SUPREME COURT OF INDIA

Controller of Estate Duty

Vs.

Dipti Narayan mani

C.A.Nos.946 and 1251 of 1975

(R. S. Pathak, C.J.I. and M. N. Venkatachaliah, J.)

09.05.1988

JUDGEMENT

VENKATACHALIAH, J.:-

1. These appeals, by certificate, under S. 65 of the Estate Duty Act of 1953 ('Act' for short) - one by the accountable person and the other by the Deputy Controller of the Estate Duty - arise out of and are directed against the judgment dated, 11-10-74 of the High Court of Calcutta, answering, in a reference under S. 64(1) of the 'Act', the question of law referred for its opinion,

The matter pertained to the determination of the principal value of the estate passing on the death, which occurred on 24-3-1960, of a certain Satya Charan Srimani. Dipti Narayan Srimani, appellant in C.A. 946/1975 is the son of the deceased and is the accountable person.

2. The said Satya Charan Srimani during his lifetime had executed three trust deeds, dated, 8-12-1947, 21-9-1953 and 4-10-1959 respectively. In the proceedings, the nature and effect of the dispositions made under the deeds of the trust, dated 21-9-1953 and 4-10-1959 fell for consideration.

Under the deed, dated 21-9-1953, Satya Charan Srimani as settlor transferred upon trust to himself as trustee 4 items of immovable property, viz., 130 and 133, upper circular Road, and 32/5 and 32/6 Beadon Street, Calcutta. The objects and purposes of the trust, broadly stated, were :

(i) the conduct of the daily worship and sevas of the Deity Sree Sridhar Jiu,

(ii) the carrying out of certain charitable acts, deeds and things mentioned in schedule B of the deed;

(iii) the making of provision for the maintenance of himself and the persons mentioned in the said deed.

The trustee was required, after defraying taxes and other out goings, to accumulate 1/4th of the net-income to be set apart for purposes of effecting certain additions and alterations to the properties; to make over another 1/4th of the net-income to the shebait for the conduct of the daily and periodical pujas, worship and rituals of the said deity, another 1/4th for the charities mentioned in the deed and the remaining 1/4th for the personal benefit of the settlor during his lifetime and to his heirs thereafter. After the developmental works were complete, the proportions of the shares allotted to various objects were suitably modified in that 7/16th share was to be made over to the shebait; 4/16th share to be spent for charitable purposes and 5/16th for the benefit of the settlor and his heirs.

3. Under the deed dated 4-10-1959, the settlor transferred upon trust to himself and his son Dipti Narayan Srimani as Trustees, six other properties, one of them situate in Varanasi, for the conduct of daily-worship and periodical festivals, rituals and ceremonies of the deity, Shri Ishwar Gobinda Jiu; for certain charitable purposes and also for the benefit of himself and his heirs. The settlor provided for his residence, free of rent, in one room on the ground floor in the Varanasi property. A 1/4th of the net-income of the trust-properties, after defraying expenses and taxes, was to be paid to the shebait for the conduct of the worship, rituals and services of the deity Shri Ishwar Gobinda Jiu; another 1/4th to be spent on the charitable purposes mentioned in the deed and the balance of ½ for the development, additions and alterations of two of the trust-properties viz. Nos. 41 and 42 Macleod Street, Calcutta. After completion of the developments and alterations, the said 1/2 share was stipulated to go for the benefit of the settlor during his lifetime and thereafter to his heirs. Under both the dispensations, the settlor constituted himself the shebait.

4. In the proceedings of assessment to estate duty, the question arose whether the trust-deeds attracted - and fell within - S.12(1) of the 'Act'. The accountable person contended that the four trust properties under deed dated 21-9-1953 could not be said to be "Settled Property" within the definition in S. 2(19) and that all events what must be held to pass would only be a 1/4th share, corresponding to the benefit reserved for the settlor and his heirs. Similarly, in respect of the six trust properties covered by the deed, dated 4-10-1959, it was urged that the properties were not "Settled properties" and that at all events only 1/2 of the property so passed.

The Deputy Controller of Estate Duty, the Appellate Comptroller of Estate Duty in the first appeal and the Income-tax Appellate Tribunal, Calcutta, in the second appeal, held that the entire subject-matter of the two deeds must be held, or deemed, to pass on death. The value of the properties constituting the subject-matter of deed dated 21-9-1953 estimated at Rs. 4,69,287/- and those constituting the subject-matter of the deed, dated 5-10-1953 at Rs. 1,27,400/- were accordingly included in the principal-value of the estate passing on death.

5. On 20-2-1971, the Tribunal at the instance of the accountable person stated a case and referred under S. 64 of the 'Act' the following question of law for the opinion of the High Court:

"Whether on the facts and in the circumstances of the case and on a proper interpretation of the trust deeds dated, 21-9-1953 and 4-10-59, the properties comprised therein are dutiable under S. 12(1) of the Act."

6. A Division Bench of the High Court by its judgment, dated, 11-10-1974 held that so far as the four properties comprised in the deed, dated 21-9-1953 were concerned, they were "Settled Property" within the meaning of S. 2(19) and that S. 12(1) was attracted. The High Court observed:

".....So far as the deed dated 21-9-53 is concerned, by the said deed the property has been made debutter and there is, therefore, a dedication in favour of the deity, and as the settlement by the said deed creates or results in a dedication or endowment, the properties settled by the said deed should, therefore, be considered to be settled properties, in view of the specific provision contained in S. 2(19) relating to dedication or endowment ....."

".....The provisions contained in the deed dated 21-9-53 which we have earlier considered, clearly indicate that the settlor has reserved to himself an interest in the properties within the meaning of S. 12(1) of the Act. He has expressly reserved for himself for life one-fourth share of the income of the properties before development and seven-sixteenth share of the income of the properties after development. S. 12(1) is therefore clearly attracted to the properties mentioned in the said deed dated 21-9-1953 ....."

However, the High Court took a different view in relation to the properties covered by the deed, dated 4-10-1959 and held that they were not hit by S. 12(1) The High Court said :

".....As in our opinion the properties covered by the deed dated 4-10-59 are not settled properties, S. 12(1) cannot apply to the said properties ....."

Concluding the High Court held:

".....We must, therefore, hold that S. 12(1) of the Act applies to the trust deed dated 21-9-1953 and the said section has no application to the trust deed dated 4-10-1959. Accordingly we answer the question by saying that the properties comprised in the trust deed dated 21-9-1953 are dutiable under S. 12(1) of the Estate Duty Act and the properties comprised in the trust deed dated 4-10-1959 are not dutiable under S. 12(1) of the Estate Duty Act ....."

The Division Bench, however, left open the question, whether the properties constituting the subject-matter of the trust deed, dated 4-10-59, would attract any other provision of the Act, to be decided by the appropriate authority.

From this opinion expressed by the High Court, both the accountable person and Deputy Controller of the Estate Duty have come up in appeal - the former aggrieved by the inclusion of the whole of the properties, comprised in the trust dated 21-9-53 in the principal value of the estate; and the latter by the exclusion of the properties constituting the subject-matter of the trust dated 4-10-59 from the principal value of the estate.

7. We have heard Dr. S. Ghosh, learned Senior Advocate for the accountable person and Shri C.M. Lodha, learned Sr. Advocate for the Revenue.

Having regard to the career of this litigation and the varying shades of the legal thought attracted by it both in the statutory appeals and before the High Court, one is tempted to recall the reflections of Diplock, L.J. in Re : Kilpatrick's: ((1966) 2 WLR 1346 at p. 1370)).

"As in nearly all appeals about estate duty, I reach my decision without confidence. Were I a betting man I should lay the odds on its being right at 6 to 4 (i.e., 3 to 2) on - or against. If ever a branch of law called for reform in 1966, it is the law relating to estate duty. It ought to be certain, it ought to be sensible - it is neither ....."

In Re Weir's Settlement (1968) 2 All ER 1241 (1244), Cross, J. had said:

"The facts are simple enough, but it will not surprise anyone acquainted with this branch of the law to learn that the argument lasted over four days - during which counsel at all events wasted no words - and that some thirty authorities, many of them in the House of Lords, were referred to. The law of estate duty has indeed now, attained a degree of refinement which would have gladdened the heart of Lord St. Leonards."

The legislative expediencies in the development of the law of Death Duties in England reflect an on going, and no less interesting, interaction between the resourceful ingenuity of the conveyancing lawyer on the one hand and the legislative vigilance to plug the susceptibilities of the law that sustain tax planning, on the other. The handy tool of the conveyancing lawyer was the notion in the law of Real property that ownership was detached from 'land' and was attached to something called the 'estate' in land.

8. The submissions of the learned counsel in the appeals are patterned substantially on the ground covered before the High Court.

In support of the accountable person's appeal Dr. Ghosh submitted:

(a) First, that, on a proper construction of the two deeds, what must be held to constitute their subject-matter are only the shares in the properties corresponding to the interests intended for the benefit of the deities and the charities, and that the interest in the property corresponding to the benefit retained by the settlor was not the subject-matter of the dispositions at all;

(b) Secondly, that, even if both the documents might admit of being called "settlements" in a wider sense the properties dealt with thereunder were not "Settled Property" within the meaning of S. 2(19) as ,there was no intervening limited interest before a final vestiture of the ownership; and

(c) Thirdly, that, at all events, what must be held to attract and fall within the mischief of S. 12(1) and be deemed to pass on death would only be the value of such share as corresponds or referable to the quantum of interest so reserved by the settlor - namely 5/16th share in the properties covered by the first document and 1/2 share in the properties comprised in the second document and not the entire value of all the properties.

Shri C.M. Lodha, learned Senior Counsel for the Revenue submitted that this case was frank case of what, by definition, attracted the wider net of S. 12(1) and that resort to the implications of "Settled Property" under S. 2(19) was unnecessary once it is clear that there is a "settlement" within the meaning of S. 12(1) coupled with the reservation of an interest however small. Learned counsel submitted that the distinction made by the High Court between the properties covered by deed, dated 21-9-1953 on the one hand and those covered under deed, dated 4-10-1959 on the other, is in the ultimate analysis, a distinction without a difference.

9. The first contention of Dr. Ghosh pertaining to what, according to him, should be held to be the subject-matter of the trust deeds, is essentially a matter of construction of the deeds. There is, no doubt, a discernible difference between a case of settlement of property with reservation of a benefit to the settlor on the one hand and the case where what is settled is only a share or interest or part of the property, excluding the part or the share corresponding to the benefit that the settlor has chosen to retain. There is, indeed, no transfer at all in the latter case. Dr. Ghosh says that there is really no transfer of the share corresponding to the benefit reserved in both the cases. This is the construction learned counsel wants the court to place on the two deeds.

In St. Aubyn v. Attorney General (See (1951) 2 All ER 473 at p. 496), Lord Radcliffe brought out this distinction between what was transferred and what was retained

".....It is the possession and enjoyment of the actual property given that has to be taken account of, and that if that property is as it may be, a limited equitable interest or an equitable interest distinct from another such interest which is not given or an interest in property subject to an interest that is retained, it is of no consequence for this purpose that the retained interest remains in the beneficial enjoyment of the person who provides the gift ....."

The distinction between the two types of dispositions is brought out in the context of S. 10, in Controller of Estate Duty, A.P., Hyderabad v. Smt. Godavari Bai, AIR 1986 SC 631 at p. 635 :

".....In other words if the deceased donor limits the interest he is parting with and possesses or enjoys some benefit in the property not on account of the interest parted with but because of the interest still retained by him, the interest parted with will not be deemed to be a part of the estate of the deceased donor passing on his death for the purpose of S. 10 of the Act. It is these aspects which mark the distinction between the two leading cases, namely Chick's case (1959) 3 ITR (ED) 89 and Munro's case 1934 AC 61 (supra). As we shall indicate presently Chick's case falls within the first category while Munro's case' falls within the other category ....."

Again, in the Controller of Estate Duty, Kerala v. M/s. R. V. Vishwanathan, (1977) 1 SCC 90 at pp.

97 and 99: (AIR 1977 SC 463 at pp. 468 and 469), it was observed :

"14. The question as to whether gifted property should be held to be a part of the estate of the deceased donor passing on his death for the purpose of Section 10 of the Act is not always free from difficulty. It would depend upon the fact as to what precisely was the subject-matter of the gift and whether the gift was of an absolute nature or whether it was subject to certain rights. There is a fine but real distinction between the two types of cases ....."

". . . . . To put it in other words, if the deceased owner delimits the interest he is parting with and possesses and enjoys some benefit in the property not on account of the interest parted with but because of the interest still retained by him, the interest parted with shall not be deemed to be part of the estate of the deceased donor passing on his death for the purpose of Section 10 of the Act. The principle is that by retaining something which he has never given, a donor does not bring himself within the mischief of that section, nor would the provisions of the section be attracted because of some benefit accruing to the donor on account of what was retained by him ....."

10. In the present case, any possibilities of such an argument are ruled out by the explicit terms of the deeds. The subject-matter of the deeds are not, respectively, 11/16 share and 1/2 share in the properties. The whole of the properties are conveyed upon trust. There is, therefore, no scope for this submission. The first contention of Dr. Ghosh, therefore, fails.

11. The second contention of Dr. Ghosh is that provisions of Section 12(1) are not attracted as the properties do not fill the bill as "Settled Properties" within the meaning of Section 2(19) of the Act.

Section 2(19) which defines "Settled-Properties" and 'settlement', respectively, provides :

" "Settled property" means property which stands limited to, or in trust for, any person, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement of this Act; and "settlement" means any disposition, including a dedication or endowment, whereby property is settled;"

The statutory definition of "Settled Property" and "settlement" is such that while it is possible to say that all "Settled Property" is the subject-matter of "settlement", conversely, however, all subject-matter of 'settlement' need not necessarily and proprio vigore become "settled property". The latter concept requires for its satisfaction certain specific incidents and consequences of a "settlement".

Section 12(1) provides

"12(1) Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death...."

Section 12(1) refers to and deals with a case of property passing under a "settlement" in which the settlor had reserved to himself an interest in such property either expressly or by implication. Apparently, on its language, the section does not draw upon the incidents and implications of "settled property" for the satisfaction of its requirements. The passing of property under a "settlement" which means "any disposition including a dedication or endowment whereby property is settled" coupled with a reservation of an interest in the property would suffice. The further incident that the properties covered by the settlement must in addition partake of the character of "Settled property" and accordingly, should stand "limited in trust for any person, natural or juridical, by way of succession" etc. are not to be held as part of the requirements so far as Section 12(1) Those incidents of "Settled Property" need not be imported to the ingredients of Section 12(1) which would be satisfied if there is a "settlement" as defined under the second part of Section 2(19) and if, there is reservation of an interest by the settlor in addition.

The two deeds clearly answer the description of 'Settlement' as defined under Section 2(19), viz., that there is a "disposition including a dedication' whereby property is settled." Indeed under both the deeds, the reservations of the benefit of the income from the trust properties were made in favour of the settlor. These reservations by themselves, in our opinion, bring the properties within the net of Section 12(1)

12. This should dispose of the second contention of Dr. Ghosh. In addition, the settlor in this case constituted himself during, his lifetime and thereafter constituted his heirs as the shebaits of the two deities. Indeed where while endowing properties to a deity, the settlor stipulates that he shall during his lifetime and thereafter his heirs be the shebaits of the deity, the settlor can possibly be said to provide not only for certain duties to be vested in connection with the endowment but also secures a beneficial interest in the property.

The following observations of Mukherjea, J. in Angurbala Mullick v. Debabrata Mullick, 1951 SCR 1125 at p. 1132: (AIR 1951 SC 293 at p. 296) as to the nature of the office of a shebait may be recalled :

".....The exact legal position of a shebait may not be capable of precise definition but its, implications are fairly well established. It is settled by the pronouncement of the Judicial Committee in Vidya Varuti v. Balusami (AIR 1922 PC 123) that the relation of a shebait in regard to debutter property is not that of a trustee to trust property under the English Law. In English Law the legal estate in the trust property vests in the trustee who holds it for the benefit of cestui que trust. In a Hindu religious endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the shebait or mahant is a mere manager. But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebaitship as a mere office. The shebait has not only duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property ....."

Again, in Kalipada Chakraborti v. Palani Bala Devi, 1953 SCR 503 at pp. 516 and 5l7 : (AIR 1953 SC 125 at p. 130), it was held :

".....Whatever might be said about the office of a trustee, which carries no beneficial interest with it, a shebaitship, as is now well settled, combines in it both the elements of office and property ....."

".....There could be no doubt that there is an element in the shebaiti right which has the legal characteristics of property; but shebaitship is property of a peculiar and anomalous character, and it is difficult to say that it comes under the category of immovable property as it is knwon in law...."

13. It is true that the reservation (of) "interest", so as to attract Section 12(1), must be in the property as such and that mere collateral benefits reserved by the settlor emanating from some other property or some other source, independent of the property so settled, will not attract the section. In Controller of Estate Duty v. R. Kanakasabai, 89 ITR 251 at p. 257 : (AIR 1973 SC 1214 at p. 1218) this court,in the context of Section 10, observed :

".....The provisions for annual payments and maintenance made in the deeds as seen earlier are not charged on the properties settled. Hence the deceased cannot be said to have retained any interest in the properties settled. Therefore, it cannot be said that he retained any benefit either in the properties settled or in respect of their possession..."

But in the present case, benefits reserved emanate from the very properties constituting the subject-matter of the settlements and cannot be said to be collateral in their nature. The distinction between a case of a benefit arising "collaterally" and a case of the benefit being reserved by "implication" would require to be kept clearly distinguished.

14. Having regard to the special nature of the office of a shebait and the rights and interests that go with it, it is possible to contend that when a settlor endows the property to an idol and reserves the right of shebaitship to himself, he would be reserving an interest in the property. It is no doubt, true that while dealing with a case of cessor of interest, under Section 7 of the Act, of an elected Mahant in Math properties, it was held by this court that no interest passes on the death of Mahant duly elected, and that the provisions of the Act are not attracted (See Controller of Estate Duty, Bihar v. Mahant Umesh Narain Puri, (1982) 2 SCC 303 : AIR 1982 SC 1153). But. the case of a settlor who himself endows property to an idol and constitutes himself a shebait is obviously different. But we need not, in this case, finally pronounce on the effect of reservation of shebaitship by a settlor in the context of Section 12(1).

15. But even to the extent, the argument that for purposes of Section 12(1) the property must answer the description of "settled property" goes the expression "by way of succession" import of the words were stated in Attorney General v. Owen (See 1899 (2) QBD 253 at p. 266) by Kennedy, J. :

"...."By way of succession" seems to me to be a phrase to which one ought, in dealing with this Act, not to assign a narrow or strictly technical meaning, but to treat it as equivalent to "successively upon death"; and substantially under the present will the property out of which the annuities are paid is property to which, so far as benefit is concerned, the annuitants are entitled during life, and which, so far as benefit is concerned, passes to the residuary devisees upon the deaths of the annuitants. There is a succession, in a popular but correct sense, in the enjoyment of this portion of the testarix's residuary estate which comes to them upon the decease of the annuitants ....."

Following this view, the Allahabad High Court in Hamid Hussain v. Controller of Estate Duty held (see 83 ITR 309 at p. 315 : (1972 Tax LIZ 369 at p. 372)) :

"...The settlor clearly contemplated that successive generations would enjoy the benefit of the wakf and thereafter it would pass to the persons covered by the charitable purposes.

It seems to us that upon these considerations the property must be considered to be "settled property" and the wakf, being a dedication or endowment, must be considered to be a settlement within the meaning of Section 2(19). Inasmuch as the property comprised in the wakf passes under a settlement, it is property which falls within the scope of Section 12 ....."

The terms of the two documents in our opinion satisfy even this extended requirement of the case.

16. What remains to be considered is the third contention of Dr. Ghosh. Learned Counsel says that, at all events, all the properties covered by the two settlements cannot be held to pass under Section 12(1) but only the value of the share of the properties corresponding to the benefit reserved must be held to pass. There are again certain fallacies in some of the assumptions basic to this contention. The quantum of the interest reserved does not determine the extent of the property passing under Section 12(1) This is not a case where several distinct properties or parcels are settled and a beneficial interest is reserved out of one alone when it might be possible to predicate that all properties comprised in such settlement, which must be held to be a composite deed dealing with several items do not attract Section 12(1) but only the parcel out of which an interest is carved out and reserved for the settlor's benefit. Under Section 12(1) if the deceased makes a settlement and reserves for himself an interest therein for life or for any period determinable with reference to death, the whole of the property so settled would be deemed to pass. The interest reserved- might be very small indeed; but however small the interest, when by virtue of such a reservation a settlement falls within the purview of Section 12, the whole property would be deemed to pass. This is what was clarified in Attorney General v. Earl Grey, (1898) 1 QBD 318 at p. 325.

"....But it is to be observed that the words are "an interest in such property". Any interest however small will do, provided it issues out of such property - that is, out of the property sought to be taxed. I agree that if several parcels of land be given by one and the same deed of gift, and an interest be reserved to the donor out of one of those parcels only, estate duty would not be payable upon the whole subject-matter of the gift, but only out of that specific portion in which the interest is expressed to be reserved. But that is not the case here...."

The expression 'interest' in Section 12(1) is also not used in a restrictive sense. Wills, J. in Attorney General v. Heywood, (1887) 19 QBD 326 said :

"This application of the word 'interest' is not confined to a vested or a necessarily contingent interest. The Act was meant to cast a wider net than such a construction would imply.....The Act of Parliament was meant to meet cases in which an interest of some sort was conferred and which were not already provided for, and I think the language used is sufficiently comprehensive to include the present case ....."

This colloquial and somewhat liberal connotation of 'interest' was adopted and followed in Attorney General v. Farrel, (1931) 1 KB 8 1, Greer, L. J. said:

"In that case the only interest which the settlor retained in the sum of money settled by him was the expectation, well founded or ill founded, that the trustees would exercise their discretion in his favour; but the trustees might quite lawfully have refused to give him anything, and have distributed the income among his wife and children. He had a mere expectation that the discretion which was vested in the trustees might be exercised in his favour, either partly or entirely, and that in my

judgment is exactly the position that Major Alfred Stourton was in this case. He had no legal right to force the trustees to give him anything; at the same time he had in a colloquial sense an interest in the estate, because it was an estate out of which something might be allotted to him in the discretion of the trustees. Whether that is an interest within the meaning of the Act of 1881 has, I think, been determined by Attorney- General v. Heywood, and the decision has stood since the year 1887, a period of forty-three years."

There is, thus, no substance in the third contention either.

17. In the result, for the foregoing reasons, Civil Appeal 1251 of 1975 of the Deputy Controller of the Estate Duty is allowed and the question referred for the opinion is answered in the affirmative and against the assessee. We hold that while the High Court was right in its view that the properties covered by the deed dated 21-9-1953 were required to be brought to charge under Section 12(1), we are unable to agree with the reasoning of, and the conclusion reached by, the High Court in regard to the properties covered by the deed dated 4-10-1953. Accordingly while CA No. 946 (NT) of 1975 brought by the accountable person is dismissed; CA 1251 of 1975 by the revenue succeeds and is allowed and the judgment of the High Court, to the extent it pertains to the properties covered by deed, dated 4-10-1959, is set aside.

In the circumstances, there will be no order as to costs in these appeals.

Order accordingly.

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