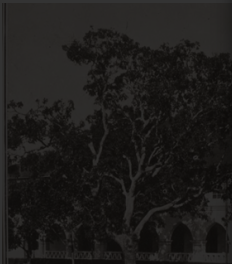


Basel Mission

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existence in three
 Kanara with Coorg
 districts of Dharwar
 Basel Mission Church
 agricultural lands were acquired for purposes of Church buildings, Prayer Halls,
 Meeting rooms, Graveyards, Schools, Hospitals, Printing Press, Theological
 Seminaries, Hostels, Boarding Houses, Sick-Houses, Homes for the poor,
 widows and converts and for the residence of Missionaries and other servants
 and agents of the Church. With the passage of time, the activities of these
 Churches increased and they acquired several properties and were managing all
 those properties. Though the title of the immovable properties stood in the name
 of General Treasurer of the Basel Mission, they really belonged to the Churches.
 The Basel Mission was merely acting as a Trustee of UBMC in India. All these
 properties were confiscated by the British Government on the outbreak of the
 First Great War of 1914, as enemy properties and vested in the custodian of



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Enemy property, Madras. Later, under orders of the Governor-General in Council, the said properties were released by a registered deed dated 26.01.1920 to certain trustees, who came to be later designated as the Mission Trust of Southern India for being managed and used for the benefit of these Churches. Throughout the period of management, the said properties continued to be in use and enjoyment of indigenous Basel Mission Churches in the several districts as before, without any break. Similarly, all the properties which belong to German Missionaries of Basel Mission was also confiscated and vested in the Missionary Body known as 'Kanrese Evangelical Mission' and they confined their activities to the ecclesiastical districts of South Kanara with Coorg and Bombay-Karnataka. The Basel Mission Churches in Malabar, however were affiliated on 01.04.1919 to the South India United Church as its Eighth Church Council. Later, after the British Parliament permitted the German Missionaries to return to India, Basel Mission, which is the successor of the original Based German Evangelical Missionary Society, resumed its work in 1926 in its former sphere of operations in the three ecclesiastical districts. The aforesaid Kanarese Evangelical Mission withdrew from South Kanara with Coorg and Bombay-Karnataka.

After the return of Basel Mission, the Mission Trust of Southern India, which was administering the aforesaid properties which vested with them under the documents dated 26.01.1920, transferred those properties on 09.08.1931 to a Society incorporated in Switzerland and carrying on Mission work in India, West Africa, China and Borneo and represented in India in its secular affairs by its General Secular Agent and treasurer. In 1933, the Basel Mission relinquished its control over all the Basel Mission Churches in the three ecclesiastical district units and those Churches came to be constituted on 17.10.1933 in the autonomous body of 'The United Basel Mission Church in India', each of the three district units being an independent entity vested with the control of the affairs of the Churches within its limits under the revised constitution and Church Rules with effect from 17.10.1933, each of these three ecclesiastical district units became an autonomous unit independent of all control by the Basel Mission. Therefore, all the properties of UBMC in India belonging to these three district



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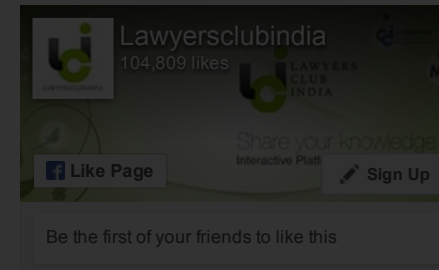
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units were vested by the Basel Mission in Defendant No.32, i.e. Trust Association for management for the benefit and in the interest of UBMC in India, subject to directions of the Church authorities in the respective districts, as expressly stipulated in the relevant declarations of Trust, executed by the Basel Mission on 18.09.1934, for the benefit of the works of the Church founded by the Society. It also executed a document dated 01.08.1939, in respect of properties for the benefit of works of the Mission carried on by the Society in India. These two documents were registered in the office of the Registrar of Madras-Chingleput on 27.01.1935 and on 29.11.1939 respectively. These two declarations of Trust, which, in fact and effect are gift/settlement deeds confirming/creating a Trust, establish beyond doubt or dispute, the exclusive and absolute ownership and beneficiary rights in these Trust properties which have subsisted continuously in UBMC of India, a distinct autonomous religious society governed by its own constitution, independent of any control by the Basel Mission.

The Trust Association was a Company registered on 28.08.1934 under the Companies Act, 1913. Under the aforesaid documents dated 18.09.1934, 01.08.1939, it is clearly recited that, if the Society should at any time be desirous of retiring from the office of trustee, it shall have the power to appoint new trustees of these properties. In exercise of its power, the Basel Mission, relinquished its Trusteeship in respect of all these properties and appointed the Trust Association and Trustee in its stead as evidence by the declaration contained in each of the documents No.828 dated 01.08.1939 which are duly registered on 08.04.1936 and 29.11.1939 respectively. The relinquishment was absolute, unconditional and complete and the Trust Association accepted and acted upon it.

Basel Mission, since 1948 has been openly attempting to influence the UBMC to merge in the CSI. In 1957, Basel Mission in order to coerce the UBMC of South Kanara and Coorg, to merge in the CSI and ultra vires its powers purported to revoke the declarations of Trust in aforesaid documents and drew up fresh declarations of Trust in document dated 03.12.1957, which was registered on the

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same day, whereby, a new provision was made to enable the Trust Association to utilize these Trust properties for the benefit of the district Churches of UBMC in India even if they join CSI. Both these documents were challenged as incompetent and void in the Court of the Subordinate Judge of Palghat in O.S.No.7, in which, the CSI, the CSI Trust Association, the Basel Mission and UBMC in India are also defendants. By judgment dated 07.04.1971, it was held that both these declarations of Trust were incompetent. This finding was affirmed by the Kerala High Court in its judgment on 01.08.1975 in Appeal Suit No.410/71. In spite of the aforesaid declarations, in disobeying the valid orders of injunction of the High Court in RSA 741/71 and of the Civil Judge of Udupi in M.A.No.16/70, the 30th defendant-Basel Mission, under a document dated 14.03.1972, executed on its behalf by the Treasurer and Attorney Rev. Albert Veigel, which was duly registered on 17.03.1972 purported to transfer all the immovable properties of UBMC of South Kanara and Coorg and of Bombay-Karnataka, described in Schedule-A and Schedule-B respectively, to the CSI Trust Association, without consideration, to hold the same in Trust for the Church of South India, after purporting to revoke by means of documents of 1972, the previous declarations of Trust in earlier documents. Basel Mission having ceased to be Trustee, it had no subsisting right or interest to execute the aforesaid documents and hence they are void. That apart, the properties purporting to be transferred, belonged to UBMC in India and hence, none could have transferred the properties belonging to UBMC in India to SCI. The said documents were executed when litigation concerning the said properties was pending and hence, aforesaid transfers are void and being hit by the principle of *lis pendens*.

Thereafter the Trust Association, again in disobedience of the valid orders of injunction, purported to transfer certain properties of UBMC of South Kanara and Coorg, described in Schedule C, to the third defendant-CSI. Trust Association, without consideration to hold the same on Trust and for the use and benefit of the work in India in the district of South Kanara and Coorg, by means of document dated 17.11.1972 registered on the same day. The third defendant-CSI Trust Association, in purporting to receive the properties of the UBMC described in

Schedule C, on behalf of first defendant-CSI also acted in contravention of the injunction order of the Civil Judge of Updui in M.A.No.16/70. These alleged transfers are illegal, void and of no effect. They are sham, nominal and make-believe, not intended to be acted upon and also hit by the principle of its pends.

The plaintiffs are constrained to file this suit in personal capacity as well as in a representative capacity, under Order 1 Rule 8 of CPC on behalf of members of UBMC of South Kanara and Coorg, who are vitally interested in the subject matter of the suit and steps have been taken under Section 92 as well as under Order 1 Rule 8 CPC, to so institute this suit.

In regular first appeal the Division Bench comprising of Justice N Kumar and Justice A N Venugopala Gowda of Karnataka High Court decreeing the suit directed the District Court is directed to settle a scheme for the proper and due administration and management of the properties of United Basel Mission Church in India, South Canara and Coorg for the proper and due administration of the affairs of United Basel Mission Church in India, South Canara and Coorg, its properties, institution, assets and activities in accordance with its constitution as it is or by making necessary changes therein or in the alternative, by making necessary provisions for the same in the scheme to be settled and other consequential reliefs and to issue such directions as deemed fit, either for conducting elections and for appointment of such elected persons as trustees or for management of United Basel Mission Church in India, South Canara and Coorg and its properties and for such other purposes in implementing the scheme to be formulated by it and make it a part of the scheme. [Christopher Karkada and Others Vs. Church of South India, Madras and Others, 2012 (1) KCCR 503: ILR 2012 (1) Kar 725 (DB)].



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