

**O.S. Chawla Vs. Assistant Controller of Estate Duty**

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**Court :** Allahabad

**Decided On :** Dec-23-1971

**Reported in :** [1973]90ITR68(All)

**Judge :** S.N. Dwivedi, ;C.S.P. Singh and ;Gopinath, JJ.

**Acts :** [Estate Duty Act, 1953](#) - Sections 2(16), 3(3), 5(1) and 6

**Appeal No. :** Estate Duty Reference No. 618 of 1965

**Appellant :** O.S. Chawla

**Respondent :** Assistant Controller of Estate Duty

**Advocate for Def. :** Deokinandan and ;R.R. Misra, Adv.

**Advocate for Pet/Ap. :** R.K. Gulati, Adv.

**Judgement :**

**S.N. Dwivedi, J.**

1. There was one S. H. Chawla. He died on July 20, 1958. He left behind a son, O. S. Chawla, and a wife, Sushila Chawla. For the purposes of assessment of estate duty the son is the accountable person. He filed an account of the property passing on the death of his father. The list of property did not include shares of the value of Rs. 77,238. The names of the companies which had issued the shares

are not disclosed in the statement of the case. But, that is of no moment. It should, however, be noted that the share scrips were in the name of Sushila Chawla, the wife. The Assistant Controller of Estate Duty included the value of the shares in the principal value of the estate of the deceased. His order was affirmed on appeal by the Appellate Tribunal. Under Section 64(1) of the Estate Duty Act (hereinafter called ' the Act'), the Appellate Tribunal has referred for opinion of the court this question :

'Whether, on the facts and in the circumstances of the case, the inclusion of the sum of Rs. 77,238 on account of the value of shares held by the deceased in the name of his wife, in the principle value of the estate passing on his death, is justified in law '

2. The contention of the accountable person before the Appellate Tribunal was that the shares belonged to Sushila Chawla. It was conceded by him that the money for purchasing the shares came from the pocket of the deceased. The Appellate Tribunal recorded these findings :

(1) The income from the shares was being shown as the income of the deceased in the income-tax assessment.

(2) The dividends were being credited to the bank account of the deceased.

(3) The income from the shares was not included in the income-tax assessments of the deceased under Section 16(3) of the Income-tax Act.

(4) In the course of assessments of income-tax for 1955-56 and 1956-57 the deceased did claim that the dividend of the shares belonged to his wife but the claim was not upheld as there was no evidence in support of it.

(5) The accountable person could not show that the dividend was ever paid by the deceased to his wife.

3. On those findings and the concession the Appellate Tribunal held that the shares did not belong to Sushila Chawla. The true legal effect of the findings of the Appellate Tribunal is this: She held the shares benami for the benefit of the

deceased. She was the benamidar of the deceased. We have to answer the question referred to the court on the basis of this legal position.

4. What is the nature of a benami transaction? The person who is the benamidar has nominal title to the property; the person who purchases the property in the name of the benamidar has the real title to the property. The law imposes an obligation in the nature of trust on the benamidar (see the Trusts Act, Section 82). He is a constructive trustee. He holds the property for the benefit of the person who has the real title to it (see *Gopeekrist Gosain v. Gungapersaud Gosain*, [1854] 6 M.I.A. 53 (P.C.)). When a transaction of purchase is proved to be benami, courts give effect to the real title, and not to the nominal title. There are four exceptions to this rule, but they are not material in this case. If a creditor of the person who has the real title has obtained a decree for money against that person, he may execute the decree by attachment and sale of the property held as benamidar in the name of a third person. (See *Musadee Mahomed Cazum Sherazee v. Meerza Ally Mahomed Shoostry*, 1854] 6 M.I.A. 27 (P.C.), *Abdul Hye v. Mir Mahommed Mozaffar Hossein*, [1884] I.L.R. 10 Cal. 616 (P.C.)). It would thus appear that in the present case the deceased had the real title to the shares ; Sushila Chawla has merely nominal title to them. So the deceased was the owner of the substance of the property; Sushila Chawla held the mere husk.

5. Section 5(1) of the Act is the charging provision. It imposes estate duty on the value of property which ' passes on the death ' of a person. Section 2(16) defines 'property passing on the death' of a person. It includes property passing immediately on death. The word ' pass ' in the two sections means, we think, ' changes hands '. (See *Controller of Estate Duty v. Smt. Usha Devi*, [1970] 76 I.T.R. 347 (M.P.) and *State Bank of India v. Controller of Estate Duty*, [1968]69 I.T.R. 270, 277 (Punj.)). Ordinarily properties owned by a person pass on his death. So the shares in which the deceased had the real title passed on his death, and their value is taxable to estate duty under Section 5(1).

6. The argument of the accountable person is that as the share-scrips were in the name of Sushila Chawla, the deceased alone was not competent to dispose of the shares. Accordingly, the shares would not be deemed to pass. An attempt is made

to inject vitality in the argument with the aid of Section 6. But, in our view, Section 6 will not apply to the case.

7. Section 6 provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. The argument, if accepted, would cut down the scope of Section 5(1). But the true object of Section 6 is to widen the net of -section 5(1). The scheme of the Act is two-fold. Firstly, there are properties which pass on the death of a person. Section 5(1) imposes duty on their value. Secondly, there are properties in which the deceased had an interest or power of appointment and which really do not pass on his death. The scheme of the Act is to impose duty on the value of such properties also. In the second class will fall provisions like sections 6, 7, 8, 9 and 10. The Act creates a fiction of law to declare that the properties mentioned in those sections will be deemed to pass on the death of a person, though they do not. ' pass ' in fact.

8. This two-fold scheme is made plain by the definition in Section 2(16) and Section 3(3). Section 2(16) defines the phrase 'property passing on the death '. Section 3(3) declares that references in the Act to ' property passing on the death ' of a person shall be construed as including references to ' property deemed to pass on the death ' of such person. The statement of objects and reasons of the Bill which ripened into the Act also emphasises the two-fold scheme. It states that the ' object of the Bill is to impose an estate duty on property passing or deemed to pass on the death of a person, '

9. The object of Section 6 is to catch properties in the net of Section 5(1) which do not really pass on the death of a person. For instance, property comprised in a revocable gift is property which the donor is competent to dispose of whether the gift is revoked or not and will be covered by Section 6. Similarly, property in respect of which the deceased had a power of appointment will also fall within Section 6.

10. Counsel for the accountable person has relied on Smt. Shantabai Jadav v. Controller of Estate Duty, [1964] 51 I.T.R. (E.D.) 1, 3 (A.P.), Smt. Denabai Boman Shah v. Controller of Estate Duty, [1967] 66 I.T.R. 385 (A.P.) and Alok Mitra v.

Controller of Estate Duty, [1971] 82 I.T.R. 430 (All.) (Estate Duty Reference No. 95 of 1966 decided by our court on May 20, 1971).

11. In all those cases the property was held in the name of a third person as the benamidar of the deceased. In the first case a garden was held benami. The Andhra Pradesh High Court applied Section 6 and held that the value of the garden could not be taken into account in assessing the duty on the estate of the deceased. The court said :

' .....so long as the deed stands in the name of another person, it could not be said that it was competent for the deceased to dispose of the property.'

12. In that case counsel for the Board seems to have conceded the point. He did not make a distinction between the scope of Section 5(1) and Section 6 of the Act. And for this reason we find it difficult to share the view taken in that case.

13. The second case is again a decision of the Andhra Pradesh High Court. That case is distinguishable on facts. There the finding was that the deceased did not have title to the property. It is true that the decision in the first case was also referred to in the second case. But there is no independent discussion. Section 5(1) was not brought to the notice of the court.

14. In the third case two learned judges of this court followed the said two decisions of the Andhra Pradesh High Court. There is no discussion in the judgment. Indeed, the learned judges, themselves say that 'as at present advised ' they were inclined to follow the decisions of the Andhra Pradesh High Court. Section 5(1) was not placed before them.

15. As a result of the foregoing discussion we are of opinion that the shares passed on the death of S. H. Chawla. Accordingly our answer to the question referred to us is that the sum of Rs. 77,238 on account of the value of the shares held by the deceased in the name of his wife, Sushila Chawla, was rightly included in the principal value of the estate passing on his death. The Assistant Controller of Estate Duty shall get costs which we assess at Rs. 200. Counsel's fee is assessed accordingly.

