SUPREME COURT OF INDIA

Nawab Shaqafath Ali Khan

Vs.

Nawab Imdad Jah Bahadur

C.A.Nos. 846-847 of 2001

(S.B. Sinha and Cyriac Joseph J.J)

05.03.2009

JUDGMENT

S.B. SINHA, J :

INTRODUCTION

1. The Nizam of Hyderabad executed a Trust Deed called "H.E.H. The Nizam's Jewellary Trust" dated 29.3.1951 in respect of some of his private properties, precious gems, jewels. Ornaments, articles of jewellary and antique pieces.

2. The terms and conditions for discharging the trust are set out therein. The trust deed has been specified in parts I, II, III of the third schedule.

3. Two sons of the Nizam, two sons of his elder son, two daughters of his second son, the daughter of the Nizam through Dullan Pasha Begum Saheba and his step brother have been mentioned in part I, the remaining thirteen sons of the Nizam and the children of his deceased son, Kazim Jah were mentioned in Part II and seventeen daughters have been mentioned in part III of the third schedule.

4. The dispute is with regard to the terms `Remaining sons and Remaining Daughters Fund' expressed in the Will. The children of some of the deceased remaining sons and remaining daughters seek for a direction to the trustees to execute the Trust Deed by giving the correct interpretation to clauses 9 to 11 of the Trust Deed.

5. The dispute lies in the interpretation of some of the important clauses of the Trust deed and particularly clauses 9 and 10 thereof.

TRUST DEED

6. The preamble of the Trust Deed dated 29.03.1951 states:

"AND WHEREAS the settler out of natural love and affection which he bears towards his relatives specified in the Third Schedule hereunder written and for diverse other good causes and considerations him there unto moving, is desirous of making a settlement of the said articles specified in the First Schedule hereunder written and of the said securities specified in the Second Schedule hereunder written in manner hereinafter appearing AND WHEREAS the trustees have agreed to become the first Trustees of these presents as is testified by their being parties to and executing these presents AND WHEREAS prior to the execution of these presents the said articles specified in the First Schedule hereunder written and the said securities specified in the Second Schedule hereunder written have been delivered by the Settlor to the Trustees, NOW THIS INDENTURE WITNESSETH as follows:-

1. in the consideration of the premises and of natural love and affection which the settler bears towards his relatives specified in the Third Schedule hereunder written and for divers other good causes and considerations him unto moving. He the settler doth hereby transfer unto the Trustees the said precious gems, jewels, ornaments and other articles of jewellery and antique pieces specified in the First Schedule hereunder written and the said securities specified in the Second Schedule hereunder written and all which articles and securities are hereinafter for brevity's sake referred to as "the Trust Property" (which expression shall include all other properties or investments or any kind whatsoever into which the same or nay part thereof may be converted or varied from time to time and such as relay be acquired by the Trustees or come to their hands by virtue of these presents) AND all the right title interest claim and demand whatsoever at law and in equity of the Settlor in

and to the Trust Property and every part thereof TO HAVE, RECEIVE, AND TAKE all and singular the Trust Property unto the trustees UPON THE TRUSTS and with subject to the powers, provisions, agreements and declarations hereinafter declared and contatined of and concerning the same.

2. the Trust hereby created shall be called "H.E.H. The Nizam's Jewellery Trust"."

7. The trustees shall divide the corpus of the principal into sixteen equal parts and allocate them as following

Four equal parts to and hold the same for Prince Azam Jha, the eldest son of the settler in the manner as mentioned in clause

Four such equal parts to and hold the same upon the trust for Prince Muazzam Jah, the second son of the settler in the manner as mentioned in clause

One such equal part to and hold the same upon the trust for Shabzadi Begum, the daughter of the settler by Dulhan pasha Begum Prince Muazzam Jah, the second son of the settlor in the manner as mentioned in clause

One such equal part to and hold the same upon the trust for Shahbada Nawab Basalat Jha Bahadur the step brother of the settler in the manner as mentioned in clause

Three such equal parts to and hold the same upon trust for the sons, grandsons and granddaughters of the settler as mentioned in Part II of the third schedule and as mentioned in clause 9

The remaining three equal parts to and hold the same upon trust for the daughters of the settler specified in Part III of the third schedule to the deed and as mentioned in clause 10.

8.Clause 9 of the Trust Deed reads as under:

"9. The Trustees shall hold the said three equal parts of the Principal Fund allocated to the sons, grandsons and grand daughters of the Settlor mentioned in part II of the Third Schedule hereunder written (hereinafter called "the Remaining Sons' Fund" UPON TRUST to divide the same or to treat the same as notionally divided into 126 (One hundred twenty six) equal units and to allocate such 126 units to the respective beneficiaries specified in part II of the Third Schedule hereunder written in the respective proportions set opposite their respective names in the second column of part II of the Third Schedule hereunder written and to hold the same upon the respective Trusts hereinafter declared and contained of an concerning the same respectively, viz:

(a) To manage the respective units of the Remaining Sons' Fund allocated to each respective beneficiary as aforesaid and to collect and to recover the interest and other income (if any)...

(b) To pay out of the income of the respective units of the Remaining Sons' Fund allocated to each such beneficiary as aforesaid and if necessary out of the corpus thereof (including the remuneration payable to the Trustees under the provisions hereof) which could not be met or defrayed out of the income or corpus of the said securities specified in the Second Schedule hereunder Written.

(c) During the life time of the Settlor to accumulate and invest the net income (if any)...

(d) From and after the death of the Settlor to pay the net income of the respective units of the Remaining Sons' Fund allocated to each such beneficiary as aforesaid to each such beneficiary absolutely for and during the terms of his or her respective life.

(e) On the death of the survivor of the Settlor and each Beneficiary leaving a child or children and/or remoter issue him or her then surviving to divide and distribute the units of Remaining Sons Fund allocated to such beneficiary as aforesaid amongst such child or children and/or remoter issue of such Beneficiary per strips in the proportion of two shares for every male child or remoter issue of such Beneficiary to one share for every female child or remoter issue of such Beneficiary tending in the same degree of relationship and so that no person shall take whose parent entitled to share under this clause shall be living and further so that persons standing in the same degree of relationship shall take between themselves in the same proposition as above the share which their parent would have taken if living provided, however, that if any of the first thirteen beneficiaries specified in the Part II of the third schedule hereunder written (i.e. Beneficiaries other than 7(seven) grandchildren of the Settlor specified in item 14 of Part II of the Third Schedule hereunder written) shall die without leaving any child or remoter issue him surviving then the Trustees shall on his death hold the units of the Remaining Sons' Fund allocated to such beneficiary as aforesaid UPON TRUST to divide the same into two equal parts and to allocate one such equal part to the remaining beneficiaries specified in Part II of the Third Schedule hereunder written (including 7(seven) grandchildren of the Settlor specified in item 14 of Part II of the Third Schedule hereunder written).

In the shares and the proportions mentioned against their respective names in second column thereof and to allocate the other such equal part to the daughters of the Settlor specified in the part III of the Third Schedule hereunder written in equal shares and proportions and to hold and stand possessed of the respective shares which on such division and allocation shall go through respective beneficiaries specified in Parts II and III of the Third Schedule hereunder written Upon Trust to add the same to and amalgamate the ame with the respective units of the Remaining Sons' Fund or the Remaining Daughters' Fund hereinafter referred to (as the case may be) originally allocated to them respectively under the provisions of this clause and the next succeeding clause 10 hereof provided further that if any of the said seven grandchildren of the Settlor specified in item 14 of Part II of the Third Schedule hereunder written shall die without leaving any child or remoter issue him or her surviving then the Trustees shall on his or her death hold the units of the Remaining Sons' Fund allocated to such grandchildren of the Settlor as aforesaid UPON TRUST to divide the same in the proportions in which the units of the Remaining Sons' Fund are allocated to the remaining grandchildren of the Settlor as specified against the respective names in the second column of the Part II of the Third Schedule hereunder written and to hold and stand possess of the respective shares which on such division shall go to the respective grandchildren specified in item 14 of Part II of the third Schedule hereunder written UPON TRUST to add the same and amalgamate the same with the respective units of the Remaining Sons' Fund originally allocated to them respectively upon the same respective trustees as those upon which the respective original units to which they are added and with which they are amalgamated as aforesaid or directed to be held under the provisions of this clause."

9. In terms of Clause of the Trust Deed, remaining daughters' fund is constituted and the manner in which the said fund is to be discharged is contained therein; the relevant part whereof reads as under:

"(e) ...provided however, that if any daughter of the Settlor specified in Part III of the Third Schedule hereunder written shall die without leaving any child or remoter issue her surviving then the Trustees shall on her death hold the one 10 equal unit of the Remaining Daughters' Fund allocated to such daughter as aforesaid UPON TRUST to divide the same into two equal parts and to allocate one such equal part to the remaining beneficiaries specified in Part III of the Third Schedule hereunder written in equal shares and proportions and to allocate the other such equal part to the Beneficiaries specified in Part II of the Third Schedule hereunder written (including the 7 grandchildren of the Settlor therein specified) in the proportions in which the units of the Remaining Sons' Fund are allocated to the respective beneficiaries specified in Part II of the Third Schedule hereunder written as specified against their respective names in the second column thereof and to hold and stand possessed of the respective shares which on such division and allocation shall go to the respective beneficiaries specified in parts II & III of the Third Schedule hereunder written UPON TRUST to add the same to and amalgamate the same with the respective units of the Remaining Sons' Fund or the Remaining Daughters' Fund (as the case may be) originally allocated to them respectively under the provisions of the preceding clause (9) hereof and this Clause and to hold the same respectively upon the same respective units as those upon which the respective original units to which they are added and with which they are amalgamated as aforesaid are

directed to be held under the provisions of the preceding clause 9 hereof and this clause."

10. Clause 11 is a residuary clause providing for the manner in which the trust is to be applied in respect of the ultimate beneficiaries.

ENACTMENT

11. The State enacted the Nizam's Trust Deeds (Validation) Act, 1950 (for short "the 1950 Act"). It received the Presidential Assent on 22.06.1950. Section 3 of the 1950 Act provides that notwithstanding anything contained in any other law for the time being in force, trust deed mentioned in the Schedule shall be valid and effectual for all purposes and shall have the force of law. The 1950 Act underwent an amendment in the year 1951. The trust deed in question was inserted as Item No. 7 in the Schedule of the 1950 Act.

BENEFICIARIES

12**.** The trust deed mentions 13 beneficiaries in Part II. Indisputably, beneficiaries at Sl Nos. 1 to 5, 7, 8, 11 and 12 have died and the corpus of their respective shares, in terms of the deed of trust, have devolved upon their heirs and successors including the appellants of Civil Appeal No. 846 of 2001, following stirpital succession. Beneficiaries at Sl Nos. 9, 10 and 13, however, are alive and the 6th beneficiary has died issueless.

13. So far as the beneficiaries specified in Part III are concerned, they are 17 in number. The beneficiaries at Sl Nos. 2, 4, 5, 7, 12 and 15 have died and their heirs and legal representatives including the appellants herein have succeeded to their units. Those at Sl Nos. 1, 6, 8, 9, 10, 11, 13 and 14 have died without any issue. The beneficiaries at Sl Nos. 3, 16 and 17 are alive.

PROCEEDINGS

14. Indisputably, the appellants filed an original petition No. 173 of 1998 in the Court of Chief Judge, City Civil Court, Hyderabad purported to be under Sections 56 and 61 of the Indian Trusts Act, 1882 praying for directions to the trustees to execute the trust deed as per the correct interpretation of clauses 9, 10 and 11 of the trust deed.

15. Respondent No. 1 also filed an original application before the Chief Judge, City Civil Court which was marked as Original Petition No. 253 of 1998 seeking directions to the trustees to execute trust deed according to the terms contained therein.

16. In the same year, some of the children of the remaining sons and daughters who predeceased those remaining sons and daughters who died issueless like the appellants herein filed a suit which was marked as O.S. No. 383 of 1998 praying inter alia for the following reliefs:

"(1) Mandatory injunction against the Trustees to correctly interpret and apply the provisions of clause 8 of the Trust Deed by making all allocations and amalgamations of Trust funds concerned therein including in the same all beneficiaries named in the parties 2 and 3 of III Schedule irrespective of whether they pre- deceased the beneficiaries dying issueless or not, and thereafter allocate their shares to their legal heirs in accordance with law,

(2) Issue a perpetual injunction against the trustees restraining them mis-interpreting or wrongly applying the provisions of clauses 8 to 10 of the Trust Deed, or

(3) Restraining the trustees from making allocations or amalgamations of Trust Funds concerned and making any payments, without giving two weeks advance notice to plaintiffs."

17. Forty similarly placed children of the deceased sons and daughters filed another suit which was marked as O.S. No. 540 of 1998 for declaration that they have vested rights in the corpus and accretion of the `remaining sons fund' to the extent of Rs. 2,22,99,200/-.

18. In the aforementioned suit, heirs and legal representatives of the grand children of the settler were impleaded as parties.

19. In the said suit, the following three issues were framed:

"1. Whether the plaintiffs are entitled for declaration in respect of the corpus fund as prayed for?

2. Whether the plaintiffs are entitled for mandatory injunction against the defendants and their successor trustees and secretary of the defendant no. 1 Trust, as prayed for?

3. Whether the plaintiffs are entitled for perpetual injunction against the defendants and their successor trustees and secretary of the defendant no. 1 Trust, as prayed for."

20. The aforementioned two original petitions as also the suits were taken up for hearing together. In the said original petitions as also the said suits a preliminary question was raised as to whether the surviving remaining sons and daughters of the Settlor are alone entitled to the corpus allotted to the remaining sons and remaining daughters who died issueless. The learned Judge passed a common judgment on 21.07.1999.

FINDINGS

21. The principal findings of the learned Judge were:

(i) "Coming back to the interpretation of sub-clause (e) of clauses 9 and 10, it can be held that the Settlor intended that even the children of a pre-deceased remaining son of a remaining daughter are entitled to a share in the unit allocated to the remaining son or daughter who died issueless. The reason is that, an absurd situation would arise if the contentions of the Trustees that surviving remaining sons and remaining daughters are only entitled to a share is accepted, if the last person who die is a issueless a remaining son and remaining daughter..."

(ii) "A reading of the said Clause discloses that the Settlor intended that the entire Principal Fund obtained by the sale of the jewellery should be handed over and transferred to the beneficiaries or ultimate beneficiaries named in the Trust Deed....In the same way, the children of the remaining sons and remaining daughters are ultimate beneficiares of the units allocated to the respective remaining sons or remaining daughters..."

(iii) "The argument of the Trustees, that the children of the remaining sons and remaining daughters are not beneficiaries at all and that they are owners consequent upon the death of the remaining sons or remaining daughters, is not contemplated by the Settlor, as he referred to such grand children as "ultimate respective beneficiaries" who are entitled to receive the main corpus itself as per the directions in the Trust Deed in clause 11 of the Trust Deed."

(iv) "...The Settlor directed in sub-clause 4 and 5 (numbered by me) in clause 9(e) that the units allocated to the remaining son who died issueless shall be divided into (2) parts and to allocate one

such part to the remaining beneficiaries specified in Part - II of the 3rd Schedule including grandchildren in the shares and proportions mentioned against their respective names in the second column thereof and to allocate the other such part to the daughters of the settlor specified in part - III of the Third Schedule hereunder written, in the equal shares and proportions. Similarly, the direction is repeated for clause 10(e). This direction can be implemented only if the contention of the children of deceased remaining sons and daughter is accepted. Then only the units allocated to the deceased remaining sons or remaining daughters can be distributed in shares and proportions as mentioned against their respective names in the second column thereof. If the interpretation of Trustees and surviving remaining sons and daughters is accepted, this direction of the Settlor cannot be implemented, for the reasons that consequent upon death, some of the remaining sons and daughters, there cannot be 126 units in Part II or 17 units in part - III".

(v) "...The Settlor did not use the word "remaining daughters" in clause 9(e) or "remaining sons or grand children" in clause 10(e) ..."

22. On the plea that nothing is left to be amalgamated in case of units of predeceased sons and daughters as the corpus was already given to them, the learned Judge noted:

(a) Some of the surviving sons and daughters have also taken the entire corpus by adopting the novel method by means of a compromise between the life estate holder and the remainder estate holder,

(b) Few lakhs of rupees from out of the units allocated to each of the remaining son or daughter who died wereretained by the Trustees.

23. The learned Judge held:

"In the result, it is held that whenever anyone of the remaining sons or remaining daughters, dies issueless, the unit allocated to him or her, as the case may be, shall be distributed amongst the surviving remaining sons and remaining daughters as well as the respective children of the deceased remaining sons and remaining daughter and also to 7 grandchildren shown in item 14 of the part II of third schedule or their children as per the units allocated to them. The surviving remaining sons and daughter and persons shown in item 14 can only receive net income on the amount amalgamated to their units whereas the respective children of the deceased remaining sons and remaining daughters, as the case may be, are entitled to receive the total amount, corpus and accretions allocated to their respective father or mother as the case may be , as per direction given in clauses 9 (e) and 10 (e) of the trust Deed."

24. The learned Judge issued the following directions:

"...This advice is given to the Trustees in OP 173/1998 and OP 253/1998 and this finding is given on preliminary point in OS 383/1998 and OS 540/1998..."

25. Indisputably, pursuant to or in furtherance of the said directions, no decree was prepared in the O.S. No. 540 of 1998.

PROCEEDINGS BEFORE THE HIGH COURT

26. Aggrieved by and dissatisfied with the judgment and order dated 21.07.1999, Respondent Nos. 1 and 2 in Civil Appeal No. 846 of 2001 and Respondent No. 2 in Civil Appeal No. 847 of 2001 filed civil revision petitions before the High Court under Article 227 of the Constitution of India and Section 115 of the Code of Civil Procedure. However, the purported common order so far as it related to the preliminary issue in the two suits was not challenged. The High Court by reason of the impugned judgment held:

"(i) The impugned order is the common order passed in two O.Ps i.e., O.P. No. 173 of 1998 and O.P. No. 253 of 1998 and the two suits as preliminary issues. Although the order insofar as it relates to the two O.Ps. is bad for want of necessary jurisdiction, the order in so far as it relates to the preliminary issues in the two suits is concerned is unquestionable on the point of jurisdiction..."

(ii) "...The petitioners who preferred these two revision petitions have surprisingly not filed appropriate proceedings as against the order pertaining to the two suits. In that view of the matter, the common order becomes unassailable except holding that the original petitions are not maintainable."

27. Despite the aforementioned findings, the High Court proceeded to consider the merit of the matter holding:

"(i) "...The various legal pleas thus raised by the learned counsel for the petitioners attacking the Trust deed and the Nizam's trust Deeds Validation Act and the Validation Amendment Act are therefore not tenable and cannot be countenanced".

(ii) "...In both these cases, suits ought to have been filed under Section 9 of the Civil Procedure Code before the appropriate courts, but not the original petitions before the Principal Civil Court of original jurisdiction. The position is clear and both the petitions cannot be maintained under Section 56 and 61 of the Trusts Act..."

(iii) "...The intention of the settler as discussed supra is not to allow the property to percolate to the other persons or to other successors either nearer or remoter except those specified..."

(iv) "...As discussed by me supra, in the absence of the words `specified in the schedule' there should have been some scope for any interpretation, but in the presence of the words `specified in the schedule', I do not think that there is any scope for any interpretation than the one, which is consistent with the view taken by me above...The view taken by the court below, for the above reasons, is not correct legal and proper and is, therefore, liable to be set aside..."

PROCEEDINGS BEFORE THIS COURT

28. Appellants preferred Special Leave Petition Nos. 4372-4373 of 2000 which came up for preliminary hearing on 27.03.2000, on which date a Division Bench of this Court ordered:

"Adjourned for two weeks as learned senior counsel for the respondents says that he wants to challenge the impugned order of the High Court so far their O.P. is held to be not maintainable."

29. Pursuant to or in furtherance of the said observations, the respondents in C.A. Nos. 846-847 filed special leave petitions against the order of the High Court and they upon grant of leave were marked as C.A. No. 848 of 2001 and 849 of 2001.

30. Two special leave petitions were also filed before this Court by the respondents, questioning the correctness or otherwise of the order dated 21.07.1999 passed by the learned Chief Judge, City Civil Court, Hyderabad. These were eventually marked as C.A. Nos. 850-851 of 2001.

SUBSEQUENT EVENTS

31. The preliminary issue in O.S. No. 540 of 1998 having already been decided, the other issues framed therein which appeared to be consequential in nature were determined by the Chief Judge, City Civil Court by an order dated 3.04.2000 decreeing the suit declaring that the plaintiffs have vested rights in the corpus and accretion of the remaining sons fund and remaining daughters fund.

32. Indisputably, an appeal, which was marked as CCA No. 114 of 2000, was preferred there against by the trustees. A Civil Miscellaneous Petition, which was marked as CMP No. 11230 of 2000, has also been filed.

33. Concededly, the said appeal and the civil miscellaneous petition are pending.

34. By an order dated 6.07.2000, the High Court directed that the aforementioned decree dated 3.04.2000 of the City Civil Court shall not be given effect to pending notice.

35. This Court by an order dated 10.04.2000 issued notices in the special leave petitions filed by the respondents.

36. By an order dated 21.01.2000, special leave to appeal has been granted, observing:

"pending the disposal of the appeal, the High court may proceed to hear and dispose of CCA No. 114 of 2000 but it shall do so independently and uninfluenced by the judgment and order under challenge insofar as it deals with the merits."

SUBMISSIONS

37. Mr. P.P. Rao, learned senior counsel appearing on behalf of the appellant, would raise the following contentions:

(i) Whether in view of the fact that the civil revision applications were filed against the order dated 21.07.1999 passed in original applications which having been found to be not maintainable, the High Court should have held that the civil revision petitions were also not maintainable.

(ii) Respondents having not filed any appeal or civil revision application against the order dated 3.04.2000 passed in the original suits filed by the appellants, the respondents would be deemed to have abandoned the remedies available to them.

(iii) The High Court could not have entered into the merits of the matter as no appeal or civil revision application having been filed against the common order passed in original suit Nos. 348 and 540 of 1999, they attained finality and, thus, the civil revision applications filed against the order dated 21.07.1999 passed against the applications were barred by the principles of res judicata. Reliance in this behalf has been placed on C.V. Rajendran and Another v. N.M. Muhammed Kunhi [(2002) 7 SCC 447].

(iv) In any event, interpretation of the deed of trust being a question of law, the civil revision application under Section 115 of the Code of Civil Procedure or under Article 227 of the Constitution of India was not maintainable.

(v) The preliminary issue having the force of a decree, an appeal lay thereagainst and, thus, a revision application under Section 115 of the Code of Civil Procedure and/ or Article 227 of the Constitution of India was not maintainable.

(vi) As the civil revision application in terms of Section 115 of the Code of Civil Procedure was not maintainable, the provisions of Article 227 of the Constitution of India could not have been taken recourse to. Reliance in this behalf has been placed on Ouseph Mathai and Others v. M. Abdul Khadir [(2002) 1 SCC 319]

(vii) No special leave petition is maintainable against the original order dated 21.07.1999 of the Chief Judge, City Civil Court, Hyderabad as by reason thereof the High Court has been by-passed. Reliance in this behalf has been placed on Chandi Prasad Chokhani v. State of Bihar [(1962) 2 SCR 276 and Taherakhatoon (D) By LRs. v. Salambin Mohammad [(1999) 2 SCC 635].

(viii) In view of the finding of the High Court that the original applications under the Indian Trusts Act were not maintainable, it acted illegally and without jurisdiction in entering into the merit of the matter and, thus, the impugned judgment is a nullity.

(ix) On merits, the High Court committed a serious error in passing the impugned judgment insofar as it failed to construe the principles of construction of a trust deed by placing itself in the armchair of the settlor.

(x) The settlor having intended to provide some property not only to the sons and daughters and the grand-children who are alive could not have intended to deprive heirs and legal representatives of those who had died issueless. (xi) The trustees in implementing the deed of trust could not have ignored a well thought of scheme of the settlor in terms whereof he intended to make no discrimination between the heirs and legal representatives and by reason whereof, he intended to make provisions not only for the children and grand-children who were then alive but also for the grand-children and great-grand children who were yet to be born.

(xii) From a perusal of the deed of trust, it would be evident that wherever the settlor intended to grant special benefit either to a heir or to a trust, he having specifically provided therefor. Having regard to the fact that the heirs and legal representatives of the deceased's son or daughter having not been excluded, the High Court could not have interfered with the well-reasoned findings of the Chief Judge, City Civil Court.

(xiii) The principle in the original applications as also the suits being primarily directed against the trustees, the heirs and legal representatives of the daughters were required to be impleaded.

38. Mr. Dushyant A. Dave, learned senior counsel appearing on behalf of the respondents, and Mr. Rajendra Choudhary, learned counsel appearing on behalf of the trustees, on the other hand, would contend:

(i) the trust deed being a deed of gift based on inheritance or otherwise, the application before the City Civil Court was not maintainable.

(ii) The settlor having executed the Will in three parts. Each part dealing with specific matters contained in the Second Schedule, the Third Schedule and the Residuary and having provided for the specific manner in which the benefit is to be conferred as also mode of discharge, the High Court must be held to have justified in arriving at a finding in regard to the intention of the settlor.

(iii) The settlor having used the term "allocate" in a number of places, the construction which would be contrary to or inconsistent therewith should be avoided.

(iv) The deed of trust having operated during the period 1952 to 1958 to the satisfaction of all those beneficiaries who have died issueless after 1958, the heirs and legal representatives could not have

been given any benefit as by that time the corpus of the trust had clearly been divided.

(v) As clauses 9(e) and 10(e) of the deed specifically provided that when a beneficiary dies, his children would get the same; the children of beneficiaries who have already been pre-deceased cannot be held to have derived any interest in the corpus of trust or otherwise.

(vi) So far as the daughters are concerned, the point of devolution of interest should be kept in mind as in case of death of one daughter her share goes to children but the same would not be the position when the daughter of a daughter dies.

(vii) Having regard to the rival contentions of the parties and the decisions of the Trial Judges whereby discretionary jurisdiction in terms of Sections 56 and 61 read with Section 34 of the Indian Trusts Act which have limited application having not been exercised, the High Court should not have interfered therewith.

(viii) The findings on the suit being subject to passing of a decree, a civil revision application against the order dated 21.07.1999 was maintainable.

(ix) The trust deed should be construed in a manner so as to achieve a certainty, as provided for under Section 6 of the Indian Trusts Act read with illustrations (c) and (d) appended thereto.

(x) Respondents being the children of the predecessor-in-interest and daughters having got the benefits cannot claim any benefit once over again on the ground that they were also entitled as heirs and legal representatives of the pre-deceased sons and daughters who had died issueless. (xi) Special leave having been granted, in the peculiar facts and circumstances of this case, this Court should exercise its discretionary jurisdiction under Article 139A of the Constitution of India and render a final decision in the matter keeping in view the passage of time.

(xii) Article 136 of the Constitution of India should be widely construed so as to take into consideration a situation of this nature where a litigation based on construction of a deed may finally be adjudicated upon by this Court.

(xiii) As no decree had been passed in the suit, it would not be correct to contend that the preliminary question raised would be a preliminary issue as envisaged under Order XIV, Rule 1 of

the Code of Civil Procedure.

(xiv) Once a leave has been granted, any decision rendered thereon could attract the doctrine of merger as has been held by this Court in Kunhayammed and Others v. State of Kerala and Another [(2000) 6 SCC 359].

OUR FINDINGS

39. The learned Trial Judge and the High Court adopted two different principles of interpretation of the trust deed. Whereas the learned Trial Judge applied the principle of contextual interpretation, the High Court applied the principle of literal interpretation.

40. It is, however, not in dispute that appeals as also civil revision application are pending before the High Court. We could have entered into the merit of the matter to determine the question as regards interpretation of the Will one way or the other but keeping in view the fact that the aforementioned proceedings are pending before the High Court, we as at present advised are not inclined to do so.

41. The High Court opined that the civil revision applications filed against the order dated 21.07.1999 were not maintainable. It is also not in dispute that no appeal was preferred against the order dated 3.04.2000.

42. The findings rendered in the order dated 21.07.1999 did not amount to a decree. The suit was not finally disposed of thereby. No appeal lay against a mere finding. An appeal would be maintainable only when a decree is passed. The matter might have been otherwise if a decree was to be recorded formally pursuant to the decision so rendered. It was not considered to be even an order passed in terms of Order XIV, Rule 2 of the Code of Civil Procedure.

43. Once the civil revision applications were held to be not maintainable ordinarily the High Court should not have entered into the merit of the matter.

44. It is true that preliminary issues were decided by an order dated 21.07.1999. It is, however, not in dispute that as several other issues were framed including the additional issues, which we have noticed hereinbefore, in terms whereof the suit was ultimately decreed by a judgment and order dated 3.04.2000, an appeal thereagainst has been filed. A civil miscellaneous application has also

been filed.

45. A decree was not passed pursuant to or in furtherance of the order dated 21.07.1999. It may be true that in terms of Section 105 of the Code of Civil Procedure when an appeal against the final decree is passed, legality of the said order could be challenged in the appeal. Only because a civil revision application has not been filed, the same, in our opinion, would not attract the principle of res judicata as an appeal from the final decree could still be maintained.

46. In C.V. Rajendran (supra), while holding that the principle of res judicata applies in different stages of the same proceedings, it was held:

"...Here what is sought to be reagitated is not really the order of remand but the order deciding a germane issue which was allowed to become final at an earlier stage of the same suit. The principle of res judicata applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party, it cannot be allowed to be reagitated by him at a subsequent stage in the same suit or proceedings. This position is laid down in Hope Plantations Ltd. v. Taluk Land Board to which one of us (Syed Shah Mohammed Quadri, J.) was a party."

47. However, as noticed hereinbefore, in this case, an appeal from a final decree is maintainable.

48. Ordinarily again a special leave petition would not be entertained directly from a judgment and order of the Chief Judge, City Civil Court, Hyderabad. [See Chandi Prasad Chokhani (supra)]

49. Maintainability of the civil revision application has been questioned inter alia on the premise that an interpretation of a deed involves a question of fact and not a question of jurisdiction.

50. Mr. Rao has placed strong reliance in this behalf on M/s. D.L.F. Housing and Construction Company (P.) Ltd., New Delhi v. Sarup Singh and Others [(1969) 3 SCC 807]. In that case, it was held:

"5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present

case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal."

51. Reliance has also been placed by Mr. Rao on Ouseph Mathai (supra) wherein it was held:

"...In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party."

52. A civil revision application although must necessarily having regard to the terminologies used in Section 115 of the Code of Civil Procedure involve the question of jurisdiction, the question which would arise is as to what are the jurisdictional questions. A jurisdictional question may arise not only when a court acts wholly without jurisdiction but also in a case where jurisdictional errors are committed while exercising jurisdiction. There are various facets of `jurisdictional errors'. Taking into consideration any irrelevant fact or non-consideration of a relevant fact would involve jurisdictional issue. This aspect of the matter has also been considered in Ajantha Transports (P) Ltd., Combatore v. M/s. T.V.K. Transports, Pulampatti, Combatore District [(1975) 1 SCC 55] in the following terms:

"27. Relevancy or otherwise of one or more grounds of grant or refusal of a permit could be a jurisdictional matter. A grant or its refusal on totally irrelevant grounds would be ultra vires or a case of excess of power. If a ground which is irrelevant is taken into account with others which are

relevant, or, a relevant ground, which exists, is unjustifiably ignored, it could be said to be a case of exercise of power under Section 47 of the Act, which is quasi-judicial, in a manner which suffers from a material irregularity. Both will be covered by Section 115 of the Civil Procedure Code."

53. It is not correct to contend that even if the revisional jurisdiction is not available, a remedy in terms of Articles 226 and 227 of the Constitution of India would also not be available in law. This aspect of the matter has been considered by this Court in Surya Dev Rai v. Ram Chander Rai and Others [(2003) 6 SCC 675] opining that not only the High Court can exercise its supervisory jurisdiction for the purpose of keeping the subordinate courts within the bounds of its jurisdiction as envisaged under Article 227 of the Constitution of India; even a writ of certiorari can be issued wherefor the subordinate or inferior courts would be amenable to the superior courts exercising power of judicial review in terms of Article 226 thereof.

54. Strong reliance has been placed by Mr. Rao on a decision of this Court in Taherakhatoon (supra) wherein it was opined that the discretionary jurisdiction of this Court under Article 136 of the Constitution of India can be denied even after grant of leave unless exceptional and special circumstances exist that substantial and grave injustice has been done. It was held:

"20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error -- still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion..."

55. There is no quarrel with the aforementioned proposition, but, as has been noticed in that case itself the discretionary jurisdiction is to be exercised keeping in view the fact and circumstance of each case and no hard and fast rule can be laid down there for.

56. There is another aspect of the matter which cannot also be lost sight of. Applications were filed before the District Court also under Sections 56 and 61 of the Indian Trusts Act praying for issuance of directions to the trustees. Such directions if issued ordinarily would be binding on them. The trustees, therefore, would be entitled to take recourse to a remedy available before a superior court, if they are aggrieved by such direction. If the High Court had the jurisdiction to entertain either an appeal or a revision application or a writ petition under Articles 226 and 227 of the Constitution of India, in a given case it, subject to fulfillment of other conditions, could even convert a revision application or a writ petition into an appeal or vice- versa in exercise of its inherent power. Indisputably, however, for the said purpose, an appropriate case for exercise of such jurisdiction must be made out.

57. Furthermore, this trust deed is not an ordinary one. It is a part of a statute. In the case of a wrong interpretation of a statute relating to jurisdiction of a court enabling it to issue a direction, it would amount to a jurisdiction error. In that sense, the courts were required to exercise their jurisdiction with more care and caution.

58. For the reasons aforementioned, we are of the opinion that interest of justice would be subserved if the matters are directed to be considered afresh by the High Court together with the pending appeal and miscellaneous applications. The special leave petitions filed before us against the order dated 21.07.1999 shall be returned to the petitioners thereof so as to enable them to re-file the same before the High Court which may also be considered on its own merits. We pass these directions in exercise of our power under Article 142 of the Constitution of India. These appeals are disposed of accordingly.

59. For the aforementioned observations and directions, we would request the High Court to consider the desirability of disposing of the matter as expeditiously as possible. No costs.