जाती है।"

8. I am in agreement with the findings arrived at by the trial Co
the application of the appellant for taking the legal representatives o
and the application under Section 5 of the Limitation Act. The suit
appellant was rightly abated as the counsel for the plaintiff-appell
taken any steps for taking the legal representatives on record for mo
years. This finding of the trial Court cannot be said to be perverse or
Lanka Venkateswarlu Vs. State of A.P. (supra) ruling cited by the cou
legal representative of Sohan Lal defendant is applicable to the facts
The cases cited by the counsel for the appellant are not applicable to
this case.

9. For the reasons mentioned above, this misc. appeal filed by th
stands rejected. The stay applications also stand rejected. The parties
to bear their own costs.

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[Citation : 2011(3) DNJ (Raj.) 1513]

RAJASTHAN HIGH COURT [JAIPUR BENCH]

PRESENT :

HON'BLE MS. JUSTICE BELA M. TRIVEDI

[S.B. Civil Writ Petition No. 144 of 2011 *With* S.B. Civil Misc. Stay Application No. 130 of 2011; decided on 24.9.2011]

Altaf Hussain Thro' LRs. ..... *Petitioners*

Versus

Deewan Syed Ale Rasool Ali Khan Thro' LRs & Ors. ... *Respondents*

Civil Procedure Code, 1908—O. 40, R. 11—Application for appointment of receiver—Petitioners prayed to record the evidence first with

वादी के वकील के पास होने से यह नहीं माना जा सकता कि इस तरह का कोई आवेदन दिनांक 10.11.1999 को न्यायालय में उनकी ओर से प्रस्तुत किया गया हो। उपरोक्त प्रकरण में प्रतिवादी के विद्वान अधिवक्ता ने यह हाजिर कर दिया था कि प्रतिवादी सोहनलाल की मृत्यु हो चुकी है, इसके उपरान्त भी प्रार्थी वादी की ओर से यह आवेदन लगभग चार वर्ष बाद दिनांक 28.10.2002 को न्यायालय में प्रस्तुत किया गया है। विद्वान अधिवक्ता प्रार्थी की ओर से जो न्यायिक दृष्टान्त प्रस्तुत हुआ है उसका मेरे द्वारा सादन अवलोकन किया गया। उस न्यायिक दृष्टान्त में वादी के द्वारा प्रतिवादी के अधिवक्ता से वारिसान के नाम व पते की सूचना मांगी गई थी, लेकिन उसके उपरान्त भी वारिसान के सम्बन्ध में प्रतिवादी के अधिवक्ता द्वारा कोई सूचना नहीं दी गई। इस आधार पर माननीय राज. उच्च न्यायालय ने इस न्यायिक दृष्टान्त में पर्याप्त सूचना होना नहीं माना है। जबकि इस प्रकरण में वादी या वादी के अधिवक्ता की ओर से वारिसान के नाम व पते की बाबत कोई प्रश्न नहीं पूछा गया है। इस कारण प्रार्थी वादी द्वारा प्रस्तुत न्यायिक दृष्टान्त प्रार्थी वादी की कोई सहायता नहीं करता।

(8) इस प्रकरण में वादी की ओर से चार वर्ष की देरी से आवेदन प्रस्तुत हुआ है, उस देरी का कोई पर्याप्त स्पष्टीकरण पत्रावली पर नहीं है। अतः उपरोक्त विवेचन के आधार पर प्रार्थी वादी के आवेदन बाबत मरम्मल सवाल व धारा 5 मा. मियाद अधिनियम में कोई बल नहीं है और ये खारिज किये जाने योग्य पाये जाते है।

परिणामतः वादी द्वारा प्रस्तुत उपर्युक्त दोनों आवेदन खारिज किये जाते है।

(9) चूंकि निर्धारित समय अवधि में प्रतिवादी के वारिसान को रिकार्ड पर नहीं लिया गया है और प्रार्थी वादी द्वारा इस सम्बन्ध में प्रस्तुत किया गया आवेदन भी खारिज किया जा चुका है अतः वादी का यह वाद विरूद्ध प्रतिवादी चलने योग्य नहीं है जो अबेट किया जाता है।"

8. I am in agreement with the findings arrived at by the trial Court rejecting the application of the appellant for taking the legal representatives on the record and the application under Section 5 of the Limitation Act. The suit filed by the appellant was rightly abated as the counsel for the plaintiff-appellant has not taken any steps for taking the legal representatives on record for more than four years. This finding of the trial Court cannot be said to be perverse or illegal. The *Lanka Venkateswarlu Vs. State of A.P.* (supra) ruling cited by the counsel for the legal representative of Sohan Lal defendant is applicable to the facts of this case. The cases cited by the counsel for the appellant are not applicable to the facts of this case.

9. For the reasons mentioned above, this misc. appeal filed by the appellant stands rejected. The stay applications also stand rejected. The parties are directed to bear their own costs.

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[Citation : 2011(3) DNJ (Raj.) 1513]

RAJASTHAN HIGH COURT [JAIPUR BENCH]

PRESENT :

HON'BLE MS. JUSTICE BELA M. TRIVEDI

[S.B. Civil Writ Petition No. 144 of 2011 *With* S.B. Civil Misc. Stay Application No. 130 of 2011; decided on 24.9.2011]

Altaf Hussain Thro' LR's ..... *Petitioners*

Versus

Deewan Syed Ale Rasool Ali Khan Thro' LR & Ors. .. *Respondents*

Civil Procedure Code, 1908—O. 40, R. 1—Application for appointment of receiver—Petitioners prayed to record the evidence first with

regard to the right of the respondent No. 1 to execute the decree—Application dismissed by holding that the respondent No. 1 had already been accepted as the Sajjadanashin as per decision of Apex Court—Contention that respondent No. 1 being not the Sajjadanashin was not entitled to execute the decree—Holding of office of Sajjadanashin by respondent No. 1 was confirmed by the Apex Court—Held No illegality or infirmity in the order passed by the Executing Court. [Para 19]

सिविल प्रक्रिया संहिता, 1908—आदेश 40 नियम 1—रिसीवर की नियुक्ति हेतु आवेदन—प्रार्थीगण ने डिक्री निष्पादन हेतु रेस्पोन्डेन्ट के अधिकार के सम्बन्ध में पहले साक्ष्य अभिलिखित करने की प्रार्थना की—यह निर्णीत करते हुऐ आवेदन खारिज किया कि उच्चतम न्यायालय के निर्णय के अनुसार रेस्पोन्डेन्ट नं. 1 को सज्जादानशीन होना स्वीकार किया—यह तर्क कि रेस्पोन्डेन्ट नं. 1 सज्जादानशीन न होने के कारण डिक्री निष्पादन हेतु हकदार नहीं था—रेस्पोन्डेन्ट नं. 1 द्वारा सज्जादानशीन का पदारूढ़ होना उच्चतम न्यायालय ने पुष्ट किया—निर्णीत, निष्पादन न्यायालय द्वारा पारित आदेश में अवैधता या तात्विकता नहीं है।

Petition dismissed

याचिका खारिज।

Cases Referred:

- *Arjun Singh Vs. Mahindra Kumar & Ors.*, AIR 1964 SC 993
- *Durgah Khwaja Sahib Ajmer*, 1980 RLW 317
- *Satyadhyan Ghosal & Ors. Vs. Smt. Deorajin Debi & Anr.*, AIR 1960 SC 941
- *Syed Saulat Hussain Vs. Syed Ilamuddin*, AIR 1987 SC 2213
- *Syed Saulat Hussain Vs. Syed Illamuddin & Ors.*, 1980 RLW 69

Counsel Appeared:

- ***Mr. M.M. Ranjan, Sr. Counsel with Mr. Rajat Ranjan, Counsel, for the petitioners***
- ***Mr. Anil Mehta with Mr. Gulam Najmi, Counsel, for the respondents***

Ms. Bela M. Trivedi, J.—Though this case has a chequered history, the issue involved in the present petition is very small. The petitioners, who are the original judgment-debtors, have filed the present petition under Article 227 of the Constitution of India challenging the order dated 22.12.2010 passed by the learned District Judge, Ajmer (hereinafter referred to as the Executing Court) in Civil Execution Petition No. 8/2010 (11/1991).

2. The facts in nut shell giving rise to the present petition are that a final decree dated 29.1.1940 (original decree dated 3.5.1933) passed by the Court of Additional District Judge, Ajmer Merwara in the suit being No. 9/29 filed by Shri Dewan Syed Ale Rasool Ali Khan Sajjadanashin Hazrat Khwaja Moinuddin Hassan Chishti, was sought to be executed by filing an Execution Petition, by the present respondent No. 1 Shaikhul Mashaikh Dewan Syed Zainul Abedin Ali Khan S/o Shaikhul Mashaikh Dewan Syed Ilmuddin Ali Khan claiming to be Sajjadanashin, Khwaja Moinuddin Chisti Saheb. In the said execution petition, the office of the executing Court had raised certain objections and the matter was put up before the Executing Court. The Executing Court vide its order dated 5.10.2002 partly allowed the objections by holding that though the execution petition with regard to the declaration was barred by limitation, the same was maintainable so far as the decree of injunction was concerned. The said order was challenged by way of revision before this Court by the decree-holder and this Court vide order dated 10.4.2006 had disposed of the said revision petition. It appears that the present petitioners thereafter again raised the objections before the executing Court as regards the maintainability of the execution petition and also raised the ground of limitation. However, the executing Court vide its

order dated 10.8.2010 dismissed the said objections of the petitioners by observing t the High Court had already set-aside the earlier order passed by the executing Court w regard to the issue of limitation, and that whether the person, who was executing decree i.e. the present respondent No. 1 was entitled to execute the same or not, or whe he was successor of the Dewan i.e. original decree-holder or not, was a matter of evide It further appears that the respondent No. 1 thereafter submitted an application u Order XL of C.P.C. for the appointment of receiver. In reply to the said application, petitioners submitted an application on 26.11.2010 requesting the Court to record evidence first with regard to the right of so-called decree-holder i.e. the respondent No. execute the decree. The Executing Court heard the learned Advocates for the parties vide its order dated 22.12.2010 dismissed by the said application of the petitioner holding that the respondent No. 1 had already been accepted as the Sajjadanashin a the decision of the Hon'ble Apex Court, and it was not open for the Executing Cou again decide the said issue. Being aggrieved by the said order dated 22.12.2010 petitioners have preferred the present petition.

3. It has been vehemently submitted by Mr. Ranjan, learned Sr. Counsel for the petitioners that the Executing Court could not have reviewed its previous order dated 10.8.2010 and passed the impugned order without any evidence having been recorded whether the respondent No. 1 was entitled to execute the decree in question or not. According to learned counsel Mr. Ranjan, except the copy of the judgment of Hon'ble Supreme Court, there was no material on record to hold that respondent No. 1 was entitled to proceed further with the execution petition. Placing reliance on the decision in case of *Arjun Singh Vs. Mohindra Kumar and others* reported in AIR 1964 SC 993 and in case of *Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi and another* reported in AIR 1960 SC 941, the learned counsel has submitted that the principle of *res-judicata* would apply between the two stages in the same litigation and the party could not be permitted to re-agitate the matter again at the subsequent stage of the same proceedings. According to him, once the executing Court had held in the order dated 10.8.2010 that the issue whether the respondent No. 1 had any *locus-standi* to prosecute further with the execution petition or not was a matter of evidence, the executing Court could not have reviewed its own order for holding that the respondent No. 1 was entitled to, in absence of any evidence having been recorded by the Court. The learned counsel further submitted that in none of the judgments of Hon'ble Supreme Court or of this Court, it was held that the respondent No. 1 was Sajjadanashin and hence a detailed enquiry was required to be conducted by the Executing Court for holding that the respondent No. 1 was Sajjadanashin and entitled to execute the decree passed in favour of the original decree holder. He also submitted that the decree in question was passed as back in 1933 and the Dargah Khawaja Saheb Act of 1955 (36 of 1955) (here-in-after referred to as the "DKS Act") having come into force subsequently, the provisions of the said Act would not be applicable to the facts of the present case. According to him, the office of Sajjadanashin or Dewan attached to Dargah was a hereditary office and the successor to the said office was governed by the Rule of Primogeniture and that there was nothing on record to suggest that the respondent No. 1 was the Sajjadanashin and was the eldest son of Ilmuddin entitled to inherit the said office of Sajjadanashin.

4. Learned counsel Mr. Anil Mehta for the respondent No. 1, however, supporting the order passed by the executing Court submitted that the said order was passed by the Executing Court on the application moved by the petitioners themselves and hence the Executing Court could not be said to have reviewed its own earlier order. Taking the Court to the observations made by this Court in case of *Syed Saulat Hussain Vs. Syed Illamuddin and others*, RLW 1980 317 and by the Apex Court in case of *Dargah Khwaja Sahib Ajmer*, RLW 1980 69; in case of *Syed Saulat Hussain Vs. Syed Ilamuddin*, AIR 1987 SC 2213, the learned counsel has submitted that the issue as to whether the respondent No. 1 was Sajjadanashin or not, had already stood concluded and the order passed by the executing Court was just and proper.

5. Adverting to the first contention raised by Mr. Ranjan, learned counsel for the petitioners that the executing Court could not have reviewed on its own the earlier order

dated 10.8.2010 by passing the impugned order dated 22.12.2010, it is required to be noted that the impugned order dated 22.12.2010 came to be passed by the executing Court on the application submitted on behalf of the petitioners praying the Court to take the evidence before deciding the issue regarding the right of the respondent No. 1 to execute the decree in question. Under the circumstances, the executing Court, taking into consideration, the decision of the Apex Court in case of *Syed Saulat Hussain Vs. Syed Illamuddin and others* (supra) and other decisions of this Court from which the said case was carried to the Apex Court, had passed the impugned order. Hence, it does not lie in the mouth of the petitioners to contend that the Executing Court had *suo-moto* reviewed its own order.

6. The question of invoking the principles of *res-judicata*, as sought to be raised by the learned counsel for the petitioners, also would not arise for the simple reason that earlier the Court had not decided the issue whether the respondent No. 1 was Sajjadanashin or not, and whether he was entitled to proceed further with the execution petition in the capacity of Sajjadanashin for the execution of the decree passed in favour of the original decree holder i.e. Sajjadanashin Dewan Sayed Ale Rasool Ali Khan or not. On the contrary, while deciding the other points raised by the office in favour of the respondent No. 1, the Executing Court had kept open the said question of *locus-standi* of the respondent No. 1 to proceed further with the execution proceedings in the capacity of Sajjadanashin, by observing that it would be a matter of evidence. Under the circumstances, the Executing Court was perfectly justified in deciding the said question left open earlier, by passing the impugned order, more particularly when the petitioners themselves had requested the Court to decide the said issue first before passing the order on the application of the respondent No. 1 seeking appointment of receiver. The judgments cited by Mr. Rajan, learned Sr. counsel for the petitioners as regards the principle of *res-judicata*, therefore, have no application or relevance to the facts of the present case.

7. The bone of contention raised by the learned counsel Mr. Rajan for the petitioners is that the respondent No. 1 Syed Zainul Abedin Ali Khan being not the Sajjadanashin, was not entitled to execute the decree passed in favour of the original decree holder Sajjadanashin Dewan Syed Ale Rasool Ali Khan. According to him, the office of Sajjadanashin attached to Dargah is a hereditary office and the successor to the said office is governed by Rule of primogeniture. He also submitted that in absence of any material to show that the respondent No. 1 was the eldest son of Sajjadanashin Ilmuddin Ali Khan and in absence of any other material to show that the respondent No. 1 was legally declared as Sajjadanashin to continue the said office, the executing Court could not have come to the conclusion that the respondent No. 1 was the Sajjadanashin entitled to proceed further with the execution of the decree in question.

8. In order to appreciate the said bone of contention raised by the learned counsel for the petitioners, it would be beneficial to refer to certain observations made by the Hon'ble Supreme Court and this Court in the proceedings, which had taken place between Syed Ilmuddin Ali Khan, the father of the present respondent No. 1 and one Syed Saulat Hussain. The decisions of the Apex Court and this Court are already reported in AIR 1987 SC 2213; RLW 1980, 69 and RLW 1980 317. The short facts of the said proceedings were that the said Syed Ilmuddin Ali Khan filed a suit being Civil Suit No. 271/48 against one Hakim Inayat Hussain, father of Syed Saulat Hussain, seeking a declaratory decree to the effect that he was entitled to hold the office of Sajjadanashin attached to the Dargah and to receive the emoluments and perquisites attached thereto and also seeking injunction restraining the said defendant from exercising the rights and privileges of the said office. The said suit was contested by the said defendant Hakim Inayat Hussain. The said suit came to be dismissed by the Sub Judge, First Class, Ajmer vide the judgment and order dated 9.5.1951 on the preliminary ground that the suit was not maintainable in view of Section 119 of Ajmer Land and Revenue Regulations. The said plaintiff Syed Ilmuddin had carried the matter upto Hon'ble Supreme Court and the Hon'ble Supreme Court vide its judgment dated 7.3.1961, set-aside the judgment of the trial Court and remitted the case to the trial Court for fresh decision in accordance with law. In the meantime, the Court of Sub-Judge was abolished and the Munsif Ajmer City acquired the jurisdiction to try the said

suit. It is also pertinent to note that during the pendency of the said litigation, the DKS Act came into force and the Dargah Committee constituted under the said Act filed an application to be impleaded as the party – defendant in the said suit. The said application was allowed and the Dargah Committee, Ajmer was impleaded as the party – defendant as per the order dated 30.9.1964. The Dargah Committee subsequently filed the written statement contending *inter-alia* that the original defendant Hakim Inayat Hussain had already expired and the responsibility for making interim arrangement for the performance of the functions of Sajjadanashin had devolved upon the Committee under Section 13 (1) of the DKS Act and that consequently the Dargah Committee had appointed Syed Saulat Hussain, S/o Hakim Inayat Hussain as an interim Sajjadanashin and that the said appointment was also approved by the Governor of the State of Rajasthan vide Notification dated 27.7.1964. Ultimately the Civil Judge, Ajmer, after recording the evidence adduced by the parties, dismissed the said suit vide judgment and decree dated 14.12.1970. The aggrieved plaintiff Syed Ilmuddin, therefore, filed an appeal before the High Court, which came to be allowed by the Single Judge vide judgment and decree dated 9.8.1974. The aggrieved son of original defendant i.e. Syed Saulat Hussain, therefore, filed a special appeal being D.B. Civil Special Appeal No. 131/1974 before the Division Bench under Section 18 of the Rajasthan High Court Ordinance. The said appeal came to be dismissed by the Division Bench vide order dated 7.3.1980 (RLW 1980, 69).

9. The learned Single Judge while allowing the appeal of the said Syed Illumuddin, vide judgment and decree dated 14.12.1970 had granted the following relief:

> "So far as nearness in propinquity to the last Sajjadanashin is concerned, the plaintiff is the rightful person entitled to hold the office of Sajjadanashin of Dargah and that Hakim Inayat Hussain had no right or title to hold the said office as against the plaintiff."

10. The Division Bench while dismissing the Special Appeal No. 131/1974 preferred by Syed Saulat Hussain, vide its order dated 7.3.1980 had observed, in para 13 of the order as under:

> "It has also come on record that after the decree passed by the learned Single Judge, the Governor of Rajasthan has passed the consequential order on 7.5.1977 in accordance with the decree passed by the learned Single Judge and asked the Committee to grant recognition under Section 13(2) of the Act."

11. As regards the applicability of DSK Act, it was observed in para 17 as under:

> "17. The Act came into force in 1955 A.D. Hakim Inayat Hussain died on 25.9.1959, when the appeal was pending before the Supreme Court. The Supreme Court, after the death of Inayat Hussain directed that the legal representatives of Inayat Hussain be impleaded as parties to the *lis*. Now, if Section 13 were applicable, the suit would have come to an end with the death of Inayat Hussain and appointment of his son Syed Saulat Hussain as Sajjada Nashin. But it is important to remember that appointment of Saulat Hussain was only an interim arrangement and that is why the Supreme Court remanded the case and gave a direction to proceed with the suit. Besides that, Section 13 is a general provision dealing with succession to the office of Sajjadanashin whereas Section 21 is a special provision to deal with a situation where a suit relating to the office is pending on commencement of the Act and the person holding the office of Sajjadanashin immediately before the commencement of the Act is a party to it. We are, therefore, of opinion that the suit is governed by Section 21 of the Act and not by Section 13 of the Act."

12. It was further held in para 24 as under:

> "24. *Lastly*, it was urged that the order passed by the Governor on 7.5.1977, directing the Durgah Committee to accord recognition to Syed Zainul Abaidin as Sajjadanashin under Section 13(2) of the Dargah Khwaja Sahib Act, was illegal and void. It may be pointed out that this order was passed after the decision of the case by the learned Single Judge and the memo of the special appeal has not been so amended as to incorporate an attack on this order. Apart from this, it

appears to us that it is only a consequential executive order in consonance with the decree passed by the learned Single Judge and if the decree of the learned Single Judge stands, no just exception can be taken to the order of the Governor dated 7.5.1977."

13. It is further pertinent to note that during the pendency of said Special Appeal No. 131/1974, the Dargah Committee made a reference under Section 13(3) of the DKS Act, to the Rajasthan High Court, for dealing with the applications received by the Dargah Committee for the claim of office of Sajjadanashin, which had fallen vacant on account of the death of Sajjadanashin Syed Ilmuddin Ali Khan. It appears that the Dargah Committee had issued a notice inviting applications from the persons claiming to succeed to the office of Sajjadanashin under sub-section (1) of Section 13 of the Act, which was issued in the Gazette of India dated 11.12.1976, and pursuant to the said notice eleven applications were received by the Dargah Committee. In the meantime, the Governor of Rajasthan had taken up the stand that only one Syed Zain-ul Abedin had claimed to succeed to the office of Sajjadanashin on the ground of his being the son of last holder of the office, the other applicants who were not the heirs of the deceased Sajjadanashin Ilmuddin could not claim to succeed the said Sajjadanashin. The said decision of the Governor was conveyed to the Dargah Committee vide letter dated 7.5.1977. When the matter was considered by the Dargah Committee, there was a difference of opinion amongst the members of Dargah Committee and ultimately the matter was referred to the Rajasthan High Court under sub-section (3) of Section 13 of the Act for consideration of the said applications received by the Dargah Committee. The said reference was registered as D.B. Civil Reference No. 2/1978. During the pendency of the said reference, the above referred D.B. Civil Special Appeal No. 131/1974 came to be decided on 7.3.1980. Under the circumstances, the Division Bench while dismissing the said reference vide the order dated 4.7.1980 (RLW 1980, 317) observed in para 6 thereof as under:

"6. We have given our earnest consideration to the arguments advanced by all the learned counsel and have carefully perused the record. It would be pertinent to point out that this litigation for succeeding to the office of Sajjadanashin commenced as early as in 1948 between Syed Ilmuddin, who is now represented by Syed Zain-ul Abdin and Hakim Inayat Hussain who is now represented by Syed Saulat Hussain. There is no dispute that the necessity for filing a suit by Syed Ilmuddin only arose on account of the fact that the last Sajjadanashin Diwan Syed Alley Rasool Ali Khan migrated to Pakistan in September 1947 and the office was occupied by Hakim Inayat Hussain. The claimants, who have now come forward, never raised any finger right from 1947 when Diwan Syed Alley Rasool Ali Khan migrated to Pakistan in September, 1947, till 11.12.1976, when the notice was published in the Gazette of India by the Dargah Committee inviting applications for submitting claims to the office of Sajjadanashin having fallen vacant in view of the death of Syed Ilmuddin. This clearly shows that apart from other factors which we would presently consider, the claim of applicants other than the two sets of parties which are fighting this litigation right from 1948, has become totally stale and has no legs to stand."

14. It was further observed in continuation of the said para that:

"The Legislature was fully aware about the suit relating to the office of Sajjadanashin pending between Syed Ilmuddin and Hakim Inayat Hussain and for this purpose laid down a specific provision under Section 21 of the Act which had already been reproduced above. It is also important to observe that Hakim Inayat Hussain had died on 25.9.1959 when the appeal was pending before the Supreme Court and after his death his legal representatives were allowed to be impleaded as parties to the *lis*. Admittedly, the Khwaja Dargah Sahib Act, 1955, had come into force on that date as well and if the contention now sought to be advanced by Mr. Jatan Chand on behalf of the Dargah Committee and Mr. Panwar on behalf of the applicants has to be accepted, the office of Sajjadanashin had fallen vacant on the death of Hakim Inayat Hussain

the Saint. That was perhaps the reason for not asking the High Power Committee constituted by the Government of India in 1948 to inquire into it. The said Committee was constituted only to enquire into the mal-administration of the Durgah and suggest remedies in the interests of devotees. The question of succession to the office of Sajadanashin was expressly kept outside its purview. It would be evident if one persues the terms of reference made to the High Power Committee."

17. It was further observed in para 21 as under:

"21. Against this background, it was not illogical or improper for parties to the suit to proceed on the basis that the hereditary office of Sajadanashin is entitled to be claimed by descendants of the Saint by the rule of primogeniture. They have stated the obvious which appears to have been recognised over the generations. If there was no such rule or principle, the Durgah Committee ought to have stated so. Or it could have stated that it was not bound to follow the customary rule of succession. It could have asserted its right to make a choice of its own. It did not state anything of the kind in the Courts below. It maintained a golden rule of silence. It is, therefore, now not open to the Durgah Committee to contend before us that it is not bound by the decision of the Courts. The Durgah Committee is as much a party to the suit as others. It is as much bound by the decision as others. It is immaterial for our purpose whether the decision has been reached by concession of parties or by determination of the dispute."

18. It was further observed in para 23 *inter-alia* as under:

"23. Section 13 of the DKS Act does not confer unlimited or absolute power to Durgah Committee. Sub-section (1), Section 13 comes into operation when the office of Sajadanashin falls vacant. It enables the Durgah Committee to make interim arrangement for the performance of functions of Sajadanashin, pending recognising the legitimate successor to the office. It must, therefore, invite applications from persons claiming to succeed to that office, if there is only one person to succeed to the office, the Committee shall with the previous approval of the Governor recognise him as Sajadanashin. That is the mandate of sub-section (2), Section 13. If there are more persons than one claiming to succeed to the office, the Durgah Committee shall follow the procedure provided under sub-section (3), Section 13. The Committee after consultation with the Governor must refer the applications to the High Court for decision. On receipt of the decision of the High Court and with the previous approval of the Governor, the Durgah Committee under sub-section (4) shall accord recognition as Sajadanashin to the person found entitled to succeed to the office."

19. From the above referred observations and decisions rendered by this Court and the Apex Court, there remains no doubt that the holding of office of Sajjadanashin by the respondent No. 1 Zain-ul Abidin was confirmed by the Apex Court. The afore-stated judgments were also cited before the Executing Court and taking into consideration the same, the Executing Court vide the impugned order dated 22.10.2010 held that the said controversy having been concluded by he Apex Court, it was not open for the Executing Court to decide it again, as sought to be raised by the petitioners. The said order of Executing Court being in consonance with the decision of Apex Court, this Court does not find any illegality or infirmity in the said impugned order.

20. The writ petition being devoid of merits deserves to be dismissed and the same is, accordingly, dismissed.

21. Consequent upon the dismissal of writ petition, the stay application, filed therewith, does not survive and that also stands dismissed.

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The End

DNJ

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