

**In the Court of Civil Judge Senior Division Mathura,**

**Civil Suit No.                      of 2020 (Twenty Twenty)**

(i) **Bhagwan Shrikrishna Virajman,**

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..... Plaintiffs

VERSUS

1. U.P. Sunni Central Waqf Board, through Chairman, 3 (Three) -A Mall Avenue Lucknow -226001 (Two Two Six Zero Zero One).
2. Committee of Management, Trust Alleged Shahi MasjidIdgah, Through Secretary, Deeg Darwaza, District Mathura, Uttar Pradesh-281001 (Two Eight One Zero Zero One ).
3. Shree Krishna Janambhoomi Trust, Mathura, through managing trustee, near Deeg Gate Chouraha, Katra Keshavdev, Janam Bhumi Temple, Mathura, Uttar Pradesh-281001 (Two Eight One Zero Zero One ).
4. Shreekrishna Janm Sthan Sewa Sansthan, through Secretary, Katra Keshav Dev, Deeg Gate, Mathura Bazaar city and District Mathura, Uttar Pradesh-281001 (Two Eight One Zero Zero One ).

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1. That this suit is being filed for removal of encroachment and superstructure illegally raised by Committee of Management of alleged Trust Masjid Idgah with the consent of Sunni Central Board of Waqf on land Khewat No.255 (Two Hundred Fifty Five) at Katra Keshav Dev city Mathura belonging to deity Shree Krishna Virajman. The boundary of property and land of Katra Keshav Dev is as under:-

North-: Housing Society Govind Nagar ,

South-: Road

East- :Railway Line BBCIL and property of Plaintiff Deity,

West-: Temple of Keshav Deo and Shops Katra Keshav Dev

2. That a site plan has been prepared by plaintiffs showing the present position of the property at Katra Keshav Dev and same is being filed forming the part of the plaint as **Annexure No.1 (One)**. In the site plan the land 13.37 (Thirteen Point Thirty Seven) acres under the ownership of the deity at Katra Keshav Dev has been shown by letters No. ABCD. The Defendants No.1 (One) and 2 (Two) with the help of their workers, supporters and men have encroached upon the land measuring approx 2 (Two) Bighas of Katra Keshav Dev and have put Super Structure which has been shown by letters no. EFGH in the site plan. The encroached area is being referred to, as the 'property in question' in this suit and its boundaries are as under:-

North – Garden of Temple,

South – Property of Deity,

East- Railway Line ,

West – Property of Deity

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3. That Plaintiff No.1 (One) is deity recognized under Hindu Law. He is minor. He is a juristic person. He can sue and be sued through shebait and in his absence through next friend. It can own, acquire and possess the property. It has every right to protect its property and to recover its lost property through shebait and in absence of shebait through next friend by availing an appropriate remedy in Court of law.

4. That the Plaintiff No.2 (Two) is Asthan, 'Shree Krishna Janmbhoomi. Being Janm Asthan' it is itself deity as the place of birth of Lord Shree Krishna has special significance in religious scriptures as well as under Hindu law. It can exercise every right available to a juridical person. It has every right to protect its property and to recover its lost property through shebait and in absence of shebait through next friend and remove encroachments by filing an appropriate suit in Court of law.

5. That Plaintiff Nos. 3 (Three) to 8 (Eight) are followers of Vedic Sanatan Dharam and are worshippers and devotees of Lord Shree Krishna. They profess, propagate and perform puja and other rituals of Lord Shree Krishna according to custom, traditions and practices of vedic Sanatan Dharam from the time of their ancestors. It is their strong faith and belief that dharshan pooja at Sri Krishna Janmbhoomi is way to acquire merit of salvation.

6. That Lord Shree Krishna is incarnation of Lord Vishnu. He took birth in human form on the day of Astami in Krishna Paksh in the month of Bhadrapad about 5132 (Five Thousand One Hundred Thirty Two) years ago in Dwapar Yuga in a prison at Mathura, the place known as Katra Keshav Dev, in Virishni Kingdom ruled by King Kans. Lord Shree Krishna is worldwide worshipped by devotees and followers of Vedic Sanatan Dharam.

7. That Lord Shree Krishna born in karagar of King Kans and the entire area is known as 'Katra Keshav Dev'. The place of birth lies beneath the present structure raised by defendant No. 2 (Two). Every inch of land of Katra Keshav Dev is sacred for the devotees of Lord Shree Krishna and Hindu community. Hindu rulers have always paid homage to the birth place of Lord Shree Krishna and from time to time they constructed / renovated temple thereat.

8. That U.P. Sunni Central Waqf Board has been arrayed as Defendant No.1 (One) as it granted approval to Committee of Management Trust Masjid Idgah to enter into the compromise dated 12.10.1968, (Twelve Ten Nineteen Sixty Eight) which was illegal and void for the reason that society Shree Krishna Janmasthan Seva Sangh had no right over the property involved in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven), decided by Ld. Civil Judge, Mathura at it was neither owner nor proprietor of the property involved in the said suit situated at Katra Keshav Dev.

9. That the Committee of Management of Trust Masjid Idgah is being arrayed as Defendant No.2 (Two) as it without any authority of law and in utter violation of decree of the Court with the help of some Muslims put super structure and encroached upon the land of Katra Keshav Dev belonging to Shree Krishna Janmasthan Trust and the deity. The committee of Management of Trust Masjid Idgah entered into illegal compromise on 12.10.1968 (Twelve Ten Nineteen Sixty Eight) with the Society Shree Krishna Janamasthan Seva Sangh and both have played fraud upon the Court, the plaintiff Deities and devotees with a view to capture and grab the property in question.

10. That in fact Shree Krishna Janmbhoomi Trust is non-functional since 1958 (Nineteen Fifty Eight) and it has failed to protect, manage

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and save the property of the deity and to act, according to the terms of the Trust Deed dated 9.3.1951. (Nine Three Nineteen Fifty One) Shree Krishna Janmasthan Seva Sansthan is a registered society and it has over powered the Trust and trust property and is working against the interest of deity and devotees and fraudulently entered into a compromise with Committee of Management Trust Masjid Idgah on 12/17.10.1968 (Twelve/ Seventeen Ten Nineteen Sixty Eight) conceding a considerable portion of property belonging to the deity and the Trust. They have been arrayed as Defendant Nos.3 (Three) and 4 (Four).

11. That the present suit is being filed by and on behalf of deity Plaintiff Nos.1 (One) and 2 (Two) alongwith devotees to ensure that Dharshan, Pooja, rituals according to Vedic Sanatan Dharma, faith, belief, usages, traditions and customs guaranteed under Article 25 (Twenty Five) of the Constitution of India are performed at the actual birth place and at any part of 13.37 (Thirteen Point Thirty Seven) Acers land of Katra Keshav Dev the Sunni Waqf Board, Trust Masjid Idgah and their men, workers, attorneys and every person working under them are restrained from entering into the premises of the property in question and they be directed to remove the construction illegally raised by them without authority of law at the property in question. The Plaintiffs have right under Article 26 (Twenty Six) of the Constitution of India to regain, hold and manage the property belonging to, owned and possessed by deity Lord Shree Krishna Virajmaan, measuring 13.37 (Thirteen Point Thirty Seven) Acers situated within the area of Temple Complex in Katra Keshav Dev, City and District Mathura.

12. That under Hindu Law prevalent in India from thousands of years it is well recognized that the property once vested in the deity shall continue to be the deities property and property vested in the deity is never destroyed or lost and it can be regained and re-established

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whenever it is freed, found or recovered from the clutches of invaders, ultras or hoodlums. The Privy Council, High Courts and the Hon'ble Supreme Court in catena of decisions have endorsed the above proposition of law.

13. That the birth place of Lord Shree Krishna is religious and cultural heritage of India. Shreemad Bhagwat Geeta given by Lord Shree Krishna to mankind is a part of our rich heritage. Lord Krishna propounded theory of Karma which defines duty to be performed by human beings. There are Crores of devotees worshipping Lord Shree Krishna across the world for thousands of years. The birth place of Lord Shree Krishna is an object of worship for the devotees who feel divine presence at Shree Krishna Janmabhoomi Mathura and have a devout faith that they by offering worship at that place are the recipients of the bounties and blessing of Lord Krishna and also acquire merit to get salvation. The Constitution of India has portrayed Lord Shree Krishna on the page of Directive Principles of State Policy. The Plaintiffs have right under Article 29 (Twenty Nine) and duty under Article 51 (Fifty One) -A(f) of the Constitution of India to preserve and protect the cultural heritage of Lord Shree Krishna associated with His birth place.

14. That the birth place of Lord Shree Krishna at Mathura has been a place for pilgrimage by the devotees coming from different parts of India and abroad.

15. That Hindu Kings from time to time had constructed/renovated temple at birth place of Shree Krishna in Katra Keshav Dev. In 1618 (Sixteen Eighteen) Raja Veer Singh Deva Bundela of Orchha built/renovated the temple of Lord Shree Krishna at birth place in Katra Keshav Dev by spending Rs.33 (Thirty Three) lakhs.

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16. That it is matter of fact and history that Aurangzeb ruled over the country from 31.07.1658 (Thirty One Seven Sixteen Fifty Eight) to 3.03.1707 (Three Three Seventeen Zero Seven) AD and he being staunch follower of Islam had issued orders for demolition of large number of Hindu religious places and temples including the temple standing at the birth place of Lord Shree Krishna at Katra Keshav Dev, Mathura in the year 1669-70 (Sixteen Sixty Nine- Seventy) AD. The army of Aurangzeb partly succeeded to demolish Keshav Dev Temple and a construction was forcibly raised showing the might of power and said construction was named as Idgah Mosque.

17. That the order passed by Aurangzeb finds place in the Official Court Bulletin (Akhbaraat) of January – February 1670 (Sixteen Seventy) which has been translated from Parsian to English by pre eminent historian Late Jadu Nath Sarkar and the same is being reproduce below:-

“During this month of Ramzan (1080 (Ten Eighty) A.H. / January-February 1670 (Sixteen Seventy)... the Emperor... The reviver of the Faith of the Prophet issued orders for the demolition of the Dehura of Keshava Rai in Mathura. In a short time the destruction of this strong foundation of infidelity was accomplished and on its site a lofty Mosque was built.. the idols large and small of the temple were brought to Agra and buried under the steps of the Mosque of Begum Sahi, in order to be continually trodden upon. The name of Mathura was changed to Islamabad.” (Massir-i-‘Alamgiri, p. 95 (Ninety Five) – 96 (Ninety Six), Tr. J. N. Sarkar)

18. That a grand huge and lofty temple of Lord Shree Krishna at His birth place at Katra Keshav Dev was existing in 17<sup>th</sup> (Seventeenth) century. In 1658-1707 (Sixteen Fifty Eight- Seventeen Zero Seven)

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during reign of Aurangzeb a Italian traveller Niccola Manucci who worked in Mugal Court described regarding demolition of temple by Aurangzeb in his Book “Storia do Mogar” or Mugal India 1653-1708 (Sixteen Fifty Three – Seventeen Zero Eight) volume III page 244-245 (Two Hundred Forty Four–Two Hundred Forty Five), Manucci records the fact that several important temples including Sri Krishna Janmbhoomi at Mathura were demolished by Aurangzeb but shortly thereafter Hindus thronged their those sacred sites and started worshipping as they were doing in past.

19. That Shri Jadu Nath Sarkar, renowned historian, in his book ‘Anecdotes of Aurangzib’ (published in 1917) (Nineteen Seventeen) writes about the demolition of temple of Lord Shree Krishna by Aurangzeb. The following passage at page 11-12 (Eleven – Twelve) from the book is quoted below:-

“Meantime Aurangzeb had begun to give free play to his religious bigotry. In April 1669 (Sixteen Sixty Nine) he ordered the Provincial Governors to “destroy the temples and schools of the Brahmans.... And to utterly put down the teaching and religious practices of the infidels.” The wandering Hindu saint Uddhav Bairagi was confined in the police lock-up. The Vishwanath temple at Benares was pulled down in September 1669 (Sixteen Sixty Nine). The grandest shrine of Mathura, Kesav Rai’s temple, built at a cost of 33 (Thirty Three) lakhs of rupees by the Bundela Rajah Birsingh Dev, was razed to the ground in January, 1670 (Sixteen Seventy), and a mosque built on its site. “The idols were brought to Agra and buried under the steps of Jahanara’s mosque that they might be constantly trodden on” by the Muslims going to pray.”

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20. That it is historical fact that Marathas after defeating Muslims in the war of Govardhan in 1770 (Seventeen Seventy) became the ruler of the entire area of Agra and Mathura w.e.f. 5.4.1770 (Five Four Seventeen Seventy) and under their rule they driven out Muslims from Mathura and the wrong done by Muslims in erecting the so called Mosque was rectified by removing the same and the temple was restored and renovated. Maratha rulers had declared the entire land of Agra-Mathura as Nazul land.

21. That it is historical fact that the East India Company under Lord Lake conquered the area of Agra and Mathura after defeating Maratha ruler Scindia army in the year 1803 (Eighteen Zero Three). In this way the East India Company became ruler of Mathura since then. The British Government also treated the land Katra Keshav Dev as Nazul land.

22. That in 1815 (Eighteen Fifteen) the entire land of Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty Seven) acres land was put for auction sale. Raja Patni Mal of Banaras was highest bidder. His bid was accepted. He purchased 13.37 (Thirteen Point Thirty Seven) Acres land of Katra Keshav Dev in auction sale and became its owner. The name of Raja Patni Mal, was recorded in revenue and municipal record as owner in possession of property at Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty Seven) Acres land. The name of legal heirs/descendants of Raja Patni Mal was recorded in Government record.

23. That more than six decrees were passed in 1875 (Eighteen Seventy Five) and 1877 (Eighteen Seventy Seven) in favour of Rai Narsing Das, the heir of Raja Patni Mal, was held to be possession of the compound and he was collecting rent from the tenants thereof.

24. That in settlement map of 1860 (Eighteen Sixty) and 1884 (Eighteen Eighty Four) and thereafter, the ownership of Raja Patnimal,

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his descendants and legal heirs have been shown in revenue and municipal record. The objection raised by Muslims against the ownership and possession of Raja Patni Mal over the land of Katra Keshav Dev were rejected by the Court as well as by administration.

25. That a number of cases were filed by Muslims questioning the auction sale, ownership and possession of Raja Patni Mal but all of them were dismissed. In between 1888 (Eighteen Eighty Eight) and (1893 Eighteen Ninety Three) there was considerable litigation on the opening of Vrindaban Railway. The eastern side of Katra Keshav Dev was demolished and compensation was awarded to Rai Narsing Das a descendant of Raja Patni Mal.

26. That in Civil Suit No.76 (Seventy Six) of 1920 (Nineteen Twenty) it was held that the Plaintiffs were not in possession and Hindu-Defendant was building a temple upon the site of previously existing temple. First Appeal No.236 (Two Hundred Thirty Six) of 1921 (Nineteen Twenty One) filed by Muslims was also dismissed vide judgment dated 16.3.1923 (Nineteen Twenty Three).

27. That Rai Kishan Das the heir of Raja Patni Mal filed Civil Suit No.517 (Five Hundred Seventeen) of 1928 (Nineteen Twenty Eight). In this suit it was also decided that Plaintiff was owner in possession of the land in dispute and the material lying thereon. The suit was finally decided by Hon'ble High Court in Second Appeal No.691 (Six Hundred Ninety One) of 1932 (Nineteen Thirty Two) vide judgment dated 2.12.1935 (Two Twelve Nineteen Thirty Five) it has been held that Raja Patni Mal and his heirs were rightful owners of 13.37 (Thirteen Point Thirty Seven) Acres land of Katra Keshav Dev and Muslims had no right over any part of said land.

28. That from judgment and decrees passed by Courts it is clear that unanimously it was held that Raja Patni Mal and his heirs were the owners of entire 13.37 (Thirteen Point Thirty Seven) Acres land of Katra Keshav Dev and Masjid Idgah or any Muslim had no right or title over the aforesaid land.

29. That on 8.2.1944 (Eight Two Nineteen Forty Four) Rai Kishan Das and Rai Anand Das, the heirs of Raja Patni Mal, executed a sale deed on consideration of Rs.13,400/- (Thirteen Thousand Four Hundred) paid by Jugal Kishore Birla transferred ownership and possession of 13.37 (Thirteen Point Thirty Seven) Acres land of Katra Keshav Dev in favour of Mahamana Madan Mohan Malviya, Goswami Ganesh Dutt and Bhikhen Lalji Aattrey. In pursuance of sale deed the aforesaid vendees came into possession over the entire land of Katra Keshav Dev.

30. That Civil Suit No.4 (Four) of 1946 (Nineteen Forty Six) was filed on behalf of alleged Trust Masjid Idgah against Pt. Mandan Mohan Malvia and others questioning the sale deed dated 8.2.1944 (Eight Two Nineteen Forty Four) on the ground of pre-emption. This suit was dismissed on the basis of compromise and it was further directed that the judgment dated 2.12.1935 (Two Twelve Nineteen Thirty Five) passed by Hon'ble High Court in Second Appeal No.691 (Six Hundred Ninety One) of 1932 (Nineteen Thirty Two) would be binding on parties.

31. That late Jugal Kishore Birla had taken pledge to construct a glorious temple at Katra Keshav Dev glorifying the birth place of Lord Shree Krishna and for this purpose he had purchased the land of Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty Seven) Acres through sale deed dated 8.2.1944 (Eight Two Nineteen Forty Four) in

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the name of revered Hindu leader Pt. Mahana Mandan Mohan Malvia, Goswami Ganesh Duttji and Bhikhen Lalji Aattrey.

32. That with a view to fulfil his commitment to the deity Shree Krishna Virajman Late Jugal Kishore Birla decided to create a trust for development of the land associated with the birth place of Lord Shree Krishna and for construction of a glorious Shree Krishna Temple over the land of Katra Keshav Dev purchased by him.

33. That Shri Jugal Kishore Birla created a Trust in the name of 'Shree Krishna Janmbhoomi Trust' on 21.2.1951 (Twenty One Two Nineteen Fifty One) through Trust deed which was registered on 9.3.1951 (Nine Three Nineteen Fifty One) in the office of Sub-Registrar Mathura. He dedicated entire land of Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty Seven) Acres to the deity Lord Shree Krishna Virajman. In brief the following reasons, purpose and rules were declared in the Trust Deed:-

- i) The Hindu Public in general believe this land as birth place of Lord Shree Krishna. At this place temple was constructed and reconstructed a number of times but were destroyed. This place is very significant from religious, cultural and historical point of view.
- ii) Late Jugal Kishore Birla having the same sentiments purchased the land on 8.2.1944 (Eight Two Nineteen Forty Four) in the name of Pt. Mahana Mandan Mohan Malvia, Goswami Ganesh Duttji and Bhikhen Lalji Aattrey and had paid Rs.13,400/- ( Thirteen Thousand Four Hundred).

- iii) The Trust was being created to fulfil the object of constructing a temple at the birth place of Lord Shree Krishna.
- iv) The main aim of the Trust would be to develop the area of Katra Keshav Dev and to construct a grand temple glorifying the birth place of Lord Shree Krishna, the Lord of universe.
- v) The Trust will also impart spiritual and religious education and may provide necessary assistance to religious and cultural institutions.
- vi) The Trust property is measuring 13.37 (Thirteen Point Thirty Seven) acres which was situated in the South of Mathura and its boundaries are as under:
  - East- Baroda Central India Railway line.
  - West- Present temple of Keshav Dev
  - North- Nazul land, South- Uftada land and kachcha rasta.
- vii) The movable and immovable property of the trust will be used only for the purposes of the Trust no person will have personal interest in the Trust property.
- viii) The Trust property would not be sold or pledged.

34. That from Trust deed it is clear that the land and property vested in the Trust or which could be acquired, purchased or obtained through gift would vest in the Trust and no Trustee will have individual right

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over such property and further that the Trust property would not be pledged or sold.

35. That the Plaintiffs are constrained to mention that the 'Janambhoomi Trust' failed to perform its duty to secure, preserve and protect the Trust property. The Trust is defunct from 1958 (Nineteen Fifty Eight).

36. That on 1.05.1958 (One Five Nineteen Fifty Eight) a society was formed in the name and style Shree Krishna Janmasthan Sewa Sangh. In view of amendment made by U.P. Legislature in the Societies Act, 1977 (Nineteen Seventy Seven), the word 'Sangh' was substituted for the word 'Sansthan'. The aim and objects of the society declares that:-

- i) Trust means the Shree Krishna Janmbhoomi Trust created by Shri Jugal Kishoreji Birla on 21.02.1951 (Twenty One Two Nineteen Fifty One), registered on 9.3.1951 (Nine Three Two Nineteen Fifty One),
- ii) Trustee means the trustee of the aforesaid Trust.
- iii) The entire movable and immovable property of the society shall vest in Shree Krishna Janmbhoomi Trust.
- iv) The trust will be managed according to rules of the trust.
- v) The members of the society will be nominated by the trustees, out of which atleast one person will be a descendant of Baldev Dasji Birla.
- vi) Except the member belonging to Birla family the trustees may remove any member of the society and may nominate any person in his place.

37. That the society was different entity from the trust. The society had no power or jurisdiction to act on behalf of the trust. The trust has no authority or power to transfer, delegate or entrust any work to the society to perform.

38. That some Muslims had filed Civil Suit No.361 (Three Hundred Sixty One) of 1959 (Nineteen Fifty Nine) against Shree Krishna Janmbhoomi Trust on the basis of sale deed executed by alleged Trust Masjid Idgah in their favour. The suit was dismissed holding that the sale deed was executed without any authority and same was illegal.

39. That on 12.5.1964 (Twelve Five Nineteen Sixty Four) Civil Suit No.210 (Two Hundred Ten) of 1964 (Nineteen Sixty Four) was filed in the Court of Munsif, Mathura under caption 'Shree Krishna Janmsthan Seva Sangh Mathura', also known as Shree Krishna Janmbhoomi Trust Mathura, registered under Act No.21(Twenty One) of 1860 (Eighteen Sixty) ', alongwith 15 (Fifteen) members of the society. The suit was verified by Shri Bhagwan Das Bhargava as Joint Secretary of Shree Krishna Janmasthan Seva Sangh. It may be mentioned here that the Ld. Munsiff returned the plaint to the Plaintiffs on 6.9.1967 (Six Nine Nineteen Sixty Seven) and same was re-filed in the Court of Civil Judge, Mathura and was numbered as Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven).

40. That it is clear that the Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) was filed by Society namely 'Shree Krishna Janmsthan Seva Sangh Mathura' and same had not been filed by Shree Krishna Janmbhoomi Trust.

41. That in substance the case of the Plaintiff of Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) was as under:-

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- i) The plaintiff was owner, zamindar and possession of entire khewat No.255 (Two Fifty Five) (old khewat no.291 (Two Ninety One) over an area 13.37 (Thirteen Point Thirty Seven) acres known as Katra Keshav Dev situated in Mauza Mathura Bazar. It was regularly paying water tax to the municipality.
- ii) Seth Judgal Kishore Birla got the sale deed executed in the names of Mahamana Pt. Madan Mohan Malvia, Goswami Ganesh Gutt and Professor Bhikan Lal Aattrey on 8.2.1944 (Eight Two Nineteen Forty Four) in respect of area of Katra Keshav Dev.
- iii) Seth Jugal Kishore Birla created a trust known as Shree Krishna Janmbhoomi Trust registered under Act No.21 (Twenty One) of 1860 (Eighteen Sixty) in the name of Shree Krishna Janmasthan Seva Sangh and the name of President and others of its holders and members of the sangh were given with the name of the Plaintiff. Seth Jugal Kishore Birla endowed the entire rights and interest in the aforesaid property by the trust deed dated 21.2.1951 (Twenty One Two Nineteen Fifty One) to the Plaintiff.
- iv) Shri Bhagwan Das Bhargav the Joint Secretary of the Plaintiff and under the constitution of the Trust was entitled to file suit on behalf of the Plaintiff.
- v) Rai Kishan Das had filed Civil Suit No.517 (Five Hundred Seventeen) of 1928 (Nineteen Twenty Eight) under Order 1 (One) Rule 8 (Eight) of CPC against the all Muhammdans with a view to establish his proprietary rights to the property of Katra Keshav Dev as certain Muhammdans of Mathura

and one body called as Anjuman Islamia were working against his propriety right.

- vi) The suit filed by Rai Kishan Das was decreed by Trial Court vide judgment and decree dated 13.8.1929 (Thirteen Eight Nineteen Twenty Nine) holding that entire Katra Keshav Dev belongs to Rai Kishan Das and it was not Katra Idgah. First Appeal was dismissed on 10.3.1932 (Ten Three Nineteen Thirty Two) and Second Appeal was also dismissed on 2.12.1935 (Two Twelve Nineteen Thirty Five) with modification regarding kachchi kursi which were treated as part of Masjid.
- vii) Masjid Idgah had filed Civil Suit No.4 (Four) of 1946 (Nineteen Forty Six) against Pt. Madan Mohan Malvia & others for pre-emption on the basis of sale deed dated 8.02.1944 (Eight Two Nineteen Forty Four) but ultimately suit was dismissed on the basis of compromise and it was directed that the judgment dated 2.12.1935 (Two Twelve Nineteen Thirty Five) passed by Hon'ble High Court would be binding on the parties.
- viii) Several other litigations filed by Intejamia committee of Masjid and other Muslims asserting their title to the various portions of Katra Keshav Dev were dismissed including appeals.
- ix) Trust Masjid Idgah and other Muslims brought Civil Suit No.361 (Three Hundred Sixty One) of 1959 (Nineteen Fifty Nine) against the Plaintiff and others raising a fresh dispute alleging that certain properties entered in the assessment register of the water tax of the Municipality of Mathura of

Katra Keshav Dev have been purchased by them from certain Muslims residing in Katra Keshav Dev which they called Katra Idgah through different sale deeds in 1955 (Nineteen Fifty Five). All the suits were dismissed holding that the Defendant No.1 (One) was not the owner of the property and had no right to execute the sale deed.

- x) Some Muslims residing in Katra Keshav Dev were allowed to live there and to make sheds, chhappars and other constructions of temporary nature. They never had any proprietary right in the land. Those Muslims have given up their licences to reside in the hutments standing on Plaintiff's land.
- xi) The plaintiff revoked the license of Defendant Nos.16 (Sixteen) to 24 (Twenty Four) through notice dated 7.10.1961 (Seven Ten Nineteen Sixty One) directing them to remove the materials and to deliver possession.
- xii) In the said suit the following relief was sought:-

“a decree for possession of the land after removal of the super structures detail below, be passed in favour of the Plaintiff and against the Defendants and the defendants be given time as may be fixed by the court for the removal of the super structures and in case they failed to remove the super structures the same may be ordered to be removed in execution proceedings through court Amin”.

42. That on 12.10.1968 (Twelve Ten Nineteen Sixty Eight) a compromise was entered into between “Shree Krishna Janmasthan Seva

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Sangh” Mathura and Trust Alleged Shahi Masjid Idgah Mathura (under the permission of U.P. Sunni Central Waqf Board) through their respective authorized representatives. This compromise was presented on 17.10.1968 (Seventeen Ten Nineteen Sixty Eight) and was registered on 22.11.1968 (Twenty Two Eleven Sixty Eight) by Sub-Registrar, Mathura. The compromise was filed in the Court of Civil Judge, Mathura in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven). The Civil Judge vide judgment and decree dated 20.7.1973 (Twenty Seven Nineteen Seventy Three) and judgment and decree dated 7.11.1974 (Seven Eleven Nineteen Seventy Three) decided the suit in terms of compromise. The salient features of the compromise deed are as follows:-

- (i) There was dispute between Shri Krishna Janmasthan Seva Sangh and Trust Shahi Masjid Idgah and certain Muslims Ghosi etc. who claimed to be tenants of trust Shahi Masjid or licensee and many civil and criminal cases were pending.
- (ii) The defendant has obtained permission of U.P.Sunni Central Waqf Board communicated through express letter No.2876/43 (Two Thousand Seventy Six/ Forty Three) -C-VAD-DHARA dated 9.9.1968 (Nine Nine Nineteen Sixty Eight) and the meeting dated 8.10.1968 ( Eight Ten Nineteen Sixty Eight) they have adopted the agreement and authorized to Mohammad Shahmir Masih and Abdul Gaffar Advocate to represent them.
- (iii) The Northern and Southern wall of the “Kachhi Kurshi” of the Idgah be extended on the East upto the Railway line by Trust Shahi Masjid Idgah.

- (iv) The Trust Shahi Masjid Idgah shall get vacated the inhabitant Muslim Ghosis, etc outside the wall on North and South side and deliver to Shri Janmsthan Sewa Sangh and will have no concern with its ownership and it will deemed to be the property of first party. Shree Krishna Janmsthan Sewa Sangh will have no concern with the ownership of the land within the Northern walls and it will be deemed to be the property of second party.
- (v) That the land on the Western- Northern Corner of “Kachchi Kursi” of Idgah is of Shree Krishna Janmsthan Sewa Sangh and has been shown by A, B, C, D in the plan, and Trust Shahi Masjid Idgah will rectangularise its “Kachchi Kursi” and it will be deemed to be its property.
- (vi) By 15<sup>th</sup> ( Fifteen) October 1968 (Nineteen Sixty Eight) Trust Shahi Masjid Idgah will remove the rubble of stairs on Southern side which is subject of the litigation, and Shree Krishna Janmsthan Sewa Sangh will have possession over that land.
- (vii) After getting possession of houses Ghosis, Muslim inhabitants etc. outside the Northern and Southern walls the possession will be delivered to Shree Krishna Janmsthan Sewa Sangh by Trust Shahi Masjid Idgah by 15<sup>th</sup> ( Fifteen) October 1968 (Nineteen Sixty Eight) and only thereafter it will construct the walls etc. Trust Shahi Masjid Idgah will not affix any door, window, or grill in these walls or the walls of “Kachchi Kursi” towards the Shree Krishna Janmsthan Sewa Sangh and neither it will open any drain or water outlet towards Shree Krishna Janmsthan Sewa Sangh. Similarly Shree Krishna Janmsthan Sewa Sangh will also not do any such work.

- (viii) Shri Krishna Janmsthan Seva Sangh, will at its own cost, divert the water of the outlets of Idgah on the Western side, towards the Shri Krishna Janmsthan Seva Sangh on the “Kachichi Kursi” of Idgah, by fixing pipes at its own cost and thereafter by constructing a masonry drain at its own cost reach the water towards the East upto Eastern door of the Masjid upto the edge of the “Kachichi Kursi”. Trust Shahi Masjid Idgah will have no objection in fixing the pipes in the walls of Masjid Idgah. Representative of Trust Shahi Masjid Idgah will accompany during completion of this work and his advise will be accepted.
- (ix) Shri Krishna Janmsthan Seva Sangh after acquisition, will deliver, to Trust Shahi Masjid Idgah, the land which will fall in front of the Idgah inside the North and South walls, from the railway land which Shri Krishna Jansthan Seva Sangh is getting acquired; and it will be deemed to be the property of Second Party.
- (x) The land in front of the “Kachichi Kursi” towards East shown by E, F, G, H, I, J K, L and A, B C, D on the Western-North corner, which Shri Krishna Janmsthan Sevasangh has relinquished in favour of Trust Shahi Masjid Idgah; has been shown by oblique lines in the annexed plan.
- (xi) Both the parties shall file compromise in accordance with this Agreement, in all the cases pending on behalf of both the parties, after fulfillment of all the conditions of the Agreement.
- (xii) That in case any party does not adhere to the conditions of this Agreement; both the parties will have right to have it enforced through Court of law or whatever manner it may

possible. The other party will have no objection to it and will not be entitled to object.

43. That it is relevant to mention that Shree Krishna Janmasthan Seva Sangh has no proprietary or ownership right in the property of Katra Keshavdev which stood vested in the deity and the Trust. The suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) was filed by Shri Bhagwan Dass Bhargava the Joint Secretary of the Society namely Shri Krishna Janmasthan Seva Sangh and the said suit had not been filed by or on behalf of Shree Krishna Janmabhoomi Trust. The compromise dated 12.10.1968 (Twelve Ten Nineteen Sixty Eight) was made between Shree Krishna Janmasthan Sewa Sangh and Trust Alleged Shahi Masjid Idgah. Shree Krishna Janmabhoomi Trust was not a party to the aforesaid compromise dated 12.10.1968 (Twelve Ten Nineteen Sixty Eight).

44. That in fact the original karagar i.e. the birth place of Lord Krishna lies beneath the construction raised by Committee of Management i.e. Trust Masjid Idgah. The true fact will come out before the Court after excavation. In fact, both Defendant No.2 (Two) and Society i.e. Shree Krishna Janmasthan Seva Sansthan with a view to hide said fact from the public due to political reasons entered into a compromise and created artificial karagar.

45. That it is relevant to mention that entire land of Katra Keshavdev had vested in the deity Bhagwan Shree Krishna Virajman from thousands of years. Shree Krishna Janmabhoomi Trust is under obligation to manage the affairs of the trust property in accordance with of Trust Deed dated 21.2.1951 (Twenty One Two Nineteen Fifty One). This society Shree Krishna Janmasthan Sewa Sangh/Sansthan has no right to act on behalf of Shree Krishna Janmabhoomi Trust.

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46. That Shree Krishna Janmasthan Sewa Sangh had no proprietary or ownership right over any inch of land of Katra Keshav Dev and it had no power or authority to file Suit No.43 (Forty Three) of 1967(Nineteen Sixty Seven) and to enter into agreement with Trust Alleged Shahi Masjid Idgah in respect of the land and property of Katra Keshavdev. Thus the compromise entered into between Shree Krishna Janmasthan Sewa Sangh and Trust Alleged Shahi Masjid Idgah is illegal and void abinitio and same is not binding on the deity and the devotees.

47. That the compromise date 12.10.1968 / 17.10.1968 (Twelve Ten Nineteen Sixty Eight)/ (Seventeen Ten Nineteen Sixty Eight)entered into between Shree Krishna Janmasthan Sewa Sangh and Trust Alleged Shahi Masjid Idgah and the decree passed in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) is null and void due to following reasons:-

- (i) The society Shree Krishna Janmasthan Sewa Sangh was a different entity from Shree Krishna Janmbhoomi Trust. The Society had no right, interest or power whatsoever over the property of deity Lord Shree Krishna Virajman. Shree Krishna Janmbhoomi Trust is the owner of the entire property of Katra Keshav Dev by virtue of Trust Deed dated 9.3.1951 (Nine Three Nineteen Thirty Five).
- (ii) The Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) had been filed by society and not by trust.
- (iii) That the suit was filed for removal of super structure raised by Muslim Defendants to the suit admitting that the entire property vested in the Trust by virtue of sale deed executed in 1944(Nineteen Forty Four).

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- (iv) It was mentioned in the suit that Shri Judgal Kishore Birla had created trust. It was also admitted that Civil Suits filed by Muslims claiming ownership and possession had been dismissed by Civil Court and decree was operating in favour of Hindus.
- (v) The society without any valid reason and even going beyond the scope of suit having no authority over the property conceded valuable property to Committee of Management Trust Masjid Idgah.
- (vi) The Society and Trust Masjid Idgah knowingly fully well that the society was not owner of the property of Katra Keshav Dev and could not enter into compromise they with a view, to defeat the interest of deity and devotee entered into compromise on 12.10.1968 (Twelve Ten Nineteen Sixty Eight) and played fraud upon the court also.
- (vii) It is relevant to mention that Civil Suit No.517 (Five Hundred Seventeen) of 1928 (Nineteen Twenty Eight) was filed under Order 1 Rule 8 of CPC wherein final decree was passed by the Hon'ble High Court in Second Appeal No.691 (Six hundred Ninety One) of 1932 (Nineteen Thirty Two) decided vide judgment dated 2.12.1935 (Two Twelve Nineteen Thirty Five). Therefore, no compromise could be entered into beyond the scope of decree passed by the Hon'ble High Court.
- (viii) The through compromise the terms of decree dated 2.12.1935 (Two Twelve Nineteen Thirty Five) passed by Hon'ble High Court in Second Appeal No. 691 (Six hundred Ninety One) of 1932 (Nineteen Thirty Two) have been violated and the property of deity has been conceded in favour of Trust Alleged Masjid Idgah in violation of decree and therefore, the compromise dated

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12.10.68(Twelve Ten Nineteen Sixty Eight) is illegal and void abinitio.

- (ix) The Shree Krishna Janmbhoomi Trust was in fact not functioning and it failed to save the interest of the deity and the Trust property.
- (x) The compromise dated 12.10.1968(Twelve Ten Nineteen Sixty Eight) is abinitio null and void and decree passed on the basis of the aforesaid compromise is also void and is liable to be set aside.

48. That defendant No. 2 (Two) or any member of Muslim community do not derive any right, Title or interest and cannot continue in possession on the basis illegal and fraudulent compromise dated 12./17.10/1968 (Twelve/ Seventeen Ten Nineteen Sixty Eight) and decree based on said compromise passed in R.S. No. 43 (Forty Three) of 1967 (Nineteen Sixty Seven) by Ld. Civil Judge. The construction raised by defendant over the property in question is liable to be removed and possession of the same has to be handed over to the plaintiff deity.

49. That the Plaintiffs have come to know that on 7.5.1993 (Seven Five Nineteen Ninety Three) an application No.74- Misc. Case No.234 (Two hundred Thirty Four) of 1993 (Nineteen Ninety Three) under Section 92 (Ninety Two) of CPC was filed in the Court of District Judge Mathura seeking permission to institute Suit inter alia praying to remove Defendant Nos.1 (One) to 6 (Six) of said suit from the trusteeship, for direction to furnish account of trust properties, to setup scheme for carrying out the object of the trust and to dissolved Shri Krishna Janamasthan Seva Sangh. The application for permission to institute suit was rejected by Ld. District Judge vide judgment and order dated 6.5.1994 (Six Five Nineteen Ninety Four) against which First Appeal No.199 (One Hundred Ninety Nine)of 1996 (Nineteen Ninety Six) was dismissed by Hon'ble High Court vide judgment and order dated

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23.9.1997 ( Twenty Three Nine Nineteen Ninety Seven) reported in 1997 (Nineteen Ninety Seven) SCC online Allahabad Pg.690 (Six Hundred Ninety).

50. That The Hon'ble High Court in First Appeal No.199/1996 (One Ninety Nine / Nineteen Ninety Six ) (1997 Nineteen Ninety Seven) SCC Online Allahabad Pg.690 (Six Hundred Ninety)) has held that:-

- (i) The entire property of Katra Keshavdev (Shree Krishna Janmbhoomi) measuring 13.37 (Thirteen Point Thirty Seven) acres vested in the Trust.
- (ii) Raja Patni Mal was the owner of the compound locally called Katra Keshavdev. On 8.2.1944 (Eight Two Nineteen Forty Four) the entire Katra Keshavdev property comprising 13.37 (Thirteen Point Thirty Seven) acres land was purchased by Pt. Madan Mohan Malvia, Goswami Ganesh Dutt and Professor Bhikalal Aattrey for Rs.13,400/- ( Thirteen thousand Four Hundred) through registered sale deed and got possession of the same. The land was purchased with the financial assistance given by Late Jugal Kishore Birla.
- (iii) Shri Krishna Janmbhoomi Seva Sansthan was not the trustee of the trust property.
- (iv) Shri Krishna Janamsthan Seva Sansthan cannot represent the Trust.
- (v) The Plaintiff has not made trustees as parties, as such the application under Section 92 (Ninety Two) of CPC was not maintainable.

- (vi) The Trust allows Seva Sangh to have their office between the disputed land and to carry on some ancillary object which are akin to the object for which the Trust was created, does not perse lead to the conclusion that the trust has lost its entity and had must into the registered society namely Shri Krishna Janmasthan Seva Sangh.

51. That it is crystal clear that U.P.Sunni Waqf Board, Trust Masjid Idgah or any member of Muslim community have no interest or right in the property of Katra Keshav Dev over an area measuring 13.37 (Thirteen Point Thirty Seven) acres and entire land vest in the deity Bhagwan Shree Krishn Virajman.

52. That for proper appreciation of the case the some important dates, events and the descriptions of the cases decided are being given hereinafter:-

<u>Sl. No.</u>	<u>Dates</u>	<u>Particulars</u>
1.	1618 (Sixteen Eighteen)	Raja Veer Singh Deva Bundela of Orchha built/renovated a temple at the cost of Rs.33 (Thirty Three) lakhs at the birth place (Janmasthan) of Lord Shree Krishna at Katra Keshav Dev, Mathura.
2.	31.7.1658 (Thirty One Seven Sixteen Fifty Eight) to 3.3.1707 (Thee Three Seventeen Seven) AD	Aurangzeb was ruler. Agra and Mathura were part of his regime.

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3.	1669-70 (Sixteen Sixty Nine- Seventy)	Aurangzeb got partly demolished Shree Krishna Temple at birth of Lord Krishna situated Katra Keshavdev and structure was erected and same was termed as Idgah Mosque.
4.	5.4.1770 (Five Four Seventeen Seventy)	Marathas won the battle of Govardhan and became the ruler of entire area of Agra and Mathura. Marathas restored and renovated the birth place temple of Lord Shree Krishna at Katra Keshavdev after removing the so called structure of mosque. They are declared the land of Agra and Mathura as Nazul land.
5.	1803 (Eighteen Three)	East India Company under Lord Lake conquered the area of Agra and Mathura and defeating Maratha ruler Scindia Army in the year 1803 (Eighteen Three) and became ruler of Agra and Mathura since then. The British Government also continued to treat the land of Agra and Mathura as Nazul land.
6.	1815 (Eighteen Fifteen)	The British Government put for auction sale 13.37 (Thirteen Point Thirty Seven) acres land of Katra Keshavdev through public auction, which was purchased by Raja Patnimal of Banaras. In pursuance of auction sale Raja Patnimal became the owner in possession of 13.37 (Thirteen

		Point Thirty Seven) acres land of Katra Keshavdev.
7.	1860 (Eighteen Sixty) & 1884 (Eighteen Eighty Four)	In settlement map the compound was described as Katra Keshav Dev.
8.	1875 (Eighteen Seventeen Five)-1877 (Eighteen Seventeen Seven)	Six decrees were passed in favour of Raja Narsing Dass the descendant of Raja Patnimal in respect of the property of Katra Keshavdev.
9.	1903 (Nineteen Three)	Survey Map of 1903 (Nineteen Three) was compared at the spot and it was found that the site was clearly number 321 Three Hundred Twenty One) and temple of Gangaji was there.
10.	1911 (Nineteen Eleven)-1913 (Nineteen Thirteen)	The property of Raja Patnimal came under court of wards and compound Katra Keshavdev was administer by Collector of Mathura.
11.	9.3.1921 (Nine Three Nineteen Twenty One)	Civil Suit No.76 (Seventy Six) of 1920 (Nineteen Twenty) filed by Muslims was dismissed holding that the land in dispute did not belong to the mosque and Plaintiff was not in possession and Hindu-Defendant was building a temple upon the site of previously existing temple.
12.	16.3.1923 (Sixteen Three Nineteen Twenty Three)	First Appeal No. 236 (Two Hundred Thirty Six) of 1921 (Nineteen Twenty One) was dismissed against the judgment and decree

		dated 9.3.1921 (Nine Three Nineteen Twenty One) passed in Suit No. 76 (Seventy Six) of 1920 (Nineteen Twenty).
13.	1928 (Nineteen Twenty Eight)	Civil Suit No. 517 (Five Hundred Seventeen) of 1928 (Nineteen Twenty Eight) by Rai Kishan Das the heir of Raja Patnimal. Muslim Defendants filed written statement. One of the issue was as to whether the Plaintiff was owner of the land in dispute and the materials lying thereon. The suit was decreed by Trial Court and First Appellate Court in favour of Hindus.
14.	2.12.1935 (Two Twelve Nineteen Thirty Five)	Second Appeal No. 691 (Six Hundred Ninety One) of 1932 (Nineteen Thirty Two) filed by Muslims was dismissed with slight modification in the decree passed by Courts below.
15.	8.02.1944 (Eight Two Nineteen Forty Four)	Rai Kishan Das and Rai Anand Das the legal heirs of Raja Patni Mal executed sale deed of 13.37 (Thirteen Point Thirty Seven) acres land of Katra Keshavdev in favour of Mahamana Pt. Madan Mohan Malvia, Goswami Ganesh Dutt and Bhiken Lalji Aattrey on a consideration of Rs.13,400/- (Thirteen Thousand Four Hundred) paid by Jugal Kishore Birla.
16.	21.2.1951/ (Twenty One Two Nineteen Fifty One)	Jugal Kishore Birla created a Trust which was registered on 9.3.1951 (Nine Three Nineteen Fifty One) specifically

	9.3.1951 (Nine Three Nineteen Fifty One)	mentioning that entire land/property measuring 13.37 (Thirteen Point Thirty Seven) acres of Katra Keshavdev will vest in the Trust and it will construct a glorious temple.
17.	21.1.1953 (Twenty One Nineteen Fifty Three)	Civil Suit No.4 (Four) of 1946 (Nineteen Forty Six) filed on behalf of Masjid Idgah against Pt. Madan Mohan Malvia and others for pre-emption on the basis of sale deed dated 8.2.1944 (Eight Two Nineteen Forty Four) was filed. The suit was dismissed on the basis of compromise holding that the judgment dated 2.12.1935 (Two Twelve Nineteen Thirty Five) passed by Hon'ble High Court would be binding on the parties.
18.	1.5.1958 (One Five Nineteen Fifty Eight)	A Society known as Shree Krishna Janmasthan Seva Sagh was formed and after amendment made in U.P. 1977 (Nineteen Seventy Seven) the word 'Sangh' was substituted with the word 'Sansthan'.
19.	1959 (Nineteen Fifty Nine)	Muslims filed Civil Suit No. 361 (Thee Hundred Sixty One) of 1959 (Nineteen Fifty Nine) against Shree Krishna Janmbhoomi Trust on the basis of sale deed executed by alleged Trust Masjid Idgah in their favour. The suit was dismissed holding that the sale deed was

		executed without any authority and same was illegal.
20.	12.5.1964 (Twelve Five Nineteen Sixty Four)	Civil Suit No. 210 (Two Hundred Ten) of 1964 (Nineteen Sixty Four) was filed in the Court of Munsiff Mathura but same was returned to the Plaintiff for filing in proper court. Thereafter, the suit was filed in the Court of Civil Judge, Mathura and numbered as Civil Suit No.43 (Forty Three) of 1967 ((Nineteen Sixty Seven) under the caption Shree Krishna Janmasthan Seva Sangh, Mathura also known as Shree Krishna Janmabhoomi Trust Mathura registered under Act 21 (Twenty One) of 1860 (Eighteen Sixty) alongwith 15 (Fifteen) members of the society. The suit was verified by Joint Secretary of Seva Sangh. In suit the prayer was to remove the super structure raised by Masjid Idgah Trust and others.
21.	12.10.1968 (Twelve Ten Nineteen Sixty Eight)	A compromise was entered into between Shree Krishna Janmasthan Seva Sangh Mathura through authorize office bearer and Alleged Shahi MasjidIdgah Mathura through representative on 12.10.1968 (Twelve Ten Nineteen Sixty Eight). In compromise the society without being the owner and having no right or power over the land of Katra Keshav Dev accepted

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		some demand of Trust Masjid Idgah against the interest of the deity and the devotees. The compromise was presented on 17.10.1968 (Seventeen Ten Nineteen Sixty Eight) and registered on 22.11.1968 (Twenty Two Eleven Nineteen Sixty Eight) by Sub-Registrar, Mathura.
22.	20.07.1973/(Twenty Seven Nineteen Seventy Three) 22.11.1974 (Seven Eleven Nineteen Seventy Four)	The Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) was decreed on the basis of compromise by Ld. Civil Judge, Mathura.
23.	7.5.1993 (Seven Five Nineteen Ninety Three)	An application No.74 (Seventy Four) - Misc. Case No.234 (Two Hundred Thirty Four) of 1993 (Nineteen Ninety Three) was filed under Section 92 (Ninety Two) of C.P.C. before District Judge, Mathura praying to remove Defendant Nos.1 (One) to 6 (Six) from Trusteeship and for other reliefs.
24.	6.5.1994 (Six Five Nineteen Ninety Four)	Ld. District Judge, Mathura rejected the application under Section 92 (Ninety Two) of CPC.
25.	23.9.1997 (Twenty Three Nine Nineteen Ninety Seven)	First Appeal No.199 (One Hundred Ninety Nine) of 1966 (Nineteen Sixty Six) challenging the order of District Judge was dismissed, reported in 1997 (Nineteen Ninety Seven)SCC Online Allahabad Pg.

		690 (Six Hundred Ninety). The Hon'ble High Court has held that entire property of Katra Keshavdev vested in the Trust and Shree Krishna Janmasthan Seva Sansthan could not represent the Trust. Since the Trustees were not made parties, the application was rejected.
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53. That the Committee of Management of Trust Masjid Idgah and any member of Muslim Community has no right or interest in the property of Katra Keshav Dev and they have no right to raise any construction, use any portion and enter into the property of Katra Keshav Dev for the following reasons:-

- (i) It is matter of record that Raja Patni Mal had purchased 13.37 (Thirteen Point Thirty Seven) acres land of Katra Keshav Dev in auction sale held in 1815 (Eighteen Fifteen) and he became owner and came in actual physical possession over the entire land of Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty Seven) acres.
- (ii) It is matter of record as held by Civil Court in R.S. No.76 (Seventy Six) of 1920 (Nineteen Twenty) that Muslims were out of possession from the land of Katra Keshav Dev for at least 100 (One Hundred)years.
- (iii) It is matter of record that the Civil Suits filed, contested and decided so far in relation to the property of Katra Keshav Dev the decree has been passed in favour of Hindus holding that they are the owners in possession and Muslims have no right or title over the said property.

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- (iv) It is matter of record that Rai Kishan Das and Rai Anand Das the heirs of Raja Patni Mal sold the entire land of Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty Seven) acres through registered sale deed dated 8.2.1944 (Eight Two Nineteen Forty Four) in favour of Pt. Mahamana Madan Mohan Malviya, Goswami Ganesh Dutta and Bhikan Lal Aatrey on a consideration of Rs.13,400/- (Thirteen Thousand Four Hundred) paid by late Jugal Kishore Birla.
- (v) It is matter of record that late Jugal Kishore Birla created a Trust in the name of 'Shree Krishna Janmabhoomi Trust' dedicating entire land of Katra Keshav Dev to deity Lord Shree Krishna Virajman for constructing a glorious temple at the said place, vide Trust deed dated 21.2.1951 (Twenty One Two Nineteen Fifty One) which was registered in the office of Sub Registrar on 9.3.1951 (Nine Three Nineteen Fifty One).
- (vi) It is matter of record that according to the aim and objects of the Trust deed the property shall vest in the Trust and utilised only for the purpose of construction of temple, importing spiritual and religious education and other religious activities.
- (vii) It is matter of record that on 1.5.1958 (One Five Nineteen Fifty Eight) a Society in the name and style Shree Krishna Janmasthan Seva Sangh was formed in which some members of the Trust were also included.
- (viii) It is matter of record that Shree Krishna Janmbhoomi Trust became non-functional and the members of the aforesaid Society over powered the working of the Trust without any legal sanction.

- (ix) It is matter of record that Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) was not filed by Shree Krishna Janmbhoomi Trust and same was filed by Shree Krishna Janmasthan Seva Sangh which had no ownership or proprietary right of the Trust.
- (x) It is matter of record that on 12.10.1968 (Twelve Ten Nineteen Sixty Eight) a compromise was entered into between Trust Masjid Idgah and Society Shree Krishna Janmasthan Seva Sangh, wherein the society conceded a major part of land of Katra Keshav Dev to Trust Masjid Idgah even though the society had no right, title or power over the land and further that on the basis of compromise the Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) was decided.
- (xi) It is matter of record that in First Appeal No.199 (one Hundred Ninety Nine) of 1996 (Nineteen Ninety Six) the Hon'ble High Court has held that entire property of Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty Seven) acres vested in Shree Krishna Janmbhoomi Trust, Shree Krishna Janmabhoomi Sangh/Sansthan was not the trustee of the trust property and could not represent the Trust.

54. That it is a matter of history that the birth place of Lord Shree Krishna is being worshipped by Hindu devotees from considerable long time and the entire land already vested in the deity. Moreover, since 1770 (Seventeen Seventy) Muslims lost interest if any, in the property in question as the temple was restored by Maratha rulers and Muslims were driven out from the land belonging to deity at birth place temple. The Hindus further got ownership/proprietorship and the possession of the land of Katra Keshav Dev measuring 13.37 (Thirteen Point Thirty

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Seven) acres after the purchase of land by Raja Patni Mal in auction sale in 1815 (Eighteen Fifteen) .

55. That it is relevant to mention that the entire property of Katra Keshavdev vested in the deity Lord Shree Krishna from thousands of years. Since 1815 (Eighteen Fifteen) Raja Patnimal became proprietor as he purchased the land in auction sale. No person of another faith can claim any part of the property already vesting in the deity.

56. That it is relevant to mention that no part of the property of Katra Keshav Dev, i.e. the property in question is Waqf property.

57. That neither any Muslim or body/ Trust / Society / Board of Muslims has ever claimed any part of Katra Keshav Dev as Waqf property. The alleged Trust Masjid Idgah or any Muslim party has never claimed that the property of Katra Keshav Dev had been registered and notified in the official Gazette as Waqf property under U.P. Waqf Act, 1936 (Nineteen Thirty Six), U.P. Waqf Act, 1960 (Nineteen Sixty), Waqf Act,1923 (Nineteen Twenty Three), Central Waqf Act,1954 (Nineteen Fifty Four ) or under Section 5 (Five) of Central Waqf Act, 1995 (Nineteen Fifty Five).

58. That the Muslims have no right to claim any mosque within the area of 13.37 (Thirteen Point Thirty Seven) acres land of Katra Keshav Dev. No part of Katra Keshav Dev is a Waqf property and therefore, construction in question within the property in question cannot be a Mosque.

59. That the members of Committee of Management of Trust Masjid Idgah have encroached upon the land of the deity and an encroacher can claim no right over the land against true owner. They by taking law in hands have put superstructure over the property in question without

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having any right or title. Admittedly, the land was sold in auction in 1815 (Eighteen Fifteen) and Raja Patni Mal had purchased the land on behalf of deity. There was no mosque in existence/or in use at the time of auction sale in 1815 (Eighteen Fifteen). The construction of any mosque over any portion of 13.37 (Thirteen Point Thirty Seven) acres land is absolutely illegal and the same does not confer any right or title against the true owner to the members of Muslim community. In view of the decree passed by Civil Court the structure put/raised by Defendant No.2 (Two) is totally illegal and is liable to be removed forthwith.

60. That the Trust Masjid Idgah alongwith some Muslims in collusion with the Society/Sansthan by playing fraud with Shree Krishna Janmbhoomi Trust, entered into compromise on 12.10.1968 (Twelve Ten Nineteen Sixty Eight) to frustrate the decrees passed in favour of Hindus and to defeat the right of deity and devotees in the property in question.

61. That thereafter, Trust Masjid Idgah and the Sansthan played fraud upon the Court got the suit decided on the basis of compromise dated 12.10.1968 (Twelve Ten Nineteen Sixty Eight) registered on 22.11.1968 (Twenty Two Eleven Nineteen Sixty Eight) by Sub-Registrar Mathura, which was parse illegal. The Sansthan had no right or interest in the property of the Shree Krishna Janmbhoomi Trust. It had no right to file suit in respect of 13.37 (Thirteen Point Thirty Seven) acres land of Katra Keshav Dev. It had no right to enter into compromise dated 12.10.1968 (Twelve Ten Nineteen Sixty Eight) on behalf of Shree Krishna Janmbhoomi Trust.

62. That it is relevant to mention that Muslims have not filed any suit so far asserting their right or title, if any, against true owner i.e. the deity Plaintiff No.1 (One) and 2 (Two).

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63. That it is reiterated that the entire land of Katra Keshav Dev vest in the deity. Shree Krishna Janmbhoomi Trust had a right to manage the property by virtue of trust deed dated 9.3.1951 (Nine Three Nineteen Fifty One). The Muslims have no right or interest in the property in question. The Muslims have raised construction taking law into hand and in violation of the decree of the court and therefore, they cannot even take shelter of adverse possession. The possession taken by a third person as trespasser or as an encroacher cannot confer any right or title to such person. Therefore, the Muslims on the basis of construction raised by them illegally cannot claim any right or title over any part of 13.37 (Thirteen Point Thirty Seven) acres of Katra Keshav Dev. An encroacher cannot claim any right upon the land encroached by him forcibly and in violation of the decree passed by the Court.

64. That the Hon'ble Supreme Court in one case observed that-

- (i) 'adverse possession is based on the theory of presumption that the owner has abundant the property to the adverse processor on the acquiescence of the owner to the hostile act and claims of the person in possession'.
- (ii) 'The right to property is now considered to be not only a constitutional or statutory right but also a human right. The claim of adverse possession has to be read in that context'.
- (iii) 'The law of adverse possession which ousts of owner on the basis of in action within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a wind fall for the dishonest person who had illegally taken possession of the

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property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner’.

- (iv) The adverse possession is illogical and disproportionate. The effect of such law would ‘seem draconian to the owner’ and ‘a wind fall for the squatter’.

65. That Article 65 (Sixty Five) occurring in part 5 (Five) of Schedule to Limitation Act, runs as follows:

For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
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66. That the property in question has vested in the deity and is under the proprietorship of Shree Krishn Janmbhoomi Trust. The deity and the Trust have infeasible right in the property in question. No person, body of person, Trust or authority has any right to claim any part of the property in question on the ground that it has been in illegal possession for the last more than 12( Twelve) years.

67. That the law of adverse possession enumerated in Article 65 (Sixty Five) of Part 5 (Five) to the schedule of the Limitation Act,1963 (Nineteen Sixty Three) is absolutely in violation of Article 14 (Fourteen)

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and 300 (Three Hundred)-A of the Constitution of India. In a country governed by rule of law nobody can be permitted to take advantage of money or muscle power or having possessed the property by extra legal methods. Therefore, a law which bars the remedy of the true owner to claim possession on the ground of lapse of a period of 12 (Twelve) years is discriminatory, illogical, irrational and against the principles underlying Article 14 (Fourteen) of the Constitution of India.

68. That after scraping property right as fundamental right the interest and right of the citizens have been protected under Article 300 (Three Hundred) -A of the Constitution of India which runs as under:-

‘No person shall be deprived of his property save by authority of law.’

69. That article 300 (Three Hundred)-A protects the right of the citizens to the effect that nobody can deprive any person from his property otherwise than in accordance with law. A person who has taken possession forcibly, illegally or in violation of decree cannot claim adverse possession and such case cannot be governed by article 65 (Sixty Five) of the schedule to the Limitation Act, 1963 (Nineteen Sixty Three).

70. That Article 65 (Sixty Five) of Schedule in part 5<sup>th</sup> to the Limitation Act, 1963 (Nineteen Sixty Three) is illegal, irrational, illogical, discriminatory and against rule of law and in violation of provisions contained in Article 14 (Fourteen) and 300 (Three Hundred)-A of the Constitution of India and therefore, unconstitutional and void and same cannot be applied in the case.

71. That the provisions of place of Worship (Special Provision) Act, 1991 (Nineteen Ninety One) is not applicable in this case.

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72. That no suit has been filed by defendant No. 1 (One) & 2 (Two) or any member of Muslim community against the deity Shree Krishna Virajman / Lord Keshav Dev / Asthan Shree Janmabhoomi relating to land and property of Katra Keshav Dev. In all the previous suits relating to land and property of Katra Keshav Dev the deity was not a party to the litigation and no one had been appointed to protect and save the interest of the deity. As such finding, if any, recorded in previous suits affecting the interest the deity is not applicable in this case.

73. That it is relevant to mention that plaintiffs have referred the decisions of the cases in this suit previously decided only as a matter of reference on the basis of knowledge derived from various sources only during preparing the case. It is made clear that the plaintiffs are not relying upon those judgments because plaintiff deities were neither parties nor were given opportunity to put their case before the court.

74. That Deity Shree Krishna Virajman is the owner in possession of entire land measuring 13.37 (Thirteen Point Thirty Seven) Acres of Katra Keshav Dev. In the Municipal record of Mathura-Vindravan Nagar Nigam, Lord Keshav Dev has been recorded as owner of the entire land of Katra Keshav Dev. The water Tax and other taxes are being paid on behalf of the deity.

75. That Trust Masjid Idgah is not paying water tax or any tax in respect of land of Katra Keshav Dev to Mathura-Vindravan Nagar Nigam and its name does not find place in Municipal record

76. That no Mosque was in existence at the time of auction sale in 1815 (Eighteen Fifteen). A small dilapidated structure was only lying in the corner of Katra Keshav Dev. Later on Muslims called the said structure as Mosque. In pursuance of illegal compromise dated

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12.10.1968 (Twelve Ten Nineteen Sixty Eight) a construction has been raised which is being called as Alleged Shahi Masjid Idgah.

77. That the Defendant No. (Two) has encroached upon the land of Deity and has raised super structure in pursuance of the illegal compromise dated 12.10.1968 (Twelve Ten Nineteen Sixty Eight) registered on 22.11.1968 (Twenty Two Eleven Nineteen Sixty Eight) and collusive decree passed in Civil Suit No. 43 (Forty Three) of 1967 (Nineteen Sixty Seven). The Deity is owner and in symbolic possession over the land encroached by Defendants No. 1 (One) and 2 (Two) in the property in question situated in Katra Keshav Dev.

78. That nobody took care of the land and property of Deity at Katra Keshav Dev as there was no Shebait, Manager or Pujari to protect the interest of Deity before creation of Trust Shree Krishna Janam Sthan Trust on 09.03.1951(Nine Three Nineteen Fifty One). Later on Krishna Janam Asthan Sewa Sangh / Sansthan after its creation in 1958 (Nineteen Fifty Eight) slowly captured the property of the Trust. The members of the society worked against the interest of Deity. They having no power or authority conceded approx 2 (Two) Bighas land of Katra Keshav Dev to Trust Masjid Idgah. In fact the society betrayed the Deity and devotees.

79. That deity Plaintiff Nos.1 (One) and 2 (Two) are minor and since 1958 (Nineteen Fifty Eight) the Trust which was responsible to look after the interest of deity has been non-functional. Therefore, cause of action is accruing every day for the reliefs prayed for in this suit.

80. That the Plaintiff Nos.3 (Three) to 9 (Nine) went to Mathura on 15.01.2020 (Fifteen One Twenty Twenty), for Darshan of Bhagwan Shree Krishna at Mathura. They were shocked to see that a mosque was standing at such a sacred place i.e. the birth place of Lord Shree Krishna.

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The plaintiffs along with number of associates met the members of Committee of Management of Masjid Idgah on 16.1.2020 (Sixteen One Twenty Twenty) and told that Muslims should remove the construction made by them over the land of temple then they showed a copy of compromise dated 12.10.1968 (Twelve Ten Nineteen Sixty Eight) which was also filed in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) by which a compromise was made by them with Hindu parties after obtaining approval of Sunni Central Waqf Board and they told that they will not remove the construction raised by them. Thereafter the Plaintiffs collected relevant materials from senior advocates and respectable persons of the society.

81. That the Plaintiffs sent a notice under Section 89 (Eighty Nine) of the Waqf Act,1995 (Nineteen Ninety Five) through their counsel on 11.07.2020 (Eleven Seven Twenty Twenty) to Sunni Central Waqf Board which was served on 15.07.2020 (Fifteen Seven Twenty Twenty) according to postal track report. The copy of notice alongwith postal receipts and postal track report are being filed with list of papers with the suit. Sunni Central Waqf Board has not given any reply and has not complied with the terms of the notice.

82. That in this case there is continuing wrong and cause of action is accruing everyday against the wrong committed by Defendants. The cause of action further accrued on 16.01.2020 (Sixteen One Twenty Twenty) when Plaintiffs came to know about the compromise dated 12.10.1968 (Twelve Ten Nineteen Sixty Eight) and decree passed thereon by Civil Court. The cause of action lastly accrued on 16.09.2020 (Sixteen Nine Twenty Twenty) when after expiry of two months notice no action has been taken by the Waqf Board for removal of encroachment from the land in question and is accruing everyday within the territorial jurisdiction of the Hon'ble Court.

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83. That for the purposes of court fee and jurisdiction of the Court the suit is valued for Rs.20 (Twenty) lakhs. The court fee is being paid in the following matter:

Sl. No.	Nature of relief	Court fee
1.	For relief of declaration that the deity is owner of 13.37(Thirteen Point Thirty Seven) Acres land of Katra Keshav Dev the Suit is valued is Rs 20 (Twenty) Lakhs for the purposes of payment of court fee and pecuniary jurisdiction of the Hon'ble Court. For the relief of declaration fixed court fee of Rs. 200/- (Two Hundred) is being paid which is sufficient.	Rs.200/- (Two Hundred)
2.	For relief of Prohibitory injunction directing Defendant Nos.1 (One) and 2 (Two) and their men and workers from entering into the land Katra Keshav Dev the property of the entire land of Katra Keshav Dev is valued for Rs.20,00,000/- (Twenty Lakhs). Since the suit for injunction fixed court of Rs.500/- (Five Hundred) is paid is sufficient.	Rs.500/- (Five Hundred)
3.	The construction/super structure raised by Defendant No.1 (One) & 2 (Two) is of ordinary nature and same is valued for Rs.20,000/- (Twenty Thousand). The land in question has not been assessed by Nagar Nigam, Mathura-Vrindaban as the same is of	Rs.1907/- (One Thousand Nine Hundred Seven)

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	religious character belonging to deity Keshav Dev. Therefore, for the purposes of court fee and jurisdiction for the relief of removal of unauthorized construction raised by Defendant Nos.1 (One) and 2 (Two) and to hand over the possession to Shree Krishna Janbmhoomi Trust the suit is valued on the basis of construction raised on the land in question, which is of inferior nature and its valuation is fixed as Rs.20,000/- (Twenty Thousand) on which a court fee of Rs.1,907/- (One Thousand Nine Hundred Seven) is paid and for the relief of issuing mandatory injunction fixed court fee of Rs.500/- is paid, which is sufficient.	Rs.500/- (Five Hundred)
4.	For the relief of cancellation of decree dated 20.07.1973 (Twenty Seven Nineteen Seventy Three) and 07.11.1974 (Seven Eleven Nineteen Seventy Four) passed in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) by Civil Judge Mathura. The plaintiff s were not parties to the suit. The valuation of Suit No. 43 (Forty Three) of 1967 (Nineteen Sixty Seven) was Rs. 5192 /-(Five thousand One Hundred Ninety Two) and its 1/5 (One/Five) comes to Rs. 1038.4 (One Thousand Thirty Eight Point Four) i.e. round 1040 /- (One	Rs.1040/-

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	Thousand Forty) on which court fees is being paid which is sufficient.	
5.	For the relief of declaration that decree dated 20.07.1973 (Twenty Seven Nineteen Seventy Three) and 07.11.1974 (Seven Eleven Nineteen Seventy Four) in Suit no. 43 (Forty Three) of 1967 (Nineteen Sixty Seven) is not binding suit is valued for Rs. 5192 /-(Five thousand One Hundred Ninety Two) for the purpose of payment of Court fee. For the relief of declaration fixed court fee of Rs. 200/- (Two Hundred) is being paid which is sufficient.	Rs.200/- (Two Hundred)
	Total	Rs.4347/- (Four Thousand Three Hundred Fort Seven)

### **Prayer**

It is therefore, respectfully prayed that the Hon'ble Court may be pleased to grant following reliefs:-

- (a) Decree the suit in favour of Plaintiffs and against the Defendants cancelling the judgment and decree dated 20.7.1973 (Twenty Seven Nineteen Seventy Three) and judgment and decree dated 7.11.1974 (Seven Eleven Nineteen Seventy Four) and passed in Civil Suit

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No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) by Ld. Civil Judge, Mathura;

- (b) Declare that the judgment and decree dated 20.7.1973(Twenty Seven Nineteen Seventy Three) and judgment and decree dated 7.11.1974 (Seven Eleven Nineteen Seventy Four) and passed in Civil Suit No.43 (Forty Three) of 1967 (Nineteen Sixty Seven) by Ld. Civil Judge, Mathura is not binding on the Plaintiffs;
- (c) Decree the suit for declaration declaring that land measuring 13.37 (Thirteen Point Thirty Seven) acres of Katra Keshav Dev shown by letters No. A,B,C,D in the site plan vest in the deity Lord Shree Krishna Virajman;
- (d) Decree the suit for mandatory injunction in favour of the Plaintiffs and against the Defendants No.1 (One) and 2 (Two) directing them to remove the construction raised by them encroaching upon the land shown by Letters No. E,B,G,F in the site plan within the area of Katra Keshav Dev City Mathura and to handover vacant possession to Shree Krishna Janmbhoomi Trust within the time provided by the Hon'ble Court;
- (e) Decree the suit for prohibitory injunction restraining Defendants No.1 (One) and 2 (Two), their workers, supporters, men, attorneys and every person acting under them from entering into premises of 13.37 (Thirteen Point Thirty Seven) Acers land at Katra Keshav Dev City and District Mathura;
- (f) Hon'ble Court may pass any other decree for which Plaintiffs are found entitled to or which may be necessary to be passed in the interest of justice;
- (g) Award the costs of the suit;

Plaintiffs

1. Next Friend Bhagwan Shree Krishna Virajman

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Ms. Ranjana Agnihotri Plaintiff No. 1

2. Next Friend Bhagwan Shree Krishna Virajman

Ms. Ranjana Agnihotri Plaintiff No. 2

3. Ranjana Agnihotri Plaintiff No. 3

4. Pravesh Kumar Plaintiff No. 4

5. Rajesh Mani Tripathi Plaintiff No. 5

6. Karunesh Kumar Shukla Plaintiff No. 6

7. Shivaji Singh Plaintiff No. 7

8. Tripurari Tiwari Plaintiff No. 8

Mathura

Dated 25<sup>th</sup> September 2020

(Twenty Fifth September Twenty Twenty)

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Counsel For Plaintiffs

**Verification**

I, Ms. Ranjana Agnihotri as Next Friend of plaintiff No. 1 (One) do hereby verify that the contents of para 1 (one) to 83 (Eighty Three) of this plaint are true to my knowledge. Nothing has been concealed.

Signed and verified this 25<sup>th</sup> (Twenty Fifth) Day of September 2020 (Twenty Twenty) within Civil Court Compound Mathura.

Ms. Ranjan Agnihotri

I, Ms. Ranjana Agnihotri as Next Friend of plaintiff No. 2 (Two) do hereby verify that the contents of para 1 (one) to 83 (Eighty Three) of this plaint are true to my knowledge. Nothing has been concealed.

Signed and verified this 25<sup>th</sup> (Twenty Fifth) Day of September 2020 (Twenty Twenty) within Civil Court Compound Mathura.

Ms. Ranjan Agnihotri

I, Ms. Ranjana Agnihotri defendant no. 3 (Three) do hereby verify that the contents of para 1 (one) to 83 (Eighty Three) of this plaint are true to my knowledge. Nothing has been concealed.

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