PRIVY COUNCIL

Official Assignee of Madras

Vs.

T. Krishnaji Bhat
P.C.A.No.67 of 1931

Lord Blanesburgh, J. Sir George Lowndes and Sir Dinshah Mulla JJ.)

14.03.1933

JUDGMENT

SIR GEORGE LOWNDES J.

1. On 5th October 1919 one T. Sivasankar Bhat, the father of the respondent, instructed his uncle Sadasiva Tawker by letter to invest in his firm, T. R. Tawker and Sons, a sum of Rs. 10,000 lying with the firm, such investment to be made in the name of the respondent, who was then a minor, the money to be handed over to him on attaining 21, and the interest in the meanwhile to be paid to the father. On 22nd October following the firm gave him a receipt in the following terms:

> "Received from Mr. T. Sivasankar Bhat, the sum of rupees ten thousand only through Mr. T. Sadasiva Tawker, as fixed deposit in the name of his minor son T. Krishnaji Bhat as per instructions contained in Mr. Sivasankar Bhat's letter, dated 5th instant, carrying interest at 9 per cent per annum.
> "Rs. 10,000.
> T.R. Tawker and Sons.

2. The interest was duly paid to the end of 1923, when apparently the firm, which carried on business as jewellers in Madras, got into difficulties.

3. On 22nd November 1923 a suit was instituted in the name of the minor against the members of the firm, alleging that they were trustees of the fund and claiming their removal from the trust and the appointment of new trustees in their place, with a direction to hand over to the latter the Rs. 10,000. The defendants put in a written statement by which in effect the trust was admitted, but the suit was charged as premature inasmuch as the plaintiff was still a minor and no breach of trust had been committed. In January 1925, while the suit, which was filed on the original side of the

Madras High Court, was still pending, the defendants were adjudicated insolvents, and the present appellant as the Official Assignee in whom their estate and effects were vested was brought on the record. He filed a written statement putting the plaintiff to the proof of the factum and validity of the trust and denying that the plaintiff was entitled to any preferential claim over other creditors. The suit came to trial in August 1926. The insolvents did not appear, and the principal question debated was as to the plaintiff's right to preferential payment out of a sum of about Rs. 22,000 which had been realized by the appellant by sale of a portion of the stock in trade. The trial Judge affirmed the plaintiff's claim and made a decree declaring his right to be paid out of the Rs. 22,000 in the hands of the appellant with Rs. 1,949 for interest, and ordering the appellant to bring these sums into Court to be held to the credit of the plaintiff. The Official Assignee appealed and the decree was confirmed. A further appeal is now brought to His Majesty in Council on a certificate that a substantial question of law is involved. The respondent is now of full age and is personally represented before the Board.

4. It was suggested before their Lordships that the transaction of October 1919 did not constitute a trust at all but a mere deposit in respect of which the respondent would only be entitled to rank with the other creditors. Their Lordships are however unable to accept this contention. No issue on this question was raised at the trial and it is clear that the trust was admitted by the defendants both before the original Court and in the Court of appeal, and apparently also in the printed case of the appellant. In their Lordships' opinion therefore the appeal must be dealt with on this basis and the only possible question is whether the trust fund can be found in the assets of the trustee firm which have come to the appellant. The trial Judge held on the evidence that the trust fund could be traced into the stock from the sale of which the Rs. 22,000 was realised. The learned Judges of the appeal Court were not satisfied that this was established, but they thought that the investment of the trust money in the general assets of the business was sufficient to give the respondent a charge upon the sale proceeds in the hands of the appellant, and in their Lordships' opinion the conclusion to which they came was right.

5. Under Section 52(1) (a), Presidency Towns Insolvency Act, 1909, property held by an insolvent on trust for any other person is excluded from the assets divisible among the creditors. The Rs. 10,000 was received by the insolvent firm for investment in their business and there is no suggestion that it was not so invested in fact. Nor is it suggested that there were any assets of the business which were not taken over by the

appellant. If it was there when the Official Assignee came in, what he took was a mixed fund only part of which was divisible among the creditors, the Rs. 10,000, being in his hands as much the property of the respondent as it was before the insolvency. There was no allegation that it had been lost or ceased to exist before the insolvency. If this had been proved the case might possibly have been different : see *Roscoe v. Winder (*Their Lordships offer no opinion upon this question as the necessary facts have not been pleaded or put in evidence and the burden of proving them would clearly be upon the appellant. Assuming then that the whole assets of the business, including the Rs. 10,000, as invested in it, passed into the hands of the appellant on the insolvency, their Lordships think that they so passed subject to any charge in favour of the respondent to which they may have been subject before the insolvency.

6. Much argument was expended in the lower appellate Court and before the Board on the doctrine of following trust funds, and it seemed to be suggested that though, if the fund in the present case had been improperly employed in the business of the trustees the beneficiary would be entitled to a charge upon the whole of the assets (see Section 66, Indian Trusts Act, 1892), no such right could be accorded to him if the employment of the funds in this way was in pursuance of the terms of the trust. Their Lordships think there is no substance in this contention. In the words of Sir George Jessel (*In re Hallet's Estate, Knatchbull v. Hallett*

> "There is no distinction therefore between a rightful and a wrongful disposition of the property, so far as regards the right of the beneficial owner to follow the proceeds."

7. In their Lordships' view passages quoted by the learned Judges of the appellate Court from the well-known judgment of Turner, L. J., in ***Pennell v.*** *Deffell, 4 De G M and G 372*, are directly in point, and show the length to which the modern doctrines of equity have gone in this direction. Their Lordships would in particular refer to the following passage which occurs at p. 388 of the report :

> "It is, I apprehend, an undoubted principle of this Court, that as between cestui que trust and trustee, and all parties claiming under the trustee, otherwise than by purchase for valuable consideration without notice, all property belonging to a trust, however much it may be changed or altered in its nature or character, and all the fruit of such property, whether in its original or in its altered state, continue to be subject to or affected by the trust."

8. So too *Lord Ellenborough in Taylor v. Plumer, 3 M and S 562 at p. 575*, speaking of

property entrusted to a factor, says :

> "It makes no difference in reason or law into what other form, different from the original, the change may have been made.....for the product of or substitute for the original thing still follows the nature of the thing itself, as long as it can be ascertained to be such."

9. In the present case once it was admitted that the Rs. 10,000 was a trust in the hands of T. R. Tawker and Sons to be invested in their business and was so invested, it must be taken to have remained a part of the assets of that business and to have been there at the date of their insolvency, the beneficiaries being entitled at all times to a charge upon such assets in the hands of the firm. Upon the insolvency the assets passed to the appellant, but passed subject to the charge. For those reasons their Lordships are of opinion that the judgment of the appellate Court in Madras was right and that this appeal should be dismissed and they will humbly advise His Majesty to this effect. The appellant must pay the costs of the respondent before this Board.

Appeal dismissed.

Cases Referred.

1915) 1 Ch. 62=84 LJ Ch 286=112 LT 121=59 SJ 105=(1915) HBR 61.

(1880) 13 Ch D 696=49 LJ Ch 415=42 LT 421, at p. 709) :