

Jameela Begum

Vs

Controller of Estate Duty, Madras

Civil Appeal No. 10209 of 1976

(K.N. Saikia, Smt. M.S. Fathima Beevi JJ)

30.10.1990

JUDGMENT

1. This civil appeal is from the order of the High Court answering in the affirmative and against the accountable person the following question of law:

"Whether on the facts and in the circumstances of the case and on a proper consideration of the settlement deed dated 15-5-50, the value of the property by name "Albany" is includible in the estate of the deceased."

2. In the deed of settlement dated 15-5-50 it is clear that the settlement was absolute subject to the obligation of payment of the income during the lifetime of the settlor and after his death to his second wife.

3. Section 164 of Mulla's Principles of Mohamedan Law, 18th Edition at page 174 'deals with Gift with a condition and states that when a gift is made subject to a condition which derogates from the completeness of the grant, the condition is void, and the gift will take effect as if no conditions were attached to it.

4. Thus, Mohamedan Law makes a distinction between the corpus of a gift (Ayn) and the usufruct (Manafi). A reservation of rights in manafi so long as the ayn is transferred does not render the gift bad.

5. S. 165 at page 177 deals with condition in the nature of a trust and states:

"Where property is transferred by way of gift, and the donor does not reserve dominion over the corpus of the property nor any share of dominion over the corpus, but stipulates simply for and obtains a right to the recurring income during his life, the gift and the stipulation are both valid. Such a stipulation is not void, as it does not provide for a return of any part of the corpus."

The deed of settlement dated 15-5-50 stipulates :

"NOW THIS INDENTURE WITNESSETH that in consideration of the natural love and affection that the settlor has for his daughter the beneficiary herein and the desire to provide comforts for her and avoid any future disputes the settlor out of his own free will and pleasure and in full possession of his senses doth hereby settle upon

Jamila Begum the beneficiary herein all his right, title and interest to and in the properties described in the Schedule hereunder with absolute rights of ownership and all other proprietary rights and that the said Jamila Begum the beneficiary herein shall hold the said properties given to her under this Deed of settlement for her own benefit and enjoyment with absolute rights of disposition by sale, gift or otherwise and her name registered as owner in the Registers of the Corporation of Madras and all other public records and offices and recover and collect the rents and do all other acts in her own name and for her own benefit subject to the payment of the income from the property to the settlor during his lifetime and after his death to his wife Fathima Bi Saheba the mother of beneficiary during her lifetime."

6. It was not disputed that the settlement amounted to a gift. From the above stipulation there can arise no doubt that the gift would be absolute. The next stipulation is:

"The settlor during his lifetime and after his death his wife Fathima Bi Saheba the mother of the beneficiary herein during her lifetime shall be entitled to the income realised from the properties and the beneficiary shall pay the same to them respectively."

7. From the above stipulation there can arise no doubt that only the usufruct or interest (manafi) had to be paid and not any share in the corpus of which possession was delivered as per the next stipulation which says:

"The settlor doth this day delivered possession of the properties to the beneficiary herein and shall hold the same for and on behalf and for the beneficiary herein and the settlor shall have no manner of right to and interest in the said properties hereby stated from this date and the beneficiary herein shall enjoy the same as full owner from this day."

8. From the above stipulations, there is no doubt that the settlement conferred absolute right, title and interest in the property on the beneficiary subject to the only obligation of payment of the income from the property to the settlor during his lifetime and after his death to his wife Fathima Bi Saheba, mother of the beneficiary during her lifetime-. The settlement and the condition being thus valid and Fathima Bi having had a charge on the property for realisation of the income only the High Court rightly held that Fathima Bi Saheba should be taken to have had interest in the property which ceased on her death, and corresponding benefit created to the accountable person. The interest of the beneficiary amounted to property as defined in the Estate Duty Act and it must be deemed to have passed under S. 6 of the Act on her death.

9. We find no merit in this appeal which is accordingly dismissed. No costs.

Appeal dismissed.

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