SHEIKH ABDUL KAYUM

v.

MULLA ALIBHAI

1962

August 17.

(A. B. GAJENDRAGADKAR and K. C. DAS GUPTA, JJ.)

Trust—Properties vested in trustees—Trustees creating new body—Entrustment of magement and properties to new body —Legality of—Abdication and delegation by trustees—If and when permissible.

In 1909 six persons created the Burhanpur Trust for governing, managing and administering the affairs of a school in Burhanpur. Under the Trust deed 18 persons were appointed as the trustees and all movable and immovable properties connected with the school were vested in them. Clause 5 of the Trust deed empowered the trustees "to appoint new trustees from time to time" and to frame rules and regulations for the benefit and efficient running of the school. In 1917 the Hakimia Society was formed by the trustees for the purpose of running the school and 12 persons were named members of the governing council in which all the properties of the school were vested. Since then ten members of the governing council have been administering the properties in respect of which a trust was created in 1909. A suit under s.92 Code of Civil Procedure was filed for removal of the ten members of the governing council, *inter alia,* on the ground the Hakimia Society and the ten members of the governing council had not been validly appointed trustees of the trust properties.

Held, that the ten members of the governing council of the Hakimia Society were not validily appointed trustees of the Trust properties and were liable to be removed from the management thereof. The trustees of the Burhanpur Trust had no power to create another body of men as trustees in their own place. Trustees who have once entered upon the trust cannot renounce their duties and liabilities except with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can trustees delegate their offices or any of their functions except in some specified cases. In the present case there was delegation of all the powers and functions of the trustees amounting to abdication in favour of a new body of men. The trustees sought to divest themselves of the properties vested in them by the trust deed and to vest them in the

1962

Sheikh Abdul Kayum v. Mulla Alibhai

new body. Such abdication could not be permitted. There was nothing in the trust deed which allowed such an abdication and substitution of trustees. The provision in cl. 5 for appointment of new trustees only permitted the old trustees to add to their number. Nor did the power to frame rules and regulations authorise the trustees to give up the management of the school themselves or to divest themselves of the properties entrusted to them by the trust deed and vest them in other persons.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 406 and 407 of 1960.

Appeals by special leave from the judgment and decree dated October 30, 1956, of the former Nagpur High Court (Now Madhya Pradesh) in F. A. Nos. 79 and 85 of 1949.

C. K. Daphtary, Solicitor General of India, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the appellants (in C. A. No. 406/60) and Respondent Nos. 12 and 14 to 17 (in C.A. No. 407/60).

C. K. Daphtary, Solicitor General of India, J. B. Dadachanji, Rameshwar Nath, S. N. Andley and *P. L. Vohra,* for the appellants (in C. A. No. 407/60) and respondent Nos. 1 to 3 (in C. A. No. 406/60).

B. Sen and *I. N. Shroff,* for respondent Nos. 5 and 6 (in C. A. No. 406/60) and Respondent Nos. 1 and 2 (in C. A. No. 407 of 60).

1962. August 17. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J.—This unfortunate litigation over a school which was started sixty years ago is one of the unhappy consequences of a feud that raised its ugly head in the Daudi Bohra Community many years ago. The School was started at Burhanpur by certain members of the Daudi Bohra Community of Burhanpur in the year 1902. It was named Madrasai Faize Hakimia and its object was to

impart religious and secular education to boys of the Daudi Bohra Community. Funds were collected for the purpose of the school from the members of that community for the maintenance of the school. In the year 1908 English classes were added to the school and in 1911 it was raised to the status of a High School under the name "Madrasai Hakimia and Coronation High School". Some time before this on May 24, 1909 one Daudi Bohra of Surat of the name of Abdul Hussain Abdullali Faizullabhai Muchhala made a waqf of certain properties in Bombay for the benefit and advantage of this school at Burhanpur. For the management of this trust he appointed as trustees 12 gentlemen whom he mentioned as persons who had already been appointed trustees of the school. Only a few months after this another trust came into existence for the benefit of the same school, by a deed executed by six persons, all Daudi Bohras and all belonging to Burhanpur describing themselves as managers of the school. They created by the deed "Waqf and trust of their properties" which were mentioned in detail in the body of the deed. Eighty persons, including themselves were named as the trustees. It is further stated by the executants of the deed that all movable and immovable properties connected with the school shall vest in these trustees. It is provided in the deed that the trustees hall be entitled to govern, manage and administer the affairs of the school and shall have the power of framing rules and regulations from time to time for the benefit and efficient running of the school; and also have the power to appoint new trustees from time to time in accordance with such rules and regulations. These trustees managed the school and also the properties belonging to the school including the properties of which waqf was made in its favour by the trust deed of September 15, 1909 without any trouble till March 1917. In the course of such management

1962

Sheikh Abdul Kayum
v.
Mulla Alibhai

Das Gupta J.

some of the original trust properties were converted into new properties by the trustees with the help of additional donations received from memebers of the Daudi Bohra Community. Trouble started in 1917 when some members of the Community started declaring that Mullaji Taher Saifuddin Saheb who, according to the main body of the Community was the Dai-ul-Mutalaq was not a Dai-ul-Mutalaq. About the same time four out of the 18 who were appointed by the trust deed of September 15, 1909 joined three other members of the Daudi Bohra Community of Burhanpur to form a society by the name of "Madrasai Hakimia & Coronation Society", the main purpose of which was to run the Hakimia & Coronation High and Primary Schools at Burhanpur. Among other objects were mentioned the development of branches of the school at different places; opening library or libraries at suitable centres; conducting newspaper or newspapers; editing and compiling and publishing books. In the Memorandum of Association it was provided that 12 persons named therein would form the governing body to whom the management of the affairs of the society shall be entrusted. It was further provided that properties of each and every description acquired for or given to Madrasai Hakimia & Coronation High School shall be vested in this govering body. The 10 persons who have been impleaded as defendants 2 to 11 are members of the govering body of the Society. From the time they assumed the management of the Madrasai Hakimia & Coronation High School as members of the Society they have been administering the properties of which waqf was made in favour of the school by the six gentlemen who executed the trust deed of September 15, 1909.

The suit out of which these appeals have arisen was started under s.92 of the Code of Civil Procedure

by 4 Daudi Bohra muslims who claimed to be interested in the trust properties set out in the Schedule to the plaint as members of the Daudi Bohra Community. Their main contention in the plaint is that the first defendant, the Hakimia Society and the 10 defendants, defendants Nos. 2 to 11 were not validly appointed trustees in respect of these trust properties. They prayed in this suit for a declaration that these defendants are not vaildly appointed trustees ; for their removal from the management of these properties and for an order on them to render accounts on their administration of these properties. There was also a prayer for the appointment of proper and fit persons for the management of these properties in accordance with the provisions of the trust deed of September 15, 1909, and for the framing of a scheme for the administration of the trust—to which we shall latter refer as the Burhanpur Trust—if it was necessary. The ground on which the plaint claimed that these defendants were not validly appointed trustees was that they had not been appointed as such in accordance with the terms and conditions of the trust deed of September 15, 1909. According to the plaint, whatever entrustment took place by the constitution of the Hakimia Society was invalid in law as the persons who got this registered as the Hakimia Society had no right in law to vest these properties in the Society or the members of the governing body of that Society.

As further ground for removal of these defendants from the management of these properties the plaint set out a number of acts said to have been committed by them which it was alleged amounted to a breach of trust. One such act was the defendants' action in throwing open the Madrasai Hakimia & Coronation High School to students other than the Daudi Bohra Community.

1962

Shaikh Abdul Kayum v. Mulla Alibhai

Das Gupta J.

The trustees of the trust created by Mr. Muchhala were impleaded as defendants 12 to 17. No relief was however asked for against defendants 12 to 17.

The main defences of defendants 1 to 11 were that they had been validly appointed trustees of the properties mentioned in the plaint under the trust deed of September 1909 in accordance with the rules framed under the trust deed. They claimed that the properties of the institution vested in them and continued to remain vested after the registration of the Society. The allegation of breach of trust was denied. In that connection it was pleaded that the admission of non-Bohra students did not amount to a breach of trust. A large number of issues were framed; but it would be unnecessary to consider most of these for the decision of these appeals. The principal question in controversy was whether defendants 1 to 11 were validly appointed trustees of the properties claimed as trust properties in the plaint. The second question was as regards the allegation of breach of trust. The first question was embodied in Issue No. 9 thus: "Are defendants 2 to 11 duly appointed trustees under the trust deed dated 15-9-1909?" The Trial Court answered this question in the affirmative. Relying on the provisions of Para. 6 of the trust deed (of September 1909) for the framing of rules and regulations for management of the school and properties connected with the school, the Court held that the persons who were already trustees under the trust-deed "had the power by a resolution" passed by the majority of the trustees at their meeting to (i) appoint new trustees, (ii) to appoint a governing body or managing committee to take charge of the trust properties, (iii) to get the body registered and (iv) to frame rules and regulations such as were embodied in the Memorandum of Association of the Hakimia Society. It pointed out

that a majority of the trustees present at a meeting had passed a resolution regarding registration of the society and regarding the rules and regulations embodied in the Memorandum of Association. This registration in the opinion of the Court and the formation of the Committee of its management for the registered society was "one of the acts done by the trustees in the course of the management" and was in fact an act to secure more efficient management of the trust property and the trustees had the power to do it. The Court further held that while it was true that the property which existed at the time the resolution to register the society was passed was then vested in the trustees then existing, there was nothing to prevent those trustees "who under the Ex. P-3 had the power to frame rules and regulations for the management of the school and the properties connected with it, from providing for the vesting of the property in the members of the governing body by a rule framed by them at a meeting of the trustees held according to the terms of Ex. P-3." According to the Court "the trustees had the power to vest the existing property in a governing body consisting of only some of them by a resolution passed at a meeting of trustees." Accordingly the Court held that defendants 2 to 11 who were members of the governing body of the Hakimia Society must be held to be validly appointed trustees according to the terms of the trust deed of September 15, 1909, Ex. P-3 in respect of all the properties endowed for the benefit of the school with the exception of Muchhala trust property.

The question of breach of trust by defendants 2 to 11 was embodied in Issue No. 6 in these words "(a) Did the governing body of the School use the trust properties (mentioned in the plaintiffs' list M) or any income therefrom for fighting out litigation in 1925 (C. S. No. 32 of 1925)?

1962

Sheikh Abdul Kayum
v.
Mulla Alibhai

Das Gupta J.

(b) Did they misappropriate the trust property or income therefrom?

(c) Was the litigation for the benefit of the school"? Another part of the allegation of breach of trust finds place in Issue No. 11 (c) thus : "Is the admission of the students who do not belong to the Daudi Bohra Community inconsistent with the object of the trust"? The Trial Court answered questions 6 (a) and (c) in the negative- i. e., it found that the governing body did use trust properties or income therefrom for fighting out litigation in C. S. No. 32 of 1925 and that the litigation was not for the benefit of the school. Yet the Court answered Issue No. 6 (c) in the negative, finding that such expenditure did not amount to misappropriation. The basis of this last finding is that though some part of the trust fund was misapplied in meetings part of the expenses of litigation which was not for the benefit of the school the defendants 2 to 11 believed, though wrongly, that by this litigation they would be safeguarding the rights of boys who were receiving education in the school and so the litigation was in the interests of the institution.

The Trial Court refused to make a declaration that defendants 1 to 11 were not validly appointed or for their removal. It however gave a decree for the removal of defendants 12 to 17, the trustees of the Muchhala Trust. Defendants 12 to 17 were further ordered to deposit into the Court the amount collected by them from the Muchhala trust property and were forbidden to recover any income from that property after the date of the decree.

The defendants 2 to 11 were ordered to deposit the sum of Rs. 15,596-5-8 which they were found to have misapplied. It was ordered that if this amount was not paid by them they shall be removed and a

scheme would be framed and a new trustee would be appointed to take charge of and manage the Madrasai Hakimia & Coronation High School and the properties endowed for its benefit. A Commissioner was directed to be appointed to ascertain the amount paid by the managers of the Muchhala trust property to the trustees defendents 12 to 17 and to determine the amount in the hands of these defendants. The same Commissioner was also directed to detemine the amount spent by defendants 2 to 11 on religious education in accordance with the directions of the trust deed. The amount was found due to be paid to defendants 2 to 11 to be then deposited, by them in a recognised bank for the benefit to the school.

Against this decree of the Trial Court the plaintiffs preferred an appeal to the High Court of Judicature at Nagpur. Another appeal was preferrred by defendants 12 to 17 against the Trial Court's judgment in so far as it directed their removal and gave other reliefs against them. Defendants 1,2,4,5, 9 and 10 filed cross-objections in which they challenged the correctness of the Trial Court's finding that there had been misapplication of the trust fund to the extent of Rs. 15,596-5-8 and Rs.900/-. The High Court dismissed both the appeals as also the cross-objections and affirmed the decision of the Trial Court in full.

Against the High Court's decision two appeals have been filed before this Court—one by the plaintiffs and the other by defendants 12, and 14 to 17 by special leave granted by this Court.

The appeal by defendants 12, and 14 to 17 can be easily disposed of. Their contention is that the Trial Court as also the High Court erred in granting a decree against them when the plaintiffs in the suit had not asked for any such relief. In our

1962

Sheikh Abdul Kayum v. Mulla Alibhai

Das Gupta J.

opinion, this contention must be accepted as correct. While it is true that these five appellants, Sheikh Abdul Kayum, Seth Abdulabhai, Mulla Abdulla Bhai, Mulla Mohmmed Bhai and Seth Hasanali along with Sheikh Fida Ali were impleaded as defendants no relief was sought against them nor was any averments made for that purpose. The prayers in para. 26 asked for a declaration that "defendants" are not validly appointed trustees, that "defendants" may be removed from the management of the properties and that the "defendants" may be ordered to render an account of their administration of the trust properties. In para. 20 also the word "defendants" was used without any qualification when it was said that it was absolutely necessary in the interest of the said trust that the "defendants" are not properly appointed trustees of the said trust and that the "defendants" are trustees de sontort.

But when the plaint is read as a whole, especially the statements in para. 19 it becomes quite clear that the plaintiffs in the present suit are seeking relief only against defendant 1, Hakimia Society and the defendants Nos. 2 and 11, the members of the Society. The averments on which the case that defendants are not validly appointed trustees and are trustees de sontort are made in respect only of these 11 defendants. The allegations of breach of trust are also made only against these defendants. Paragraph 10 puts the matter in clear perspective in these words: "The plaintiffs say that defendant No. 1 and defendants 2 to 11 who are the present members of defendant No. 1 Society are liable to be removed on the following grounds." This statement is followed by an enumeration of six grounds all of which clearly and unmistakably refer only to these 11 defendants. Common sense and ordinary rules of grammar therefore compel us to read the words "defendants"

in Paras 20 and 26 to mean only defendants Nos. 1 to 11. We have no doubt therefore that the courts below misdirected themselves in thinking that the plaintiffs had asked for any relief as against defendants 12 to 17.

It was stated before us that the Muchhala trust was outside the jurisdiction of the Trial Court and that even if any relief had been asked for against defendants 12 to 17 the Trial Court would not have been competent in law to give such relief. It is unnecessary for us to consider that aspect of the matter as it is abundantly clear that the plaitiffs did not ask for any relief against defendants 12 to 17 and for that reason alone the courts below acted illegally in passing any decree as against those defendants. In the two appeals filed respectively by the plainttffs and defendants 12, and 14 to 17 the appellants are represented by the learned Solicitor-General and it is conceded by him for the plaintiffs that the plaint did not claim any relief against defts. 12 to 17.

The appeal No. 406 of 1960 which is by the original defendants 12 & 14 to 17 must therefore be allowed.

The appeal which has been numbered as 407 of 1960 is by the four plaintiffs. The first contention raised on their behalf by the learned Solicitor-General is that the original trustees of the Burhanpur trust had no power in law to divest themselves of the property vested in them by the trust deed or to vest these properties in any society or its governing body, even though the society or the governing body might include some or all of the old trustees. In the persent case it was contended in the plaint and urged before us on behalf of the appellants that the evidence would show that all the old trustees had not joined in the act of

1962

Sheikh Abdul Kayum
v.
Mulla Allibhai

Das Gupta J.

formation of the Hakimia Society and transfering the property vested in them to the society or its members. Assuming, however, for the purpose of the present question that what was done should be deemed in law to be the act of the entire old body of the trustees, even so, the learned Counsel argues, the act had no legal validity and did not produce in law the consequence of constituting the Hakimia Society or its members trustees in place of the old trustees. In our judgment, this contention must succeed.

There cannot, in our opinion, be any doubt about the correctness of the legal position that trustees cannot transfer their duties, functions and powers to some other body of men and create them trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. A person who is appointed a trustee is not bound to accept the trust, but having once entered upon the trust he cannot renounce the duties and liabilities except with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can a trustee delegate his office or any of his functions except in some specified cases. The rules against renunciation of the trust by a trustee and against delegation of his functions by a trustee are embodied, in respect of trusts to which the Indian Trusts Act applies, in ss. 46 and 47 of that Act. These sections run thus :—

> "46, A trustee who has accepted the trust cannot afterwards renonce it except (a) with the permission of a principal Civil Court of Original Jurisdiction, or(b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or(b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation."

It is true that s.1 of the Indian Trusts Act makes provisions of the Act inapplicable to public or private religious or charitable endowments; and so, these sections may not in terms apply to the trust now in question. These sections however embody nothing more or less than the principles which have been applied to all trusts in all countries. The principle of the rule against delegation with which we are concerned in the present case, is clear; a fiduciary relationship having been created, it is against the interests of society in general that such relationship should be allowed to be terminated unlilaterally. That is why the law does not permit delegation by a trustee of his functions, except in cases of necessity or with the consent of the beneficiary or the authority of the trust deed itself; apart from delegation "in the regular course of business", that is, all such functions which a prudent man of business would ordinarily delegate in connection with his own affairs.

What we have got in the present case is not delegation of some functions only, but delegation of all functions and of all powers and is nothing short of abdication in favour of a new body of men. Necessarily there is also the attempt by the old trustees to divest themselves of all properties vested in them by the settlor and vesting them in another body of persons. We know of no principle of law and of no authority which permits such abdication of trust in favour of another body of persons.

1963

Sheikh Abdul Kayum
v.
Mulla Allibhai

Das Gupta J.

In the deed itself there is nothing which contemplates or allows such an abdication and the substitution of the old trustees by a new body of trustees. It is necessary in this connection to consider the terms of cl.5 of the trust deed. That clause is in these words:—

> "5. All the aforesaid trustees shall be entitled to govern, manage and administer the affairs of the school above. These trustees shall have the power of framing rules and regulations from time to time for the benefit and the efficient running of the school, and they shall have the power to appoint new trustees from time to time in accordance with the rules and regulations on behalf hereof. All the movable and immovable properties connected with the said school shall come to vest in the trustees and they shall be managed and administered in accordance with the rules and regulations framed on that behalf. The trustees for the time being shall have the power to alter and cancel the rules and regulations and to frame new ones instead thereof at the time when necessary. The treasurer shall have the power to open the cash account in some reliable bank and he shall always arrange for cash dealings to the benefit of the said school in accordance with the holy law of Islam. (Shariat)."

The provisions for the appointment of new trustees cannot by any stretch of imagination be held to mean the substitution of the old body of trustees by a new body. That provision only permits the old trustees to add to their number. Nor does the power to frame rules and regulations for the benefit and efficient running of the school authorise the trustees to give up the management of the school themselves or to divest themselves of the

properties entrusted to them by the trust deed and vest them in other persons. We are satisfied therefore that cl.5 of the trust deed does not in any manner authorise the trustees appointed by deed to abdicat in favour of anthor body of persons or to constitute that body as trustees in their own place.

There is no question here also of the beneficiary, i.e., the school consenting to such abdication. There is therefore no escape from the conclusion that the act of the trustees, who were appointed by the trust deed, in handing over the management of the school to the Hakimia Society and the properties of the school to the members of the governing body of the Hakima Society was illegal and void in law. The members of the Society or the members of the governing body did not therefore become trustees in respect of the properties which are covered by the Burhanpur trust.

This position in law is not seriously disputed by Mr. Sen, who appeared before us on behalf of the respondents. He has however taken before us a noval line for suporting the decision of the courts below. He has tried to persuade us that the trust deed of September 1909 creates a trust only in respect of the properties that belonged to the six presons who executed the trust deed. These properties have been set out in cls. 7 to 12 of the deed. This deed therefore has not created any trust in respect of such of the properties mentioned in the plaint which do not fall within the properties mentioned in these clauses of the trust deed. As regards cl.5 of the trust deed which has been set out above and which states that "All the movable and immovable properties connected with the said school shall come to vest in the trustees," the learned Counsel states that the six settlors who executed this trust deed of September 1909 have not been shown to have had any title to these

1962

Sheikh Abdul Kayum
v.
Mulla Allibhai

Das Gupta J.

movable and immovable properties connected with the school. The school, argues the learned Counsel, is merely a beneficiary of the trust and the properties of the school do not become trust properties entrusted to these trustees merely because the settlors have createated a trust in respect of other properties. There is no question therefore of any property—other than the properties mentioned in Paras. 7 to 12 of the deed—having been vested in the trustees appointed by the deed, or their divesting themselves of the same. It is only in so far as the defendants 1 to 11 claim to be the trustees of the properties mentioned in cls. 7 to 12 of this deed that they can be considered to be not validly appointed trustees. Mr. Sen submits that his clients do not claim to be trustees in respect of these properties, viz., those which are mentioned in cls. 7 to 12 of the deed. In so far as they manage these properties an order may be made against them removing them from the management of these and they may be asked to render accounts in respect of these properties, only. In respect of other properties which according to Mr. Sen are the properties belongining to the beneficiary school, however, no order could properly be made, as they are outside the Burhanpur trust that came into existence by the trust deed of September 1909.

The argument appears attractive at first sight and even plausible. Unfortunately, however, for the respondents, this case which their Counsel now seeks to make was never their case in the courts below. Far from saying that some of the properties mentioned in the plaint as trust properties of the Burhanpur trust are not in fact covered by the trust deed, these respondents have all along made the definite case that they were validly appointed trustees of those properties in accordance with the trust deed of September, 1909. Their case in this matter may

best be described in the words used in Para. 4 of the written statement thus :—

> "It is admitted that on or about 19th March, 1917, seven persons signed a memorandum of Association and registered themselves as members of the Society under Act XXI of 1860. Defendant says that all these persons were the trustees and in the management of be trust properties under trust deed dated 15-9-1909 and were either appointed under that trust or under the rules framed thereunder, and in whom the properties of the institution vested and the same continued to be vested after the registration of the Society."

This paragraph unambiguously accepts the plaintiffs' case that all the properties specified in the Schedule M attached to the plaint ar properties covered by the trust in question and it pleads that defendants 2 to 11 are validly appointed trustees of the said trust. The Judgment of the Trial Court and the High Court also clearly show that before them, these defendants claimed to be trustees—validly appointed in accordance with the trust deed of September 1909—of all the properties that were mentioned as trust properties of that deed in the plaint. Nothing appears to have been pleaded either in the written statement or at the trial or during the arguments that the settlors of this deed of September 1909 could not create a trust in repect of "all the movable and immovable properties connected with the said school", as those properties did not belong to them. On the contrary, the respondents claimed all along to have become trustees in respect of not only of the properties mentioned in cls. 7 to 12 of the deed but aslo of all other properties of the school, on the strength of this very trust deed. Mr. Sen's

1962

S. Sikh Abdul Kayum v. Mulla Allibhai

Das Gupta J.

contention that some items of the properties mentioned in the plaint as trust properties covered by the trust deed of September 15, 1909 were not so covered, cannot therefore be accepted.

We find it established therefore that defendants 1 to 11 were not validly appointed trustees in respect of the trust properties mentioned in the plaint. Their possession and management of these properties must therefore be held to be only in the character of trustee de sontort. They are liable therefore to account for their entire period of management.

From the very fact that they have no legal right to remain in possession of the trust properties, not having been validly appointed as trustees, it is equally clear that the plaintiffs are entitled to a decree that those defendants 1 to 11 be removed from the management of the properties.

The learned Solicitor-General challenged the correctness of the findings of the courts below that these defendants (defendants 1 to 11) did not by their misapplication of trust funds to the extent of Rs. 15,596-5-8 and Rs. 900/- commit misappropriation and also that the admission of students who did not belong to the Daudi Bohra Community was not inconsistent with the object of the trust. We think it unnecessary however to consider these matters inasmuch as even if these findings of the courts below are correct the plaintiffs are entitled to the reliefs they have asked for in this suit. Besides the amount of Rs. 15,000/-and odd has been already paid by defendants 2 to 11 under the decree of the Trial Couts. It is necessary to mention the fact that an assurance was given to by the learned Solicitor-General that in any case the interest of the non-Bohra students will be safeguarded in this school.

Accordingly, we allow the appeal and order that it be declared that the defendants 1 to 11 are

not validly appointed trustees in respect of the trust properties mentioned in the list M annexed to the plaint; that the defendants be removed from the management of these properties and they be ordered to render an account of their administration of these properties. Necessary directions for the rendering of accounts will be made by the Trial Court and in doing so, credit will be given to defendants 2 to 11 of Rs. 15,000/- and odd already paid by them. The paintiffs-appellants admit that it is not necessary to fram any scheme for the andministration of the trust and we agree that this is not necessary—at least for the present. It is necessary however that new trustees be appointed for the administration of the trust. Of the original 18 trustees all except one are dead and sole survivor is admittedly too old to carry on the administration successfully. The very fact that for many years he has not discharged any functions as a trustee also makes it necessary that new trustees should be appointed. We therefore direct that suitable persons be appointed by the Trial Court as new trustees after giving an apportunity to the plaintiffs and other responsible members of the Daudi Bohra Community to place their recomendations and objections in this matter.

Both the appeals are accordingly allowed. The plaintiffs will get their costs here and also in the Trial Court and the High Court from defendants 1 to 11. There will be one set of hearing fee for the two appeals.

Appeals allowed.