

**(2013) 09 AHC CK 0180****Allahabad High Court****Case No:** First Appeal No. 263 of 1973

Mahabir Prasad Mishra

APPELLANT

Vs

Smt. Shyama Devi

RESPONDENT

**Date of Decision:** Sept. 13, 2013**Citation:** (2013) 9 ADJ 46 : (2013) 101 ALR 402 : (2013) 121 RD 711**Hon'ble Judges:** Pankaj Mithal, J**Bench:** Single Bench**Advocate:** Kailash Nath Tripathi, A.P. Tiwari, Anil Sharma, G.C. Bhattacharya, M.P. Sinha, S.P. Rai and Siddheshwari Prasad, for the Appellant; A.P. Tiwari, A.N. Bhargava, B.P.N. Singh, K.N. Tripathi, K.P. Singh, R.N. Singh, S.K. Chaturvedi, S.K. Chaubey, V.K. Mishra and A.K. Tripathi, for the Respondent

### **Judgement**

Pankaj Mithal, J.

This First Appeal arises out of Original Suit No. 180 of 1970, Smt. Shyama Devi v. Pt. Mahabir Prasad and others, decided on 18.7.1973 by the Court of first instance. The appeal was preferred in 1973 and it is being heard and decided after full four decades in the year 2013. A great travesty of justice and antitheses to the fundamental right of speedy justice. One Smt. Hridaya Kunwar, the second wife of late Pt. Girdhari Lal of Banaras had considerable properties and income from the Vritt Yajmani. She had two step daughters Manukarni Devi and Hingo Devi and two daughters of her own Sumitra Devi @ Chikan and Sawanli Devi @ Baban. She executed a registered deed described as a Will on 24.2.1935 making arrangement for her properties and for collection and distribution of the income therefrom and from the Yajmani after her death.

2. The salient features of the aforesaid deed inter alia are as under:

- (i) Mahabir Prasad, the husband of her own elder daughter Sumitra Devi would act as her Wali;
- (ii) during her life time she would remain the complete owner of all her properties;

(iii) on her death, one of the houses old No. 1/2 (New No. 33/72) Mohalla Gyanwapi would continue to be used by the tenants on the outer side, the first floor would be utilized for the stay of the travellers/pilgrims and the second floor would remain in occupation of the persons in whose name it has been shown;

(iv) in respect of the rest of the properties, the Wali would exercise the right to let out, evict and realise rent from the tenants and for their repairs;

(v) from the income of the properties, Rs. 7/- per month would be paid to one of her daughter Sawanli Devi @ Babban, Rs. 15/- per month would be kept by the Wali as his remuneration and whatever remains thereafter would be divided into four equal shares and would be distributed amongst her four daughters or their heirs.

(vi) the said arrangement would be carried out by Mahabir Prasad and thereafter by his decedents;

(vii) no person would have any right to sell/transfer any property.

(viii) her Yajmani would also be managed by Mahabir Prasad and thereafter by his male decedents generation to generation and in case there is no male decedent in his line then by Batuknath, the son of her second daughter and thereafter by his decedents and in case there is no male decedent in that line it will devolve upon the male decedents of the other daughters;

(ix) from the income of Yajmani 5 annas would go to Mahabir Prasad, 2 Annas to Batuknath son of Sawanli Devi @ Baban and the remaining 9 Annas would be divided into 4 equal shares to be distributed amongs her four daughters or their decedents;

(x) house No. D-5/19 Mohalla Tripura Bharvi would be used by Smt. Rajjo Devi, the daughter of Sawanli Devi @ Baban for her life time then by her son where-after it would be utilized for the benefit of all her daughters and their decedents;

(xi) the accounts would be maintained and produced by Mahabir Prasad every six months and the shares of each one would be distributed;

(xii) that no person will have any right to interfere with the arrangement made by her as aforesaid; and

(xiii) that her debts, if any, would be settled by Mahabir Prasad from her properties or income from them and her funeral expenses etc. shall also be deducted from the income.

3. Smt. Hridaya Kunwar expired some time in 1935 after the execution of the above deed. On her death Mahabir Prasad took over the management of her properties including Yajmani as stipulated above. He was accordingly managing the properties but Shyama Devi one of the daughters of Sawanli Devi @ Baban instituted original suit No. 180 of 1969 against Mahabir Prasad and others claiming the following three

reliefs:

- (i) removal of Mahabir Prasad from the management of the property;
- (ii) rendition of accounts and
- (iii) cancellation of the three mortgage deeds dated 12.6.1948, 10.5.1955, 20.7.1956 and the sale-deed dated 6.4.1968.

4. The aforesaid suit was filed alleging that Mahabir Prasad the trustee under the deed executed by Smt. Hridaya Kunwar on 24.2.1935, is mismanaging the properties, therefore, he should be removed and a competent and honest person be appointed in his place. He has failed to submit the accounts. Therefore, he be directed to furnish them. At the same time as he had disposed of certain properties by executing mortgage deeds and a sale-deed in clear violation of one of the conditions of the deed therefore, the same be cancelled.

5. In the suit, the purchasers or the persons, in whose favour, the mortgage or sale-deeds were executed, were also arrayed as the defendants.

6. The suit on contest was decreed by the judgment and order dated 18.8.1973. The Court held the deed executed by Smt. Hridaya Kunwar to be a deed of trust and that Mahabir Prasad has mismanaged the properties. It directed for his removal from the post of trustee and appointed one Amarnath son of Hingoo Devi, one of the step daughters of Smt. Hridaya Kunwar as the new trustee. The mortgage deeds and the sale-deed were held to be illegal and were ordered to be cancelled as they were executed in violation of the conditions of the deed. Mahabir Prasad was also directed to furnish accounts of the income of the properties and the Yajmani.

7. It is against the aforesaid judgment, order and decree dated 18.8.1973 that Mahabir Prasad, who was defendant No. 1 in the suit has preferred this appeal. During the pendency of the appeal Mahabir Prasad had died and the names of his heir and legal representative i.e. grandson has been substituted.

8. Most of the other respondents also expired and are now represented by their respective heirs and legal representatives who have been substituted.

9. It may be relevant to note that Amarnath Pandey, who was appointed trustee by the Court below by the impugned judgment was removed by the High Court vide order dated 13.8.1979 passed in the present appeal. The executing Court in execution No. 10 of 1973 vide order dated 4.2.1980 appointed Narayan Upadhyay son of plaintiff Shyama Devi as the receiver. The appointment of Narayan Upadhyay as receiver was challenged by the grandson of Mahabir Prasad in F.A.F.O. No. 119 of 1980 which was decided by the High Court vide order dated 19.5.1983 with a direction to the executing Court to appoint a new receiver and allowing Narayan Upadhyay to continue till fresh appointment. The executing Court thereafter appointed one Radhye Shyam Chaubey Advocate as the receiver who is continuing

as such even today though the order of his appointment as receiver is under challenge by plaintiff Shyama Devi in First Appeal From Order No. 303 of 1984.

10. I have heard Sri Anil Sharma, learned counsel for the defendant No. 1 appellant Mahabir Prasad, who is now represented by his heir and legal representative i.e. his grandson and Sri S.K. Chaubey, learned counsel appearing for the plaintiff respondent Shayma Devi now represented by her heirs and legal representatives.

11. No one appeared for the other respondents.

12. Sri Anil Sharma, has raised basically three arguments namely (i) the Court below fell in error in holding the deed dated 24.2.1935 executed by Smt. Hridaya Kunwar as a trust deed whereas in fact it is a Will and in case it is a Will, Mahabir Prasad cannot be removed from the management of the properties by the Court below. Even otherwise as the relief of removal of trustee is of a personal nature the relief in this regard stand abated with the death of Mahabir Prasad; (ii) The relief of cancellation of the sale-deed/mortgage deeds was barred by limitation and could not have been granted; Lastly, no person from outside the family of the four daughters of late Smt. Hridaya Kunwar could be appointed as the trustee/manager so long as the male lenient decedents from their family are alive.

13. In reply to the above arguments advanced on behalf of the defendant appellant," Sri S.K. Chaubey, learned counsel for the plaintiff respondent has submitted that the entire reading of the deed dated 24.2.1935 clearly reveals that Smt. Hridaya Kunwar had reposed confidence in Mahabir Prasad and as such entrusted her properties and the Yajmani to him for distribution of the income thereof amongst her daughters/heirs. The said deed has rightly been interpreted to be a trust deed. Mahabir Prasad had no authority under the said trust deed to transfer the properties and therefore, the mortgage deeds and the sale-deed executed by him even if jointly with Shyama Devi are null and void which have rightly been cancelled by the Court below notwithstanding the limitation. The plea of limitation was not taken up earlier and cannot be allowed to be raised at the time of final hearing of the appeal.

14. In the light of the facts and circumstances of the case, the issues framed and decided by the Court below and the arguments advanced by both the sides, the controversy in appeal crystalises on the following two broad points:

1. Whether the deed dated 24.2.1935 executed by Smt. Hridaya Kunwar is a trust deed or simply her Will or if will, the status of Mahabir Prasad;

2. Whether the relief of cancellation of the mortgage deeds dated 12.6.1948, 10.5.1955 and 20.7.1956 and that of sale-deed dated 6.4.1948 was barred by limitation;

No other point was raised and canvassed before me by the parties.

Point No. 1

15. The determination of the nature of the deed is not difficult.

16. The Court of first instance in dealing with issue No. 3 whether the plaintiff respondent No. 1 has a right to sue, discussed the nature of the deed dated 24.2.1935 and held that it is a trust deed. In holding so it concluded that Mahabir Prasad nowhere in reply to the plaintiff allegation stated that he was not a trustee, he was appointed to carry out the wishes of Smt. Hridaya Kunwar as detailed in the Will and was charged with the duty to distribute income as she had confidence in him and that the deed clearly shows that she intended that the ownership of her properties after her death should vest in Mahabir Prasad, all of which goes to establish that a trust with Mahabir Prasad as trustee was created.

17. Section 2(h) of the (Indian) Succession Act, 1925 (hereinafter Succession Act only) defines "will" to mean a legal declaration of the intention of the testator/testatrix with respect to his/her property which he/she desires to be carried into effect after his/her death.

18. No technical words are necessary for a "will". However, to constitute a "will" the instrument must fulfill the following ingredients:

(i) It should be the legal declaration of the intention of the testator.

(ii) The declaration must be with respect to the property of the testator.

(iii) The intention should be described to be carried out into effect after the death of the testator.

19. The deed in question is a legal declaration in respect of the property of the testatrix which she intended to be carried out into effect after her death. Therefore the above deed falls with the ambit of a "will" as defined u/s 2(h) of the Succession Act.

20. A plain reading of the plaintiff allegations would demonstrate that the plaintiff herself had described the aforesaid deed dated 24.2.1935 executed by Smt. Hridaya Kunwar to be a Will deed. In the plaint it is nowhere pleaded that the aforesaid deed is a trust deed or that Smt. Hridaya Kunwar had created a trust and Mahabir Prasad was appointed as a trustee. It all through describes it as a Will but refers to Mahabir Prasad as the trustee. In the absence of specific pleadings in this regard, there was no occasion for Mahabir Prasad to aver that the aforesaid deed is not a trust deed and it does not create a trust.

21. Mahabir Prasad in his written statement had only accepted the execution of the Will deed dated 24.2.1935 and that Smt. Hridaya Kunwar died sometime thereafter. The absence of the specific denial that he is not a trustee in the light of the pleadings in the plaint cannot be taken as admission on his part that he accepted himself to the trustee and the deed to be a trust deed and not a Will. Therefore, one

of the reasons assigned by the Court below in holding the aforesaid deed to be a trust deed does not hold good and is overruled.

22. The aforesaid deed (Ex. 1) in unequivocal terms states that the Smt. Hridaya Kunwar is executing a Will and is appointing Mahabir Prasad as her Wali. The Will makes arrangement of her properties and Vritt Yajmani in the manner laid down therein without specifically vesting them in Mahabir Prasad.

23. The word "Wali" is an Arabic word which refers to a person entrusted with some responsibility. In common usage a person entrusted to carry out duties in a most honest and beneficial manner is called a "Wali". He acts as a representative. He is referable to a saint like person vide The Advocate-General of Bombay Vs. Yusuf Alli Ebrahim and Others. It exactly does not refer to a trustee but something close to it with some what same responsibility. Thus, "Wali" may not connote a trustee and the appointment of Mahabir Prasad therein casting similar responsibilities is not to be treated as a trustee.

24. The aforesaid deed has been registered. The endorsement regarding registration is in Urdu. It was got translated by me through registry. The endorsement reveals that it has been entered in Book No. 3 Zild. 417 at Page 18 on 26.2.1935. Book No. 3 is a register of Wills maintained by the Registrar for registering the Wills as provided u/s 51 of the Registration Act, 1908. Thus, the aforesaid deed has been registered as a testamentary instrument namely a Will otherwise it would have been entered in Book No. 1 meant for registering non-testamentary documents relating to immovable property. The registration of an instrument in a particular book maintained by the Registrar may not be decisive of the nature of the instrument but nonetheless it is a relevant supporting factor to prove its nature.

25. The plaintiff respondent Shyama Devi P.W. 1 in her deposition also admits that Smt. Hridaya Kunwar had executed a Will wherein Mahabir Prasad was entrusted with the management of the properties. Therefore, not only the plaint allegations and its description in the deed as Will but the statement of the P.W. 1 also proves that Smt. Hridaya Kunwar had executed a Will on 24.2.1935 as her last testament to ensure proper management of her properties and her Vritt Yajmani after her demise for the benefit of her daughters and their heirs.

26. This apart, the parties all through treated the said deed to be the last Will of Smt. Hridaya Kunwar and have contested the proceedings on the said premise. Even the Court below has referred it and described it as a testamentary instrument in the impugned judgment.

27. Accordingly, the inevitable conclusion is that the deed dated 24.2.1935 is the last Will of Smt. Hridaya Kunwar and the finding to the contrary of the Court of first instance is incorrect.

28. There may not be two opinions that a trust can also be created by a testamentary disposition. Therefore, the finer question to be examined is whether by the said Will Smt. Hridaya Kunwar had simply bequeathed her property and appointed an executor for its management or has actually created a trust with Mahabir Prasad as the trustee.

29. The answer to this question is complex and not an easy one. It would depend much upon the reading of the aforesaid Will as a whole and upon the intention of the testatrix expressed in it irrespective of its description or its nomenclature as a Will.

30. The Will is in respect of immovable properties and Vritt Yajmani.

"Yajmani" is a local Hindi word derived from Yajman which connotes a person who employs a priest to perform for him fixed or occasional religious ceremonies.

31. In India, a Sanatani Hindu beside performing daily Pooja etc. generally performs religious ceremonies during pilgrimage or on special occasions. These religious ceremonies and functions are performed with the help of a priest. A special permanent bond comes into existence between him and the priest which continues for generation to generation and is referable as Yajmani. The fixed nature of Yajmani is called Vritt Yajmani as distinct from Manvritti which is temporary where offerings are made to the priest for getting an occasional Pooja performed without any boundation to utilise his services in future.

32. The right of Vritt Yajmani from times immemorial had been recognised as a right in property which is heritable in nature and at times transferable though no particular pilgrim or person can be forced or compelled to seek the ministrations of any particular priest. This is discernible from *Ram Chander and others v. Chunu Lal AIR 1923 All 350* and [Mst. Sarda Kunwar Vs. Gajanand and others](#), having the approval of the Division Bench in [Ghisibai and Another Vs. P. Mangical and Another](#), .

33. In view of the above, the aforesaid "Will" envisages arrangement of properties of the deceased which includes her Vritt Yajmani and the distribution of the income derived therefrom after her death.

34. In the light of the aforesaid and reading the Will as a whole to ascertain if it creates a trust and appoints a trustee or simply an executor, I first consider the definition of a trust and its essentials.

35. The law relating to private trusts and trustees has been codified in the (Indian) Trust Act, 1882 (hereinafter referred to as the Trust Act). Section 3 of the said Act which contains the interpretation clause defines a trust" as an obligation annexed to the ownership of the property which arise out of a confidence reposed in and accepted by the owner for the benefit of another. It provides for (i) the author of the trust; (ii) a trustee or trustees; (iii) beneficiary or beneficiaries; (iv) trust property or

fund; and (v) the instrument of trust.

36. Section 6 of the said Act provides for the creation of trust. A trust is created when the author indicates with reasonable certainty an intention to create a trust, the purpose of the trust, the beneficiary and transfers the trust property to the trustee except where the trust is declared by Will or the author himself is the trustee.

37. A combined reading of Sections 3 and 6 of the Trust Act apart from other things provide expression of intention to create trust with reasonable certainty and the transfer of trust property to the trustee. The later of the above condition is not mandatory where trust is created by a Will and therefore may not be relevant in this case.

38. A plain and simple reading of the Will deed demonstrates that the testatrix had made arrangement in respect of her properties which included her landed properties in the shape of various houses, shops, open land etc. and Vritt Yajmani. The Will does not contain any stipulation regarding creation of any trust or for the appointment of a trustee. No intention to this effect has either been expressed therein nor can be inferred from the language used.

39. Under the Will, Mahabir Prasad has simply been cast upon with the responsibility to collect rent of the properties and the income of the Vritt Yajmani, render accounts and to distribute the income thereof amongst the daughter/her heirs and legal representatives after adjusting the expenses and his remuneration. This kind of responsibility appears to be more in the nature of managerial function than an obligation attached with the ownership of the properties. He has not been conferred with the ownership rights in the properties under the Will.

40. In AIR 1920 8 (Privy Council) , it has been held that a person agreeing to collect rent and undertaking to render accounts thereof does not become the trustee for the owner.

41. In other words, a person who has been entrusted with the responsibility to manage the properties, collect rent, to pay taxes, render accounts thereof and to distribute the income to the beneficiaries is not a trustee.

42. In contrast to a trustee the executor is a person appointed by the testator to carry out his wishes and to manage his estate after his death. This is implicit from the definition of the executor contained in Section 2(c) of the Succession Act. Therefore, an executor is a creature of the Will and he draws his power to administer the estate of the deceased from it. He steps into the shoes of the testator for the limited purpose of carrying out his wishes on his death and is only a nominal owner of the properties.

43. In other words, the executor acts only as a legal representative of the deceased for all purposes which he is required to carry out as per the Will of the deceased and

for that purpose it not necessary form him to obtain probate which is otherwise not mandatory in [Bhaiya Ji Vs. Jageshwar Dayal Bajpai, .](#)

44. In view of the definition of the trustee and that of an executor and the fact that the Will expressly does not create any trust and appoint Mahabir Prasad as the trustee, by applying the general principles for the construction of a Will as laid down in 6 M.I.A. 526 (Privy Council) , by the PC and reiterated by the Apex Court, it is apparent that the testatrix by her Will had appointed Mahabir Prasad as an executor to carry out her wishes as detailed therein for the benefit of her four daughters and their heirs. Thus, the finding of the Court below on issue No. 3 that the Will created a trust and Mahabir Prasad was a trustee is not correct and his hereby set aside.

45. Accordingly, point No. 1 is decided and it is held that the deed dated 24.2.1935 executed by Smt. Hridaya Kunwar is simply a Will which does not create any trust and appoints Mahabir Prasad as an executor of the said Will.

Point No. 2

46. The law of limitation is founded on public policy and is based upon the maxim "interest reipublicae ut sit finis litium" which means that it is for the general welfare that a period be put to litigation. The idea behind it is that every legal remedy must come to an end after a fixed period of time as it is pointless to keep it alive indefinitely. The law of limitation bars the remedy after a certain period without extinguishing a right. It means though the right continues, the remedy to enforce comes to an end and it cannot be enforced by judicial process.

47. Section 3 of the Limitation Act mandates that every suit instituted after the prescribed period shall be dismissed even though limitation has not been set up as a defence. In other words, a Court is obliged to dismiss a suit on the ground of limitation even if no plea has been raised that it is barred by limitation provided on the face of the pleadings the Court comes to the conclusion that the suit or the relief claimed therein is beyond time and has not been instituted within the limitation prescribed.

48. Section 3 of the Limitation Act reads as under:

3. Bar of Limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(2).....

49. Section 3 of the Limitation Act is peremptory and it casts a duty upon the Court not to proceed with the suit, if on the face of the pleadings it is found to be presented beyond the period of limitation prescribed as has been laid down by Privy Council of Five Judges in AIR 1935 85 (Privy Council) . A three Judges Bench of the

Supreme Court in Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, also reiterated the above principal and held that in view of Section 3 of the Limitation Act, the Court is duty bound not to proceed with the suit if it is made beyond the period of limitation. It has no other choice.

50. In Food Corporation of India and Others Vs. Babulal Agrawal, the Apex Court reiterated that in view of Section 3 of the Limitation Act it is the duty of the Court to check it at the threshold whether the relief claimed in the suit is barred by limitation and it is not necessary to raise the plea in this regard though in all fairness it is desirable to raise it.

51. The position which emerges from the above is that the Court is obliged or is under a statutory duty to dismiss a suit which is filed/presented beyond the prescribed period of limitation or to refuse a relief which is barred by time. No question of condoning the delay in filing a suit arises and no inherent power of the Court can come to the rescue to save the plaint from the period of limitation.

52. This is so because the object of law of limitation is to discourage continuity of litigation, prolongment of the remedy and to burry all accumulated past disputes with the passage of time so that there may be repose, peace and justice with the lapse of particular time. It ousts a person who sleeps over his right and wakes up after the expiry of limitation period to claim the relief that has become barred.

53. In view of Section 3 of the Limitation Act the plea of limitation can be raised at any time and the relief if barred by time can always be refused by the Court irrespective of the fact that the limitation was not taken up as a defence.

54. In the light of the above legal position, I proceed to examine as to whether the relief of cancellation of the mortgage deeds dated 12.6.1948, 10.5.1955 and 20.7.1956 and the sale-deed dated 6.4.1968 was barred by time on the date of institution of the suit.

55. The mortgage deeds are in respect of one of the houses CK 56/12 situate in Mohalla Chandu Hazam Ki Gali, Varanasi; a shop part of house No. 23/39 Mohalla Rani Kunwa, district Varanasi and house No. CK 23/29 Mohalla Rani Kunwa Chowk City Varanasi respectively. The sale-deed dated 6.4.1968 is in respect of house No. CK 29/26 Mohalla Rajgeer Tola, Chowk City Varanasi.

56. The limitation for instituting a suit for cancellation of instruments under Article 59 of Part IV of the Limitation Act is three years from the date the instrument first came to the knowledge of the person concerned. There is no averment or pleadings as to when the plaintiff respondent acquired knowledge of the above mortgage/sale-deeds. The presumption is that she had the knowledge from the inception. Even assuming that the limitation for seeking their cancellation is 12 years then also on the face of it the relief for cancellation of mortgage deeds executed on 12.6.1948, 10.5.1955 and 20.7.1956 was patently barred by time and

could not have been granted in a suit instituted in the year 1970 about which there is no dispute.

57. Apart from this, it is not a case where the question of limitation was not raised in the Court below.

58. The defendant appellant No. 9 one of the transferee under the mortgage/sale-deed has clearly contested the suit and had pleaded that the relief for cancellation is barred by limitation.

59. Order VII Rule 6 CPC provides that a plaint which is filed after the expiry of the period prescribed for instituting a suit shall show the ground upon which exemption from limitation, if any, is claimed.

60. The plaint do not contain any pleadings to show any cause for granting any exemption from limitation in connection with the relief for cancellation of mortgage deals and the sale-deed.

61. The Court below has completely overlooked the limitation aspect in passing the decree of cancellation of the above deeds.

62. In view of the above discussion, the Court below could not have decreed the suit for the cancellation of the mortgage deeds dated 12.6.1948, 10.5.1955 and 20.7.1956 as the relief to that effect was barred by limitation. However, part of it pertaining to the cancellation of the sale-deed dated 6.4.1968 was not barred by limitation. The sale was certainly executed in clear violation of one of the conditions of the Will which prohibited the transfer of the properties. Even otherwise the executor could not have transferred the property without the leave of the Court as stipulated u/s 307 of the Succession Act.

63. Point No. 2 is decided accordingly.

64. In addition to the above two points, Section 301 of the Succession Act vest the jurisdiction of removal of executor or administrator in the High Court. It provides that the High Court may on an application suspend, remove or discharge any private executor or administrator and make provision for appointment of another. The said power exclusively vests in the High Court and is not possessed by the Courts subordinate to it. Therefore, the Civil Court is devoid of jurisdiction to remove Mahabir Prasad from the management of the properties of the deceased being an executor under the Will.

65. Accordingly, the decree of the Court below directing for removal of Mahabir Prasad from the management of the properties holding him to be a trustee is illegal and without jurisdiction.

66. In the wake of the above findings on the above two points, I need not go into some of the ancillary aspects referred to earlier.

67. In view of the aforesaid facts and circumstances, the appeal has to be allowed in part. The judgment, order and decree of the Court below dated 18.8.1973 passed in Original Suit No. 180 of 1970 with regard to the removal of Mahabir Prasad from the management of the properties of the deceased treating him to be a trustee and for cancellation of the mortgage deeds dated 12.6.1948, 10.5.1955 and 20.7.1956 is set aside and at the same time the decree regarding furnishing of accounts and cancellation of the sale-deed dated 6.4.1968 is maintained. Appeal is allowed in part as aforesaid with costs upon the parties.