

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2024
In R/FIRST APPEAL NO. 77 of 1979
With
CIVIL APPLICATION (MODIFICATION/DELETION OF
CONDITION) NO. 1 of 2023
In R/FIRST APPEAL NO. 77 of 1979**

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SHASHIKANT NATVARLAL PATEL & ORS.

Versus

HEIRS OF MAHANT DAYARAMDAS- BAI PADMA WD/O
DAYARAMDAS & ORS.

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Appearance:

BHAGIRATH N PATEL(9016) for the PETITIONER(s) No. 1,2,3,4,5
Mr. Manohar Rahevar, Asst.GOVERNMENT PLEADER/PP for the
RESPONDENT(s) No. 3

Mr. Mehul Shah, Senior Advocate with MR ARPIT A
KAPADIA(3974) for the RESPONDENT(s) No. 1.6

Mr. Percy Kavina, Senior Advocate with MR TEJAS P SATTA(3149)
for the RESPONDENT(s) No. 19

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 22/10/2024

IA ORDER

1. The present application is filed by the proposed trustees who want to implead as respondent nos. 30 to 34 in the main captioned First Appeal preferred by the heirs and legal representatives of Mahant challenging the judgment and decree of the District Court in proceedings under section 19 of the Bombay Public Trust Act (hereinafter referred as 'the Act'). The prayer is also sought to restrain the Heir of the deceased Mahant-opponent no.1/6 herein to maintain status quo for properties/ lands of the trust mentioned in the PTR of the trust at Annexure -'C', pending the captioned First Appeal.

2. Before examining the merits of the present application, it

would be relevant to consider the facts of the case which are summarized as under:

2.1 The original appellants are the heirs and legal representatives of deceased Mahant Dayaramdas Guru Govinddas who was the main Mahant and the trustee of the aforesaid trust. The dispute arose with regard to the existence of the public trust as well as properties attached to the temple whether being personal properties of the said Mahant or the properties of the aforesaid public trust. Such application was registered as Miscellaneous Inquiry Case No.27 of 1952 before the learned Deputy Charity Commissioner, Ahmedabad Region. Upon inquiry under Section 19 of the Bombay Trust Act, by order dated 2.6.1954, learned Deputy Charity Commissioner, Ahmedabad Region had passed an appropriate order to register Narsinhji Temple, Dhaman as public trust. The same was reflected in Register A of Surat District. Thus, the temple came to be registered as a public trust in the name of "Shri Narsinhji Mandir, Dhaman, Taluka Navsari" bearing registration no. A/1369/Surat. Subsequently, it was re-numbered as A/351/Valsad and thereafter again was re-numbered as A/265/Navsari.

2.2 On 6.7.1954 the original appellant no.1 late Mahant

Dayaram preferred an appeal being Appeal No.117/54, under Section 70 of the Bombay Public Trust Act, before the learned Charity Commissioner, Bombay, claiming it to be his private deity, which came to be dismissed by order dated 25.7.1955 with cost. On 21.09.1955, the Mahant being aggrieved by the aforesaid order, had approached the Court of learned District Judge, Surat under section 72 of the Act which was registered as MCA no. 70 of 1955. Upon bifurcation of the District, the said proceedings were transferred to the District Court, Valsad and was renumbered as CMA no. 1 of 1964.

2.3 One Haribhai Naranji Patel and two others claimed to have interest in protection of Trust properties, and therefore after obtaining necessary permission from the learned Charity Commissioner under section 50 of the Act, have also preferred Regular Civil Suit No.30 of 1954 before the District Court, Surat. The said suit was transferred to the Court of learned District Judge, Valsad at Navsari and was re-numbered as RCS No.3 of 1964.

2.4 Noticing the dispute involving the public trust and the properties attached with the trust, learned District Judge by order dated 17.09.1962 consolidated the Regular Civil Suit No.3 of 1964 and Miscellaneous Civil Application No.70 of

1955 together. The learned District Judge, Valsad at Navsari decided both the proceedings i.e. Regular Civil Suit No.3 of 1964 (Old No.30 of 1954) and Miscellaneous Application No.1/64 (Old No.70 of 1955) by common judgment of 16.09.1971. The learned District Judge by aforesaid common judgment allowed the Miscellaneous Application No.1 of 1964 and confirmed the order of the learned Charity Commissioner, Bombay confirming the order of learned Deputy Charity Commissioner, Ahmedabad (Region) thereby declaring the Narsinhji Temple as a private deity and the properties as private properties of Mahant. Consequently, Regular Civil Suit No.3 of 1964 was dismissed.

2.5 Being aggrieved and dissatisfied with the aforesaid common judgment of 16.09.1971 passed by the learned District Judge, Valsad disposing the Regular Civil Suit No.3 of 1964 along with Miscellaneous Application No. 1 of 1964, the original plaintiff and the trustees have approached in appeal before this court viz. First Appeal no. 803 of 1971 and first Appeal no. 222 of 1972. The Hon'ble Division bench of this Court by common order dated 11th/ 12th August, 1977 allowed the appeals by reversing the decree of the learned district Judge by setting aside the findings that the temple in question was not a public trust and that these properties in

question were not public trust properties. As regards, properties in dispute, the Hon'ble Division Bench remanded the matters back to the trial court in light of the observations.

2.6 It transpires on record that pending the remand order, the Mahant had unsuccessfully challenged the aforesaid order of hon'ble division bench before the Hon'ble Supreme Court, however, the Hon'ble Supreme court has upheld the order of remand. After remand, various Issues were framed, Mahant had also expired pending the proceedings of remand and his heroes were brought on record and the new trustees were approved to be the trustees of the trust and after detailed examination of evidence led on record, the learned District judge by common judgment and decree dated 11.09.1978 dismissed the Misc. Civil Application no. 1 of 1964 under section 72 of the Trust Act whereas allowed the Regular Civil suit no. 3 of 1964. Being aggrieved and dissatisfied by the aforesaid common judgment and decree, the heirs and legal representatives of the deceased Mahant have approached this Court by filing captioned appeals.

2.7 In the aforesaid pending appeals, initially the applications were preferred by the present applicants seeking the present applicants to be joined as party respondents in their capacity

as trustees of the trust. The aforesaid appeals were dismissed for default by order dated 22.6.2016. Though the appeals were later on restored, once again it came to be dismissed for default by order dated 29.06.2017. With the dismissal of the appeals for default, the consequential order followed as regards the aforesaid Civil Application for joining party. The separate applications were preferred at the stage of restoration of the main captioned appeals being Civil Application No. 2 of 2019. The said applications were heard and allowed by the Coordinate Bench by order dated 28.02.2023 permitting to join the present applicants in the restoration being MCA No.1 of 2017 (for restoration). That upon hearing the present applicants the Coordinate Bench by order dated 20.02.2023 allowed the restoration by reasoned order. At the stage of restoration, the Court had taken into consideration the objection raised by the present applicants with regard to the conduct of the appellants of illegally transferring the trust property pending the litigation. The Court after taking into consideration the objections of the present applicants taking liberal approach as well as assurance given by the learned counsel for the respondent trust of no further adjournment and conducting the appeal, restored the First Appeals to its original file with payment of cost of Rs.25,000/- payable by the respondent trust. Though,

the captioned First Appeals were restored to its original file and the applicants who were otherwise joined as party respondents in the restoration application, being not joined as party respondents in the main captioned First Appeals, gave a cause for the present applicants to apply for joining as party respondents in the main proceedings i.e. captioned First Appeal and the cause arose for them to seek status quo order in respect of the properties / land of the trust as mentioned in the PTR of the trust at Annexure C pending the main First Appeal. Hence this application.

4. Mr. Percy Kavina, learned Senior Counsel for the applicants trustees, at the outset, has invited attention of this Court to the proceedings of restoration to contend that the present applicants were joined as respondents in the restoration application being 1 of 2017 by filing separate application being CA No.2 of 2019. The learned counsel has referred to the averments made in the aforesaid applications for joining party which was otherwise preferred at the instance of the respondent nos. 1 and 6 herein – original appellants. Precisely to point out that the trustees of the so called trust have expired and the applicants being new trustees of the trust are required to be joined as party respondents. The order dated 4.10.2019 reproduced in the order dated 25.07.2022 passed

by the Coordinate Bench in Civil Application for joining No.2 of 2019 in Miscellaneous Civil Application for restoration No.1 of 2017 in First Appeal No.478 of 1979 was referred to and relied upon whereby the Court had considered the submissions of learned Assistant Government Pleader who had submitted before the Court that the respondents therein who were original trustees of the trust have expired and the proposed respondents no. 16 to 20 i.e. present applicants are now the new trustees of the trust and therefore, are required to be impleaded as party respondents. In light of the aforesaid facts, Coordinate Bench while passing the aforesaid order on 04.10.2019 in the restoration proceedings has permitted the deletion of the deceased trustees and had permitted the trustees - proposed respondent nos. 16 to 20 therein were permitted to be joined as party respondents. The statement of the learned counsel appearing in the aforesaid proceedings was recorded that such joining of the respondents to the restoration application was without prejudice to the rights and contention to be taken by the respondents at the time of further hearing. In background of the aforesaid facts, learned senior counsel has submitted that the present respondent nos. 1 and 6 (original appellants) are therefore, estopped from objecting to the present application seeking joining party. Learned senior counsel has referred to the excerpt of the

English Author William Shakespeare as expressed in his literary work *the Merchant of Venice*, which reads as :

“ The devil can cite Scripture for his purpose. An evil soul producing holy witness is like a villain with a smiling cheek, A goodly apple rotten, at the heart. O, what a goodly outside falsehood hath.”

Having said so, learned senior counsel has thereafter highlighted the conduct of the present respondent nos. 1 and 6 by referring to the various transactions entered upon pending the present proceedings. It was submitted that mere glance of the sale transactions produced on record at Annexure D collectively reflects the real intention of the aforesaid respondents in objecting to the present application for joining party. It was submitted that since all existing trustees have expired the captioned appeal as such gets abated if new trustees are not brought on record, the only respondent then would be the Charity Commissioner. According to learned senior counsel, no effective representation is made by the learned Charity Commissioner in the present proceedings. In such circumstances, the original appellants will have free hand to deal with suit properties as if the said properties are the personal properties of deceased Mahant and not the trust property. It was therefore submitted that such conduct of the heirs and legal

representatives of the deceased Mahant would seriously prejudice the rights of the trust in the suit properties. Learned senior counsel has invited attention of this Court to the affidavit in reply filed by the respondent nos. 1 and 6 - original appellants objecting their application for joining party. It was pointed out that on one hand the appeals are not conducted by the appellants and on the other hand the change report pending consideration before the Court of learned District Judge, Navsari under Section 47 of the Trust Act is avoided by the present appellants by contending that their application for joining party is pending consideration in the captioned appeals before the High Court. As regards delay in conducting the proceedings, learned counsel has relied upon two orders of the dismissal for default of the captioned appeals passed by this Court. It was pointed out that on two occasions the captioned appeals, which otherwise relate to the year 1979, were dismissed for default for the first time by this Court by order dated 22.06.2016. It was submitted that at this stage the matter was dismissed on merits, the learned Judge categorically observed that the appeal does not involve the question of appointment or successor to the Mahantship as sought to be claimed by the heirs. The need for framing of scheme arose when the said Mahant had tried to grab the property which led to the appointment of the new trustees and

the scheme was framed after he expired. Looking at the findings and conclusion arrived, this Court upheld the same. Learned counsel has thereafter referred to the averment made in the application being Miscellaneous Civil Application No.3087 of 2016 which was preferred in First Appeal No.478 of 1979, whereby, on technical ground of the respondents, who were the existing trustees at the relevant time, having expired and such order being passed without hearing the applicants, were raised. Noticing aforesaid averments made in the application, this Court by order dated 15.11.2016 restored the original First Appeal by recalling its earlier order dated 22.6.2016. It was further pointed out that again learned counsel who had appeared at the stage of restoration / recall of the earlier order submitted before the Court prayed for an adjournment on the ground of non availability to the requisite papers to conduct the matter. The Court noticing the fact that matter was restored and peremptorily fixed for final hearing on the day when it was notified, dismissed the First Appeal for want of prosecution by its order dated 29.6.2017. The original appellants once again preferred an application for restoration being Miscellaneous Civil Application No.3169 of 2017 in First Appeal No.77 of 1979 wherein the applicant raised contention that the notice qua respondents was unserved or sincere efforts were made by the learned advocate to collect papers

from the registry. However, since the papers were not made available, learned counsel in absence of the requisite papers could not proceed with the hearing of the captioned appeal, at that stage, specific averment was made that all the trustees have expired. The Court after considering the fact of deposit of the costs amount and the application for joining party preferred by the original appellants, by order dated 28.02.2023 allowed the restoration application. As against the aforesaid dates of the dismissal of default of the matter right from 22.6.2016 and its restoration by order dated 28.02.2023, learned counsel has submitted that the transaction with regard to the few of the trust properties were entered upon by the original appellants with the third parties. He has therefore submitted that the aforesaid conduct of the original appellants itself necessitates the present applicants to be brought on record so as to protect interest of the trust properties. As regards the change report pending consideration under Section 47 of the Act before the learned District Judge, Valsad at Navsari is concerned, learned senior counsel has invited attention of this Court to the case status to highlight the conduct of the present appellants in order to prolong the hearing of the said application so as to avoid them to be joined as proper and necessary parties in the present proceedings. He has therefore prayed for allowing this

application for joining them as party respondents.

5. *Per contra*, learned senior counsel Mr. Mehul Suresh Shah has appeared for the respondent nos. 1 and 6 – original appellants. Reliance was placed on the affidavit in reply filed by the present applicants to point out that their application is premature inasmuch as on the date the substantive proceedings under Section 41 of the Trust Act seeking approval of being appointed as the trustees of the trust in question is pending consideration. The reliance was also placed on the affidavit in reply cum objection filed by them in the change report proceedings to point out that they have no locus standi inasmuch no right, title or interest or even semblance of any right upon the suit properties has been derived by the present applicants. At this stage, the attention of this Court was invited to Section 47 of the Act to contend that it is only when the trustees are appointed by an appropriate order under Section 41, the newly appointed trustees derive the interest in the trust property. It was submitted that the so called resolution passed by the Gram Sabha is concerned, the same does not have any sanctity and does not confer any right to proclaim themselves as trustees, more particularly, when substantive proceedings under Section 47 of the Act are pending. Learned senior counsel has

highlighted the background of the facts of the case and has submitted that pursuant to the common judgment and order dated 16.09.1971 in First Appeal No.803 of 1971 with First Appeal No.222 of 1972 at the instance of the present appellants were allowed and the decree of the District Judge were reversed. The temple in question was held to be a public trust. As regards the properties, the matter was remanded to the District Court. It was further pointed out that the Miscellaneous Application was preferred under Section 72 of the Act, which was registered as Miscellaneous Civil Application No.1 of 1964, however, the learned District Judge, Valsad at Navsari by common judgment and order dated 11.09.1978 dismissed the aforesaid application under Section 72 of the Act whereas allowed the Regular Civil Suit No.3 of 1964. Being aggrieved and dissatisfied with the common judgment and decree passed by the learned District Judge, the appellants have approached this Court in the captioned appeals. It was further pointed out that this Court by order dated 01.02.1979 has stayed the execution and implementation of the decree till further order or uptill final disposal of the First Appeal. He has therefore submitted that the judgment and decree of the learned District Judge holding the suit properties as the trust properties has been stayed. By virtue of the aforesaid order the applicants original appellants

holding the suit properties in their personal capacity have entered into transaction in respect of few of their properties which in no manner can be termed to be against the interest of the trust inasmuch as on the date it cease to be the trust property. As regards the contention raised by the learned senior counsel applying for joining application as party respondent in the restoration application is concerned, learned counsel has fairly submitted that application for joining party in the original captioned appeal was preferred by the appellant herein but at relevant stage an impression was gathered from the resolution about applicants being appointed as new trustees. Additionally, their original applications for joining party in the captioned First Appeal also stood dismissed in view of the order of dismissal for default and therefore to avoid any technical loopholes in the future proceedings, it was thought appropriate to join them as party respondent in the restoration application stage. Learned advocate has referred to and relied upon the order dated 25.7.2022 passed in Civil Application for joining party being Civil Application No.2 of 2021 in Miscellaneous Civil Application for restoration No.1 of 2017 preferred in First Appeal No.478 of 1979 to contend that the Court has after considering the submission advanced by the applicants had allowed such prayers of joining party in the restoration

application. Attention of this Court was also invited to the reasons assigned by the Coordinate Bench while restoring the captioned appeals. It was submitted that the Court has taken liberal approach which otherwise every Court follows while considering the restoration application as the Courts would prefer the appeal to be decided on merits rather than to be dismissed for default. It was therefore, submitted that merely because the Court had heard the present application at the stage of restoration of the captioned appeals principle of estoppel cannot be applied against the appellants as there cannot be any estoppel against law. Learned counsel has once again referred to the pending change report applied by the present applicants under Section 41 of the Trust Act. He has seriously objected to the allegations made by the applicants of delaying the proceedings before the learned District Judge in hearing of the aforesaid change report seeking appointment of the new trustee. As regards the conduct of the respondents-original appellants, it was submitted the applicants having challenged revenue entry by claiming to be the interested persons and beneficiary of the trust rather than claiming to be the trustees appointed. It was further submitted that change report seeking their appointment as new trustees of the trust has been preferred before the learned District Judge way back in the year 2017, pursuant to the resolution dated 26.01.2016

whereas the revenue proceedings before the competent Court were preferred in the year 2021, which itself goes to suggest the contradictory stand being taken by the applicants in different proceedings pertaining to the suit properties. It was therefore submitted that the respondents – original appellants are within their right to object them to be joined as party respondents in the captioned First Appeal. As regards the protection of interest of the trust is concerned, it was submitted that the Charity Commissioner is party respondent in the captioned First Appeal and in absence of trustees being appointed, the provision of the Act permits the Charity Commissioner to take over the decision of the trust. It was therefore submitted that the interest of the trust is represented through an independent State Authority who is otherwise entrusted with the charge to take care of the interest of the trust. By making aforesaid submissions, learned senior counsel has vehemently objected to grant of prayer of joining present applicants as party respondents in the captioned appeals.

6. In rejoinder, Mr. Percy Kavina, learned senior counsel for the applicants has submitted that though he did not intend to go into the merits of the case at this stage. However, looking at the contention raised by the learned senior counsel

Mr. Shah of disputing status of suit properties as trust properties, it would be relevant to have a glance at the findings and reasons recorded by the learned District Judge while passing the impugned order dated 11.09.1978. The attention of this Court was invited to the description of suit properties, whereby, the properties mainly agriculture lands which were claimed to be in actual possession of the deceased Mahant were reflected in category A part I and the Court had held the aforesaid properties not to be the trust properties. It was further pointed out that lands and buildings which are in actual possession of the deceased Mahant were further categorized in part II and the aforesaid properties were held to be trust properties. The movable properties in the hands of the deceased Mahant were described in category A as part III, which was mainly based on the inventory prepared by the Charity Commissioner on 26.6.1954 whereas the properties which are alienated by the deceased Mahant were included in category B. The Court upon appreciation of the evidence held that except for four survey numbers of village Nehali which were not held to be trust properties, suggest that rest of the properties were treated as the properties of the trust. The category "C" properties were the properties which the deceased Mahant had given to the defendant no.3 by oral gift. In light of the aforesaid decree, the suit properties

identified under the different categories which are held to be forming part of the trust properties were included in the PTR and thus are treated to be vested in the trust. Learned senior counsel has further submitted that since he is not party to the proceedings interim order passed by this Court is required to be closely examined as contended by the learned counsel for the respondents nos. 1 and 6 original appellants. Learned counsel has relied upon the Order 31 of the Code of Civil Procedure to point out that in a dispute relating to the properties vested into trustees, the beneficiaries of the trust as well as trustees to the properties are required to be joined as parties to such litigation. The very fact that Gram Sabha has passed resolution authorizing them to be new trustees of the trust and such application of approval of them being appointed as trustees pending consideration before the competent Court, itself is sufficient to be considered as necessary parties to the present proceedings. It was lastly submitted that no prejudice is likely to be cause to the appellants if the present applicants are joined as party respondents in the captioned appeals.

7. Mr. Shah, learned senior counsel for the respondent nos. 1 and 6 – original appellants has objected to the aforesaid submissions by pointing out that upon plain reading of Order

31 of the Code of Civil Procedure indicates that such question would arise only when the properties are treated to be vested in the trust and consequently in the trustees whereas that stage has not reached in the facts of the case inasmuch as the order impugned declaring the trust properties is subjudice in the captioned appeals and has been stayed by this Court pending this appeal. Even otherwise, applicants have not been appointed as trustees as on the date. Hence there is no occasion of any properties being vested in the trustees so as to attract the provision of Order 31 of the Code in the facts of the present case.

7.1. Mr. Shah, learned senior counsel has relied upon the decision of the Hon'ble Supreme Court in the case of **Krishna Rai (Dead) Through Lrs and Ors vs. Banaras Hindu University Through Registrar and Ors** reported in **2022 Live law (SC) 553** to contend that it is settled principle of law that principle of estoppel cannot override the law. It was submitted that if the law requires something to be done in a particular manner, then it must be done in that manner and if it is not done in that manner, then it would have no existence in the eyes of law. By referring to the aforesaid settled principle, learned senior counsel has submitted that provision of Bombay Public Trust, more particularly, Section 47

authorizes the Charity Commissioner for appointment of new trustee when the trustees of such trust expires. In the facts of the case, the application seeking approval of the Court for being appointed as new trustees of the trust is pending consideration before the learned District Judge. Merely because in the restoration application, the applicants were joined as party to the restoration proceedings of the captioned First Appeals no estoppel would arise to appoint the new trustees in accordance with law. He has therefore, objected to prayer sought for in the present application.

8.0. Having heard the learned counsel for the respective parties and having perused the impugned order as well as document placed on record by way of a paper book, the only limited issue which is required to be decided by this Court in the present application is whether the applicants can be permitted to be brought on record in the captioned appeals in their capacity as a new trustees of the respondent trust. In other words, at the outset, what is required to ascertain is whether the applicants have been appointed as new trustees who can be permitted to be substituted on behalf of erstwhile trustees who are reported to have expired pending this appeal. It would be appropriate to look into the relevant provisions of the Code of Civil Procedure which governs the

dispute as to the suit concerning property vested in trustees, executors and administrators as provided under Order 31. The provision thus reads as under:

“Order 31:

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee; executor or Administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, Order them or any of them to be made parties.

2. Joinder of trustee, executors and administrators: Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside India need not be made parties.

3. Husband of married executrix not to join : Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall

not as such be a party to a suit by or against her."

8.1. The plain reading of the aforesaid provision, more particularly, Rule 2 of Order 31 clearly mandates joining of all trustees as parties to a suit. It deals with the situation where the suit concerning the property vested in a trustee, executor or administrator and it involves the contentions raised between the persons beneficially interested in such property and a third person, then the trustee; executor or administrator shall represent the persons so interested. Thus, the discretion is left with the Court as to whether to make beneficial interested persons to be party in such suit proceedings. Further reading of Rule 2 of Order 31, however mandates that all the trustees are required to be made parties to a suit against one or more of them. At this stage, it would be germane to examine the phrase *trustee* as defined in Section 2(18) of the Bombay Trust Act, which read as follows:

"Trustee means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager."

8.2. The conjoint reading of the aforesaid provisions vis-a-vis the overall scheme of the Bombay Public Trust Act clearly suggests that no trustee can be said to be owner of the trust

property and the real sense of the term. By virtue of Section 47 A of the Act, it only confers the legal ownership in the trust property for the purpose of the trust or for beneficial enjoyment of others and for administration of the trust. Thus, it is clear that the property of trust vests in the trustees in a limited sense to the extent of management for subserving the objects of the trust.

8.3 However, before deriving such rights as trustees, it is equally essential that such status is required to be recognized as provided by the statutory provisions. The Act also provides that after such recognition the Charity Commissioner is required to maintain entries in the trust register maintained under Section 17 in that respect and any change of trustee is required to be recorded in view of Section 22 of the Act.

8.4 Considering the aforesaid provisions of the Act in the facts of the case, indisputably the case of the applicants is based on the fact that they have been elected to act as trustees of the Trust by virtue of resolution dated 26.1.2016 passed by the Samasth Gram Sabha of village Dhaman. It is an undisputed fact that the applicants have approached the Court of learned District Judge, Navsari by preferring Civil Miscellaneous Application No.DC/56/2017 seeking necessary orders of appointment as trustees of the said trust. The details of the

case status of the aforesaid application has been placed on record which goes to suggest that the application was notified at final hearing stage and lastly it was listed on 8.4.2024 before the learned 3rd Additional District Judge. In view of this undisputed fact, inevitably recognition of the present applicant as trustees of the trust is yet to be decided and till such recognition is conferred upon the applicants as trustees of the trust, no interest in the suit properties can be said to have been derived by the applicants in view of Section 47 A of the Bombay Public Trust Act.

9. The question therefore, falls for consideration as to whether the appeal proceedings would get abated in view of the trustees of the trust having expired and new trustees being not brought on record. It is an admitted position that the applicants are seeking their impleadment as successors / trustees on the ground that the erstwhile trustees have expired and they are now the new trustees. Looking to the case of the applicants certainly they seek impleadment in their representative capacity as a trustee or at the most beneficiaries till their status as trustees is crystallized. In that case, when the erstwhile trustees of the trust have expired, there cannot be any devolution of the interest in the trust property. In that case, when erstwhile trustees of the trust have expired, the present applicants cannot be treated as

their legal representatives and would not automatically become trustees and would not be 'legal representatives' within the meaning of Clause 11 of Section 2 of the Civil Procedure Code. Only those trustees who are elected or appointed under the scheme of the trust can step into the shoes of the erstwhile trustees and can pursue the present proceedings. The new trustees by no stretch of imagination can be said to be legal representatives of the deceased trustees. In any case, the right of the deceased respondents to act as trustees would not pass on to the new trustees on their demise. Hence, in my view, such a case would not be governed by Order 22 Rule 3 or Order 22 Rule 4 which contemplates the legal representatives of deceased respondents to be brought on record within the stipulated time period, failing which, proceedings get abated. Obviously such a case is covered by Order 22 Rule 10 of the Code. It is settled legal position that unlike Order 22 Rule 3 and Order 22 Rule 4, no limitation period is prescribed for the presentation of the application under Order 22 Rule 10 and therefore, in absence of any consequence being prescribed for failure to substitute the person on whom the interest of the deceased plaintiff or defendant devolves, it can be construed that right to make an application for substitute in case of the deceased trustees which accrues from day to day, can be

made at any time during the pendency of the suit / appeal. Hence, there is no abatement in case of substitution of the new trustee as against the deceased trustees. Hence, there is no abatement of the present appeal in absence of any trustees being substituted as against erstwhile trustees.

10. For the foregoing reasons, considering the fact that the substantial proceedings in the nature of application under section 47 of the Act, preferred by the present applicants being pending before the learned District Judge for consideration, the interest of justice would prevail by considering the present application at the stage of the final adjudication of the main captioned First Appeal being First Appeal No.77 of 1979 with the further direction that the learned Additional District Judge is directed to expeditiously decide the application being Civil Miscellaneous Application No.56 of 2017 preferred by the present applicants preferably on 22.11.2024. Learned advocates for the respective parties are directed to peremptorily appear before the learned District Judge on **22.11.2024** and conclude their arguments preferably on the same day or on the date which may be fixed by the learned Judge. It is further directed that the learned District Judge shall expeditiously dispose of the proceedings on or before **29.11.2024**. In view of the aforesaid direction, captioned First Appeals are peremptorily fixed for final hearing on 4.12.2024. Learned advocates are expected to proceed with the final arguments on the next date of hearing without any further adjournment. With these observations,

present applications are directed to be heard with main First Appeals. Stand over to **4.12.2024**. Registry is directed to forward the copy of this writ to the concerned Court.

RATHOD KAUSHIKSINH

(NISHA M. THAKORE,J)