaintiffs' title by getting the katha transferred to their name, by executing the lease deed, the plaintiffs thereafter immediately filed the present suit on 30.03.1982 within a period of three years prescribed under law, for a declaration that the second plaintiff which is part of first plaintiff is the owner of the plaint A schedule property and for other consequential releifs.

104. The contention that plaintiffs' title is denied in the year 1969 immediately after the split in the Congress, as Congress (O) continued in possession of the schedule

property and Congress (J) was excluded from possession, is the starting point of limitation, is without any substance. In 1969, when the split took place in the Congress, the dispute was, which group or faction is the real Congress. There was no dispute that the schedule property belonged to the Congress. Which is the real Congress was decided in the year 1971 by the Supreme Court. Which ever is the Congress, this schedule property belongs to them. But the Congress did not take any steps to recover possession immediately after 1971. But it is the Youth Wing which tried to take forcible possession. Proceedings under Section 145 of Cr.P.C., were initiated. A preliminary order was passed under which the Sub-Divisional Magistrate took possession of the property. After the dispute was resolved by the High Court in the year 1973, possession was directed to be delivered back to the group belonging to Congress (O). The dispute there was, who was in possession before the preliminary order and who is entitled to possession. But it was not a dispute regarding title. Even in 1977, when

Congress (O) joined hands with other three political parties and formed Janata Party, there was no dispute regarding title to the property. Therefore the Janata Party because of the merger of Congress (O) with them continued to operate from the schedule premises. It is only when the Janata Party made an attempt to get the katha transferred in their name, an attempt was made to assert title to the property for the first time. Therefore, a cloud was created on the plaintiffs' title to A schedule property. This is the starting point for the cause of action for a suit for declaration. Within three years there from, the suit is filed. Therefore, the argument that the suit for declaration of title is barred by time is without any substance.

LIMITATION FOR SUIT FOR RECOVERY OF POSSESSION BASED ON TITLE – ARTICLE 65

105. Part V of the Limitation Act deals with suits relating to immovable property. Article 65 deals with suits for possession of immovable property based on title. The

period of limitation prescribed is 12 years from the date when possession of the defendant becomes adverse to plaintiff. Article 65 reads as under:

65. For possession of immovable property or any interest therein based on title Explanation.- For the purposes of this article – (a) Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) Where the suit is by a purchaser at a sale in execution of a decree	Twelve years	When the possession of the defendant become adverse to the plaintiff.

when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession	

106. This article has been the subject matter of interpretation by the Apex Court.

107. The Supreme Court in the case of ***BABU KHAN ND OTHERS vs. NAZIM KHAN (DEAD) BY L.RS., AND OTHERS [AIR 2001 SC 1740]*** has held as under:-

> *8. For bringing a suit for possession of immovable property the period of limitation is 12 years when the possession of a defendant becomes adverse to the plaintiff. Once a suit for recovery of possession is instituted against a defendant in adverse possession his adverse possession does not continue thereafter. In other words, the running of time for acquiring title by adverse possession gets arrested.*

The legal position that emerges out of the decisions extracted above is that once a suit for recovery of possession against the defendant who is in adverse possession is filed, the period of limitation for perfecting title by adverse possession comes to a grinding halt. We are in respectable agreement with the said statement of law……"

108. The Supreme Court in the case of ***KONDA LAKSHMANA BAPUJI VS. GOVT. OF ANDHRA PRADESH AND OTHERS [AIR 2002 SC 1012]*** has held as under:-

58. In Balkrishan Vs. Satyaprakash & Ors. (J.T. 2001 (2) SC 357), this Court held:

"The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three "nec" - nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent."

109. The Supreme Court in the case of ***RAMAIAH vs. N. NARAYANA REDDY (DEAD) BY L.RS., [AIR 2004 SC 4261]*** has held as under:-

> *"9. ... ... Article 64 of the Limitation Act, 1963 (Article 142 of the Limitation Act, 1908) is restricted to suits for possession on dispossession or discontinuance of possession. In order to bring a suit within the purview of that article, it must be shown that the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance. Article 65 of the Limitation Act, 1963 (Article 144 of the Limitation Act, 1908) is a residuary article applying to suits for possession not otherwise provided for. Suits based on plaintiffs' title in which there is no allegation of prior possession and subsequent dispossession alone can fall within article 65. The question whether the article of limitation applicable to a particular suit is article 64 or article 65 has to be decided by reference to pleadings. The plaintiff cannot invoke article 65 by suppressing material facts. In the*

present case, in suit no.357/60 instituted by N. Narayana Reddy in the Court of Principal Munsiff, Bangalore, evidence of the appellant herein was recorded."

110. The Supreme Court in the case of ***SAROOP SINGH VS. BANTO AND OTHERS [(2005) 8 SCC 330]*** has held as under:-

"28. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant- Appellant did not raise any plea of

adverse possession. In that view of the matter the suit was not barred.

29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date defendant's possession becomes adverse. [See Vasantiben Prahladji Nayak and Others vs. Somnath Muljibhai Nayak and Others (2004) 3 SCC 376]

30. 'Animus possidendi' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the Appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. [See Md. Mohammad Ali (Dead) By LRs. Vs. Jagdish Kalita and Others, (2004) 1 SCC 271, para 21]

31. Yet again in Karnataka Board of Wakf vs. Government of India it was observed (SCC p. 785, para 11) : "

Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

111. The Supreme Court in the case of ***T. ANJANAPPA AND OTHERS vs. SOMALINGAPPA AND ANOTHER [(2006) 7 SCC 570]*** has held as under:-

"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them.

24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co- owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners."

(See Vidya Devi v. Prem Prakash, SCC p. 504, para 24).

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to he adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.

"14. ... Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants

to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. …

15. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who

enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. (See Annasaheb Bapusaheb Patil v. Balwani, SCC p. 554, paras 14-15.)

15. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See Ward v. Carttar (1866) LR 1 Eq.29). Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only

become adverse by some change in his position. Adverse possession not only entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See Rains v. Buxion)

16. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by Section 15. Possession is

not held to be adverse if it can be referred to a lawful title.

17. According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".

18. It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner, (b) it is possession inconsistent with the title of the true owner.

19. In Halsbury's 1953 Edition, Volume-I it has been stated as follows:

"At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterwards be reviewed either

by re-entry or by subsequent acknowledgement. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him"

20. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of

the adverse possessor actually informing the real owner of the former's hostile action."

112. The Supreme Court in the case of ***KRISHNAMURTHY S. SETLUR [(DEAD) BY L.RS] vs. O. V. NARASIMHA SETTY AND OTHERS, [AIR 2007 SC 1788]*** *has held as under:-*

> *"13. … … In the matter of adverse possession, the courts have to find out the plea taken by the plaintiff in the plaint. In the plaint, the plaintiff who claims to be owner by adverse possession has to plead actual possession. He has to plead the period and the date from which he claims to be in possession. The plaintiff has to plead and prove that his possession was continuous, exclusive and undisturbed to the knowledge of the real owner of the land. He has to show a hostile title. He has to communicate his hostility to the real owner. None of these aspects have been considered by the High Court in its impugned judgment. As stated above, the impugned judgment is under section 96 CPC, it is*

not a judgment under section 100 CPC. As stated above, adverse possession or ouster is an inference to be drawn from the facts proved that work is of the first appellate court."

113. The Supreme Court in the case of ***DES RAJ AND OTHERS vs. BHAGAT RAM (DEAD) BY LRS. AND OTHERS [(2007) 9 SCC 641]*** has held as under:-

"29. Yet again in T. Anjanappa and Others v. Somalingappa and Another [(2006) 7 SCC 570], it was held:[SCC pp.574-75,para 12):

"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding

whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property."

114. The Supreme Court in the case of ***HEMAJI WAGHAJI JAT vs. BHIKHABHAI KHENGARBHAI HARIJAN AND OTHERS [AIR 2009 SC 103]*** has held as under:-

"14. In S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Hidayatullah, J. speaking for the court observed as under:-

"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did and a mere

suggestion in the relief clause that there was an uninterrupted possession for "several 12 years"; or that the plaintiff had acquired "an absolute title was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea";

15. The facts of R. Chandevarappa & Others v. State of Karnataka & Others (1995) 6 SCC 309 are similar to the case at hand. In this case, this court observed as under:-

"The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse

possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant".

16. In D. N. Venkatarayappa and Another v. State of Karnataka and Others (1997) 7 SCC 567 this court observed as under:-

"Therefore, in the absence of crucial pleadings, which constitute adverse possession and evidence to show that the petitioners have been in continuous and uninterrupted possession of the lands in question claiming right, title and interest in the lands in question hostile to the right, title and interest of the original grantees, the petitioners cannot claim that they have perfected their title by adverse possession."

17. In Md. Mohammad Ali (Dead) By LRs. v. Jagadish Kalita & Others (2004) 1 SCC 271, paras 21-22, this Court observed as under:

"21. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

22. ....We may further observe that in a proper case the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the written statement or not which can also be gathered from the cumulative effect of the averments made therein;

18. In Karnataka Board of Wakf v. Govt. of India (2004) 10 SCC 779 at para 11, this court observed as under:-

"In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a

hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it

is for him to clearly plead and establish all facts necessary to establish his adverse possession.

In Saroop Singh v. Banto (2005) 8 SCC 330 this Court observed:(See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak (2004) 3 SCC 376)

30. `Animus possidendi' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Md. Mohammad Ali (Dead) by LRs. v. Jagdish Kalita and Others (2004) 1 SCC 271)"

20. This principle has been reiterated later in the case of M. Durai v. Muthu and Others (2007) 3 SCC 114 para 7. This Court observed as under:

"...In terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve

years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."

21. This court had an occasion to examine the concept of adverse possession in T. Anjanappa & Others v. Somalingappa & Another [(2006) 7 SCC 570]. The court observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The court further observed that the classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

22. In a relatively recent case in P. T. Munichikkanna Reddy & Others v. Revamma & Others (2007) 6 SCC 59] this court again had an occasion to deal with the concept of adverse possession in detail. The court also examined the legal position in various countries particularly in English and American system. We deem it appropriate to reproduce relevant passages in extenso. The court dealing with adverse possession in paras 5 and 6 observed as under:-

"5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See Downing v. Bird 100 So. 2d 57 (Fla. 1958), Arkansas Commemorative Commission v. City of Little Rock 227 Ark. 1085 : 303 S.W.2d 569 (1957); Monnot v. Murphy 207 N.Y. 240, 100 N.E. 742 (1913); City of Rock Springs v. Sturm 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).]

6. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See American Jurisprudence, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of Limitation Statutes, that the intention to dispossess can not be given a

complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim."

115. From the aforesaid judgments, it is clear that Article 65 of the Limitation Act, 1963 (Article 144 of the Limitation Act, 1908) is a residuary article applying to suits for possession not otherwise provided for. In terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the schedule appended to the Limitation Act, 1908. By reason of the Limitation Act, 1963, in a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit.

Once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date defendant's possession becomes adverse. Therefore when possession can be said to be adverse is the moot point.

ADVERSE POSSESSION

116. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the

recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him.

117. The Indian Law of Limitation as contained in the Limitation Act, 1963 contains a specific provision in Section 27 of the Act, which deals with extinguishment of right to property. It reads as under:

> *"**27. Extinguishment of right to property**.- At the determination of the period hereby limited*

to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

The general principle is that limitation bars only the remedy and does not extinguish the right itself. This Section is an exception to this general principle so far as suits for possession of property are concerned. It provides that the bar of the remedy shall operate to extinguish the right also. The law of limitation as regards possession and dispossession of property has always been a law of prescription. The words 'at the determination of the period hereby limited to any person for instituting a suit for possession' imply that limitation has began to run against the person for instituting the suit referred to and has expired. It follows that where a person could not or need not have sued for possession, there is no question of any determination of the period limited to him for instituting a suit for possession and consequently, no question of the applicability this Section. The full period prescribed for a

suit for possession must have expired, otherwise, the title of the true owner is not extinguished in favour of the wrong doer. Thus, an owner of property does not lose his right to it merely because he happens not to be in possession of it for twelve years. His right is extinguished only when somebody else is in possession against whom a suit for possession could have been filed but had not been filed within the time prescribed. The institution of the suit itself within the period of limitation is sufficient to bar the operation of this Section though the decree for possession is passed beyond the period. This Section, in terms, applies only where suits for possession of property become barred by limitation. Section 27 of the Limitation Act does not change the legal position of the person claiming title. The suit for possession referred to in the Section is a suit in respect of which the period of limitation is prescribed by the schedule to the Limitation Act. This is clear from the words 'period hereby limited' in the Section. A suit for possession by the owner of the property will not be barred if the defendant's possession

is not adverse to him. The Section does not provide as to in whom the title that gets extinguished gets vest. Where a person who could have sued for possession of property allows the period of limitation prescribed for the suit to expire, his title is, under this Section, destroyed. The extinguishment of the title of the rightful owner will operate to give a good title to the wrongdoer because title to immovable property cannot remain in vaccum. The acquisition of the title by the wrongdoer is thus the corresponding effect of the right to the property being extinguished. If one does not take place, the other does not. The right that is extinguished cannot also be anything more than what the rightful owner had in the property.

118. Possession is one of the few phenomena considered to be the most complex in the legal labyrinth and it becomes all the more abstruse when the term is prefixed by the epithet 'adverse' and no body finds it simple to understand which is by nature adverse. The most

outstanding feature to the complexity of the concept is that the claimant placing his foot on the plea of adverse possession claims his own title to a property to which the title of another is not disputed. The concept of adverse possession involves three elements, namely, (1) property, the subject of adverse possession; (2) possession of that property by a person having no right to its possession and (3) the possession being adverse to the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. *Animus possidendi* is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus, the period for prescription does not commence. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his

possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. It is well recognized proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. In order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true

owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical

adverse possession lie in it being open, continuous and hostile.

PLEA OF ADVERSE POSSESSION

119. In a claim of adverse possession, the title is not disputed; what is alleged is only its extinction. In the matter of adverse possession, the courts have to find out the plea taken by the party in the pleadings. A plea of adverse possession being based on facts which have to be raised to the effect, is not necessarily a legal plea. The plea of adverse possession raises a mixed question of law and fact. Where a person wants to base his title on it, he should specifically set up the plea. Unless the plea is raised, it cannot be entertained. A plea must be raised and it must be shown when possession became adverse, so that the starting point of limitation against the party affected can be found. The prayer clause is not a substitute for a plea. A person acquires title by way of adverse possession when he is in continuous, uninterrupted, hostile possession over a period

of 12 years. In order to calculate 12 years period there should be a starting point. The date of commencement of adverse possession is very crucial for calculating the period of 12 years. Therefore, the law mandates that the person who seeks a declaration that he has perfected his title by way of adverse possession should specifically plead the date from which his possession becomes adverse to that of the opposite party against whom the said plea is set up. It is from that date if the party proves continuous, uninterrupted possession for a period of 12 years, then the right of the opposite party to the property stands extinguished and the party who has set up the plea would acquire title by way of adverse possession. Therefore, in the absence of crucial pleadings, which constitute adverse possession, the party cannot claim that he has perfected their title by adverse possession. In a proper case, the court may have to construe the entire pleadings so as to come to a conclusion as to whether the proper plea of adverse possession has been raised in the pleadings or not which can also be gathered

from the cumulative effect of the averments made therein. Therefore, a person who claims adverse possession should show:

(a) on what date he came into possession,

(b) what was the nature of his possession,

(c) whether the factum of possession was known to the other party,

(d) how long his possession has continued, and

(e) his possession was open, continuous and undisturbed.

A person pleading adverse possession has no equities in his favour. Because, adverse possession is commenced in wrong and is aimed against right. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. Once a suit for recovery of possession is instituted against a defendant in adverse possession his adverse possession does not continue thereafter. In other

words, the running of time for acquiring title by adverse possession gets arrested.

EVIDENCE OF ADVERSE POSSESSION

120. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. Under Article 65 of the

Limitation Act, burden is on the defendants to prove affirmatively.

121. It is in this background, in order to appreciate the case of the defendants, it is necessary for us to look into the plea regarding limitation vis-a-viz Article 65 as well as adverse possession. In the written statement at para 4 it is categorically pleaded that the Janata Party has its Head Quarters housed in No.3, Race Course Road. Bangalore-9 and it came into being as a result of merger of Congress (O) and several other parties. As a result of the merger, all the properties belonging to the Congress (O) which originally belonged to the Congress became the properties of the Janata Party. The property described in Schedule A is the absolute property of the first defendant and they are entitled to be in possession. **The Janata Party and its predecessor Congress(O) have perfected their title by adverse possession.** The plaintiffs are not entitled to bring the present suit for recovery of properties belonging to Janata

Party. The parent organization viz., the Congress came to be known as Congress (O) and it was in possession and enjoyment of the properties belonging to the Congress throughout the length and breadth of the country. From 1969 onwards till today the Congress (O) and after the formation of the Janata Party are in exclusive possession and enjoyment of the A schedule property where at present the Janata Party's State Head Quarters are situate. A schedule property is the absolute property of the first defendant and they are entitled to be in possession. The plaintiffs are not entitled to lay claim to the properties and funds belonging to the Congress. The properties and funds belonging to the Congress after the split in 1969 vested in Congress (O) and they were in exclusive possession and enjoyment of the properties and funds belonging to the Congress. Subsequently, they have become the properties of the Janata Party headed by Sri. Chandrashekar. The suit schedule property is the absolute property of the Janata Party after the split in Congress (O) which was originally a

mighty organization. The property described in Schedule A was never owned by the KPCC described as plaintiff-2. Plaintiffs-1 and 2 were never the representatives of the Indian National Congress. The erstwhile Congress came to be identified as Congress (O) and was in possession and enjoyment of the properties ever since and after the merger with the Janata Party. The Janata Party is in possession and enjoyment as absolute owner.

122. From the aforesaid pleadings, it is clear that the defendants never accepted the plaintiff as the owner. On the contrary, their specific case is that the 1st defendant is the owner of the property. A person who claims to be the owner under a title deed cannot turn round and contend that he has perfected his title by adverse possession. The plea of adverse possession presupposes the person putting forth the plea of adverse possession has no title and the person against whom the said plea is set up is the owner. The original owner by his inaction even after the person who set

up the plea of adverse possession asserted a hostile title openly to his knowledge and continued in possession for more than 12 years from the date of assertion of hostile title, keeps quite, then the title of the real owner stands extinguished and the said title vest in the person who had no title to the property till then. This is the purport of Section 27 of the Limitation Act, where the law provides for extinguishment of right to property. The Section makes it clear that at the determination of 12 years period for instituting a suit for possession of any property, his right to the said property shall be extinguished. It refers to Article 64 and Article 65 of the Limitation Act which are the provisions meant for suits for possession of immovable property based on previous possession and not on title and for possession of immovable property based on title. In the case for suit for possession of immovable property based on previous possession, the time begins to run from the date of dispossession. Whereas, in the case of possession of immovable property based on title, the time begins to run

when the possession of the defendant becomes adverse to the plaintiff.

123. Therefore, it is clear that when title is not in dispute and merely because a person continues in possession for any length of time, the said person would not acquire title by adverse possession. Consequently, the suit for possession based on title could not be said to be barred by time. Therefore, the starting point of limitation under Article 65 of the Limitation Act, is when the possession of the defendants becomes adverse to the plaintiff.

124. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another title. When the defendant specifically pleads that the properties and funds belonging to the Congress after the split in 1969 vested in Congress (O), and

they were in exclusive possession and enjoyment, the Congress (O) is tracing a lawful title to the schedule property, as they claim to be the successor of the Congress. Therefore, the said plea do not constitute a plea of adverse possession. They are not claiming that their possession of the schedule property is adverse to the plaintiff. Similarly the specific case of the 1st defendant is as a result of the merger, all the properties belonging to the Congress (O) which originally belonged to the Congress became the properties of the Janata Party. Again the 1st defendant is claiming lawful title and possession to the schedule property. According to them the act of merger has conferred on them lawful title and as Congress (O) was in lawful possession of the schedule property on the date of merger, they continued in such lawful possession. Therefore, they are not claiming that their possession is adverse to that of the plaintiff, because they are not admitting the title of the plaintiff to the schedule property at all. Neither the acts of split in the political party nor the merger of political party constitutes

commencement of adverse possession. It is in this background the averment that the Janatha Party and its predecessor Congress (O) have perfected their title by adverse possession makes no sense.

125. In this context, it is for the defendant who contends that the suit is barred by limitation under Article 65 of the Limitation Act or that he has perfected his title by adverse possession to specifically plead the day from which his possession became adverse to that of the plaintiff. Therefore, the day on which the possession of the defendant became adverse to plaintiff is of utmost importance. Unless the said date is pleaded, it is not possible to compute the period of limitation. That is the first ingredient which is to be pleaded and proved by the defendant to succeed in his case that the plaintiff's suit is barred by limitation or that he has perfected his title by adverse possession. In the absence of such plea, any amount of evidence would be of no assistance. However, in this case, let us see what is the

evidence regarding adverse possession which is adduced, if at all.

126. It is to be remembered that the entire burden of proving that possession is adverse to that of the plaintiff is on the defendant in view of the change in law in the year 1963. D.W-1 in his evidence in chief, has categorically stated at para 9 that since 1977 he knows the suit property in this suit, as he has been the office bearers of Janata Party, Janata Dal and Janata Dal (Secular). The disputed property was known as Congress Bhavan till the formation of the Janata Party in the year 1977. It consists of buildings with stone constructions and brick constructions. The big stone building facing north is the original stone building. Western portion thereto is of brick construction. Stone building has ground and first floor. The brick building has ground, I floor and 2nd floor and 3rd floor. This building was being used by the Congress party headed by Sri. S. Nijalingappa till the Janata Party was formed. Even after

formation of Janata Party, it continued as Janata Party Office. The Mysore Pradesh Congress Committee office was situated in that building. The Mysore Pradesh Congress Committee was affiliated to the Congress headed by S. Nijalingappa.

127. In the cross examination he has stated that from 1977 the Janata Party started paying the taxes to the Corporation concerning the suit property even before the katha was transferred in the name of Janata Party in Karnataka in 1980. It is true that in Ex.P-5, the name of the president of the Bangalore City Congress Committee is mentioned as owner. He is not aware of the dates of sub number of the properties as mentioned in Ex.P-6, P-7 and P-8. He is not aware of any application made by the Janata Party for permission for change of land use. Some renovation of the building was made by the Janata Party, subsequently by the Janata Dal Party. As the ceiling and plastering of the room of the original building had

disintegrated and was leaking, they had to replaster the same and strengthen the building. Except defendant No.13 no other party or person has any right therein.

128. The other witness examined on behalf of the 13th defendant, D.W-2 has categorically admitted that Mysore Pradesh Congress Committee became KPCC in 1971. The plaintiffs never had possession and enjoyment of the suit schedule property at any time in the long history of political parties in Karnataka. The Congress Bhavan was constructed in 1954. The inscription put on the Congress Bhavan shows that R. Rangaswamy and R. Subbanna donated the land to Mysore Pradesh Congress Committee. R. Subbanna was also the president of Bangalore City Congress Committee. The building was constructed in 1954. The building has undergone some alterations and modernization. The modernized building was inaugurated on 06.05.1998. AT the inaugural time and prior thereto, Janatadal Paty was in possession of the said premises. Its office is situated there.

The new inscription/memorial stone is as per Ex.P-17. The possession of the suit premises is throughout of Congress (O) and its successor parties. Congress party was never in possession of the suit schedule property. Throughout they are in possession. This evidence do not help the defendants to any extent in support of their contention that the suit is barred by limitation nor the 13th defendant has perfected his title by adverse possession.

129. The material on record discloses that after the Janata Party lost power in the center in the year 1979 and they lost the election in 1980, there was infighting in the said party. Jana Sangh, which had merged in Janata party came out and formed Bharathiya Janata Party. Another group constituted Janata Dal. Janata Party also continued with its symbol in a truncated form. However, the evidence on record shows that Janata Dal continued to be in possession of the schedule property as it was the ruling party in the State. However, there was a split in Janata Dal

Party in the national level in the year 1999 resulting in the formation of Janata Dal (Secular) and Janata Dal (United). After the split, Janata Dal (Secular) continued in possession and enjoyment of the schedule property. The 13th defendant got themselves impleaded in the suit in the year 2003. Thereafter, the 13th defendant is claiming to be in lawful possession of the schedule property on account of split and previous possession of Janata Dal. Therefore, there is no plea of adverse possession at any point of time. In this context the question for consideration is whether the defendants are in lawful possession of the schedule property and they are not liable to deliver possession to the plaintiffs. Once the plaintiffs establish their title, then in the absence of title in the defendants and they having not claimed their possession adverse to that of the plaintiff, they are bound to deliver possession of the schedule property to the rightful owner.

130. It is pertinent to notice that after the split in Janata Party, subsequent to the filing of the suit, the Janata Dal which continued in possession of the schedule property did not make any attempt to implead themselves. It is only after a split in Janata Dal in 1999, Janata Dal (S) a splinter group impleaded themselves in 2003. Neither Janata Dal nor 13th defendant filed any written statement. 13th defendant is contesting the suit on the basis of the written statement filed by the 1st defendant Janata Party. In fact Janata Dal (U) is also impleaded as 14th defendant to the suit. Except 13th defendant no other defendant has preferred the appeal. The 1st defendant Janata Party, which still exists has accepted the judgment of the trial Court and not preferred any appeal. The Congress (O) which claimed the schedule property is not in existence at all. At any rate they have not put forth any claim in respect of this property nor they are claiming to be in possession of this property. Janata Dal and 13th defendant came into existence subsequent to the suit. Their possession is also subsequent to the suit. Once a suit for

recovery of possession is instituted adverse possession gets arrested. Therefore neither the Janata Dal nor the 13th defendant can put forth a claim of adverse possession. In these circumstances the 13th defendant, who has no manner of right, title or interest in the schedule property, who claim to be in possession of the schedule property from 1999, has no right to continue in possession of the schedule property. They are liable to deliver possession of the schedule property to the 2nd plaintiff herein. The decree for possession granted by the Trial Court is in accordance with law and does not call for any interference.

POINT NO.3: REPRESENTATIVE SUIT

131. The learned counsel for the appellant further contended that the suit filed in the representative capacity is not in proper form and, therefore, the suit is liable to be dismissed.

132. In the body of the plaint in paragraphs 3 and 4, it is categorically stated that, the plaintiff Nos.1 and 2 are not registered bodies. The number of members of the Congress are numerous, running to several lakhs. The suit is filed for and on behalf of and for the benefit of the entire body of members of the Congress, all of whom have same interest in the subject matter of the suit. It is impracticable to make all persons interested as parties to the suit as *eo nominee*. Hence the plaintiffs seek the permission of the Court to bring the suit on behalf of all the members of the Congress and the KPCC. Similarly, the 1st defendant is an unregistered body with numerous members. Plaintiffs are not aware of the names of all of them. Further, it is also not practicable to implead all the members of the 1st defendant as parties. Second defendant is the President of the Karnataka Unit of the 1st defendant party adequately representing the 1st defendant party as a whole and all its members. . A separate application for permission to bring the suit in a representative capacity and to sue the 1st and

2nd defendants in a representative capacity was filed along with the plaint.

133. The learned trial Judge referring to this application filed under Order I Rule 8 CPC in para 14 of the judgment has held that, the said application filed was allowed and plaintiffs were permitted to be sued in representative capacity. Therefore, he has held the suit as maintainable.

134. In this context it is necessary to notice Order I Rule 8 CPC which provides for, *one person may sue or defend on behalf of all in same interest*.

135. A representative suit is one which is filed by one or more persons under this rule on behalf of themselves and others having the same interest or a suit allowed to be defended by one or more persons on behalf of themselves and others having the same interest. Rule 8 is an exception

to the general rule that all persons interested in a suit ought to be made parties thereto. The object for which this provision is enacted is really to facilitate the decision of questions in which a large body of persons are interested, without recourse to the ordinary procedure. In cases where the common right or interest of a community or members of an association or large sections is involved, there will be insuperable practical difficulty in the institution of suits under the ordinary procedure, where each individual has to maintain an action by a separate suit. Thus, to avoid numerous suits being filed for decision of a common question Order I Rule 8 has come to be enacted. It is the existence of a sufficient community of interest among the persons on whose behalf or against whom the suit is instituted that should be the governing factor in deciding whether the procedure under this rule could properly be adopted or not. Where right of communities to own property are recognized, it is necessary that this rule should receive an interpretation to subserve the practical needs of

the situation. This rule is an enabling provision which entitles one party to represent many who have a common cause of action; but it does not force any one to represent many if his action is maintainable without the joinder of the other persons. It presupposes that each one of the numerous persons by himself has a right of suit.

136. The scope and object of this rule was discussed and explained by the Supreme Court in the case of ***CHAIRMAN, TAMIL NADU HOUSING BOARD vs T.N.GANAPATHY [AIR 1990 SC 642]*** as under : -

> *"The provisions of Order 1 of Rule 8 have been included in the Code of Civil Procedure in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provision is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. The object for which Order I Rule 8 is enacted is really*

to facilitate the decision of questions in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object of the enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction."

The provisions of this rule apply only if,

(i) the parties are numerous.

(ii) they have the same interest,

(iii) the necessary permission of the Court is obtained or direction under clause (b) of sub-rule (1) is given, and

(iv) notice under sub-rule (2) is given.

137. The power to grant permission to the parties either to sue or be sued in a representative capacity is conferred on the Court and the said power is required to be exercised after being satisfied as to whether the subject

matter of the suit concerns the interest of numerous persons or not. The notice is given by the Court, though at the plaintiff's expense. There are no words in Order I Rule 8 to limit its scope to any particular category of suits or to exclude a suit. It is essential that the parties should have the same interest in the suit. Any member of a community may successfully bring a suit to assert his right in the community property or for protecting such a property.

138. Therefore, in the instant case the plaintiffs as representatives of persons who belong to the Congress/KPCC, in order to protect the property belonging to this Association have brought this suit in a representative capacity. They have complied with all the legal requirements stipulated in the said rule and, therefore, the trial Court was justified in holding that there is no infirmity in the framing of the suit. It is validly instituted. In the facts and circumstances set out above, we do not find any infirmity in

the said finding recorded by the trial Court. Accordingly, we affirm the same.

POINT NO.4

139. It was next contended that, the Congress-the first plaintiff is represented by Sri M.Sathyanarayana Rao who claims to be the All India Congress Committee General Secretary. He has not been duly authorized to file the suit. Secondly, he contended that, second plaintiff is KPCC represented by Sri K.T.Rathod, its President and the extract of the proceedings of the Executive Committee meeting which is marked at Ex.P12 shows it is the KPCC (I) which is not the second plaintiff which has authorized him to initiate the suit and therefore the suit is not properly instituted and is liable to be dismissed.

140. We do not see any merit in the said submission. As is clear from the material on record, the Congress as a political party is registered with the Election Commission of

India. It is an association of persons who have common ideology. It is not in dispute that Sri M.Sathyanarayana Rao is the General Secretary of the All India Congress Committee. Therefore, it is in that capacity he has verified the plaint as well as filed the suit. In so far as the second plaintiff is concerned, though Ex.P12 shows that it is KPCC (I) it refers to the second plaintiff. When there was a split in the Congress in the year 1978, one group headed by Smt. Indira Gandhi was known as Congress (I) and the other group headed by Sri Brahmananda Reddy was known as Congress (R) or Reddy Congress. This is only for the purpose of identification of these two factions. Both were claiming they represent the Congress. Ultimately, the said dispute was resolved by the Election Commission which was affirmed by the Apex Court holding that Congress (I) is the Congress. Therefore, Sri K.T. Rathod who was the President of the KPCC was duly authorized to present the suit and accordingly he has filed the suit.

141. The suit is also filed by plaintiffs 3 and 4 who are the members of the Congress and the KPCC. In that capacity they have verified the plaint. Therefore, the contention that they were not duly authorized to initiate the suit and prosecute the same is without any merit. Accordingly, the said contention is also rejected.

142. In the light of the aforesaid discussion, we do not see any merit in this appeal. Accordingly, we pass the following order:

Appeal is dismissed with costs.

Three months time granted to hand over possession.

Sd/-
JUDGE

Sd/-
JUDGE

ng/ksp/ujk