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Court : Privy Council

Decided On : Mar-28-1944

Judge : Viscount Maugham, Lord Macmillan &Amp; Lord Writht

Appeal No. : Privy Council Appeal No. 2 of 1943 (From Madras)

Appellant : Chambers

Respondent : Chambers and Others

Advocate for Pet/Ap. : H. Wynn-Parry and C.D. Myles, for Appellant; Sir T. Strangman and L.M. Jopling, for Respondents. Solicitors for Appellant, Burton Yeates and; Hart; Solicitors for Respondents, Sanderson Lee and Co.

Judgement :

Lord Macmillan:

The late George Alexander Chambers of Madras, being minded to make provisions for his wife and children and other relations, and being also animated with the less laudable desire to prevent the Government of India, as he put it, from "grabbing death duties" on the whole of his estate, took certain steps which he conceived would achieve these objects. The present proceedings are concerned with the question of the legal effect of these steps. Mr. Chambers carried on business as a leather merchant in Madras under the style of The Chrome Leather Company. The business belonged to and was conducted by himself alone and the company name was no more than an alias for himself, but for the object he had in

view he purported to treat the company as if it had an independent being. At the time of the transactions about to be narrated, Mr. Chamber's family consisted of his wife Ethel Mary Chambers, a son who is the present appellant, and two daughters, Phyllis Dora Chambers (Mrs. Michell) and Sheila Florence Chambers. His wife died in 1924. He married a second wife who died in 1927 leaving an infant son, who is respondent 4. In 1930 he married respondent 1 as his third wife. Respondents 1, 2 and 3 are the trustees and executors of Mr. Chambers, who died on 16th November 1937, and respondent 1 is also the guardian of her infant step-son respondent 4. The appellant is the sole trustee and executor of his mother, the first wife of Mr. Chambers, hereinafter called "Mrs. Chambers."

In the year 1917 Mr. Chambers caused entries to be made in the books of the Chrome Leather Company crediting Mrs. Chambers, his children by her, and certain other relatives with various sums of money and debiting his capital account in the company's books with these sums. Separate accounts were opened in the respective names showing the sums so credited. In particular in the case of Mrs. Chambers a separate account was opened in the company's books in May 1917, showing two sums of Rs. 15,000 and Rs. 30,000 credited to her in that month. A further sum of rupees 1,55,000 was credited to her account on 1st April 1919, as a "transfer" from Mr. Chambers' "capital account."

In the balance-sheets of the company the sums at the credit of Mrs. Chambers were entered at first as "deposits" and subsequently as "unsecured loans."

On the death of Mrs. Chambers in 1924, she left a will in which she referred to the two lakhs "deposited" on her behalf with the company as belonging to her. No interest was credited to her account after about November 1924, when the National Bank of India Ltd., to which the business was largely indebted, objected. In 1930 accounts were opened in the names of the beneficiaries under the will of Mrs. Chambers, showing them as creditors in respect of shares in the amount which had stood to her credit at her death as apportioned by her will. Letters waiving payment of interest were signed by the beneficiaries under the will of Mrs. Chambers in 1931 in order to satisfy the company's auditors. In December 1932, Mr. Chambers caused the two lakhs which had been proportionately credited to

the beneficiaries under the will of Mrs. Chambers as well as all the other similar credits in favour of his children and relations to be re-transferred to his own capital account in the company's books, and all the credit accounts were cancelled and closed. Mr. Chambers appears to have taken this action in consequence of advice received by him from a lawyer brother in Canada to the effect that none of the parties to whom he had caused sums to be credited in the company's books had any legal claim thereto, in consequence of the absence of any consideration. On 12th November 1932 he had written to the company's auditors a letter containing the following passage :

"Certain transfers from my capital in our books were made of my own free will and I have no intention of cancelling same, but I have never received any 'loans,' and there was never any consideration either given or accepted, and as regards payment of interest I am under no obligation to anyone."

On the appellant being apprised of what Mr. Chambers had done he at once protested against his action as an unwarranted repudiation of the liability he had undertaken to Mrs. Chambers. If Mr. 'Chambers had constituted himself a trustee, his action was plainly a fundamental breach of trust. The present proceedings were initiated in 1939 by the appellant who, as the executor of the will of his mother Mrs. Chambers, took out an originating summons in the High Court at Madras. The main question formulated for decision was whether on the facts and circumstances there was a valid and completed gift of the sum of two lakhs of rupees to Mrs. Chambers by Mr. Chambers or, in the alternative, a valid declaration of trust in respect of two lakhs in her favour. Both the Courts in India held that the legal requirements of a gift had not been satisfied and the appellant has not pursued this point on appeal to His Majesty. Gentle J. however, in the Court of first instance, was of opinion that a valid trust in favour of Mrs. Chambers had been created and he so decided. On an Original Side Appeal the contrary was held by Sir Lionel Leach C. J., and Horwill J.

The only question argued before their Lordships was whether a trust in favour of Mrs. Chambers had been effectually constituted. On this question their Lordships heard a persuasive argument by Mr. Wynn Parry but in their opinion the contention

is untenable in law. In India the law of trusts is codified in the Trusts Act (2 of 1882) and when the provisions of that Act are consulted the appellant's case is found to break down at the very threshold. If there is one thing clear it is that there can be no trust unless its subject-matter is clearly ascertainable. Section 8 of the statute declares that "the subject-matter of a trust must be property transferable to the beneficiary." What then was the subject-matter of this alleged trust? Gentle J. seems to have been of opinion that it was a fund of two lakhs of rupees. But that was not so. No such sum was ever set aside and appropriated by Mr. Chambers as a fund transferable to Mrs. Chambers of which he was to be a trustee with all the consequential obligations of such a position. At the most it was an attempt to give Mrs. Chambers an interest in the capital of his business to be measured on the basis of her having contributed two lakhs. The entire business, including the share in it which he had purported to credit to Mrs. Chambers, remained entirely under the unfettered control of Mr. Chambers. There was never any trust estate which the Courts could administer.

Sensible of this difficulty, counsel for the appellant did not attempt to support the view of Gentle J. as to the subject-matter of the trust. He sought to define it as a sum of money to be paid out of the business (at an uncertain date) after the creditors were satisfied, to be measured by the proportion which two lakhs should bear to the total capital left. This, if anything, has a resemblance to partnership rather than trust. Such a subject-matter in their Lordships' opinion does not answer the requirements of Indian trust law, and immediately raises other and inextricable difficulties both of form and of substance. Thus, so far as the surplus assets of the business, if any, should consist of immoveable property, the provisions prescribed by S. 5 of the Act requiring a registered instrument in writing would require to have been observed and they have not been. There being no ascertained and appropriated trust fund the case for the constitution of a trust necessarily fails. But there are other insurmountable obstacles in the appellant's way, which are fully discussed by the learned Chief Justice in the light of the authorities on the subject. The requisites for the constitution of a valid trust are prescribed by Ss. 5 and 6, Trusts Act. These read as follows :

"5. No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or trustee and registered, or by the will of the author of the trust or of the trustee.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

6. Subject to the provisions of S. 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust (b) the purpose of the trust, (c) the beneficiary, and (d) the trust property, and (unless the trust is declared by will, or the author of the trust is himself to be the trustee) transfers the trust property to the trustee."

There are difficulties, which it is unnecessary for their Lordships to discuss, as regards the interpretation and precise relation of these two sections, but it is plain that on any view there has not in the present case been compliance with the statute. There is no non-testamentary instrument in writing signed by the author of the trust or the trustee declaring the trust. The letter of 6th August 1919 which Gentle J. held to amount to a declaration of trust expressly states the contrary. The two lakhs placed to the credit of Mrs. Chambers are therein described as "entirely in the nature of a personal gift from Mr. Chambers" to her. Mr. Chambers never indicated with reasonable certainty by any words or acts an intention on his part thereby to create a trust. His acts were throughout inconsistent with any such intention. As to the trust property, it has already been pointed out by their Lordships that there was no such ascertainment and appropriation as the law requires. Their Lordships in reaching their conclusion adverse to the appellant have proceeded upon the terms of the Trusts Act, but the general principles of trust law applicable to the case, as the learned Chief Justice points out are the same in India as in England, and the English authorities which he cites fully justify the view taken by him and his colleague. In the present case there was nothing tantamount to a declaration of trust at all and there was never any absolute parting by Mr. Chambers with the alleged subject-matter of the trust. The appeal accordingly fails and their Lordships will humbly advise His Majesty that it be dismissed and that the judgment of the High Court of 20th August 1940 be

affirmed. The appellant will pay the respondents' costs of the appeal.

Appeal dismissed.

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