

In Re: Tarun Kumar Ghose

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Court : Kolkata

Decided On : Jul-17-1934

Reported in : AIR1935Cal509,157Ind.Cas.975

Appellant : In Re: Tarun Kumar Ghose

Judgement :

ORDER

Remfry, J.

1. This is an application by the Collector of Calcutta under Section 19-H (4), Court-fees Act of 1870 as amended. The facts are that one Monmotha Nath Ghosh opened an account in the Post Office Savings Bank in the name of his minor son Tarun Kumar Ghosh as his guardian and made deposits in his name amounting to some Rs. 11,000. The son died a minor in October 1932. The father obtained letters of administration to the estate of his minor son in May 1933. In the affidavit of assets he set out this deposit, but in Sch. B claimed that it was held in trust not beneficially or with a general power to confer a beneficial interest. The Registrar of this Court granted a certificate under Section 4, Court-fees Act, certifying that no duty was payable. Pausing here, it seems to me that when a claim of this sort is made the Registrar should refer the matter to the Chief Justice. It is not a matter of valuation but of exemption. In the present application it is alleged on behalf of the Collector that the money was the money of the minor and Court-fees are payable in respect thereof. In my opinion the certificate of the Registrar, though conclusive

for certain purposes, does not preclude the Collector from applying under Section 19-H: see *In the Goods of Arratoon Stephen* (1928) 32 CWN 799.

2. In the case cited for the defendant, *In the Goods of Bhubaneswar Trigunait*, 1925 Cal 1201, Rankin, J., as he then was, expressly reserved the point whether a certificate under Rule 4, Ch. 35, owing to Section 5, Court-fees Act, 'hampers the Collector in claiming more money under Section 19-H.' The result is that the point was not decided, and if I may say so, I agree with the decision of Costello, J. in the first cited case. The certificate is conclusive in a Court on the point as to whether the correct duty has been paid, except when an application is made under Section 19-H. And under 8. 19-H, the Collector can challenge the validity of a claim of this kind. The valuation of the estate is under-estimated if part of it is wrongly exempted on the ground that it was held in trust. The valuation is for the purpose of assessing the duty payable, and the estimate of such valuation is under-estimated if assets, which should not have been excluded from that valuation, are excluded. The question to be decided is whether in fact the deposit was the property of the minor or whether he was the benamidar of his father. It is not disputed that the father made the deposit with his own money. It is admitted that the doctrine of advancement is not applicable to Hindus. The question is what was the intention of the father, and whether he can be heard to allege an intention contrary to his conduct or which involves an assertion that he intended to act dishonestly.

3. The father gave evidence and he did not seriously allege that he was not aware of the rules and really admitted that his intention was to withdraw the money before the son attained majority and for that purpose to make a false declaration that he was withdrawing it for the use of the minor. He stated that the minor was his youngest son aged 6 or 7 at the time and that he him-self had already deposited in his own name Rs. 21,500 in the Post Office and as he could only deposit another Rupees, 1,000 in his own name he adopted the device of opening an account in the name of his minor son, so as to be able to deposit more than the rules permitted with a view to save income-tax. Apparently apart from his pay, he had no other assets, and he had six children: four girls and two boys. It is abundantly, clear therefore that in fact he had no intention to give this large sum to

his youngest son. His intention clearly was to use the name of his son to obtain the benefit of an investment for himself in the Post Office. In my opinion there is nothing to prevent the father from alleging that the transaction was for his own benefit, unless there is any rule, which precludes him from being heard to say that he intended to act dishonestly. The position is otherwise than that of an ordinary benami transaction, and that unless the object of the transaction was fraudulent and succeeded, the parties can prove their actual intentions. The position of an account in the name of a minor under the Post Office Rules is that under Rule 7 no trusts are recognized. Under Rule 26 no money can be withdrawn by a guardian unless he certifies that the money is withdrawn for the use of the minor, and when the minor attains majority payment is made to him.

4. The defendant according to his own statement intended to withdraw the, money before the minor attained majority and to certify that the money was required for the use of the minor. That would have been a false statement according to the defendant himself. According to the decision in *Field v. Lansdale* (1850) 13 Beav 78, the mere fact, that the depositor had, in order to evade the rule that no one could deposit more than a stated amount in a Post Office Savings Bank, used other persons names, would not affect his right to the money deposited in excess of the stated limit. It does not appear that the depositor had to make a false statement in order to withdraw the money, and the only point for decision was whether there were trusts in favour of the persons whose names had been used. In *Chandanmull v. Donald Campbell & Co.* (1916) 23 CWN 707n at p 714n, Lord Sumner declined to assume in the favour of a party that he lacked honesty, and added, 'I cannot assume' that. *Fletcher Moulton, L.J.* in *Hirachand Panamchand v. Temple* (1911) 2 KB 330 at p. 339 declined to accept the evidence of the plaintiffs that they acted dishonestly and adds: 'I shall presume that they... (acted)... honestly.' In *Doolan v. Midland Railway Co.* (1877) 2 AC 792 at p. 807 Lord Blackburn said: 'it does not lie in the mouth of a Railway Company, to set up its (own) illegality.' In this case the defendant seeks to allege that he opened an account with the intention of violating the rules of the Post Office; those rules being rules passed under an Act, he alleges that he acted illegally; he then alleges that he intended to make a false declaration that was a dishonest intention, and I decline to accept his statement. I shall presume that, he acted honestly and

intended to act honestly. Jessel, M.R. in *In re Hallett's Estate* (1880) 13 Ch D 696 at p. 727 laid it down that

nothing can be better settled... in the law I suppose of all civilised countries, than this, that where a man does an act which may be rightfully performed, he cannot say that fact was intentionally and in fact done wrongly... wherever it can be done rightfully he is not allowed to say against the person entitled to the property or the right that he has done it wrongfully.

5. Bowen, L.J. in *Overseers of Putney v. L. & S.W. Ry.* (1891) 1 QB 440 at p. 443 said:

The rule is that no one is allowed in a Court of Justice, in order to escape from liability, to put forward a plea that that which he is doing is illegal.

6. In that case the defendant company alleged, in order to escape a tax, that they had exceeded their powers under a statute. Jessel, M.R., in the same case said: 'They (the company) cannot I think be heard to say this.' Fry, L.J., concurred. In my opinion the last cited case is very similar to the present case. There a Railway Company, in order to escape the parish rates, sought to allege that they had acquired land but not under their statutory powers, the railway company had no other legal powers. Here the defendant, in order to escape paying duty, seeks to be heard to say that in order to escape illegally from paying income-tax he wrongfully in vested money in the name of his minor son with the intention of recovering it by a false statement. In my opinion the rule is clear that when a man may have acted rightly, or may have acted wrong fully, he cannot be heard to say for his own benefit that he acted wrongfully. The result is that the claim that there was a benami transaction fails, and the duty in respect of the fund is payable.