

# CALCUTTA HIGH COURT

Amarendra Krishna Dutt

Vs

Monimunjary Debl

(Rankin, J.)

02.03.1921

## JUDGMENT

### **Rankin ,J.**

1. In this case at the conclusion of the evidence and the argument, I gave judgment upon the footing that the deceased had, during his lifetime, transferred certain shares to the defendant, Sreemati Monimunjary Dabi. At the trial, it was a common assumption of both sides, that if the widow could show that the deceased had executed in her favour a certain transfer deed, and had made over the same to her she would be entitled to succeed. Mr. H. D. Boss, for the plaintiff, after my judgment had been given, asked me to re-hear argument upon the case in view of the fact that subsequent consideration had induced him to think that this assumption was wrong. Rather than have the rights of the parties determined according to any other principles than those of law, I assented to having the matter re-opened in argument before me. Now I am quite clear on the facts of this case that the gift, which the deceased intended of these shares, was intended by him to take effect by way of transfer, and that he did not intend a trust. If, upon the evidence, I thought that it was open to the widow to say that on this question her opportunity for adducing evidence had not been in the circumstances complete, I should not disturb my previous intention, and I should give judgment in her favour. I am, however, satisfied, that in view of the evidence given at the hearing, it is not now open to the widow to profess a desire to contend that the gift of shares by her husband was not intended to take effect by way of transfer. As regards the shares in question, the deceased husband was the absolute registered owner if one may apply language which is not strictly applicable even in England except to land, one may say that he was the owner of the legal as well as the equitable interest in the shares. He executed the transfer deed, which is in evidence, and as I have held, he gave possession of it to his Wife. she however did not till after his death, complete the transfer deed, nor was it in his lifetime presented for registration with the Company. In my opinion the gift was not perfected. The donor must have, done everything which, according to the nature of the property comprised in the settlement was necessary to be done to transfer the property, *Mitroy v. Lord*<sup>1</sup> The donor much in the case of shares such as those with which I am concerned (the Articles of Association of the Company had been put in evidence), have a Present, absolute and unconditional right to have the transfer registered: *Societe Generale de Paris v. Walle*<sup>2</sup> *Nanney v. Morgan*<sup>3</sup>. *Moore v. North Western Bank*<sup>4</sup> *Ireland v. Hart*<sup>5</sup>

2. In these circumstances, I must, in this case, apply the principle that there is no equity to perfect an imperfect gift, and that the gift, having been intended to take effect by way of transfer, the Court will not hold the intended transfer to operate as a declaration of trust. The evidence with regard to the disposition of the dividend does not alter this position and is no stronger than it was in the case of *Milroy v. Lord* (1) Two cases, *Merbai v. Ferozbai* (7) 5 B. 268 3 Ind. Dec. (n. s.) 178, *Bhaskar Purshotan v. Sarawitibai* (8) 17 B. 486 : 9 Ind. Dec. (n. s.) 316. Were cited to me from Bombay, but, in so far as they qualify or whittle down the principles which I have endeavoured to explain I am not prepared to follow them. The fact is that, unless those principles be adhered to, every imperfect transfer will have to be made effectual by being construed as a perfect trust

3. In these circumstances, the result is that the plaintiffs must succeed in the after the first day of the hearing must be paid by the plaintiff to the defendants. As regards the costs of suit up to and including the first day hearing, those must be paid by the defendant, *Sreemati Monimunjary Debi*. I am not prepared to make other defendants pay any costs

4. As regards my first judgment, I have copy of it, which is unsigned. To make the matter quite clear, what I purpose to do is to make the shorthand notes of the first judgment a schedule to this judgment Rankin, J

5. In these case, I quite agree with the proposition that the Matter should be treated with that degree of suspicion which is proper to which are made after a man's death against his estate, In the present case, I am not surprised that the parties have searched high and low for corroborative evidence on either side, but has having regard to the extreme unreliability of certain witness I think the evidence, in the end is with narrow compass.

6. I do not think that the evidence of the plaintiff *Amarendra Krishna Dutt*, about what his father is said to have told him three years before his death, is worth anything at all. The statement that a dead man three year ago had said this or said that, is almost inevitable in such a case I am not in the least prepared to rely upon evidence of *Amarendra* when he makes a statement of that sort, particularly as it not corroborated by the evidence of any her brother. whom it is to be presumed some knowledge of the father's intention would be communicated. As regards the statement that the transfer deed through not as filled up in the body of it not was taken it *Akhoy* some time in August, shortly before his death, to the Stock Exchange to have the shares sold by means of one *Protab Chunder Roy*, that is borne out by the evidence of this broker and I do not in the least feel satisfied that is anything except tale. Very much the same consideration applies to the witness *Bholanath*, a neighbour of the deceased, the deceased, who, in my judgment, gave his evidence (8)17 B. 486 : 9 Ind. Dec. (n. s.) 316. deuce with some vagueness and did not in the box impress me as a man whose oath proved the things which he said. Further, I am of opinion that the whole story as to what happened at the opening of the iron safe after the death some time in September, is a story which comes to nothing in either direction. Even if it be true that this lady's brother, *Kashik*, who seems not to be a very reputable person, immediately shouted that there was no such thing as shares the moment the shares were mentioned, and that immediately thereupon these some-what numerous parties assisting in this function got into a state of noise and quarrel, while the lady stood by the threshold, I am entirely unable to draw any inference useful for the decision of this case from those facts. Now, I think that the documentary evidence in this case is by far the most important, but I failed to find any importance in a minute examination of the time and manner in which the transfer form was, after the death, signed by *Monimunjary Debi* by the

pen of Kashik for the purpose of accepting the transfer,

7. The position shortly is this;---The one witness, apart from the lady's evidence, who says that Akhoy Kumar Dutt executed the document now before me that it was years ago in the condition as regards the body of it, that it is now in, is the broker Dunanjoy Mullick, He is corroborated by the evidence of Amarendra in this respect, as it would appear from Amarendra's evidence, that Muliick's signature was on that document in August 1918. Now, it is quite true that Dunanjoy Mullick is a relation of this lady, but he is a share, broker and he is just the sort of person who might reasonably be called in for the purpose of assisting Akhoy Kumar Dutt to execute the transfer deed. There is no improbability, and merely by reason of the relationship there is all the more probability that he would be called in for that purpose. Now the position is this. The transfer deed has on it the date 29th November 1916, and I know that the deceased made his Will within a couple of weeks or so after that, in December 1916 the same year. When I come to that fact I have before me the high probability that Akshoy was minded to arrange his affairs for some reason or other towards the end of 1916. In the Will he expressly says that he has no cash or moveable estate for distribution, and I find from the evidence of the share certificate that these shares had been transferred to him as long ago as the with June 1907. He is very unlikely to have forgotten about this holding in the Bengal Timber Trading Company and his statement that he has no moveable estate for distribution is, I think pretty strong evidence, taking it with the evidence of Mullick, as to the transfer deed, that Akshoy had disposed as he thought of these shares at that time Now, when he was disposing of those properties in this way, we know something about his state of mind, because he says that the plaintiffs in this suit "Abinash and Amarendra naturally bore a strong hateful feeling to my wife and quite disrespect full to me, especially Abinash. Remembering that the evidence of the testator himself is by far the best class of evidence that can be appealed to by claimants against his estate, I think I have here ample evidence for this, that the test was minded to give these shares to his wife and was of opinion, as the recital in the Will shows, that he had effectively done so and that they no longer belonged to his estate. In these circumstances, although the date 28th November 1916 is in type and not in manuscript, I am satisfied, reading the circumstances together with the Will, that it was executed as on the date which it purports to bear.

8. It being, therefore, established that the testator was minded to give these shares to his wife and thought that he had effectively done so, it remains to consider the point which Mr. H. D. Bose very properly pressed. People often are minded, to make gifts and yet do not complete the gift. That is quite true, but I am satisfied not only that the transfer deed was signed and witnessed, but that it was given effect to by parting with it to the wife with the intention that from that time she was to be the owner of the shares. In the first place, there is some presumption that if a man wants to make a gift he will do all that is necessary to effectuate his purpose. He is treating the matter in the Will as though the shares were not his, and, when I come to examine the evidence that the testator handed the paper over to his wife, I find the position to be this. The lady's evidence is confused and in some places unreliable, but it does seem fairly certain that both he and she had a private box of their own and they both had access from time to time to each others. The lady is an illiterate purda-nashin. If she were to be required to make her mark upon the transfer deed and to have the shares transferred into her own name with the result that dividend warrants would come addressed to her, it is very probable that that would produce a great deal of trouble and inconvenience both to the husband and to her every time that these matters had to happen. It is not an astonishing thing at all that, in these circumstances, the

transfer deed should be made over to the wife, but that the transfer deed should not be presented for registration and a new share certificate taken out in the name of the purda-nashin lady. Every probability, it seems to me, is in the lady's favour. It is probable that the husband meaning to make a gift did make the gift; he thought he had made it and it is quite consistent that they should not do what would be very troublesome in its consequences, namely, get the shares put in the lady's name during her husband's lifetime. As regards the receipt of dividends, the lady says that her husband had, of course, to collect the dividends. Sometimes he made them over to her and sometimes it seems that he spent them, I do not know, whether on household expenses or upon his own; but the mere fact that he paid the dividends, as such, on any occasion to his wife, is corroboration of the gift, and there is no doubt, having regard to the relationship of the parties, that if he did not pay the dividends over as received to his wife he did so by her implied consent or at any rate as between her and him, upon the footing that it was with her permission. I think, under the circumstances, that the evidence proves to my satisfaction not only that the document was executed in November 1916, but that it was made over to the lady and that there is room for quite sensible reasons, why the transfer was not completed by the registration of the shares in the new name. The lady must, therefore, succeed in this suit. The suit will be dismissed with costs on scale Mo. 2

#### Cases Referred.

- 1(1) (1862) 4 De G F & j 261 : 31 L. J. Ch.798 : 8 jur.(N. S.) 806 : 7 L. T. 178 : 45 E. R.1185;135 R. R.135., Richards v. Delbridge
- (2) (1871) 18 Eq. H 43 L. J. ch. 459 : 22 W. R. 584
- 2(3)(1888)11,App. Cas. 20 at p. 28 : 55 L. J. Q. B. 169 : 54 L.T. 389 : 34 W. R. 662
- 3(4)(1888) 37,Ch. 346 : 57 L. J. ch. 311 : 58 L. T. 238 : 36 W.R. 677
- 4(5)(1891) 2 Ch.599 : 60 L. J. Ch. 627 : 64 L. T. 238 : 36 W. R. 93
- 5(6)(1902) 2 Ch. 522 : 71 L. J. Ch. 276 : 86 L. T. 385 : 50 W. K. 315 : 9 Manson 209 : 18 T. L. R. 253