

(1981) 03 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Reven. Petition No. 4025 of 1980

Sahebzadi Amina Marzia

APPELLANT

Vs

Syed Mohd. Hussain and Others

RESPONDENT

Date of Decision : 25-03-1981

Acts Referred:

Trusts Act, 1882 — Section 34, 37, 38

Citation : AIR 1981 AP 340 : (1981) 2 APLJ 64

Hon'ble Judges : Madhava Rao, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : J.V. Suryanarayana Rao, for the Appellant; Mohiruddin Ali Khan and V.B. Sahagal, for the Respondent

Judgement

Madhava Rao, J.—This revision is placed before us on a reference made by our learned brother, Muktadar, J., by order dated 29th Jan., 1981 as an important question of law is involved in the matter.

2. The parties are described in this judgment as they were arrayed in the petition. The facts relevant for disposal of this revision are as follows: Sahebzadi Fatima Fouzia and Sahebzadi Amina Marzia, the grand-daughters of His Exalted Highness the Nizam, are respondents 1 and 2 in the petition. The 3rd respondent is the Wealth Tax Officer, Central Circle III, Hyderabad.

3. His Exalted Highness the Nizam VII of Hyderabad executed on 4th Sept., 1951 an Indenture of Trust known as "Wedding Gifts Trust of H.E.H, the Nizam's two grand-daughters" whereby he settled jewellery and ornaments specified in the first and second schedules and 3 per cent Government of India securities of the face value of Rs. 50,000, Rs. 1,25,000, Rs. 1,25,000 and Rs. 25,000 specified in the third, fourth, fifth and sixth schedules to the deed of trust respectively for the benefit of his two grand-daughters Sahebzadi Fatima Fouzia and Sahebzadi Amina Marzia, respondents 1 and 2. The petitioners and Prince Muffakhm Jah Bahadur and Col. Bashir Hussain Zaidi are the present trustees of the Trust, The petitioners filed O. P. No. 210 of 1979 u/s 34 of the Trusts Act, 1882 for advice or

directions in respect of the management or administration of the trust property in view of the demands made by the Wealth Tax Officer, the 3rd respondent.

Under the provisions of Sub-clauses (c) and (e) of Clause 3 of the deed of trust the articles of jewellery specified in the First and Second Schedules to the deed of trust are to be held upon trust to allow the 1st and 2nd respondents to wear and use the articles of jewellery respectively for the purpose of any special or festive occasion and after any such ceremony or festive occasion, the trustees are enjoined to take charge of such articles from the said beneficiaries. Under Sub-clauses (g) and (h) of Clause 3 of the deed of trust, the trustees are enjoined not to sell or otherwise dispose of the articles of jewellery specified in schedules I and 2 during the lifetime of respondents 1 and 2 or to deal with the same in any manner except for the purposes of allowing the beneficiaries to wear and use the same. Clauses 4 and 5 of the deed of trust provide that on the death of the respondents 1 and 2, the trustees are to divide the articles of jewellery specified in the first and second schedules respectively among the children of the beneficiaries per stripes in the proportion of two shares for every male child and one share for every female child.

4. The securities specified in the 3rd schedule are to be notionally divided into two equal parts and one such equal part is to be held upon trust called "Fatima Fouzia pocket Money Trust" and the other upon trust called "Amina Marzia Pocket Money Trust", The net income of the respective pocket money funds are to be paid to the respective beneficiaries for and during their lifetime. The securities specified under the 4th and 5th schedules are to be held upon trust for the purchase of a suitable building or land for construction of buildings thereon for the residence of the beneficiaries, respondents 1 and 2.

5. Under the provisions of Clause 3 (h) of the deed of trust, the income of the securities specified in the 6th schedule is to be utilised for payment and discharge of all costs, charges, expenses and outgoings relating to the safe-custody, preservation and upkeep of the trust property and if the income is not sufficient then out of the corpus of the said securities. The 6th schedule consists of the securities and Bonds of the aggregate face value of Rs. 11,091 as per details shown in the Annexure "A". It is stated in the petition that the corpus settled under the above trust deed has been the subject matter of levy of wealth tax under the Wealth Tax Act, 1957. The wealth tax payable in relation to Fatima Fouzia Trust Fund for the assessment years 1957-58 to 1970-71 is Rs. 61,715 whereas in relation to Amina Marzia Trust Fund for those years is Rs. 55,772. According to the present assessments the petitioners are required to pay gross-wealth tax of Rs. 1,17,487, being the aggregate amount of wealth tax in relation to each of the trust funds settled for the benefit of the two grand-daughters. Deducting the amounts of the tax already paid pursuant to the original assessments made, the balance of tax payable is determined at Rs. 88,589 of which Rs. 47,266 is payable in relation to Fatima Fouzia Trust Fund and Rs. 41,322 is payable in relation to Amina Marzia Trust Fund,

6. It is further stated that as the jewellery in question is intact, it is not yielding any income and there are no funds under the trust which can be utilised by the petitioners for the discharge of tax liabilities. The net income from the securities specified in the VI Schedule to the deed of trust is Rs. 376 per annum and is not sufficient for meeting the wealth tax liabilities. Thus, there is no money in the hands of the petitioners to meet the said demand. It is also stated that even if the corpus of the securities in the VI Schedule is sold, the same would not be sufficient to meet the tax liability which is of a recurring nature. If the corpus of the securities in the VI schedule is sold for discharging a part of the present tax demand there would be no source of income available to the trustees for meeting the other outstandings and expenses like maintenance and preservation of the trust property. The petitioners state that they are advised that the corpus of the VI schedule cannot be utilised for the purpose of paying tax on the corpus relating to the beneficiaries under the trust. The wealth tax authorities are threatening to take coercive action for the recovery of tax due. The trustees are unable to sell the jewellery themselves because of the prohibition contained in clauses 3 (g) and 3 (h) of the Trust deed. The petitioners are, therefore, confronted with a serious difficulty in the management of the trust and in complying with the statutory tax demands raised against the petitioners. The petitioners have, therefore, no alternative but to seek directions and advice of the Court u/s 34 of the Trusts Act, 1882.

7. The petitioners, therefore, prayed for a direction authorising or enabling the Trustees.

"(i) to sell the following items of jewellery specified in the first and second schedules to the deed of trust, the sale proceeds of which will be sufficient to meet the present tax liabilities, either by inviting tenders or by auction, and out of the sale proceeds thereof to discharge the present tax liabilities,

(a) PADAD JARAVI...Item No. (16) of Schedule No. (1) to the deed of trust, which has been valued at Rs. 41,500 as per valuation done on 28-10-1969 by M/s. Hemchand Mohanlal & Co., the valuers appointed by the I.-T. Department,

(b) PADAK JARAVI...Item No. (16) of Schedule No. (ii) of the deed of trust, which has been valued at Rs. 41,500 as per valuation done on 28-10-1969 by M/s. Hemchand Mohanlal & Co., the valuers appointed by the I.-T. Department.

Or

(ii) to sell a portion of the securities specified in the 4th and 5th scheduled to the deed of trust and out of the sale proceeds thereof to discharge the present tax liabilities of the trust;

AND

(iii) Further to enable and authorise the Trustees to invest the balance, if any, of the sale proceeds in the fixed deposits with the nationalised Banks or the Rural Development Bonds (Banks?) and from the net income of respective investment

to pay and discharge the future tax liabilities.

(iv) That this Hon"ble Court be pleased to give any other or further direction which in the circumstances of the case will serve the purpose and obviate the proceedings under the Wealth Tax Act and prevent an involuntary sale.

(v) This Hon"ble Court may be pleased to permit the trustees to reimburse themselves the costs of this petition."

8. Respondents 1 and 2 filed separate counter-affidavits. In the counter filed by the 1st respondent it is stated that first of all the jewellery should be deposited in the Court and handed over to her and that with the permission of the Court she would sell her jewellery either by private sale or by auction. In her counter, the second respondent made a submission that an enquiry or hearing of the petition might be conducted in the Chambers. She further stated:

"The petitioners are invoking advisory jurisdiction of this Hon"ble Court which is only part of the general administrative jurisdiction which is exercised chiefly in Chambers."

It was further stated in the counter by the 2nd respondent:

"This respondent is not prepared to subscribe the prayer in the petition viz., to give a direction to the Trustees to sell only one item i.e. "Padak Jarvari" Item No. 16 of IInd schedule of the Deed of Trust the sale proceeds of which, it was alleged, would be sufficient to meet the present tax liability. The Trustees of this Trust filed O. P. No. 48 of 1974 on the file of this Hon"ble Court u/s 34 of the Trust Act when they were faced with a situation like the present viz., payment of wealth tax as per the assessments made at that time. The tax liability at the time was to the tune about Rs. 29,421 on totality of the jewellery in the first and second schedules. The prayers in the said O. P. are as follows:--

"The petitioners, therefore, pray that this Hon"ble Court may be pleased to give a direction u/s 34 of the Indian Trusts Act, 1882 authorising or enabling the Trustees (i) to sell the articles of jewellery specified in the 1st and 2nd schedules to the Deed of Trust to the respective respondents herein on the highest valuation that may be offered by the jewellers through tenders to the Trustees and out of the sale proceeds thereof to discharge the present and future tax liabilities of the Trust and (ii) further to enable and authorise the Trustees to invest the balance of the sale proceeds in Government securities and from the net income of the respective investments, to pay and discharge the tax liabilities and if there be any sums remaining thereafter in the hands of the Trustees to pay to the said Amina Marzia and Fatima Fouzia for and during their respective lives and on and after their deaths to hold the same upon the trust specified on Clauses 4 and 5 of the Trust Deed."

The averments on which the earlier O. P. No. 48 of 74 was based were (i) that as the jewellery was intact it was not yielding any income (ii) that there were no funds under the trusts which could be utilised by the Trustees for discharge of

tax liabilities (iii) that subject to the permission of the Hon"ble Court, the Trustees and (sic) resolved to sell the jewellery specified in the first and 2nd schedules to the respondents therein (beneficiaries under the Trust) on the highest valuation offered by the jewellery that might be received by Trustees through tenders."

9. In paragraph 5 of her counter affidavit the 2nd respondent stated that through her counter she supported the prayer in O. P. No. 48 of 1974 especially because the trustees proposal for conversion of the unproductive trust property, viz., jewellery which was kept in safe vaults of a Bank into an income yielding asset was a step beneficial to the beneficiaries present and also in view of the changed set up, altered circumstances like high cost of living and heavy taxation direct and indirect After the said O.P. underwent some adjournments, the trustees filed I.A. No. 1 of 1975 for permission to withdraw O.P. No. 48 of 1974 with liberty to file the same when occasion arises, the reasons given for withdrawal being that the Trustees were hopeful of getting relief that the jewellery would not be assessable to wealth tax either in the hands of the beneficiary or in the hands of the trustees. The said I.A. No. 1 of 1975 was ordered on 3-3-1975 and the petitioners were permitted to withdraw the petition with liberty to either party to approach the Court by filing a fresh petition if necessary in future.

10. Therefore, the present petition O.P. No. 210/79 was filed. The respondents are not agreeable for a direction to sell a portion of the securities specified in the 4th and 5th schedules to the deed of trust. On the other hand, it was stated that the Trust was created in 1951 and the Wealth Tax Act, an Act to provide for the levy of Wealth Tax came into force on the 1st day of April, 1957. Section 34 enables the Court to issue directions or advice on questions regarding the management or administration of the Trust. It was further stated:

"In the present case granting permission to sell all the items of jewellery comprised in the 2nd schedule relating to this respondent at the highest tendered value will not override the express intentions of the settlor but on the other hand it would enable the trustees to take the only method available to the fulfilment of the trust and sustain the provisions of the trust deed in all their vigour. The wealth tax liability as is well known, is a recurring liability, if year after year the tax is to be paid out of the corpus of the trust by resorting to sales, item by item, ultimately in due course nothing will be left for the ultimate beneficiaries who are to be monetarily benefited under the Trust, that is in other words the trust would be extinct."

It is also stated:

"At present there is the incentive of exemption from levy of capital gains tax if the proceeds are invested in approved securities or Bonds. This exemption may not be available in future."

It is also further made clear that the jewellery is lying in the safe vaults of Mercantile Bank, Bombay, from 1951 without yielding any income, that in these

days of high cost of living if the unproductive asset is sold and invested in income yielding securities or bonds, the beneficiaries will really have the advantage of the Trust property. In paragraph 8 (v) of the counter it is stated that the present wealth tax liability, as stated in the petition, is Rs. 41,325 for the period 1957-58 to 1970-71. For the succeeding years and year after year during the lifetime of the 2nd respondent, it is difficult now to estimate the quantum of liability. It is also to be noted that she is a beneficiary under pocket money trust and Housing Fund Trust besides the Wedding Gifts Trust. It is further stated by her:

"for the purpose of wealth tax assessments, the authorities club all the wealth of this respondent in all her trusts and the tax thus payable will be very high unless all the items in this trust are converted into income yielding assets there will be no scope for payment of taxes and she will be left with no money to maintain herself. In this view the sale of only one item is prejudicial to the interest of this beneficiary. If only one item i.e. item 16 alone which was valued at Rs. 41,500 in 1969 is allowed to be sold now for meeting the existing liability, the same process may have to be followed year after year in future which as submitted already results in extinction of the Trust, Hence sale of all the items of jewellery and investment of sale proceeds in income yielding assets, is the only desirable solution having regard to the facts and circumstances of the case."

In view of the facts stated in her counter-affidavit the second respondent prayed that the Court might be pleased to issue appropriate advice and directions to the Trustees of the Wedding Gifts Trusts of H.E.H. The Nizam's two granddaughters (i) authorising the trustees to sell the articles of jewellery comprised in Schedule II (32 in number) of the Wedding Gifts Trust of H.E.H. the Nizam's two granddaughters dated 4-9-1951 to Sahebzadi Amina Marzia, the beneficiary at the highest valuation that might be offered by the jewellers through tenders to the Trustees and out of the sale proceeds and/or the income thereof to discharge the existing and future tax liabilities, (ii) authorising the trustees to invest the balance of the sale proceeds in acceptable securities or fixed deposits or Bonds capable of securing exemption from capital gains tax; (iii) authorising the trustees to pay the surplus income on the sale proceeds, after meeting tax demands to this respondent Sahebzadi Amina Marzia year after year during her lifetime etc.

11. Thereafter an enquiry was conducted and evidence was also recorded. Exs. A-1 to A-4 were marked on behalf of the petitioners, while no document was marked on behalf of the respondents, Ataur Rahman, a trustee of the Trust was examined as P.W. 1 Ex. A-1 is a copy of the trust deed dated 4-9-1951. The learned Chief Judge opined that the only remedy without defeating the object of the trust is to sell as many items of jewellery out of the items specified in Schedules I and II of the deed of trust as would be sufficient to meet the wealth tax demand already assessed and also fetch income by way of interest on investment that can meet the recurring liability of the wealth tax in future, and

that some two or three items of each of Schedules I and II, if sold would realise the amount sufficient for the purpose of meeting the present demand and leave sufficient balance to be invested in fixed deposit, from the income of which, the year to year demand of wealth tax can be met.

12. In the earlier part of this judgment, the Chief Judge observed, after considering a decision of the Mysore High Court in *In re D. V. Gundappa* AIR 1951 Mys 6 as follows;

"That being the case since the trustees have to meet the wealth tax demand and there is no provision made in the deed of trust to meet this liability, the trustees cannot but sell a portion of the jewellery specified in Schedules I and II to the deed of trust. If we are to concede to the request of the respondents who are the beneficiaries to sell the entire items of jewellery mentioned in Schedules I and II it would amount to defeating the trust itself, After all, the respondents are only entitled to wear the jewellery during their lifetime on ceremonial and other festival occasions and that they have no further interest in the jewellery. The real beneficiaries of the trust are the children of the respondents and it is not possible to take their consent since they are not sui juris and are not in existence now."

In the result, the order was passed on those lines.

13. The learned counsel for the petitioner-2nd respondent submitted that where in the administration or management of a trust estate by the trustees there arises an emergency or a state of circumstances which it may reasonably be supposed was not foreseen or anticipated by the author of the trust and is unprovided for by the trust instrument and which renders it desirable and perhaps even essential, in the interests of the beneficiaries, certain acts should be done by the trustees which they themselves have no power to do and to which the consent of all the beneficiaries cannot be obtained by reason of some not being sui juris or in existence, the Court will exercise its general administrative jurisdiction by sanctioning, on behalf of all parties interested, those acts being done by the trustees. In support of his submission he relied upon a decision in *In re New* (1901) 2 Ch 534, 544. A similar question arose in that case.

14. No provision in regard to certain expenses was made in the trust deed. In such circumstances the trustees sought for a direction of the Court. The question of jurisdiction was involved therein. When applications were filed the summonses came before Cozens-Hardly J. in Chambers on June 17, 1901, then his Lordship refused applications, but intimated that he would have made the orders had he not felt himself bound by the decisions in *In re Morrison* (1901) 1 Ch 701 and *In re Crawshay* (1888) WN 246, 251: 60 LT 357 but he expressed the hope that, for the assistance and guidance of Judges of first instance, the cases would be carried to the Court of Appeal.

15. The plaintiffs in the three summonses then appealed separately. Romer L. J. delivered the judgment holding:

"As a rule, the Court has no jurisdiction to give and will not give, its sanction to the performance by trustees of acts with reference to the trust estate which are not, on the face of the instrument creating the trust, authorised by its terms.

The cases of *In re Crawshay* (1888) WN 246, 251 : (60 LT 357) decided by North J., and *In re Morrison* (1901) 1 Ch 701 decided by Buckley J., are instances where the Court was asked to sanction steps to be taken by Trustees which it thought unjustifiable, and which it declared it had no jurisdiction to authorise. But in the management of a trust estate, and especially where that estate consists of a business or shares in a mercantile company, it not infrequently happens that some peculiar state of circumstances arises for which provision is not expressly made by the trust instrument, and which renders it most desirable, and it may be even essential, for the benefit of the estate and in the interest of all the cestui que trust, that certain acts should be done by the trustees which in ordinary circumstances they would have no power to do. In a case of this kind, which may reasonably be supposed to be one not foreseen or anticipated by the author of the trust, where the trustees are embarrassed by the emergency that has arisen and the duty cast upon them to do what is best for the estate, and the consent of all the beneficiaries cannot be obtained by reason of some of them not being sui juris or in existence, then it may be right for the Court, and the Court in a proper case would have jurisdiction, to sanction on behalf of all concerned such acts on behalf of the trustees as we have above referred to. By way merely of illustration, we may take the case where a testator has declared that some property of his shall be sold at a particular time after his death, and then, owing to unforeseen change of circumstances since the testator's death, when the time for sale arrives it is found that to sell at that precise time would be ruinous to the estate, and that it is necessary or right to postpone the sale for a short time in order to effect a proper sale; in such a case the Court would have jurisdiction to authorize, and would authorize, the trustees to postpone the sale for a reasonable time."

16. The above decision was followed by the High Court of Bombay in *In Re Shirinbai*, AIR 1919 Bom 119. A similar question arose in that case. The point that came up for consideration was whether trustees of land who had no express power of sale in the instrument creating the trust had power to sell that land either with or without the consent of the Court. The parties concerned were all Parsis. The instrument in question was a settlement made on 11th February, 1898. The settlor was one Bai Galbai since deceased and the trustees were her two daughters. Shirinbai and Ratanbai, the petitioners therein. It was a voluntary settlement and the only property settled was a certain immovable property in Meadows Street, Bombay, mentioned in the schedule. The trusts were for the settlor for life with remainder as to one moiety for Ratanbai for life with remainder, to use the exact words of the instrument:

"for the issue of the body of the said Ratanbai in the shares prescribed by law as if the said Ratanbai had died possessed of the said share intestate leaving such

issue only as her right heirs and in default of such issue upon the trusts hereinafter declared in regard to the other half of the said premises."

17. The other moiety went to the other daughter Shirinbai for life with a limitation over to her issue similar to that contained as regards Ratanbai's moiety. There was an ultimate gift over of all the property to charity in case there should be no "person living entitled to take the said premises under the trusts hereinbefore declared." Ratanbai was unmarried. Shirinbai had six children viz. two daughters and four sons, all of whom consented to the proposed sale. The question that arose for consideration was which provision of the Trusts Act would permit the sale of the property.

Marten, J. observed:

"But, I think, in the present case it is unnecessary for me finally to decide whether the trustees have any power u/s 40 or Section 36, because I think, this particular case may be decided on another ground, namely, under the extraordinary jurisdiction of the Court which it can exercise in certain cases of what I may call "emergency". I think that class of jurisdiction is exemplified at its highest in *In Re New* (1901) 2 Ch 534 a decision of the English Court of Appeal, the headnote of which runs as follows:

"Where in the administration or management of a trust estate by the trustees especially where the estate consists of a business or of shares in a mercantile company, there arises an emergency or a state of circumstances which it may reasonably be supposed was not foreseen or anticipated by the author of the trust and is unprovided for by the trust instrument, and which renders it desirable and perhaps even essential in the interests of the beneficiaries, that certain acts should be done by the trustees which they themselves have no power to do, and to which the consent of all the beneficiaries cannot be obtained by reason of some not being sui juris or not yet in existence the Court will exercise its general administrative jurisdiction by sanctioning on behalf of all parties interested those acts being done by the trustees..... The learned Judge further observed:

"I will only say by way of warning that as pointed out in that case, this jurisdiction is of an extremely delicate character and has to be exercised with the greatest caution. The case should be read at the same time with *In Re Tollemache* ((1903) 1 Ch 457) where Cozens Hardy, L.J., as he then was said at p. 956:

"I will only add that, in my opinion *In Re New* (1901) 2 Ch 534 constitutes the high water mark of the exercise by the Court of its extraordinary jurisdiction in relation to trusts."

The learned Judge also observed:

"Now, have I got here a case of an emergency such as is contemplated in *In Re New* (supra). So far I have not dealt with the facts which have led to the

proposed sale. This is not a case where the parties from some mere caprice, or from an ordinary desire to change of investments, or to increase their income, are desirous of settling the property. The facts are that this property is at the corner of two streets and is liable to a setback and that if that setback arose, which would happen on any occasion when it might be necessary to go to the Municipality for their approval of plans, the property would be very seriously depreciated. Then, further the property is an extremely old one and repairs in the near future are undoubtedly required. Amongst other things it is entirely defective as regards sanitary conveniences and any moment the trustees might be served with a sanitary notice from the Municipality. This notice would be extremely difficult to comply with and would probably result in the setback being enforced. I will not go into all the details of the affidavit of the Engineer, Mr. Nowroji Hormusji Katrak, but he sums the situation in the last paragraph in which he says:

"In these circumstances I consider it most desirable that the property should now be sold for Rs. 33,000, and if it is not sold for Rs. 33,000, I should consider that the property is allowed to be ruined and that the beneficiaries' interest would be very adversely affected partly on account of their disability to do the repairs within the regular lines of the streets and partly on account of the inevitable monetary loss,"

That being so, I think there is an emergency here within the meaning of *In Re New* (supra). Certainly the settlor here never contemplated the possibility of a setback, nor of these Municipal requirements and the possible disastrous effect they might have on the beneficiaries under trust instrument. I think really this is a case where it would be almost pedantic on my part to say that the letter of the trust must be kept to and the spirit disregarded and that as it is land which is settled, land it must remain. I accordingly consider that I may properly exercise in this present case the extraordinary jurisdiction which I have and that accordingly the sale ought to be sanctioned."

18. In that case also the beneficiaries and their children were majors and gave their consent for sale of the property.

19. A Division Bench of the Madras High Court consisting of Leach C. J. and Patanjali Sastri, J. in exercise of extraordinary jurisdiction held in *Edward H.M. Bower Vs. Lt.-Col. A.M.V. Hesterlow and Others*,

"The learned Judge refused to give any direction because he considered that the Court should not interfere with the provisions of a trust deed unless there were exceptional circumstances and in his opinion there were no exceptional circumstances here. He held that the donor must have had in mind when he decided on the conditions of the trust that a portion of the income would of necessity have to be devoted to the payments of premia on the lives of beneficiaries and in refusing to give the direction sought relied on the judgment of *Romer L.J.* in (1901) 2 Ch 534. We are unable to share the view that the facts

in this case did not warrant a deviation from the trust deed to the extent of permitting security to be given in another form and we can see nothing in the case cited which runs contrary to this view. If relief were not given in this case, it would undoubtedly mean the frustration to a large extent of the objects of the trust. If the matter remained there we should have no hesitation in passing an order which would enable the trustees to take the security in the shape of surety bonds."

20. The learned counsel for the petitioner then relied upon the decision in *In Re D.V. Gundappa* (AIR 1951 Mys 6) (supra).

21. In that case also a petition was filed u/s 34 of the Trusts Act. The facts which are relevant and have some bearing on the present case are as follows: A trust was created by Vajapeyam Krishniah on 5th Jan. 1916 for the benefit of education to poor students. One of the properties was a shop in Chickpet, Bangalore. It was in need of repairs and required heavy funds for that purpose. But it was fetching a small rent of Rs. 45 per month. One person was prepared to buy the property for Rs. 32,000, It was urged that if that amount was deposited with Government, the rate of interest that it would fetch was 4 per cent. But the District Judge refused to grant sanction for sale of the trust property. The High Court in revision held (See Head-note):

"The Court has no general power to interfere with or disregard the provisions of a trust; but the Court has, in exercise of its extraordinary jurisdiction, power to go beyond the express provisions of the trust instrument in cases of emergency, cases not foreseen or provided for by the author of the trust, where the circumstances require that something should be done and can authorise the trustees to do an act not authorised by the trust. This jurisdiction is, however, of an extremely delicate character and should be exercised with the greatest caution. Thus, where a deed of trust did not empower the trustees to sell the trust property and the trust being for the benefit of poor students, consent of beneficiaries could not be obtained, the Court, authorised the trustees to sell the property subject to certain conditions when it was found to be in the best interests of the trust to do so."

Reliance was placed on the decisions in *In Re Gundappa* (AIR 1951 Mys 6) (supra) and *In Re Shirinbai* (AIR 1919 Bom 119) (supra).

22. We do not want to multiply the decision on this aspect of the case.

23. Learned counsel for the petitioner referred to some of the text-books on this aspect of the matter.

24. Learned counsel for the petitioner submitted that deviation can be sanctioned by the Court contrary to the terms of the trust deed. That depends upon the facts and circumstances that emerge in a particular context. He referred to the relevant portion at page 291 of Underbill's Law of Trusts and Trustees (12th edition) which is as under:

"It frequently happens that it is not possible to obtain concurrence of all the beneficiaries, either because some of them are not of age or otherwise under disability, or because potential beneficiaries include unascertained or unborn persons, Pressure of economic circumstances and the burden of heavy taxation, particularly since the Second World War, have, moreover, diminished the attractions of rigid settlements and much ingenuity has been devoted to the production of schemes by which trust funds might be divided up, or trusts rearranged, to the mutual advantage of those interested in income and capital respectively, often at the expense of the Revenue. Many such schemes were, it is believed, sanctioned by Judges of the Chancery Division in Chambers and a belief that the jurisdiction to do so was unlimited was growing, when a sharp rebuff was administered by the House of Lords in *Chapman v. Chapman* 1954 AC 429: (1954) 1 All ER 798 affirming the decision of the Court of Appeal (*Re Chapman's Settlement Trusts* (1953) Ch 218: (1953 All ER 103) but further narrowing the jurisdiction therein recognised."

25. The learned counsel for the petitioner then referred to a portion at page 348 in *Law of Trust's* by Keeton. The author observed:

"The increasing pressure of taxation upon interests created by trusts has not only been responsible for the developments in the law of trusts which have been outlined in the previous chapter; it has also been responsible for attempts to reframe interests in trusts already in existence. In a number of cases where the remaindermen are an ascertained class, and are of full age, such rearrangements of trust interests can be carried out by agreement between the beneficiaries, but when the interests of children or unborn persons are involved, an application to the Court had been necessary.

26. We have dealt with the position of law as to the jurisdiction to be exercised by the Court when no provision is made in the trust deed.

27. Learned counsel for the petitioner herein submitted that in the present case the sale of mere few items of jewellery will not meet the situation and that if one after one the jewellery is sold, it will become extinct. That apart, the lower Court has also directed to sell the required number of items of each of Schedules I and II attached to the trust deed Therefore, the other items of jewellery could be sold for the reason that it will not be possible to say the exact amount of wealth-tax in view of the fact that the rate of wealth-tax cannot be uniform. It is also submitted that as the entire jewellery is kept in vaults in the Bank, the respondents could not wear the jewellery even at the time of weddings and thereafter for various reasons such as security etc. The jewellery, according to the learned counsel, is lying idle. The only proper course therefore, is to see that the jewellery is not kept idle. The entire jewellery may be sold and the proceeds realised thereby may be deposited in such securities which would fetch recurring income to meet the tax liabilities. If the jewellery is sold one after one it will become extinct.

28. On the other hand, the learned counsel for the respondents herein submits that the question is whether it is just and proper to sell the entire jewellery during the life of the beneficiaries, respondents 1 and 2, particularly when there is prohibition under Sub-clauses (g) and (h) of Clause 3 from selling away or otherwise disposing of the jewellery. He also submits that the grand daughters of H.E.H. the Nizam were allowed to wear the jewellery only on special occasions and therefore the entire jewellery could not be sold. But they were compelled to file the petition for permission for disposing of some items to meet the wealth-tax demands.

29. When P. W. 1 who is one of the trustees, was examined he stated in his cross-examination that "if the Court permits the sale of the items of jewellery, to meet the wealth-tax the trustees will have no objection to it". He also agreed that it is desirable to sell the entire jewellery and not piecemeal, Even according to him the jewellery is a dead capital. As the trust deed prohibits the sale of jewellery, the petitioners had to invoke the jurisdiction of the Court for permission to sell at least some of the items of jewellery. We have already noted that in the counter filed by the 2nd respondent it was stated that O.P. No. 48 of 1974 was filed for permission to sell the entire jewellery, but later it was withdrawn. The said petition seems to have been filed for the reason that the jewellery is a dead capital and it is not being used by respondents 1 and 2 for various reasons. Even at the time of their marriages which are very important occasions, they did not wear the jewellery. In our view, it is of no use to keep the jewellery in the vaults of the Mercantile Bank idle. Even the third respondent Fatima Fouzia filed a memo stating that she has no objection to the sale of entire jewellery. The memo reads as under:--

"This respondent No. 3 has no objection to the sale of entire jewellery of Schedule I of the Wedding Gift Jewellery Trust of H.E.H, The Nizam's two granddaughters and pertaining to respondent No. 3. The sale should be negotiated sale as per Section 37 of the Indian Trusts Act and the deed of Trust with the concurrence and approval of this beneficiary, This respondent co-opts with the stand taken by the petitioner in the above Revision Petition."

This memo was signed by respondent No. 3 Fatima Fouzia and her counsel Mr. V.B. Sahagal on 20-3-1981. In view of the statement made by one of the trustees viz. Sri Ataur Rahman and in the face of the memo filed by Fatima Fouzia and having regard to the submission made by the learned counsel for the petitioner herein, in our view, to carry out the real object of the trust the proper course to be adopted in the interests of the beneficiaries is to direct the sale of the entire jewellery noted in 1st and 2nd schedules. The petition was filed u/s 34 of the Trusts Act. which reads as under:

"Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of Original Jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust property other than questions of detail, difficulty or importance, not proper in the opinion

of the Court for summary disposal."

30. Section 34 contemplates a petition to be filed before a principal Civil Court of Original Jurisdiction for its opinion Or direction on any present questions respecting the management or administration of the trust property. The present question, as noted earlier, is the payment of tax for the assessment years 1957-58 to 1970-71.

31. Learned counsel for the petitioner herein stated across the Bar that even for the subsequent years wealth-tax is assessed and they have to meet the demands, It is also stated across the Bar that the rate of wealth-tax is raised. Therefore, the present question is not only as to the demand of wealth-tax for the years referred to in the petition but also as to the subsequent years. This is a recurring question. It is not confined to one or two years. Therefore, we have to consider all these facts and decide as to what arrangement could be made for payment of wealth-tax year after year. As we have already observed what would be the rate of wealth-tax each year cannot be ascertained now. Both the beneficiaries agree that the entire jewellery should be sold. Besides the beneficiaries, one of the trustees also agreed for the same in his evidence. In view of all these facts and circumstances of the case, we are of the opinion, as already observed, that the entire jewellery needs to be sold in the interests of the beneficiaries.

32. Consequently, we allow the revision petition and modify the order of the learned Chief Judge, City Civil Court and direct that the entire jewellery in Schedules I and II of the Trust Deed must be sold.

33. Learned counsel for the petitioner-respondent No. 2 submitted that the interest accrued on the amounts deposited in securities has to be paid to respondents 1 and 2 as they are being deprived of the opportunity of wearing the jewellery. But it can be noted that they did not wear the jewellery even on a single occasion previously and there is no likelihood of wearing the jewellery in future. At any rate, such questions cannot be decided in this petition. It is open for respondents 1 and 2 to raise such points as they desire with regard to the payment of interest only after the sale of the jewellery by separate applications. Whether, in the interests of the beneficiaries, interest is to be paid to respondents 1 and 2 or to be allowed to be accumulated to the corpus, is a question to be decided as and when such applications are filed.

34. The trustees will be entitled to take proceedings for the sale of the jewellery in Schedules I and II of the Trust Deed as per the provision of Sections 37 and 38 of the Trusts Act in consultation with respondents 1 and 2 viz. Sahebzadi Fatima Fouzia and Sahebzadi Amina Marzia. It is, however, made clear that the sale of jewellery would be subject to the confirmation by the Chief Judge, City Civil Court.

35. There will be no order as to costs.