

**(1987) 04 AHC CK 0040**  
**In the Allahabad High Court**

**Case No :** Appln. No. of 1986 in Testamentary Suit No. 5 of 1984

Smt. Chandra Kali

APPELLANT

Vs

Managing Committee Aryasamaj, Meerut and Others

RESPONDENT

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**Date of Decision :** 13-04-1987

**Acts Referred:**

Administrator Generals Act, 1963 — Section 25  
Official Trustees Act, 1913 — Section 25, 29

**Citation :** AIR 1987 All 341

**Hon'ble Judges :** A. Banerji, J

**Bench :** Single Bench

**Advocate :** Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A. Banerji, J.—This is an application u/s 25 of the Official Trustees Act, 1913 read with Section 25 of the Administrators General Act, 1963. This is a proceeding under the supervisory jurisdiction of the Court under S. 25 of the Official Trustees Act. This case has been wrongly marked as Testamentary Suit. The petitioner states that she is a widow and has nobody in the family to support her. She claims to be a beneficiary of Shri Jyoti Swarup Trust, Meerut and is as such interested in the proper administration of the said Trust. It may be noted that the applicant is a widow of Sri Jamuna Prasad Mishra, resident of village Kakraha, P.O. Atrampur, district Allahabad.

2. It is stated that one Shri Jyoti Swarup son of Munshi Jawahar Singh, resident of Mohalla Chipiwara, Meerut executed a registered Will dated 26th April, 1936 creating a trust of his entire immovable properties for the benefit of widowed women on the terms and conditions mentioned in the Will itself, Shri Jyoti Swarup at the time of his death left behind a house bearing Municipal No. 38, Chipiwara, Meerut and cash amounting to Rs. 13,000/- besides other movable property. In the Will it was indicated that the Aryasamaj after taking into possession the house and the goods shall dispose of the movable goods and

deposit the cash in the Bank and receipts from movable property in fixed securities i.e. Fixed Deposit Receipts. The Arya Samaj, Meerut was directed to give effect to the aforesaid wishes under the guidance and control of the District Magistrate, Meerut. The interest from the deposits as well as income from the rent of the house was to be given to Pardanashin widowed ladies. It was also provided in the will that a stone plaque shall be put on the house No- 55 signifying it to be a waqf created by Jyoti Swarup son of Munshi Jawahar Singh.

3. After the death of Jyoti Swarup, the Arya Samaj Committee, Meerut discharged their function in accordance with the terms and conditions of the Will. They took possession of the movable property in the house and sold it away and deposited the cash. Certain interested persons applied for grant of succession certificate which was rejected and ultimately a Letter of Administration was granted in favour of the Administrator General, U. P. in Testamentary Case No. 13 of 1943 by an order of this Court dated 23-11-1945. The Administrator General administered the property and ultimately the Administrator General of U. P. who is the official trustee under the Official Trustees Act became the Trustee of the Jyoti Swarup Trust.

4. The petitioner's case is that in spite of the fact that the Official Trustee took over possession of the Trust property but somehow the Trust property remained under the management and control of Arya Samaj Committee, Meerut, who worked under the control and guidance of District Magistrate, Meerut. The Managing Committee Arya Samaj, Meerut each year gave financial help to needy Pardanashin widowed women and needy students.

5. The applicant then stated that the Managing Committee Arya Samaj, Meerut, the District Magistrate, Meerut as well as the Official Trustee completely mismanaged the Trust inasmuch as they varied the scheme of the Trust as created by the testator without any valid order of the competent Court and gave financial help at a rate higher than Rs. 5/-per month. Secondly, the Managing Committee in the year 1979 passed a resolution No. 5 dated 31-8-1979 that the house property be sold away. A copy of the resolution was sent to the Administrator General/Official Trustee. The Official Trustee did not, however, agree and asked the Managing Committee Arya Samaj to carry out the repairs in the house. The Managing Committee Arya Samaj, Meerut persisted that the house be sold and persuaded the District Magistrate in his capacity as President of the Trust Committee to seek permission from the Official Trustee and wrote a letter on 20-3-1984 to the latter for permission to sell away the house. Thereupon the Head Assistant in the office of the Administrator General/Official Trustee put up a note before the latter. The Head Assistant then addressed a letter to Sri Devendra Swarup Sharma, Secretary of Arya Samaj of the Jyoti Swarup Trust for initiating proceedings for selling away the property. He asked him to get the advertisement for the sale of the house published in some prominent daily newspaper and asking him to send the sealed offers for purchase directly to the office of the Administrator General. The applicant further alleges

that the members of the Managing Committee Arya Samaj, Meerut, however, addressed a letter to the Administrator General that it would be in the interest of Trust that the house was sold by auction at Meerut itself. The Administrator General gave his consent by the letter dated 26th July, 1985. It is stated that the entire processes of auction had been started on the basis of the report submitted by the Head Assistant in the office of the Administrator General without there being any permission from the Administrator General/Official Trustee. The Official Trustee had passed an order on 31-8-1985. "I agree. It is in the interest of Trust that property be sold."

5A. An advertisement was published in the newspaper for sale of the house on 16-10-1985. The house was not sold on that date but it was auctioned on 18-10-1985 in which the bid of one Ashok Kumar Mittal son of Shri Gian Chand Mittal was the highest He offered a sum of Rs. 3,25,000/-. Mr. Ashok Kumar Mittal deposited a sum of Rupees 1,62,500/-. The applicant alleged that instead of sending the money to the Official Trustee the amount was kept by the Managing Committee Arya Samaj, Meerut. The applicant further stated that before granting permission to sell the house the Official Trustee had neither obtained any permission from the competent court nor had proposed any amended scheme of the Trust. The Secretary of the Trust in Meerut Shri Devendra Swarup Sharma had written and prayed for its acceptance. The Head Assistant in the office of the Official Trustee had asked the Secretary of the Trust that the money be remitted to the Official Trustee at Allahabad. The Administrator General/ Official Trustee did not pass any order accepting the offer of Ashok Kumar Mittal and confirming his bid but the Head Assistant had accepted the offer and directed to remit the amount deposited.

6. The applicant has alleged that the Official Trustee could not change the scheme of the Trust by permitting the sale of the house without there being an order by a competent Court. He has alleged that there has been a gross mismanagement of the affairs of the Trust and prayed that the Official Trustee be restrained from confirming and accepting the offer of the purchase of the auction sale of the house in favour of Ashok Kumar Mittal. A prayer has been that necessary directions be given on record of the Jyoti Swarup Trust

7. The above application is supported by an affidavit of Smt. Chandra Kali the applicant.

8. In the counter affidavit sworn by Ram Autar, senior clerk in the office of the Official Trustee it is stated that a Letters of Administration with a copy of the Will annexed had been granted by the High Court in 1945. Later, the Trust was transferred to the Official Trustee, U. P., who was the sole Trustee and manages it through the local management committee under the presidentship of the District Magistrate, Meerut as provided in paras 5 and 6 of the Will. In the counter affidavit the mismanagement of the Trust property is entirely refuted. It is stated that the District Magistrate is a responsible officer of the State Government and being at the spot is the best person to decide and take steps for the benefit of

the Trust. The house being very old one and fetching a meagre income it was conducive to sell the same. The Official Trustee accepted the recommendation of the Collector. It was also pointed out that in the Trust deed there is no prohibition to sell the house. A proper notice had been given for the auction held on 18-10-1985 and the bid of the highest bidder was accepted. The stand of the Official Trustee was that he was not required to take permission from the Court but he can take guidance from the Court whenever necessary. It was further stated that the Official Trustee had not accepted the auction on account of the pendency of the present proceedings. Lastly, it was stated that the applicant has absolutely no right to maintain the application which is likely to be rejected on this ground alone.

9. A rejoinder affidavit has been filed where the allegations made in the counter affidavit have been denied. It is stated that the petitioner who is beneficiary under the Trust, is entitled to maintain the application.

10. Before I advert to the contentions raised before me it would be proper to refer to the specific provisions in the Administrators General Act and the Official Trustees Act. Section 25 of the Administrators General Act, 1963 reads as follows :

"Section 25. Power of High Court to give directions regarding administration of estate. -- The High Court may, on application made to it by the Administrator General or any person interested in the assets or in the due administration thereof, give to the Administrator General of the State any general or special directions as to any estate in his charge or in regard to the administration of any such estate."

11. This provision empowers the High Court to give any general or special directions to the Administrator General of the State in regard to any estate in the latter's charge or in regard to the administration of any such estate. It has to be given by the High Court on application made to it by the Administrator General or any person interested in the assets or in the due administration thereof. It is apparent from the above that the directions whether general or special may be in respect of any estate in the charge of the Administrator General of the State or in regard to the administration of any such estate. In other words, it would be in regard to questions pertaining to the administration of the estate. It does not envisage that the High Court should advise on disputed questions of law and facts.

12. We may now look at Section 25 of the Official Trustees Act, 1913. Section 25 reads as follows :

"Section 25. Power of High Court to make orders in respect of property vested in Official Trustee. -- The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the income or produce thereof."

13. The above words empower the High Court to make such orders as it thinks fit in respect of the trust property vested in the Official Trustee. It may even pass orders in respect of the income or the produce of such property. All that is required is that the property should be vested in the Official Trustee and the High Court has power to pass orders in respect thereof. It is, therefore, apparent from the above that the High Court has very wide powers u/s 25 of the Official Trustees Act.

14. I will now advert to the question of the maintainability of the application by the applicant. On her own showing the applicant is a Hindu widow residing in village Kakraha in district Allahabad. It will be relevant to notice that she is the widow of Jamuna Prasad Mishra who was a Brahman. Normally caste does not enter into picture but in this case it will be relevant for in para. 4 of the Will (Annexure 1 to the application). It is provided that the entire capital shall be maintained intact and from the income from interest Pardanshin widows who have no one to look after them and such others who are helpless people who cannot earn their living and who get no help from their relatives may be given a monthly amount of Rs. 5/- and although this would be given without distinction between caste, creed and community but the preference would be given to the widows and helpless people of Bhatnagar community. It is, therefore, evident that although a sum of Rs. 5/- per month could be given to any one who fulfill the aforesaid qualifications under para 4 of the Will yet the preference would be given to the widows and helpless people of the Bhatnagar community. It is, therefore clear that there is no absolute right in favour of persons other than persons belonging to the Bhatnagar community. There is another factor. It has not been stated by the applicant anywhere in the application that she had applied for the payment of any amount under para 4 and whether she had received any amount. If she had been receiving Rs. 5/- per month it could be said that she was a beneficiary under the above scheme. If she has not applied at all, then she does not become a beneficiary merely because she thinks that she is entitled to the help under the scheme. If her application had been rejected, even then she does not become a beneficiary. Merely because she is a widow, she does not become a beneficiary. The Trust which has been created under the Will of the deceased Jyoti Swarup Bhatnagar envisages granting a support at the rate of Rs. 5/- per month on certain class of persons who fulfill the above qualifications. Then there are millions of people in this country who may think that they are entitled to get such an amount but that will not make them beneficiaries until they have applied for and have received the said support. One who is getting such an assistance, as is envisaged under the will, may have an apprehension that the change in the administration of the Trust or by mismanagement in the Trust her monthly support may be discontinued or threatened may have a cause for coming to this Court but not otherwise. If a person whose only qualification is that of being a widow has no right to maintain such an application. She has to be a pardanashin widow who has no support from her relatives and who is incapable of earning her livelihood. Even where

these conditions are fulfilled she is to make an application for assistance from the Trust. If the Trust refuses even then she cannot be aggrieved. The Trust may refuse assistance on more grounds than one. It is only when the Trust has recognised her position and given her assistance it is only then that she is accepted as a beneficiary. Such a beneficiary can raise a plea that a change in the management or mode of management may result in discontinuance of the assistance. Such a person can move this Court. No such case is made out by the applicant in the present case. On this ground alone this application is liable to fail.

15. A further question arises : What is the object of the applicant who is a resident of a village in Allahabad for keeping a dilapidated house which she has perhaps never seen in life in Meerut? She is no relation of the deceased founder of the Trust nor a beneficiary. It is a of some curiosity as to how she comes to make this application. It may be that some one who is interested in the immovable property is behind her and has got this application made. I, therefore, see absolutely no merits for the maintainability of the application in the case put forward by the applicant.

16. The Supreme Court has laid down in the case of Jaisri Sahu Vs. Rajdewan Dubey and Others, that the Official Trustee can sell such a property if there is legal necessity. If the Official Trustee is of the opinion that the property should be sold and it would be a prudent act to do so, he would certainly be entitled to sell the property. Every man when he executes a Trust deed, believes that the immovable property that he leaves behind remains there in perpetuity. Alas, that is not true. Chances of mismanagement of immovable properties are always there. Sometimes the house may be damaged beyond repair or even fall down due to lack of proper management and looking after or may be encroached upon illegally or there is always a possibility of the income being wasted, defalcated or dissipated but no such occasion arises if the property is sold and the sale proceeds are kept secure in a long term deposit yielding annual interest. The application by the applicant must, therefore, fail.

17. There is, however, one aspect of the matter which has to be clarified in this order. Although the Official Trustee is the sole trustee of the property vested in the Official Trustee, yet he has to seek order from the Court. Section 25 of the Official Trustees Act makes it clear that the High Court may make such orders as it thinks fit respecting, any Trust property vested in the Official Trustee or the income or produce thereof. Even in the matter of the income or the produce of vested property the High Court has power to make order or give directions. The sale of a Trust property is certainly the sale of the corpus and it is all the more necessary that the High Court's permission ought to be obtained by the Official Trustee before he disposes of any immovable property.

18. Section 29 also says that nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to any other person if the Court so directs. Since the transfer by auction sale in the present case is in favour of a person other than original transferee or any other lawfully appointed

trustee it can only take place if the Court so directs. It is, therefore, evident that to effect a valid transfer of a trust property which has vested in the Official Trustee the latter has to seek direction from the Court for its transfer. If .the Official Trustee feels that it is in the interest of the Trust to dispose of any immovable property of the Trust he can always seek direction from the Court. My attention has not been drawn to any paper by which Court's direction was sought for the transfer of the aforesaid immovable property. I am of the opinion that unless there is a direction by the Court or an order by the Court within the meaning of Sections 29 and 25 of the Official Trustees Act, 1913, no Trust property can be transferred by the Official Trustee.

19. With these observations this application of the applicant is dismissed. However, in the circumstances of the case there will be no order as to costs.