

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Revision Jurisdiction)

DATED: **29.10.2018**

SINGLE BENCH : THE HON'BLE ACTING CHIEF JUSTICE, MRS. JUSTICE MEENAKSHI MADAN RAI

CRP No. 08 of 2017

Petitioner : Goshir Gyaltsab Rinpoche,
Tibetan Monk,
Presently residing at the
Dharma Chakra Center,
Rumtek, East Sikkim.

... **Petitioner**

versus

Respondents : 1. Karmapa Charitable Trust,
A public religious and charitable
Trust having its Head Office at
Dharma Chakra Center, Rumtek,
East Sikkim.

2. Jigme Tenzin Gyaltsen,
Son of Late T.S. Gyaltsen,
Resident of Trateng Villa,
Gangtok, East Sikkim.

3. Amrit Jyoti Kansakar,
Son of late Gyan Jyoti Kansakar,
Resident of Kwapulhu, Thahity,
Kathmandu, Nepal.

4. The State of Sikkim,
Through its Chief Secretary,
Having its Office at Manan Kendra,
Gangtok, East Sikkim.

5. The Secretary,
Ecclesiastical Affairs,
Government of Sikkim,
Having its Office at Manan Kendra,
Gangtok, East Sikkim.

... **Respondents**

**Revision Petition under Section 115 read with Section 151
of the Code of Civil Procedure, 1908**

Appearance:

Mr. Anmole Prasad and Mr. N. Rai, Senior Advocates with
Mr. Jorgay Namka, Ms. Yangchen D. Gyatso, Ms. Tamanna Chhetri,
Ms. Malati Sharma, Ms. Sudha Sewa and Mr. Sagar Chettri, Advocates
for the Petitioner.

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Mr. K.K. Rai and Mr. B. Sharma, Senior Advocates with
Mr. Ansul Rai, Mr. Norden Tshering Bhutia, Mr. Shiv Kumar Pandey and
Mr. Sajal Sharma, Advocates for Respondents No. 1, 2 and 3.

Mr. Karma Thinlay, Senior Government Advocate with Mr. Thinlay
Dorjee, Government Advocate, Mr. S.K. Chettri and Mrs. Pollin Rai,
Assistant Government Advocates and Ms. Sedenla Bhutia, Advocate for
Respondents No. 4 and 5.

ORDER

Meenakshi Madan Rai, ACJ

1. By filing this petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908, the Petitioner herein (*Defendant No. 3 in Title Suit No. 1 of 2017*) seeks to assail the order of the learned District Judge, Special Division I, Sikkim at Gangtok dated 09.11.2017. Vide the said Order, the learned Court rejected the petition filed by the Petitioner under Section 151 of the Code of Civil Procedure, 1908 praying for dismissal of the suit on grounds stated therein.

2. Before proceeding further, for clarity, it may be stated that the original Plaintiffs in Civil Suit No. 40 of 1998 filed on 31.07.1998 were (1) Karmapa Charitable Trust (Respondent No. 1 herein), (2) T.S. Gyaltzen, (3) Kunzing Shamar Rinpoche and (4) Gyan Jyoti Kansakar. The original Plaintiffs No. 2, 3 and 4 are since deceased. The Plaintiff No. 2 is substituted by his son as also Respondent No. 4, Respondent No. 3 was a celibate monk hence none substitutes him. The Respondents No. 1, 2 and 3 herein are the Plaintiffs No. 1, 2

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and 4 in the Title Suit now renumbered as Title Suit No. 1 of 2017. The Defendant No. 1 (State of Sikkim) and Defendant No. 2 (Secretary, Ecclesiastical Affairs, Government of Sikkim), in the Title Suit No. 1 of 2017, are the Respondents No. 4 and 5 herein. The Petitioner herein is the Defendant No. 3 in the said Title Suit. The parties shall be referred to in their order of appearance in the instant Revision Petition.

3. The arguments of Learned Senior Counsel Mr. Anmole Prasad for the Petitioner, before this Court, pivoted around the contention that due to the occurrence of certain events that transpired subsequent to the filing of the suit, the Respondents No. 2 and 3 have lost the *locus standi* to continue with the suit on their own admission as would be evident from the averments made in their plaint. The Respondents have clearly conceded that the Trust would automatically become *functus officio* upon the reincarnated Karmapa viz. the 17th Gyalwa Karmapa, attaining the age of 21 years at which point he would become the sole Trustee. That the rival contentions reveal the admission of the adverse parties that the sole Trustee has re-incarnated, been identified and attained the age of 21 after the institution of the suit. This occurrence has been brought to the notice of the Court and has a fundamental impact on the right to relief or the manner of moulding it, hence the Court cannot turn a blind eye to such an event. To buttress this submission, reliance was

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placed on *Pasupuleti Venkateswarlu vs. The Motor & General Traders*¹. That in this circumstance, continuing with the suit would be like flogging a dead horse. On this count, strength was drawn from *J.M. Biswas vs. N.K. Bhattacharjee and Others*². That in such event, this suit would not survive in the name of the Respondent No. 1 for the reason that no suit can be instituted or continued in the sole name of a Trust as a Trust is not a juristic person. While assailing the impugned order, it was averred that the learned Trial Court failed to consider that the future Trustees were entitled to act as such only till the 17th Gyalwa Karmapa attained the age of 21 years and the admission of the Respondents No. 1 to 3 that the reincarnation of the 17th Karmapa had attained the age of 21. Besides, the petition was misconstrued as being an invitation to embark upon the controversy regarding the recognition of the 17th Karmapa. That, the cross-examination of the witnesses has established that the sole Trustee had not only reincarnated but attained the age of 21 which fact could not be brought on record in 2006 without recording evidence. Hence, the Trustees being *functus officio* the suit would not survive in the name of the Respondent No. 1, a Trust which is not a juristic person. Thus, the impugned order be set aside and quashed and the reliefs prayed for in the petition under Section 151 of the Code of Civil Procedure, 1908, be allowed.

¹ (1975) 1 SCC 770

² (2002) 4 SCC 68

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4. Learned Senior Counsel Mr. K.K. Rai, resisting the contentions of learned Senior Counsel for the Petitioner, canvassed that the object of filing the petition under Section 151 of the Code of Civil Procedure, 1908 was an effort to cut short the matter which would decide the entire suit. In fact, the Petitioner ought to have invoked the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 but has erroneously opted to invoke only the provisions of Section 151 of the Code of Civil Procedure, 1908. That, this petition has been brought before this Court *malafide* with the purpose of delaying the trial as the issues raised by the Petitioner have already been settled by the learned Trial Court and confirmed by the higher Courts. Relying on the ratio in ***Alka Gupta vs. Narender Kumar Gupta***³, learned Senior Counsel would contend that a civil proceeding governed by the Code will have to be proceeded with and decided in accordance with law and there can be no shortcuts in the trial unless provided by law. That the question of the Respondent No. 1 not being a juristic person does not arise as with the changing needs of society, fresh juristic persons have been created. Reliance was placed on the decision of the Hon'ble High Court of Madras in ***M/S Abraham Memorial Educational Trust and Others vs. C. Suresh Babu***⁴, which, while discussing the law laid down by the Hon'ble Supreme Court and other High Courts would hold that a Trust, either private or public/charitable or otherwise, is a juristic

³ 2010 (10) SCC 141

⁴ (2012) 175 Comp Cas 361

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person who is liable for punishment for the offence under Section 138 of the Negotiable Instruments Act. That since issues pertaining to non-joinder of necessary parties and the *locus standi* of the Respondents No. 1, 2 and 3 have been framed for adjudication, these issues are necessarily to be decided after all parties adduce their evidence and not by way of a petition under Section 151 of the Code of Civil Procedure, 1908. That the Respondents No. 1, 2 and 3, even today, have *locus standi* and the cause of action still subsists in view of the fact that the Trust property is in illegal possession of the Petitioner and which has not yet been returned to its original owner i.e. the Respondent No. 1. Mr. K.K. Rai would further contend that the Trust is a juristic person while referring to the decision of the Hon'ble Supreme Court in ***Shiromani Gurdwara Prabandhak Committee vs. Shri Som Nath Dass and Others***⁵. Learned Senior Counsel buttressed his submissions with the ratio of ***Vimal Vitthal Chavan vs. L. Nava Maharashtra Education Society and others***⁶, while contending that the Petitioner has to come to Court with clean hands. That the application of the Petitioner ought to be dismissed at the threshold for suppression of material facts, on which count, strength was garnered from the decision in ***Amar Singh vs. Union of India and others***⁷. That, the question that arises in view of the instant petition is whether the 17th Karmapa ought to take over the Trust. It was his

⁵ (2000) 4 SCC 146

⁶ 2005 SCC OnLine Bom 916

⁷ (2011) 7 SCC 69

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specific argument that it is not as easy as envisaged by the Petitioner since the rules of evidence have also to be complied with. The Petitioner is required to prove, by satisfactory evidence, the age of the Karmapa and not by merely stating that the Karmapa has come of age.

5. The arguments of both parties were heard *in extenso* and all records perused carefully.

6. In order to examine the matter, the brief facts of the suit as stated by the Petitioner herein, may be referred to. The original Plaintiffs filed Civil Suit No. 40 of 1998 in that year now numbered as Title Suit No. 1 of 2017 claiming to be the Trustees of a public, religious and charitable Trust created in 1961 by the Late 16th Gyalwa Karmapa, who, until his demise on 06.11.1981, was the sole Trustee of the said Trust. On his passing away, the Trustees stepped into his shoes, as asserted by them, assuming complete authority over the trust properties enumerated in Schedule A and Schedule B of the Plaint. The principle grievance of the original Plaintiffs No. 2 to 4 was that on 02.08.1993, the agents of the Defendants No. 1 and 2 i.e. the State of Sikkim through its Chief Secretary and the Secretary for Ecclesiastical Affairs, Government of Sikkim (*Respondents No. 4 and 5*), acting in collusion with the Petitioner herein, had forcibly ousted the monks and beneficiaries of the Respondent No. 1, the Karmapa Charitable Trust and put the Petitioner in illegal and wrongful possession

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of the suit property. Hence, reliefs were sought for as mentioned in the plaint.

7. On the Petitioner and the Respondents No. 4 and 5, filing their respective Written Statements, issues were framed by the learned Trial Court on 27.02.2002 and 28.12.2002.

8. Evidence of the parties were recorded. That now after the evidence of the Respondents No. 1, 2 and 3 concluded on 16.08.2017, the Respondents No. 4 and 5 have led their evidence and closed their case. On 16.08.2017, in view of the materials emerging from the pleadings and evidence of the witnesses of Respondents No. 1 to 3, the Petitioner filed an application under Section 151 of the Code of Civil Procedure, 1908 before the learned Trial Court.

9. That, Orgyen Drodul Thinlay Dorjee, recognized as the 17th Karmapa by the Dalai Lama in 1992 (and consequently by the Petitioner), has attained the age of 21 years having been born on 26.06.1985 and as of date, he is 32 years. That, Thaye Thinlay Dorjee, who was claimed to be the 17th Karmapa by the original Plaintiff No. 3, Kunzing Shamar Rinpoche (and hence by the Respondents No. 1 to 3 herein), has attained the age of 34 years having been born on 06.05.1983. That regardless of the imbroglio concerning the identity of the reincarnation, both Orgyen Drodul Thinlay Dorjee and Thaye Thinlay Dorjee have crossed the age of 21,

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therefore, the Trustees have now no role to play as the Karmapa is the sole Trustee and the role of the Trustees was limited to the interregnum from the date of the demise of the 16th Karmapa till the attaining of the age of 21 years by the 17th Karmapa. Hence, the petition under Section 151 of the Code of Civil Procedure, 1908.

10. Before embarking on the point raised by the Petitioner in his petition, it would be interesting to note that as far back as in the year 2001, the Court of the learned District Judge, East and North Sikkim at Gangtok in Civil Suit No. 40 of 1998 had considered whether the suit filed by the Plaintiffs was maintainable or not, the prayer in the suit being *inter alia* for a declaration that they were entitled as Trustees of the Karmapa Charitable Trust to administer, protect and preserve the suit properties i.e. both movable and immovable, as per Schedule A and Schedule B of the plaint. The learned Trial Court observed as follows;

"...15. Besides the above facts and circumstances, statements on oath filed by the parties prima facie go to show that out of seven Trustees only 3 are capable of participating in the present proceeding. Parties are yet to lead evidence in support of their respective contentions. Thus it is found that the plaintiffs in the capacity of trustees have locus standi to file the present suit and such suit is maintainable. ..."

(Emphasis supplied)

11. The Petitioner herein was consequently before this Court in FAO No. 1 of 2002 challenging the said order. Vide judgment dated 18.11.2002, this Court would hold as follows;

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"...The use of the word 'prima facie' and the expression that the parties "are yet to lead evidence in support of their respective contentions" shows that the finding recorded by the trial Court that the preliminary objections had no merit was only prima facie for the purpose of the order that was passed and not final. The controversy as regards the issue of commission has already been settled by this Court with the consent of the parties. As such, no further question remains to be decided in this appeal. ..."

12. Later in time, this Court would note, in its judgment dated 26.08.2003 in Writ Petition (C) No. 5 of 2003;

"...At this stage, we may note that the learned trial Judge was called upon by the contesting defendants to decide as to the maintainability of the suit and in his order dated 17th October, 2001, he has come to hold that the suit is maintainable. In paragraph 14 of the said order, he has held that "defendants 1, 2 and 3 do not dispute that possession of the suit property was with the plaintiffs till 2.8.1993. Defendants 1 and 2 have admitted this fact in para 7 of their written statement. Defendant 3 also concedes this fact at paragraph 14 in his written statement." This order was subject matter of challenge in this Court in FAO No. 1 of 2002 and this court did not interfere with the above finding.

.....

The learned trial Judge in another order on 7th August, 2002 has held that "the present suit does not relate to the question as to who is the 17th Karmapa. The main dispute between the parties is that whether the plaintiffs being the trustees are obliged to possess and administer the suit property or that whether the defendants 1 to 3 have dispossessed them from the possession of suit property. Such being the position whether a particular person is the 17th reincarnation of the Karmapa or not is not the bone of contention." This order of the learned trial Judge was upheld by this Court in Civil Revision No. 5 of 2002. The findings recorded in the two orders have touched finality and are not available to be disturbed.

.....

The learned trial Judge rejected the application for impleadment on two grounds (1) the suit filed by the majority of the trustees is basically for eviction, restoration of possession and maintenance of property and the petitioner has failed to show as to

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how its interest is involved in it (2) the suit has been filed wherein majority of the trustees are parties who sufficiently represented the case of the petitioner. ...”

(Emphasis supplied)

The observations *supra* were made in relation to a prayer for impleading “Tsurphu Labrang” as a party, the learned Trial Court had rejected the petition and the order was upheld by this Court.

13. Later on 07.07.2005, the Petitioner went on to file an application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 seeking to strike out the name of the Karmapa Charitable Trust from the array of parties who according to the Petitioner was improperly joined as Plaintiff No. 1. It was contended that a Trust is not a legal entity and the suit cannot be maintained in the name of a Trust i.e. the Karmapa Charitable Trust and, in fact, a Trust cannot sue or be sued in its own name, as a member of a firm that in the case of a Trust, the Plaintiff has to be a Trustee.

14. The Respondents No. 1, 2 and 3 objecting to the petition, had stated that this issue had already been decided by the Court of the learned District Judge, East and North when the preliminary objection regarding misjoinder of parties was taken up during the hearing of the injunction application. The preliminary objection including the misjoinder of parties was dismissed by the learned District Judge, East and North Sikkim which came to be assailed before the Hon'ble High

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Court in FAO No. 1 of 2002 which also disposed of the matter with the observations as already extracted hereinabove. They further contended that the issue of misjoinder of parties is sought to be raised by the Respondent No. 4 for the second time in the garb of a petition under Order I Rule 10 of the Code of Civil Procedure, 1908 in an attempt to once again raise the issue of maintainability of the suit. The Trial Court i.e. the District Judge, Special Division I referred to the decision of the learned District Judge, East and North and the judgment of the Hon'ble High Court *supra* and held that the application under Order I Rule 10 of the Code of Civil Procedure, 1908 filed by the Defendant No. 3 raised the same question already decided and thus rejected the petition. However, Mr. Anmole Prasad, learned Senior Counsel, whose attention was drawn to the above orders and Judgment would contend that these decisions were prior in time to the Karmapa attaining 21 years of age. Now the circumstances differ from the circumstances at that particular time as the Deed of Trust, already referred to, specifies that on the reincarnation of Karmapa attaining the age of 21 years, he shall be the sole Trustee and none else.

15. What emerges from the entire gamut of facts and circumstances placed hereinabove is that the learned Trial Courts found that the Respondents No. 1, 2 and 3, in the capacity of Trustees, had *locus standi* to file the suit and that

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the suit was maintainable. This Order was not overturned or upset by this Court in FAO No. 01 of 2002 already extracted hereinabove. Further, this Court, in its Judgment in Writ Petition (C) No. 5 of 2003, has also observed that the findings recorded in the two orders have reached finality and are not to be disturbed. The Petitioner went on to file the petition under Order I Rule 10 of the Code of Civil Procedure, 1908, whose fate has been detailed *supra*. We may beneficially consider the issues framed by the learned Trial Court on 27.02.2002 and 28.12.2002. The issues framed on 27.02.2002 were as follows;

"(1) Whether the representatives of the plaintiffs on 2.8.1993 handed over the main key of the Sanctum Santo-rum (sic) of the Monastery at D.C.C, Rumtek to the Home Secretary Voluntarily or under duress and coercion which was then handed over to defendant No.3 and Tai Setu Rimpoche by the said Home Secretary?

(2) Whether on 2nd August, 1993 the defendants 1, 2 and 3 deprived the plaintiffs, their rights to administer, manage and take care and keep the custody of the Schedule 'A' and 'B' properties and they also deprived the plaintiffs to conduct Puja and other religious ceremonies?

(3) Whether the plaintiffs 2, 3 and 4 are under an obligation to possess, manage and administer the Schedule 'A' and 'B' properties in accordance with the instrument of Trust dated 23.8.1961 till the 17th Karmapa attains the age of 21 years?

(4) Whether the defendant No.3 and his inductees are liable to be removed from the suit premises?

(5) Whether the plaintiffs are entitled for status quo ante over D.C.C, Rumtek as it was on 2.8.1993?

(6) Whether any such Trust known as Karmapa Charitable Trust was established on 23.8.1961 by H.H.XVI Gyalwa Karmapa?

(7) Whether the properties mentioned in Schedules 'A' and 'B' to the plaint which are alleged to be the subject matter of the dispute

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vested in the Trust as its corpus and whether the plaintiffs are vested with the said properties?

(8) Whether the quorum for the Trust (plaintiff No.1) exists and whether the Trust was functional after its establishment?

(9) Whether the plaintiff No. 1 was vested only with an amount of Rs.2,51,473.64 and no other movable and immovable property including Schedule 'A' and 'B' properties?

(10) On 2nd August, 1993 the day of Yarney Ceremony was the situations at Rumtek Monastery tense due to the closer (sic) of the main door of the Shrine Hall?

(11) Who has been in possession of the key to the main door of the Shrine Hall since August 2nd, 1993?"

(Emphasis supplied)

16. The issues framed on 28.12.2002 were as follows;

"1. Whether the Suit as filed is maintainable in law?

2. Whether the suit is barred in view of the provision of Section 34 of the Specific Relief Act, 1963?

3. Whether the suit is barred for the non joinder of necessary parties?

4. Whether the suit has been properly signed, verified and instituted?

5. Whether the appointment of plaintiff No.2, 3 and 4 as Trustees of the plaintiff Trust valied (sic) and binding in law?

6. Whether the conduct of the plaintiffs disentitles them to any relief?

7. Whether the plaintiffs have any locus standi to file this suit?

8. Whether the suit is barred by the law of limitation?"

17. The issues thus are indicative of the irrepressible fact that other controversies raised in the suit need to be given a quietus. Issue No. 3 *supra* of 27.02.2002 is to be decided on

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merits and not by mere statement. Even if it is admitted that the Karmapa is 21 years and hence the sole Trustee, the matter is not as simplistic as the Petitioner would have us believe as the prayers in the plaint are manifold as also the issues settled for determination which require specific decision on merits.

18. As rightly pointed out by the learned Trial Court, it is not clear as to why the Petitioner has suddenly raised the issue of the 17th Gyalwa Karmapa having already attained the age of 21 years at this stage when, going by his own claims, the 17th Karmapa had attained the age of 21 years in the year 2006. It is no one's case that they were unaware of the date of birth of the reincarnation. Contrarily, it may be stated that no proof has been furnished before the learned Trial Court to establish that the Karmapa has attained the age of 21 years and the rules of evidence cannot be wished away and the matter decided in a slipshod manner on the persuasion of the Petitioner. In my considered opinion, the coming of age of the Karmapa as the sole Trustee has to be established by evidence. That having been said the contention of the Petitioner that the learned Trial Court misconstrued the petition under Section 151 of the Code of Civil Procedure, 1908 as an invitation to embark on the question of who the Karmapa was, is in my considered opinion, erroneously

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interpreted by the Petitioner. The learned Trial Court, in fact, has specifically stated as follows;

"...15. Further, it seems there is some controversy regarding the recognition of the 17th Gyalwa Karmapa. However, for the purpose of the present suit, this Court need not enter into the said controversy. ..."

19. The reliance on the decision of *J.M. Biswas (supra)* by the Petitioner is misplaced as it is clear from the said facts and circumstances narrated therein that the dispute raised in the case lost its relevance due to the passage of time and subsequent events which had taken place during the pendency of the litigation. The dispute therein related to the election of office bearers of the South Eastern Railway Mens' Union. It was at a point of time when both the Appellant and the Respondent 1 were members of the said Union. Both had since ceased to be members of the Union. Further, successful subsequent elections had been held to elect office bearers and the office bearers so elected had been recognized by the management. In the said circumstances, the Hon'ble Supreme Court would observe that continuing the litigation would be like flogging a dead horse as such litigation irrespective of the result would neither benefit the parties in the litigation nor would it serve the interest of the Union. The facts in the instant matter are clearly distinguishable from the aforestated citation.

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20. Reliance had also been placed on *Jaspal Kaur Cheema and Another vs. Industrial Trade Links and Ors.*⁸ which dealt with Section 116 of the Indian Evidence Act, 1872 i.e. estoppel of tenant wherein it is specified that a tenant cannot be allowed to approbate or reprobate at the same time. In my considered opinion, there has been no reprobation of what was stated by the Respondents concerning the age of the 17th Gyalwa Karmapa or that he was the sole Trustee on his coming of age. The contention of the Respondents No. 1, 2 and 3 is that a deeper look is required into the matter in view of the issues involved and the rules of Evidence.

21. In *Shipping Corporation of India Ltd. vs. Machado Brothers & Ors.*⁹ also relied on by the Petitioner, it was specifically held that if by the subsequent event if the original proceeding has become infructuous, *ex debito justitiae*, it will be the duty of the Court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. In the matter at hand, learned Counsel for the Petitioner would contend that as the Karmapas on either side have attained the age of 21 years, the Trustees are *functus officio* and in such event the suit does not survive as it cannot be continued in the sole name of the Trust which is not a juristic person. It is to be reiterated here that proof of age of the Karmapas is yet

⁸ 2017 (8) SCC 592

⁹ 2004 (11) SCC 168

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to be adduced and the proceeding cannot be said to have become infructuous in view of the issues involved.

22. In view of the above discussions, no error obtains in the order of the learned Trial Court.

23. Petition is dismissed.

24. No order as to costs.

25. Copy of this Order be sent to the learned Trial Court and its records be remitted forthwith.

Sd/-
(Meenakshi Madan Rai)
Acting Chief Justice
29.10.2018

Approved for reporting: **Yes**
Internet: **Yes**

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