

Satyanarayana Modi

Vs

Controller of Estate Duty Delhi and Rajasthan, New Delhi

Civil Appeal No. 438 of 1967

(CJI J. C. Shah, V. Ramaswami-I, A. N. Grover JJ)

31.07.1969

JUDGMENT

SHAH, ACTING C.J. -

1. Purnabai, widow of Sagarmal Modi, held on April 1, 1953 three deposit receipts of the aggregate face value of Rs. 6,26,724/14/- with the State Bank of Bikaner. By her letter, dated July 22, 1952, Purnabai informed the Bank that she intended to make a gift of the amounts of two out of the three receipts to Suryakant, son of her adopted son Satyanarayana, and requested that the receipts be renewed for three months in the joint names of :

"Purnabai Sagarmal Modi and/or Surya Kant S. Modi - payable to either of the survivor,"

and that the renewed fixed deposit receipts be sent to Satyanarayana at Bombay. Pursuant to this letter two fresh receipts were issued on August 3, 1953, for Rs. 5,00,000 and Rs. 45,793/4/-. It appears that a receipt for Rs. 80,931/10/- was previously obtained in the joint names of Purnabai and Suryakant on July, 4, 1953.

2. On August 16, 1953, Purnabai executed a deed of gift in favour of Suryakant in respect of the three receipts containing the following recitals :

"#Out of natural love and affection I have towards the said Suryakantson of Satyanarayana I hand over to the said Satyanarayana as thefather and natural guardian of the said Suryakant Fixed DepositReceipts total for Rs. 6,25,724/14/-. X X XF.D.R. No. 222/8293, dated 3-8-53 for Rs. 45,793/4/-, F.D.R.No. 221/8292, dated 3-8-53 for Rs 5,00,000/- of the Bank ofBikaner Ltd., Jaipur and F.D.R. No. 11446, dated 4-7-53 forRs. 80,931/10/- of Bank of Bikaner Ltd., Jhunjhunu in the name ofPurnabai Sagarmal and Suryakant Satyanarayana Mody payable toeither or survivor as and by way of gift to the said Suryakant on the15th day of August, 1953, and that the said Satyanarayana for and onbehalf of an as the natural guardian of the said Suryakant acceptedthe said gift of Rs. 6,26,724/14/- X X X X giftedby me as aforesaid."##

The gift deed contained a confirmation by Satyanarayana that he had accepted the gift for and on behalf of and as natural guardian of Suryakant, "to the intent and effect that the said Suryakant shall be the absolute owner of the sum gifted".

3. On August 17, 1953, Purnabai addressed a letter to the Manager of the Bank enclosing a copy of the declaration of gift and intimated that her grand son Suryakant was the sole owner of the amount of the two fixed deposit receipts and till Suryakant S. Mody attained the age of majority the receipts should remain in the joint names as they then stood.

4. From time to time Purnabai presented the receipts for renewal when they matured and obtained fresh receipts in the joint names of herself and Suryakant. On August 25, 1955, the receipt for Rs. 80,931/10/- was encashed and out of the amount of Rs. 86,732/- realized. Rs. 5,000/- were invested in the name of Suryakant in National Savings Certificates. The balance was also deposited alone with a firm in Bombay also in the name of Suryakant alone. The other two receipts were renewed in the joint names of Purnabai and Suryakant.

5. After the death of Purnabai on February 15, 1956, the two receipts were encashed by Suryakant. The Assistant Controller of Estate Duty in proceedings for assessment of estate duty held inter alia that possession and enjoyment of the gifted property was not assumed by the donee to the entire exclusion of the donor, and on that account the amount of the two receipts and interest thereon formed part of the estate of Purnabai and was liable to estate duty. Regarding the third receipt for Rs. 80,931/10/- the Assistant Controller observed that even though the earlier receipt was discharged on August 25, 1955, i.e. within two years of the death of Purnabai and the amount was invested in the name of Suryakant, by virtue of the provisions of the Estate Duty Act, the amount held in the name of Suryakant alone, was for assessment of estate duty liable to be included in the estate of Purnabai.

6. In appeal the Central Board of Revenue confirmed the order. The Board held that at all material times during the currency of the fixed deposit Purnabai had the right to receive the money from the Bank by giving discharge for the same and that whenever the Fixed Deposit Receipts matured during the lifetime of Purnabai, the receipts were, in fact, discharged by her alone and in the circumstances it could not be said that the property was held by the donee to the entire exclusion of the donor.

7. The Board of Revenue referred the following question to the High Court of Rajasthan for opinion :

"Whether on the facts and in the circumstances of the case the sum of Rs. 6,85,193/- was correctly included in the estate of the deceased as property deemed to pass on her death under Section 10 of the Estate Duty Act, 1953 ?"

The High Court of Rajasthan answered the question in the affirmative. With certificate granted by the High Court this appeal has been preferred.

8. The deposit receipts were renewed from time to time after August 16, 1953, in the joint names of Purnabai and Suryakant. Till August 25, 1955, under their terms the receipts could be encashed by either of the survivor. Even after Purnabai made a gift of the amount represented by the three receipts, she continued to obtain the receipts in the joint names, presumably with the object of not parting with control over those receipts.

9. Counsel for the appellant however contended that the fixed deposit receipts were held by Purnabai in her name as benamidar for Suryakant. Counsel placed strong reliance upon the letters, dated July 22, 1953, August 17, 1953, and the terms of the deed of gift, dated August 16, 1953. By

the letter, dated July 22, 1953, the Manager of the Bank was informed that in respect of two out of the three receipts Purnabai intended to make a gift and the Manager was requested that the receipts be made in the joint names of Purnabai and Suryakant. It was expressly recited in the letter :

"I intend to gift the entire amount of the receipts to my grandson Mr. Suryakant S. Mody hence you are requested to prepare the receipts in joint names as under :

"Purnabai Sagarmall Mody and/or Suryakant S. Mody payable to either or survivor."

The deed of gift also recites that Purnabai had made a gift of the amount of Rs. 6,25,724/14/- represented by the previous receipts in favour of Suryakant, and that the gift was accepted by Satyanarayana on behalf of Suryakant. The letter, dated August 17, 1953, recites that a copy of the deed of declaration of gift was sent to the Bank for record and information and proceeds to state :

"Further I would like to state that now Suryakant S. Mody is the sole owner of the above Fixed Deposit Receipts in question till Suryakant S. Mody attains majority the receipts should remain in joint names as it stands now."

It is clear that Purnabai desired to make a gift of the amount represented by the previous deposit receipts and did in fact execute a deed of gift. The Bank had notice of the gift deed. Counsel for the appellant contends that Purnabai did everything possible to divest herself of her interest in the money held by her, in deposit with the Bank, and retained no interest therein and that in obtaining renewal of the receipts in the joint names of herself and of Suryakant, she was merely a benamidar and in any event was acting on behalf of Suryakant. Counsel further contends that the Bank having notice of the gift could not have parted with the money except only for the benefit of the minor and by obtaining renewal of the receipt in favour of the minor Suryakant and Purnabai, the latter retained no possession or enjoyment of the money represented by the receipts. Counsel invited our attention to a decision of the Madras High Court in *Imperial Bank of India, Madras v. S. Krishnamurthi and Another* (AIR (1933) Mad 628) in which Beasley, C.J., speaking for the Court observed that when a Bank having notice that the administrators of the estate of the depositor intended to commit a breach of trust by seeking to invest monies contrary to express directions of the will paid out the money, the Bank was liable to make good to the beneficiary the money deposited by the testator. In that case one Naidu had deposited a sum of money with the Imperial Bank of India in fixed deposit. Naidu died having bequeathed by his will the amount deposited to his son Krishnamurthi who was then a minor. Naidu had appointed by his will two persons to be guardians of Krishnamurthi with authority to receive the amount in fixed deposit with the Imperial Bank and to apply the same for the maintenance and education of Krishnamurthi. The guardians obtained from the High Court of Madras grant of letters of administration with copy of the will annexed. After the death of one of the guardians the surviving guardian withdrew the money from the Bank on the pretext that he wanted to invest it on more advantageous terms in house property or some other form of investment and misappropriated it. On attaining the age of majority Krishnamurthi sued the Bank. It was held by the High Court that the Bank knowing of the trust created by the will had parted with and delivered the amount deposited to the administrator who intended to commit a breach of the trust. The learned Chief Justice quoted a passage from Hart's *Law of Banking* (End. 3) at p. 159 that "A banker who receives into his possession moneys of which his customer to his knowledge became the owner in a fiduciary character, contracts the duty and to part with them at the mandate of his customer for purposes which are inconsistent with the customer's fiduciary character and duty," and upheld the claim of Krishnamurthi.

10. It is unnecessary to consider whether in the present case the investment was made by renewal of fixed deposit receipts after August 16, 1953, for a purpose which the Bank knew was inconsistent with Purnabai's fiduciary character and duty. We are not concerned in this case to decide whether the Bank could have refused to pay the amount of the renewed deposit receipts if demanded by Purnabai. Whether the amount of deposit receipts was liable to estate duty must be determined on the true effect of Section 10 of the Estate Duty Act (34 of 1953). Section 10 of that Act provides :

"Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thence-forward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise : Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death. Provided....."

The phraseology of the section is somewhat involved. The purport of the section is however clear. The section clearly means that if in respect of any property which is gifted, bona fide possession and enjoyment is not immediately assumed by the donee and thenceforward retained by him to the entire exclusion of the donor or of any benefit to him therein the property gifted shall not be excluded from the estate subject to estate duty.

11. The question which must be determined therefore is whether in the present case the donee did under the deed of gift immediately assume bona fide possession and enjoyment of the fixed deposit receipts gifted to him, and thenceforward retained the same to the entire exclusion of Purnabai or of any benefit arising to her by contract or otherwise. The conduct of Purnabai clearly indicates that she had no intention to part with control over the property; the deposit receipts were obtained in joint names, and Purnabai had authority to withdraw the amount from the Bank, without consulting the guardian of Suryakant. The deposit receipts were renewed on several occasions even after the execution of the deed of gift in the joint names of Purnabai and Suryakant. Purnabai alone presented the fixed deposit receipts for renewal. She could under the terms of the receipts receive the moneys to the entire exclusion of Suryakant. We are unable to hold, in the circumstances, that bona fide possession and enjoyment of the property gifted was immediately assumed by Suryakant and thenceforward retained by him to the entire exclusion of Purnabai. The right retained by Purnabai to have the receipts made out in her name jointly with Suryakant and the power to recover the amount from the Bank without the concurrence of Suryakant clearly indicate that she was not excluded, but she had retained important benefits in herself in the fixed deposit receipts.

12. It is true that the third receipt was encashed during the lifetime of Purnabai, and the amount was invested in the name of Suryakant alone. But the encashment and reinvestment were within two years of the death of Purnabai and the amounts so reinvested were liable to be included in the estate of Purnabai.

13. The argument that fixed deposit receipts had remained exclusively in the possession of Satyanarayana as guardian of Suryakant and they were obtained by him from Purnabai for the purpose of renewal is not supported by any evidence. There is also no evidence that in obtaining the receipts in the joint names Purnabai acted as a guardian of Suryakant nor that she was a benamidar of Suryakant. We are of the view that the High Court was right in answering the question against the

appellant.

14. The appeal fails and is dismissed with costs.

</html