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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 517 OF 2012

Shivanand Gurusangayya Vikraktamath & Ors. ..Appellants.

Vs.

Vishwanath Harikarnappa Katare & Ors. ..Respondents.

Mr. Surel S. Shah for the appellants.

Mr. S.G. Kudle for the respondent nos.3 to 9.

CORAM : K.K.TATED, J.

DATED : 14/09/2012.

PC:

1 Heard the learned counsel for the parties.

2 Admit.

3 The substantial questions of law involved in the present First

Appeal are as under:

- a) Whether both the Lower Courts rightly considered the contentions of the Applicant that Original Respondent No.1 – Basappa Surgappa Umbarje had presented the Change Report contending that Applicant No.1 had been elected as President of the Trust in the year 2001 and that no objections were raised by deceased Basappa Surgappa Umbarje and he had remained present in the various meetings called by the Applicants and had participated in the decision making process in those meetings?

- b) Whether both the Lower Courts rightly appreciated that proposed draft scheme submitted by the Applicants does not amount to his consent for framing of the scheme which was unpalatable to the Applicants?
- c) Whether the Appellate Court erred in appreciating the fact that before framing of the scheme, it was necessary for the Assistant Charity Commissioner to supply draft scheme to the Trustees and invite their comments before framing final scheme and as such non supply of the draft scheme to the Trustees and not inviting their comment have vitiated proceedings?
- d) Whether both the Lower Courts erred in not attempting to consider that the persons from other group i.e. Scheme No.8/2004 who were appointed as First Board of Trustees were not members of the Trust and their bio-data was also not considered by Assistant Charity Commissioner?
- e) Whether both the Courts erred to take into consideration that only when the instrument of the Trust has failed and that even after amendment or modification of the scheme, proper management and administration of the Trust was not possible, then only resort can be made to Section 50-A of the Act and the mismanagement of the Trust would be a ground for invoking powers under section 58 of of the Act?

4 Appellants are directed to file private paper book within one year from today including a copy of the Application, Written Statement, depositions and other important documents, if any.

5 If private paper book is not filed within one year from today, the matter shall stand dismissed without referring back to the court.

6 Printing is dispensed with.

7 Civil Application for stay to be heard along with the First Appeal at the time of final hearing.

(K.K.Tated, J.)