

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 56 OF 2001
WITH
CIVIL APPLICATION NO. 3824 OF 2000
AND
CIVIL APPLICATION NO. 1059 OF 2007**

Meer Usman Alam Khan

...Appellant

Versus

1. Farouk Alam Khan

(since deceased through Lrs.)

1a. Lekha Farouk Alam Khan

2a. Sameer Farouk Alam Khan

2. Ayesha Begum sd/o. Nawab
Sultan Alam Khan (since deceased
through L.Rs.)

2A Ms Razia Wahid Syed

2B Ms Mahertaj Subedar

2C Ms Nadira Begum Kaazi

2D Ms Mahalak Danial Kazi

2E Mr. Masood Alam Khan

3. Ladli Begum Khairat Ali (deleted)

4. Mohammed Bahauddin

5. Jaffar Imam

...Respondent(s)

Ms R.C. Nichani for the Appellant.

Mr. G.N. Salunkhe & Mr. S.R. Sharma for Respondent Nos.1 and 2.

Mr. Yusuf Iqbal Yusuf a/w. Mr. Neville Majra, Ashish Ved,

Ms Shaista Pathan and Ms Ambrin Khan i/b Yusuf & Associates for
Respondent Nos.4 and 5.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 13 February 2017.

Date of Pronouncing the Judgment : 06 April 2017.

JUDGMENT:

1] The appellant, Meer Usman Alam Khan (Meer), the original

defendant No.5 in Suit No. 2411 of 1990 before the City Civil Court Mumbai (Trial Court) appeals judgment and decree dated 21 February 2000, even though, the suit came to be dismissed and even though, no reliefs had been prayed for, against Meer in the suit.

2] Suit No.2411 of 1990 was instituted by Farouk Alam Khan (Farouk), son of Nawab Meer Sultan Alam Khan Saheb (Sultan) and Ayesha Begum, the second wife of Sultan against the following defendants:

- 1] Shahzadi Begum Mohammed Sadiq – Sister of Sultan;
- 2] Ladli Begum Kahirat Ali – Sister of Sultan;
- 3] Mohammed Bahauddin – Son of Shahzadi Begum (D1);
- 4] Jafar Imam – Son of Ladli Begum (D2); and
- 5] Meer Usman Alam Khan – Son of Sultan from first wife - appellant;

3] Shahzadi Begum, defendant No.1, it appears, expired during the pendency of the suit. Ladli Begum, defendant No. 2, expired during the pendency of the appeal. Similarly, Ayesha Begum also expired during the pendency of the appeal and is now represented in this appeal by respondent Nos.2A, 2B, 2C, 2D and 2E. Similarly, Farouk also expired during the pendency of the appeal and is now represented in this appeal by respondent Nos.1a and 1b.

4] In the suit, Farouk and Ayesha, had applied for a declaration that the appointment of defendant Nos.3 and 4 in the suit, i.e., Mohammed Bahauddin and Jafer Imam as Trustees under the Deed of Appointment dated 6 November 1989 to the Trust founded by

Deed of Settlement dated 21 February 1938 is illegal, null and void. Several, consequential reliefs were also applied for. Significantly, however, no relief was applied for against Meer, the appellant herein.

5] The learned Trial Court vide impugned judgment and decree dated 21 February 2000 dismissed the suit. The original plaintiffs Farouk and Ayesha or for that matter their legal representatives have not challenged the impugned judgment and decree dated 21 February 2000. Meer, has however challenged the impugned judgment and decree by instituting the present appeal urging mainly that the original defendant Nos. 3 and 4 were disqualified or ineligible to be appointed as Trustees under the Deed of Settlement dated 21 February 1938 and the finding to the effect that they were so qualified or so eligible, recorded in the impugned judgment and decree is vulnerable and must be set aside.

6] Ms R.C. Nichani, learned counsel for the appellant, submits that in the suit, the appellant Meer, had supported the case of the plaintiffs Farouk and Ayesha to the extent, they had questioned the appointment and continuance of original defendant Nos.3 and 4 as Trustees. She submits that since the original plaintiffs had applied for declaratory reliefs, it makes no difference that Meer, the appellant, may not have raised any counter claim or applied for any specific reliefs as regards the appointments or continuance of original defendant Nos.3 and 4 as Trustees. She submits that even though the original plaintiffs may not have challenged the impugned judgment and decree, Meer, who was impleaded as defendant No.5

in the suit, is entitled to challenge the impugned judgment and decree, seek declaration and consequential reliefs as were applied for by the original plaintiffs in the suit. She submits that there is no serious dispute that Meer is the son of second wife of Sultan and therefore, in the best position to be appointed as the Managing Trustee of the Trust. She submits that Meer, the appellant, alone qualifies as “*lineal descendants in the direct line of the present Trustees*” and therefore, it is only Meer, who can be appointed as Managing Trustee. In contrast, she points out that the original defendant Nos.3 and 4, who were the sons of the two daughters of Sultan could never have been regarded as lineal descendants in the direct line of the Trustees and therefore, were ineligible and disqualified from being appointed as Trustees, much less as Managing Trustees. She submits that Meer, the appellant, not only is entitled to maintain this appeal but further, Meer, the appellant, is entitled to the main reliefs applied for by the original plaintiffs, as against the original defendant Nos.3 and 4, who have now been impleaded as respondent Nos.4 and 5 in this appeal. She submits that learned Trial Court has grossly erred in holding that there is no position or post of “*Managing Trustee*” contemplated under the Deed of Settlement. She submits that the learned Trial Court has grossly erred in not correctly appreciating the scope and import of the crucial expression “*lineal descendants in the direct line of the present Trustees*” which finds prominent place in the Deed of Settlement dated 21 February 1938. She submits that this crucial expression only means and implies the descendants from the male line and excludes any descendants from the female line. She has relied upon the following decisions in support of her submissions :

- 1] *Mahammad Eshaque Vs. Mahammad Amin and ors.*¹ ;
- 2] *Mohammad Ali Khan vs. Ahmad Ali Khan and ors.*²;
- 3] *Zarir Rustom Joshi and ors. vs. Burzor Rustom Joshi and ors.*³ ; and
- 4] *Saadat K. Hanum vs. Attorney – General, Palestine*⁴.

7] Mr. Yusuf Iqbal, learned counsel for respondent Nos.4 and 5, submits that Meer, the appellant, had, at no stage, supported the case of the original plaintiffs in the suit. Rather, Meer, had opposed the case set out by the plaintiffs in the plaint. Meer, the appellant, had, actively participated in the appointments of respondent Nos.4 and 5 as Trustees. In these circumstances, it is impermissible for Meer, the appellant, to make such a *volte face* and assume *locus standi* to challenge the impugned judgment and decree, even though, there is no relief granted to the original plaintiffs against Meer, the appellant. He submits that Meer, the appellant, cannot be permitted to approbate and reprobate and therefore, the appeal at his instance, is clearly not maintainable. He submits that even otherwise, there is no infirmity whatsoever in the appointment and continuance of respondent Nos.4 and 5 as Trustees and this position has now even been accepted by the legal representatives of the original plaintiffs. He supports entirely the impugned judgment and decree and submits that this appeal may be dismissed on grounds of maintainability and in any case, on merits.

1 AIR (35) 1948 Calcutta 312

2 AIR (32) 1945 Allahabad 261

3 2007(3) Bom.C.R. 610

4 AIR 1939 Privy Council 185

8] Mr. G.N. Salunkhe, learned counsel for the legal representatives of original respondent Nos.1 and 2 (original plaintiffs) was not quite clear in his submissions. On one hand, he appeared to suggest that respondent Nos.4 and 5 were not qualified to be appointed as Trustees, but on the other hand, he submitted Meer, the appellant, had no business to challenge the appointments or continuance of respondent Nos.4 and 5. He submitted that presently the legal representatives of the original plaintiffs have no serious surviving grievances and therefore, the appeal may be dismissed.

9] The rival contentions now fall for determination.

10] Ms Nichani, the learned counsel for the appellant, was heard for considerable length of time since her submissions were premised upon the basis that Meer, appellant, had wholeheartedly supported the case of the original plaintiffs in the suit that the very appointment and the continuance of defendant Nos.3 and 4 to the suit (respondent Nos.4 and 5 herein) as Trustees was illegal, void and unsustainable. On this basis, Ms Nichani was permitted to and made her submissions on the interpretation of the phrase "*lineal descendants in the direct line of the present Trustees*" as it appears in the Deed of Settlement. However, it now transpires, that there is really no basis for the premise that Meer, the appellant, had in fact supported wholeheartedly or otherwise the case of the original plaintiffs in matter of the appointment and the continuance of respondent Nos.4 and 5 as Trustees. This is evident, amongst other

materials, from the very written statement filed by Meer, the appellant before the learned Trial Court in the suit.

11] On record, there is a common written statement filed by all the defendants to the suit, which includes, Meer who was impleaded as defendant No.5 in the suit. However, Ms Nichani, learned counsel for the appellant, has pointed out that though such written statement was prepared, the same was never signed by Meer, who, chose to file a separate written statement in the suit. Upon verification of the original written statement dated 3 December 1996 in the records, it is evident that in this written statement, though there is place reserved for defendant No.5 to sign, actually, defendant No.5 has not signed the written statement. There is also on record a supplemental written statement filed by defendant Nos.2,3 and 4, with no reference to Meer, defendant No.5.

12] There is on record very detailed written statement dated 11 June 1992 signed, verified and filed by Meer, the appellant herein. From the perusal of the written statement, it is quite evident that the basic premise articulated by Ms Nichani that Meer, the appellant, had wholeheartedly supported the case of the original plaintiffs as regards the appointment and continuance of respondent Nos.4 and 5 as Trustees, is found to be completely non-existing. In fact, from the perusal of the written statement, it is quite clear that Meer, the appellant, had opposed the case of plaintiffs. There is accordingly, merit in the contention of Mr. Yusuf Iqbal that Meer, the appellant, is indulging into approbation and reprobation.

13] In paragraph 2 of the written statement, dated 11 June 1992, Meer, the appellant has stated the following:

“2. At the outset, this defendant submits that the suit is absolutely false, misconceived, premature and not maintainable. Moreover, the plaintiffs have not joined all the heirs and legal representatives of late Nawab Meer Sultan Alam Khan and as such the suit is liable to be dismissed. The suit is also liable to be dismissed for non-joinder and/or misjoinder of the parties. This defendant submits that the plaintiffs and/or at any rate the plaintiff no.2 have/has no right to file this suit.”

(emphasis supplied)

14] In paragraphs 16, 18 and 21 of the plaint, the original plaintiffs had alleged that defendant Nos.3 and 4 in the suit (respondent Nos.4 and 5 herein) were ineligible to be appointed as the Trustees. Meer, the appellant, in his written statement at paragraphs 12,14 and 17, has responded to the aforesaid paragraphs of the plaint in the following manner:

“12. With reference to para 16 of the plaint, this defendant is not aware whether any of the defendant Nos.1 to 4 have any ability or qualification or eligibility to be the trustees or that they are entitled to be the trustees or managing trustee of the trust. However, this defendant submits that it is only the eldest lineal male member should be the managing trustee of the trust and this defendant being the eligible for the said post none of other defendants is entitled to be the managing trustee of the trust. In view of the intention of the settlors of the said Trust and subsequent events that had occurred for the post of managing trustee of the trust, this defendant denies the allegations against this defendant that this defendant is an unscrupulous person and that his intention is only to grab the trust properties. This defendant denies that he had filed false proceedings against his deceased father at Surat. This defendant submits that he had filed the said proceedings against his deceased father at Surat and he felt that due to his fickle mindedness the deceased might cause loss and damage to the estate of the trust. This defendant denies that he had withdrawn the petition because of the futility

thereof as alleged. This defendant denies that after the demise of his deceased father he wanted to throw away his step-mother Haseena Begum from the residence and make them live in servant quarters as falsely and dishonestly alleged. This defendant submits that this allegation is the figment of imagination of the plaintiffs. This defendant denies that he has joined hands with the defendant Nos.1 to 4 as alleged or that he wants to cause any detriment to the interest of the beneficiaries of the trust. This defendant submits that his step-mother Haseena Begum and her son Shri Irfan have also not been joined in these proceedings because they knew that the plaintiffs wanted to file these false proceedings against the defendants in order to see that some how or the other the plaintiff No.1 gets the post of managing trustee and that the plaintiffs had ulterior motive to grab the estate of the deceased not caring for the interest of the other beneficiaries of the said trust.

.....

14. With reference to para 18 of the plaint, this defendant is not aware whether the defendant Nos.1 and 2 appointed the defendant Nos.3 and 4 as an additional trustees for the reasons as alleged by the plaintiffs. **It is true that as per the Trust Deed, only lineal descendant in direct in direct line should be appointed as managing trustee of the Trust. However, this defendant denies that only persons from the plaintiffs' side can be appointed as trustees and none else.** This defendant submits that the plaintiffs have intentionally and deliberately not mentioned the fact that only eldest lineal descendant in direct line should be appointed as managing trustee of the in view of the intention of the settlors and subsequent events that have happened after the settlors death with regard to the person to be appointed as managing trustee of the trust. **This defendant submits that no persons from the plaintiffs' side can claim for appointment of the managing trustee inasmuch as he/she lacks qualification for being appointed as managing trustee. This defendant submits that the plaintiffs are putting the cart before the horse, when they say that only persons from the plaintiffs' side can be appointed as managing trustee of the trust and no one else. This defendant submits that as stated above, none of the plaintiffs is even a trustee and therefore the question of appointing either of them as managing trustee does not arise. This defendant is not aware whether the appointment**

of the defendant Nos.3 and 4 as trustee is illegal, bad in law and malafide. In any case this defendant submits that since he is a trustee of the trust since March, 1990 he has got sufficient qualification to be managing trustee of the trust as shown hereinabove.

.....

17. With reference to para 21 of the *Plaint*, this defendant is not aware whether the defendant Nos.3 and 4 are appointed as trustees illegally or otherwise.”

(emphasis supplied)

15] Besides, Meer, the appellant, whilst denying certain allegations made against him by the original plaintiffs, has, contested the claim of the plaintiffs that they were fit and proper persons to be appointed as Trustees or Managing Trustees. In this regard, reference is required to be made to the following averments in the written statement dated 11 June 1992.

“4. With reference to para 10 of the *plaint*, this defendant submits that under the terms of deeds of settlors inter alia the intention of the settlors was that direct male lineal descendants of the settlors was entitled to become the managing trustee of the Trust and no one else. This defendant denies that there was a specific condition in the deed of Trust that only one of the children of Nawabzada Meer Sultan Alam is entitled to become the managing trustee of the Trust as alleged. This defendant denies that the majority of the children of Nawab Meer Sultan have consented to the plaintiff no.1 being appointed as managing trustee of the trust. This defendant denies that the plaintiff no.1 is a highly qualified person or that he has thorough knowledge of finance and administration or he is a fit person to be appointed as managing trustee of the Trust. This defendant denies that by his alleged Will dated 13.5.1978 Nawabzada Meer Sultan Alam Khan inter alia directed that the Plaintiff no.1 should succeed him as the managing trustee of Wakf-ul-Aulad Trust of Bombay as well as Surat or that pursuant to the alleged will coupled with the alleged high qualification and alleged administrative ability of the plaintiff no.1 or alleged consent of the majority of the

children of the said Nawabzada Meer Sultan Alam Khan, the plaintiff no.1 is the only fit and proper person to be appointed as managing trustee of the Trust and no one else. **This defendant disputes the validity and execution of the Will, Exhibit 'C'.** According to this defendant's knowledge the said Will is even not attested property and it has not been executed by late Nawabzada Meer Sultan Alam Khan and the same is manufactured by one by the plaintiffs for the purpose of this case. **This defendant submits that the plaintiff No.1 is settled down at U.S.A. for the last many years and according to this defendant's presumption he is N.R.I. and he and his wife have also acquired citizenship of U.S.A.. This defendant submits that according to the deed of settlement dated 21.2.1938 annexed to the plaint if a trustee goes to reside abroad permanently or for a period not less than one year, it shall be lawful for the continuing or surviving trustees or trustee for the time being to appoint a new trustee from among the persons holding high status in society and having experience of management of large estate and is otherwise capable of and fit person to be a trustee in place of the trustee going abroad etc. This defendant submits that since the plaintiff No.1 has already gone abroad and settled there for the last many years, he has no right to become a trustee and for that matter the managing trustee under the deeds of the Trust.** It is surprising as to how the plaintiff no.1 will be able to properly manage the properties of the Trust when he cannot come to India when the management of the Trust requires day to day attention. This defendant submits that considering this fact, the intention of the settlor was clear that no one except the person who is residing in India and who is capable of managing the properties of the Trust should be appointed as Trustee and / or Managing Trustee of the Trust and none else. This defendant submits that in the correspondence, the late Nawabzada Meer Sultan Alam Khan has accepted that this defendant should be that next successor to him. This defendant submits that he was the person who filed Suit No. 1529 of 1973 against the Trustees for saving the land of the Belha Palace because the late Nawabzada Meer Sultan Alam wanted to lease out the land to Surat Corporation for a token rent of Re.1/- only under compelling circumstances and because of this defendant the trustees were permanently restrained from leasing, selling or

transferring the open land of the palace. This defendant submits that because of the instigation and evil intention of the plaintiffs and sister of this defendant, one Fouzia is the wife of the defendant no.3 and of another widow of Nawab Meer Sultan one Haseena and her children, this defendant's father the said Nawabzada Meer Sultan Alam Khan and this defendant had estranged relations with the result that the plaintiffs were acting against this defendant so that this defendant should not be a trustee or managing trustee of the Trust. This defendant submits that after the demise of Nawabzada Meer Sultan Alam Khan within four days the plaintiffs and Fouzia with the help of and abatement of the said Haseena and wanted to act contrary to the Wakf-ul-Aulad Trust and actually they wanted to put an end to the said Trust. However, this defendant opposed their mischievous design and as head of the family in Bombay and Surat and not spoiled by these persons. In the meeting these persons had decided to harass and see that this defendant does not interfere in the management of the properties of the Trust and that this defendant should not be appointed as a Trustee. This defendant submits that he is a highly respectable person in the society with good family background from mother's family and his wife's family. This defendant submits that he has good experience of developments of properties and management thereof. This defendant has developed the land known as Lalbadi Karaba Land as Behla Industrial Estate. This defendant submits that he has been appointed as a Trustee under a deed of appointment of Trustee dated 16.3.1990 and since he is the Managing Trustee he will be able to increase the income of the Trust which is badly shattered because of mismanagement. This defendant is an income-tax payer. This defendant has cleared all the mismanagement of Surat properties which took place during the life of the deceased and he is now trying to clear the municipal tax and income-tax of the Trust. This defendant wishes to see that all the beneficiaries of the Trust get their respective shares honestly. This defendant submits considering all these factors the best person to be Managing Trustee is no one else except this defendant as he is the lineal eldest malemember of the family having large experience with regard to the management of the properties as mentioned above. It is nowhere mentioned that the managing trustee is to be decided by majority of the beneficiaries of the settlors family. If that was so,

late Nawabzada Meer Sultan Alam Khan would not have been the managing trustee. The trustees cannot also be appointed by a Will under the Mohamedan Law particularly when Wakf-ul-Aulad Trust are involved. The Trusteeship was not the property of the deceased and the deceased could not have appointed the trustee by Will. One has to go strictly by the intentions of the settlors and provisions mentioned in the Trust Deeds. **The alleged Will is fraudulent document manufactured by the Plaintiffs with others who are against me. Even the signatures of the deceased seems to have been false as the deceased would not have made this kind of Will propounded by the Plaintiffs.**

5. This defendant submits that now he has also been appointed as a Trustee of the Trust in question by a registered deed of appointment of Trustee dated 16.3.1990. This defendant craves leave to refer to and rely upon the said deed when produced. **This defendant submits that the plaintiff no.1 is not even a trustee of the Trust and therefore he cannot be appointed as Managing Trustee as claimed by him.** This contention of the plaintiff is putting a cart before the horse. This defendant shall rely upon Suit No. 2918 of 1980 filed by his deceased father against the plaintiffs in the Bombay City Civil Court at Bombay for a declaration that the tenancy created in respect of flat No.10 and garage by him be declared as null and void in view of what is mentioned in the plaint of the said suit. This defendant shall refer to the said suit in detail hereafter. The said suit is still pending before the Bombay City Civil Court at present in Court Room No.4. This defendant submits that he is entitled to be a party in the said suit and he shall make necessary application for becoming a party in the said suit or he shall file independent proceedings for cancellation of the alleged tenancy granted in respect of the said flat no.10 and garage by the deceased in favour of the plaintiffs after obtaining copies of those proceedings.

6.This defendant shall also rely upon the letter dated 18.12.1968 addressed to the defendant No.1 Shahzadi Begum Mohammed Sadiq wherein he had made several grievances against the plaintiffs and stated that how they were misbehaving, back biting, hammering and/or hating him and not caring for him. This defendant submits that as stated above,

*the said Will is a fraudulent Will. **This defendant submits that the said Will was obtained by the plaintiffs exercising undue influence, force and coercion if at all the said Will was signed by the deceased.***

.....

.....

16. With reference to para 20 of the *plaint*, this defendant denies that his motive is to deprive the beneficiaries of the trust and usurp the trust properties as alleged. This defendant submits that the alleged Will dated 13.5.1970 is challenged by the defendants and therefore unless the said Will is proved, the Plaintiff No.1 is not entitled to rely upon the same. In any case, this defendant submits that it is crystal clear that the alleged Will must have been procured by the plaintiffs from the deceased by exercising undue influence, coercion and force in view of the facts and circumstances pointed out by this defendant hereinabove. This defendant denies that the managing trustee can be appointed by consent as is sought to be made out by the plaintiffs. This defendant submits that the procedure laid down by the settlors and the trustees and/or the managing trustee is to be appointed as per the procedure laid down by the said trust deed and as such no consent is necessary for the appointment of the trustee or managing trustee. This defendant denies that 9 out of 12 beneficiaries have consented to the appointment of the Plaintiff No.1 as managing trustee or have executed writing in that behalf. This defendant submits that no such consent or writing have any legal value even if the same are available for the plaintiffs as alleged by them. The fact that the consent and/or writing that might have been obtained by the plaintiffs for appointing the plaintiff No.1 as managing trustee goes to show that it might have been obtained by the plaintiffs by misrepresentation and undue influence, coercion, force and/or fraud inasmuch as no one can be appointed as managing trustee without he/she being a trustee of the trust. **This defendant submits that the plaintiff no.2 is not entitled to be appointed as additional trustee in view of what is stated above.**

...

18. With reference to para 22 of the *plaint*, this defendant denies that the plaintiffs are entitled for the reliefs claimed therein. This defendant submits that at the time when the suit was filed and the reliefs were claimed by the

Plaintiffs, this defendant cannot say anything what is stated by the plaintiffs against the defendant Nos.1 to 4 as trustees of the trust.

....

24. With reference to para 29 of the Plaint, this defendant submits that the plaintiffs are not entitled to any of the reliefs claimed by them.

25. This defendant submits that since the suit is false, frivolous, vexatious and mala fide, the same be dismissed with costs."

(emphasis supplied)

16] From the aforesaid averments in the written statement dated 11 June 1992 signed, verified and filed by Meer, the appellant, it is very clear that Meer, far from supporting the case of the original plaintiffs, wholeheartedly opposed the case set out by the original plaintiffs. The half hearted submission made by Ms Nichani to the effect that Meer had claimed that he was not aware about the legality or otherwise of the appointments and continuance of defendant Nos.3 and 4 (respondent Nos.4 and 5 herein) as Trustees and therefore, it should be construed that Meer had in fact supported the case of the original plaintiffs as regards ineligibility of original defendant Nos.3 and 4 (respondent Nos.4 and 5 herein) cannot be accepted. Similarly, Ms Nichani's submission that such support must be culled out from some of the statements made by Meer in the course of his examination in chief or his cross-examination during the trial in the suit, also, cannot be accepted. In the first place, the statements made are more or less in consonance with the averments in the written statement. Secondly, there can be no variance between pleadings and evidence. Thirdly, even the evidence, just like the pleadings have to be read and construed in their entirety. So construed, there is hardly any material to suggest,

much less, to establish that Meer had in fact joined with the original plaintiffs in questioning the appointment and continuance of original defendant Nos.3 and 4 (respondent Nos. 4 and 5 herein) as Trustees of the Trust. Since, the basic premise upon which Ms Nichani attempted to build her edifice is lacking, her attempts at building such edifice, naturally fails.

17] Meer, the appellant, has deposed in the suit as witness No.2 for the defendants. In paragraph 2 of his examination in chief, he has stated that in 1961, his father became the Managing Trustee under the mandate in the Trust Deed. He has also stated that after his father's death in August 1989, his direct lineal descendant from his line only could be the Managing Trustee. He has also stated that since he is the eldest son, he was entitled to be the Managing Trustee. However, thereafter, in paragraph 30 of the examination-in-chief, Meer has stated as follows:

“30. I do not have a copy of the Complaint in the suit filed by Haseena Begum against me. It is true that there is no provision in the trust deed Ex-A for appointment of managing trustee.”

18] Meer, after making the aforesaid statement that it is true that that there is no provision in the Trust Deed Exhibit-A for appointment of Managing Trustee, has further volunteered that it is not true that there is no provision for post of Managing Trust and no provisions for allotment of flat to the Managing Trustee under the Deed of Settlement Exhibit-A. He also stated that he does not agree that there is no provision for the appointment of the eldest direct male lineal descendants in direct line to the post of Managing Trustee. Suffice to note, that Meer, has not been consistent in the

matter. In any case, upon consideration of Meer's written statement and deposition, it can hardly be said that Meer had wholeheartedly supported the plaintiffs in their claim that original defendant Nos.3 and 4 (respondent Nos.4 and 5 herein) be removed as Trustees, since they were ineligible or disqualified to be appointed as such. Meer, had neither raised any counter claim nor had Meer instituted any independent proceedings questioning the appointment of original defendant Nos.3 and 4 (respondent Nos.4 and 5 herein). Therefore, at the behest of Meer, the appellant, it will not be appropriate to go into issue of appointments of original defendant Nos.3 and 4 (respondent Nos.4 and 5 herein) or to grant any relief in this appeal declaring that the appointment of continuance of original defendant Nos.3 and 4 was illegal null and void.

19] Further, reference is also required to be made to the Deed of Appointment dated 16 March 1990, by which, the original defendant Nos.3 and 4 (respondent Nos.4 and 5 herein), came to be appointed as Trustees. To this Deed, Meer, the appellant, is a signatory. The recitals to this Deed, after making reference to the Deed of Settlement, *inter alia*, declared that if and so often as any of the Trustees or future Trustee or Trustees or those presents should die or go to reside abroad permanently or for a period of not less than one year or became incapable to act in the Trust, it shall be lawful for the continuing or the surviving Trustees or Trustee for the executors or administrators of the last surviving and continuing Trustees to appoint a new Trustee or Trustees from among persons holding high status in society and having experience of management of large estates and otherwise capable and fit to be a Trustee or

Trustees, in place of the Trustee or Trustees so dying or going abroad or becoming incapable to act as Trustee and upon every such appointment of new Trustee, the Trust property and the premises should be transferred so as to become vested in the new Trustee or Trustees either jointly with the confirming Trustee or Trustees or solely as the case may require. The recitals further record that Sultan died on 28 August 1989 and the continuing Trustees were desirous of appointing additional Trustee to be the Trustees of the Trust jointly with the continuing Trustee. After all these recitals, the actual Deed proceeds to record the appointments of defendant Nos.3 and 4 (respondent Nos.4 and 5 herein) as Trustees. Meer, the appellant, is a signatory and therefore, a party to this Deed of Appointment dated 16 March 1990 by which, defendant Nos.3 and 4 (respondent Nos.4 and 5) actually came to be appointed as Trustees. It is this Deed of Appointment which was challenged by the original plaintiffs in the suit. Meer, the appellant, far from himself challenging this Deed to which, he was himself a party by taking out any independent proceedings, in his written statement dated 11 June 1992, opposed the grant of any reliefs in favour of the original plaintiffs. In such a situation, it is hardly open to Meer, the appellant, in these proceedings, to assail the impugned judgment and order which has dismissed the suit and has denied the original plaintiffs the relief of setting aside the Deed of Appointment dated 16 March 1990. At the behest of Meer, appellant, there is no question of deciding the issue as to whether the original defendant Nos.3 and 4 (respondent Nos.4 and 5 herein) qualify for appointment as Trustees or not.

20] The issue as to whether defendant Nos.3 and 4 (respondent Nos.4 and 5 herein) were indeed qualified to be appointed as Trustees could perhaps have been gone into, had the original plaintiffs or their legal representatives questioned the impugned judgment and decree. Possibly, then, the decisions upon which Ms Nichani has placed reliance in order to interpret the expression "*lineal descendants in the direct line of the present Trustees*" might have assumed relevance. However, neither the original plaintiffs nor their legal representatives have challenged the impugned judgment and decree. Mr. Salunkhe submitted that it is not open to Meer, the appellant herein to challenge the impugned judgment and decree. Mr. Salunkhe also submitted that the legal representatives of the original plaintiffs have no interest in challenging the impugned judgment and decree.

21] For the aforesaid reasons, this appeal fails and is hereby dismissed. The interim order, if any, stands vacated.

22] The pending civil applications in this appeal do not survive and the same are disposed of, accordingly.

(M. S. SONAK, J.)

23] At this stage, Ms R.C. Nichani, learned counsel for the appellant, prays for continuation of interim reliefs, which were operating during pendency of this appeal for a further period of twelve weeks. The interim orders were in operation for a considerable period. Accordingly, such interim orders are extended for a period of twelve weeks from today.

(M. S. SONAK, J.)