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Court : Kolkata

Decided On : May-21-1971

Reported in : [1972]84ITR6(Cal)

Judge : Sankar Prasad Mitra and ;A.N. Sen, JJ.

Acts : Estate Duty Act, 1953 - Section 5

Appeal No. : Matter No. 95 of 1965

Appellant : Usha Kumar Banerjee and ors.

Respondent : Controller of Estate Duty

Advocate for Def. : B.L. Pal and ;Ajoy Kr. Mitter, Advs.

Advocate for Pet/Ap. : D. Pal and ;Arun Kr. Motilal, Advs.

Judgement :

Sankar Prasad Mitra, J.

1. This is a reference under Section 64(1) of the Estate Duty Act, 1953. It arises out of the estate duty assessment of the estate of late Panchu Gopal Banerjee (hereinafter referred to as 'the deceased'), who died on April 17,1955. On the death of the deceased, theapplicants, who were the accountable persons under the Act, furnished an account in the prescribed form of the properties passing on

the death of Panchu Gopal to the Deputy Controller of Estate Duty, Calcutta, the assessing authority concerned. The Deputy Controller, by his order dated the 30th December, 1958, determined the principal value of the estate passing on the death of the deceased, at Rs. 16,51,31.4 and the duty payable at Rs. 3,12,214.50 nP. In the principal value aforesaid, the Deputy Controller included, inter alia, the value of the properties comprised in two trusts known as (a) Sarada Sampad Trust, and (b) Jagadhatri Sampad Trust.

2. The question referred to this court is as follows:

'Whether, on the facts and in the circumstances of the case, the properties comprised in the trusts known, respectively, as 'Sarada Sampad Trust' created by the deed dated the 19th September, 1936, and 'Jagadhatri Sampad Trust' created by the deed dated the 27th June, 1939, were correctly included in the estate of the deceased as property passing on his death under Section 5 of the Act ?'

3. At the hearing before us counsel for the applicant did not make any submissions with respect to the 'Sarada Sampad Trust'. He said that he was accepting the view of the Member, Board of Revenue, on the 'Sarada Sampad Trust' and did not invite us to answer any question relating thereto. In this reference, therefore, we shall confine ourselves only to the 'Jagadhatri Sampad Trust'. By a deed dated 27th June, 1939, the deceased's father, the late Umesh Chandra Banerji (who died in April, 1941), settled certain properties in trust directing the trustees to apply the income thereof in the manner indicated in the deed. The English translation of the preamble to this instrument reads thus:

'By the grace of the Almighty God I have acquired properties by dint of my labour and in course of business, etc. In order that they may not in my absence be wasted at will by my heirs and representatives, that the puja and-worship of the deities that I have so far carried on as a Sanatan Hindu in accordance with the directions of the Shastras may not cease to be performed, that in my absence (death) the puja and worship, etc., of the deities may be regularly performed according to the Hindu Shastras for the purpose of maintenance and preservation of the Barnashram Dharma according to my firm conviction as per directions of the Shastras and I being the scion of a good Brahmin family having uptil now

cherished a firm belief and a (deep) reverence in the Sanatan Hindu Dharma, I execute this instrument of Nyas Nirdesh Trust in accordance with the directions of the Shastras, making thereby a permanent trust of all my said movable and immovable properties as from to-day (to take effect) during my lifetime.'

4. The various directions for applying the income from the trust properties were as follows:

(i) One-fourth of the net income left after defraying all the aforesaid expenses (i.e., rent, taxes, cess, Government revenue of the properties and the rent, taxes, income-tax, etc., as also expenses for repairs, partial constructions, addition and alteration and reconstruction, etc., of the houses), shall be spent for repairing and preserving houses included in the trust estate and for litigation charges in respect of the trust properties.

(ii) One half of the surplus income left, less one-fourth, of the said net income shall be spent for the seva of the deities, entertainment of visitors (or casual guests) and for similar acts. The same shall be spent towards the pujas of the deities long worshipped by me, the puja of Sri Sri Jagadhatri, recitation of the Chandi for three days during Sri Sri Durga puja, Sri Sri Saraswati puja and all the pujas and sradhs, etc., that are performed on the occasions of monthly and daily parbans (festivals), such as Sri Sri Satyanaryan puja, recitation of the Chandi, Sri Sri Lakshmi puja, Sri Sri Sitala puja, Manasa puja, Sasthi puja, Kali puja, Sradhs, etc., of paternal ancestors, daily entertainments of visitors, feeding the poor, etc., and in the discharge of duties of Hindu householders, pujas, charities, etc., and in giving vidans (parting presents), etc., to Guru Purohits. And the said one-half income shall be spent entirely for religious work ; at no point of time there shall be any departure from the same.

(iii) The trustee shall be competent to spend the remaining net one-half (of the income), in accordance with the procedure laid down by themselves ; first, the trustees, if they so desire, shall get at the rate of Rs. 25 per month as their remuneration for the management of this trust estate. They shall be competent to defray the joint family expenses, to engage servants, maid servants (a) Brahmin cook, (b) Durwan and a Sarkar and to maintain a motor-car or a horse-and-

carriage for the estate, out of the said amount, according as need be. They shall pay the telephone charges for the estate as also the electric charges for the family house out of this amount.'

5. The remaining directions were for meeting the expenses on account of the marriages of the daughters, provision for maintenance of any daughters-in-law in the settlor's line who may become child-widows, etc.

6. The Deputy Controller held that the provisions of the trust were such as to keep the properties tied up in perpetuity without any power of alienation and that since the purpose for which the trust was created was not a public or charitable one, the trust as a whole was void. He, accordingly, held that, on the death of the settlor, the deceased being the sole heir, became entitled to the properties comprised in the trust and as suchthese properties passed on the death of the deceased under Section 5 of the Act.

7. The applicant preferred an appeal to the Board under Section 63 of the Act. It was contended before the Board that the trust deed which was executed by the deceased's father was valid and was not hit by the doctrine of perpetuity within the meaning of Section 14 of the Transfer of Property Act. It was stated that the main purpose of the trust as set out in the preamble to the trust deed was service and worship of the deities, and a trust created for such purpose was valid according to Hindu law.

8. The Board observed that, on a perusal of the trust deed as a whole, it was clear that the settlor intended not only to provide for the worship of the deities but also to provide for the secular expenses of the family members and future heirs. In the Board's opinion, the settlor's main object was to create a sort of permanent endowment for the descendants which was by its very nature void in law. The Board held that the properties comprised in this trust were rightly included in the estate of the deceased as passing on his death.

9. There is no dispute that if we come to the conclusion in the instant case that a valid trust was created by the deceased's father the question of any property comprised in the trust passing on the death of the deceased would not arise at all

(vide Section 22 of the Act).

10. Mr. Balai Pal, learned counsel for the Controller, has urged that by the deed under consideration no dedication of property was at all made to the deities. The dominant intention of the deceased's father was not simply to see that worship of the family idols was maintained in the same style as before along with the religious ceremonies like festivals, etc., and, therefore, to see that his properties should not be wasted by his heirs and other descendants. On a construction of the deed as a whole, submits Mr. Pal, it appears that, what the settlor intended to do was to make a provision for his family from all different angles subject to a charge of devaseva of the family idols and performances of religious festivals. The trust, learned counsel has urged, was only for the perpetual maintenance of heirs and descendants of the settlor and was, therefore, void subject to the charge in favour of the deities and idols. Reliance was placed on a number of decisions. In Sonatun Bysack v. Sreemutty Jaggulsoondree Dossee, [1859] 8 M.J.A. 60 (P.C.) a Hindu, by will, gave all his movable and immovable property to his family idol; and after stating that he had four sons, he directed that his property should never be divided by them, their sons, or grandsons, in succession, but that they should enjoy 'the surplus proceeds only' ; and the will, after appointing one of the sons as manager to the estate, to attend to the festivals and ceremonies of the idol and to maintain the family, furtherdirected that, whatever might be the surplus after deducting the whole of the expenditure, the same should be added to the corpus, and, in the event of a disagreement between the sons and the family, the testator directed that after the expenses attending the estate, the idol and maintenance of the members of the family, whatever net produce and surplus there might be, should be divided annually in certain proportions among the members of the family. At the date of the will the family were joint in estate, food and worship. The accumulation of the income were divided as directed by the will. The Privy Council held, inter alia, that the bequest to the idol was not an absolute gift, but was to be construed as a gift to the testator's four sons and their offsprings in the male line, as a joint family so long as the family remained joint, and that the four sons were entitled to the surplus of the property, after providing for the performance of the ceremonies and festivals of the idol, and the provisions in the willfor maintenance.

11. It has been repeatedly pointed out both by the Judicial Committee and our Supreme Court that the question whether a deed of dedication of properties to deities creates an absolute or partial dedication must, be settled by a conspectus of all provisions of the deed. Where the property is wholly dedicated to the worship of the idol without reserving any beneficial interest to the settlor, his descendants or other persons, the dedication is complete, if the intention of the deed is to create a charge in favour of the deity and the residue vests in the settlor, the dedication is partial. It is not expedient to construe the terms of one deed by reference to the terms of another, or to lay down general rules applicable to the Construction of settlements varying in terms. The court has to ascertain the intention of the settlor, and for that purpose to take into consideration all the terms of the deed. If it appears, on a review of all the terms, that after endowing property in favour of a religious institution or a deity, the surplus is either expressly or by implication retained with the settlor or given to his heirs, a partial dedication may readily be inferred, notwithstanding the apparently comprehensive words of the disposition in favour of the religious endowment.

12. The decision in Sonatun Bysack's case has to be understood in the light of the above principles. It is quite clear from the facts that the testator was really providing for accumulation of surplus for an enjoyment of surplus by his sons and other members of his family. This predominant intention was apparent from a conspectus of all the terms of the document and that was why the Judicial Committee was of the view that there was no absolute dedication to the deities at all.

13. The next case of Mr. Pal is the cask of Ashutosh Dutt v. Doorga Churn Chatterjee, [1879] L.R. 6 I.A. I82; I.L.R. 5 Cal. 438 (P.C.). Here a Hindu testatrix, after creating a charge on the property, the subject of her will, for the expenses of various religious acts and ceremonies, directed that 'after all these acts have been observed from the proceeds of the said property, if there be a surplus, then the family will be supported therefrom' ; and further that 'this property of mine will not be liable for the debts of any person. None will be able to transfer it. None will have the rights of gift and sale' The Privy Council held that the former direction amounted to a bequest of the surplus to the members of the joint family for their

own use and benefit, the share of each member being capable of being ascertained and of being attached in execution by his creditors; and that the latter directions, being inconsistent with the interest given, were wholly beyond the testatrix's power and must be rejected as having no operation.

14. We do not see how this case is of any relevance in determining the terms of the deed by which the 'Jagadhatri Sampad Trust' was created. There are no terms here reserving any surplus for enjoyment of members of the settlor's family. On the other hand, there is a specific direction in the deed that nearly one-half of the income shall be spent entirely for religious work and at no point of time there shall be any departure from the same.

15. Mr. Balai Pal then relies on Chundramoney Dossee v. Motilal Mullick, [1880] 5 C.L.R. 496 (Cal.). In this case the testator gave certain directions by his will with which we are not directly concerned. Then, after reciting that he was desirous of making, out of his immovable property, a permanent provision for the benefit of his five younger sons and their male descendants, and that he was desirous of having the due performance of worship carried out after his death, directed that certain lands should be held by his executors on trust to apply the rents and profits, (1) in the celebration of certain pujas and in the performance of periodical turns of worship of the family thakoors and other religious festivals, at the same expense and on the same style as the testator himself had done, or at such expense and in such style as the executors should think fit; and (2) in the maintenance, out of the surplus, of the five younger sons, their wives, sons and male decendants, and female descendants until their marriage. The court held that the trust for maintenance and the religious trusts as being mere perpetual trusts for the benefit of the family were void:

16. This is again a case of an undefined surplus which was to be spent for the benefit of the members of the testator's family. It is true that a portion of the income was to be spent for religious purposes but no quantum was fixed and the executors, it seems, were free to accumulate a surplus to bespent entirely for the benefit of the testator's family members. The predominant intention, it appears, was not to benefit the deities but to benefit the members of the family.

17. The case of Har Narayan v. Surja Kunwari, [1921] L.R. 48 I.A. 143; A.I.R. 1921 P.C. 20 that counsel for the Controller also relied on, would make the position clearer. A will provided that the property of the testator 'shall be considered to be the property of' a certain idol. Then there were provisions that the residue after defraying the expenses of the temple 'shall be used by our legal heirs to meet their own expenses'. The circumstances such as that the ceremonies to be performed were fixed by the will and would absorb only a small proportion of the total income, indicated that the intention was that the heirs should take the property subject to a charge for the performance of the religious purposes named. The Privy Council was of the view that in determining whether a will of a Hindu gave the testator's estate to an idol subject to a charge in favour of the testator or made a gift to the idol a charge upon the estate there was no fixed rule depending upon the use of particular terms in the will; the question depended upon the construction of the will as a whole.

18. The Judicial Committee decided that by this deed the provision for the worship, expenses and charges of the idol formed a burden upon the estate but the property descended according to the destination in the will and subject to that burden.

19. It is to be noted that one of the clauses of the document specially relied on by their Lordships of the Judicial Committee was Clause 6 which said : 'whatever may be saved after defraying the expenses of the temple, and the pay of the servants, shall be used by our legal heirs to meet their own expenses.' We do not find any such Clause in the present document which we are called upon to construe.

20. Another case cited by counsel for the Controller was the case of Srikissen Khanna v. Tarachand Ghanashyamdas, A.I.R. 1940 Cal. 228. This case only refers to the observations made in the case Chundramoney Dossee v. Motilal Mullick.

21. On a conspectus of the provisions of the present document we are of the opinion that the deceased's father created a trust by which the properties named therein were vested in trustees absolutely and irrevocably. In other words, he had completely divested himself of all these properties and vested them in trustees for

the worship of idols and for various other purposes. The dominant intention of the settlor, it seems to us, was to make provision for these idols. It may be that some of the objects of the trust cannot be fulfilled on the ground of illegality or other reasons but that does not affect the validity of the trust as such particularly in favourof the deities. And so long as the trust is valid no estate duty could be attracted to the properties comprised in the trust on the death of the deceased. We make it clear, however, that we are expressing no opinion as to the validity or otherwise of rights conferred on other beneficiaries apart from the deities.

22. In support of our conclusions we may refer to the Judicial Committee's decision in Jadu Nath Singh v. Thakur Sita Ramji, [1917] L.R. 44 I.A. 187 ; 42 I.C. 225, 227 (P.C.). A Hindu, by a deed which he registered, dedicated the whole of his property to a temple. The deed by subsequent clauses provided that after the death of the grantor certain female members of his family should succeed him as managers; that half of the income should be applied to the temple purposes and that the other half should be enjoyed by the managers, without power of alienation ; that upon the death of the named managers the Government should become manager and that the whole net income should then be applied to the expenses of the temple. The Privy Council held that the deed was a valid endowment of the whole property to the temple and that the donor's heirs had no right in it against either the idol or the managers.

23. We have to observe that the Privy Council at page 190 says :

'If the income of the property had been large, a question might have been raised, in the circumstances, as throwing some doubt upon the integrity of the settlor's intention, but, as the entire income is only Rs. 800, it is obvious that the payment to these ladies is of the most trifling kind, and certainly not an amount which one would expect in a case of this kind.'

24. The reason why we have quoted the above passage is that in our case also the total annual gross income of the properties in 1955 was a sum of Rs. 5,883 only, that is to say, a little over Rs. 250 per month and the heirs and other family members of the settlor were entitled to enjoy only a trifling portion of this small income.

25. Mr. Pal pointed out to us that in the case of the Privy Council provisions were made for maintenance of the managers of the temple only and not for their family members. But in the instant case not only the trustees but other members of the family were entitled to derive benefits. To our mind, on the facts of this case, this is not a distinguishing feature as there are cases in which members of the family were entitled to receive small benefits but the court declared in favour of the validity of the trust. As an instance, we may refer to the Supreme Court's decision in Nirmala Bala Ghose v. Balai Chand Ghose, : [1965]3SCR550 .

26. Our answer to the question in this reference, therefore, is that the properties comprised in 'Jagadhatri Sampad Trust' created by the deed dated June 27, 1939, were not correctly included in the estate of thedeceased as property passing on his death under Section 5 of the Act. Each party will pay and boar its own costs.

A.N. Sen, J.

27. I agree.