
(1971) 05 AHC CK 0009

In the Allahabad High Court

Case No : Estate Duty Reference No's. 95 of 1966 and 78 of 1969

Aloke Mitra

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 20-05-1971

Acts Referred:

Estate Duty Act, 1953 — Section 5, 6, 64, 64(2)

Citation : (1971) 41 AWR 827 : (1971) 82 ITR 430

Hon'ble Judges : Satish Chandra, J;A.K. Kirty, J

Bench : Division Bench

Advocate : S.C. Khare, Jagdish Swarup, B.C. Dey and Ashok Gupta, for the Appellant; Gopal Behari, for the Respondent

Judgement

This Judgment has been overruled by : Controller of Estate Duty, Lucknow Vs. Aloke Mitra, AIR 1981 SC 102 : (1980) 16 CTR 49 : (1980) 126 ITR 599 : (1981) 2 SCC 121 : (1981) 1 SCR 943 : (1980) 4 TAXMAN 19

Satish Chandra, J.—The Central Board of Direct Taxes has submitted this statement of the case as well as a supplementary statement for the opinion of this court on a certain question of law.

2. The reference arises out of the estate duty assessment of late K. M. Mitra, who died on 11th February, 1957. On his death, his son, Aloke Mitra, the present applicant, filed an estate duty return valuing the estate of the deceased at Rs. 3,74,235. This included 502 shares of Rs. 100 each held by the deceased in Mitra Prakashan (P.) Ltd. and 225 shares of Rs. 100 each held by the deceased in Maya Press (P.) Ltd. The Assistant Controller, however, did not accept this part of the return. He held that 2,002 shares in Mitra Prakashan (P.) Ltd. and 1,602 shares in Maya Press (P.) Ltd. were held by the deceased and were liable to be included in his estate. He held that the shares standing in the name of the deceased's wife and sons were held by the deceased benami in the name of the wife and the sons. Since the wife had no beneficial interest in the shares, she could not be held to have become an absolute owner of these shares on the coming into force

of the Hindu Succession Act, 1956.

3. The applicant, who was the accountable person, felt aggrieved, and went up in appeal to the Central Board of Direct Taxes. The Board affirmed the finding that the deceased held shares in the two companies benami in the name of his wife, sons, etc., and that all such shares were liable to be included in his estate. The finding that the Hindu Succession Act did not help the deceased's wife was also affirmed.

4. The accountable person applied u/s 64(1) of the Estate Duty Act, 1953, for reference of certain questions of law to this court. The Board held that the finding that the shares were held by the deceased in the name of his wife and sons etc., benami, was a finding of fact, and it did not raise any question of law. In the opinion of the Board, there was only one question of law involved in the case, and the same was referred. The question was :

"Whether the shares allotted to the wife of the deceased as his nominee and/or benamidar were, as from the commencement of the Hindu Succession Act, 1956 (No. 30 of 1956), held by her as full owner thereof, by virtue of the provisions of Section 14 of that Act ?".

5. The accountable person moved this court u/s 64(2) of the Estate Duty Act. A Bench of this court held that the question whether, on the facts found by the Board, the shares allotted to the wife and sons should be treated as the son's shares or K. M. Mitra's shares, is a question of law, and not just a question of fact. The contention that if the shares be deemed to be held by the deceased benami in the name of his wife and sons, the deceased had no power to dispose of these shares, was also held to raise a question of law. This court, therefore, directed the Board to draw up a supplementary statement of the case and to refer the following questions of law :

"(2) Whether, in the circumstances of the case, the shares which stood in the names of the wife and the sons of the deceased, Sri K. M. Mitra, were held by them as benami and they really belonged to Sri K.M. Mitra deceased ?

(3) Assuming that the shares in dispute really belonged to Sri K. M. Mitra, deceased, whether those shares in the circumstances of the case constituted property which passed on the death of Sri K. M. Mitra for the purposes of Section 5 of the Estate Duty Act ?"

6. Learned counsel for the department urged that the finding that the shares were held by the deceased benami in the name of his wife and sons, etc., was a finding of fact, and did not raise any question of law. This Bench was not bound by the opinion expressed by the previous Bench while calling for a reference that a question of law arose. In our opinion, the submission of the learned counsel is plainly right. In Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi, , the Supreme Court held :

"It is well settled that the High Court may decline to answer a question of fact or

a question of law which is purely academic, or has no bearing on the dispute between the parties or though referred by the Tribunal does not arise out of its order. The High Court may also decline to answer a question arising out of the order of the Tribunal, if it is unnecessary or irrelevant or is not calculated to dispose of the real issue between the taxpayer and the department. If the power of the High Court to refuse to answer questions other than those which are questions of law directly related to the dispute between the taxpayer and the department, and which, when answered, would determine qua that question the dispute, be granted, we fail to see any ground for restricting that power when by an erroneous order the High Court has directed the Tribunal to state a case on a question which did not arise out of the order of the Tribunal."

7. The court then proceeded on to hold :

"We are unable, therefore, to hold that at the hearing of a reference pursuant to an order calling upon the Tribunal to state a case, the High Court must proceed to answer the question without considering whether it arises out of the order of the Tribunal, whether it is a question of law, or whether it is academic, unnecessary or irrelevant,"

8. It is thus clear that this Bench is not bound by the opinion expressed by the previous Bench that the finding regarding benami raised a question, of law. We have to see for ourselves whether a question of law arises out of that finding.

9. The decision of the Supreme Court in *SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.*, is a direct authority for the proposition that such a finding is a pure finding of fact. On page 51, the court observed :

"It was argued for the appellant that what the Tribunal had found was that the intermediaries firms and companies were benamidars for the appellant, that a question of benami was one of mixed law and fact, and that accordingly a finding thereon was open to review u/s 66(1). Whether that is a correct reading of what the Tribunal had found will presently be considered. Assuming that such is the finding, what is the ground for holding that a finding of benami is one of mixed law and fact ? The only basis for such a contention is that the finding that a transaction is benami is a matter of inference from various primary basic facts such as who paid the consideration, who is in enjoyment of the properties and the like. But that is not sufficient to make the question one of mixed law and fact unless, as already stated, there are legal principles to be applied to the basic findings before the ultimate conclusion is drawn. But no such principles arise for application to the determination of the question of benami which is purely one of fact, and none has been suggested by the appellant.

In *N.T. Palanisamy Chettiar by Agent, V.D. Seetharama Mudaliar Vs. Komara Chettiar and Others*, , the Federal Court had to consider whether concurrent findings of benami by the courts below could be reviewed by it, and it was held that it could not be done as the practice of the court was not to interfere with

concurrent findings of fact unless there were exceptional grounds therefore and that there were none such in that case. It should be noted that the finding of benami in that case was a matter of inference from primary facts found which are set out at page 573. But it was nevertheless held to be a question of fact. In *Misri Lal v. Surji* [1950] 1 M.L.J. 294 : AIR 1950 P.C. 28, it was held by the Privy Council that a finding of benami was one of fact not open to attack in second appeal. This contention of the appellant must accordingly be rejected."

10. In our opinion, the finding in relation to benami was a finding of fact, on which no reference could validly be made to this court.

11. Learned counsel for the applicant, however, urged that the finding was perverse. In order to adjudge the merit of this submission, let us look at the facts.

12. The deceased carried on printing and publishing business in the name of Maya Press. In 1953, his brother-in-law, B. N. Ghosh, along with some other persons floated two companies, Mitra Prakashan (P.) Ltd. and Maya Press (P.) Ltd. Under an agreement dated 29th May, 1953, the deceased agreed to transfer his publishing business to Mitra Prakashan (P.) Ltd. for a consideration of Rs 2,07,500 and the printing business to Maya Press (P.) Ltd. for Rs. 1,64,800. It was agreed that the consideration would be paid by Mitra Prakashan (P.) Ltd. in the form of cash to the extent of Rs. 7,500 and the balance by allotting 2,000 fully paid up shares of the value of Rs. 100 each to the deceased or his nominee. The other company, namely, Maya Press (P.) Ltd., agreed to pay Rs. 4,800 in cash and the balance, Rs. 1,60,000, in the form of 1,600 fully paid-up shares of the value of Rs. 100 each to be allotted in the name of the deceased or his nominee. In pursuance of this agreement, the business of Maya Press was transferred by the deceased on 1st July, 1953, to the two companies. On 24th January, 1954, the deceased wrote to the two companies letters intimating that the shares be allotted to the following persons :

Mitra Prakashan Ltd.

Maya Press Ltd.

Shares

Shares

1.

Shri K. M. Mitra (deceased)

500

223

2.

Shri Aloke Mitra (son)

93

100

3.

Shri Ashoke Mitra (son)

100

98

4.

Shri Deepak Mitra (son)

100

100

5.

Shri B. N. Ghosh (brother-in-law)

23

23

6.

Smt. N. M. Mitra (wife)

1,178

1,055

7.

Shri R. R. Misra (ex-employee)

1

1

Total

2,000

1,600

13. The companies allotted shares accordingly. The companies in addition allotted two more shares each to the deceased. Thus 502 shares were held by the deceased in his own name in Mitra Prakashan Ltd., and 225 shares in Maya Press (P.) Ltd. The rest were held by his wife, sons, brother-in-law (Sri B. N. Ghosh), and an ex-employee (Sri R. R. Misra). It has been found that the total number of shares issued by the two companies was 2,006 by Mitra Prakashan Ltd. and 1,606 by Maya Press (P.) Ltd. Out of this total, 2,002 and 1,602 shares

respectively were held by the deceased and his nominees. Thus, the deceased by transferring his personal printing and publishing business to the two new companies became through himself and his nominees practically the exclusive owner of these two companies. It is admitted that the deceased supplied the entire consideration for the purchase of 2,002 and 1,602 shares. His wife, sons, brother-in-law or the ex-employee did not make any contribution.

14. The Assistant Controller held that there was nothing in the agreement or the letters to indicate that the deceased intended that his nominees would be the beneficial owners of the shares allotted in their names. There was no evidence to show that the wife or the sons of the deceased exercised rights as shareholders, without any restriction or control by the deceased, or, that they enjoyed the dividends declared by the companies. He discounted the suggestion that the dividend declared by Mitra Prakashan (P.) Ltd. in respect of the year 1955-56 was taxed in the hands of the nominees, by observing that the deceased might have allowed the dividend to be assessed in the hands of the nominees only to save Income Tax. The plea that the deceased had gifted the money representing the value of the shares in favour of his wife and sons was repelled, by observing that there was no evidence to prove a gift.

15. On appeal, the Board held that there being no presumption of advancement, the mere fact that the shares were got issued in their names, without making any indication of gift, would not make the nominees recipient of any gift. Using the name of benamidars for holding of shares in companies is as common as for any other type of property. There was no clear evidence to show that the dividends were actually utilised by the nominees. The dividends were only credited by book entry in the personal accounts of the deceased, his son, Alope Mitra, and the wife. There was nothing to show that before his death, these amounts were actually withdrawn or utilised by his nominees. The Board, therefore, upheld the finding that the wife and sons were mere benamidars, the deceased being the real owner of the shares. The Board also confirmed the finding that, Section 14, Hindu Succession Act, was not attracted, because the wife and not have any interest in the shares.

16. The finding that the deceased supplied the purchase money for all the shares allotted by the two companies, has not been disputed before us. The basic findings are that it has not been established that the wife or the sons enjoyed the dividend income of the shares which stood in their names, or that they exercised rights as shareholders without control of the deceased. Mr. Khare, appearing for the applicant, urged that the authorities below erred in ignoring relevant considerations like the motive for asking for arc allotment in the name of the wife and sons, the possession and custody of the share scripts and the relationship of the parties. In our opinion, the submission of the learned counsel discloses a basic misapprehension as to the law relating to burden of proof in relation to benami transactions.

17. In *Gopeekrist Gosain v. Gungapersaud Gosain* [1854] 6 M.I.A. 53(P.C.) . Lord

Justice Knight Bruce elaborately discussed the doctrine of advancement in relation to benami transactions. He said :

"It is clear it was not the money of the individual in whose name the purchase was effected. If then the person in whose name the purchase was effected had been a stranger in blood, or only a distant relative, no question could have arisen ; he would have been, *prima facie*, a trustee, and if he desired to contend that the *prima facie* character of the transaction was not its real character, the burden would have rested on him ; but the individual in whose name the present purchase was effected was the son, and at that time, the only son, of the person who made the purchase, and whose money it was, and it has been contended that that circumstance changes the presumption, and that what would be the presumption its the case of a stranger does not exist between father and son ; that the presumption is advancement, and that, therefore, the burden of proof is shifted. Now, on this, as far as their Lordships can learn, there is no authority in Indian law, no distinct case, or dictum, establishing or recognising such a principle, or such a rule. It is clear that in the case of a stranger the presumption is in favour of its being a benami transaction, that is, a trust ; but it is clear also that in this country (i. e. England), where the person in whose name the purchase is made is one for whom the party making the purchase was under an obligation to provide, the case is different : and it is said that that ought to be deemed the law of India also, not because it is the law of England, but because it is founded on reason and the fitness of things, if I may use the expression, on natural justice, that on such grounds it ought to be considered the law of India. Now, their Lordships are not satisfied that this view of the rule is accurate, and that it is not one merely properly *juris*. Probable as it may be, that a man may wish to provide for his son to a certain extent, and though it may be his duty to do so, yet there are other considerations belonging to the subject ; among others, a man may object to make his child independent of him in his lifetime, placing him in such a position as to enable him to leave his father's house and to die, leaving infant heirs, thus putting the property out of the control of the father. Various reasons may be urged against the abstract propriety of the English rule. It is merely one of positive law, and not required by any rule of natural justice to be incorporated in any system of laws, recognising a purchase by one man in the name of another, to be for the benefit of the real purchaser."

18. A persual of the discussion in this case shows that it is an authority for holding that no presuming of advancement arises in India because of adoption of the English form of conveyance (page 81), or because accounts stand in the name of the benamidar (page 82), or because the benamidar is a minor (page 81), or because the benamidar is the only son (page 80), or because memorials as to tenure are addressed to the Government in the name of the benamidar (page 82) or, because the person advancing the purchase money is bound to provide for the ostensible purchaser (page 75). In several subsequent decisions, the Privy Council held that *Gopeerkrist*'s case is also authority for the proposition that the presumption is that the purchase made with money of "B" in the name

of "B" is for the benefit of "A" ; and that from the purchase by a father, whether Mohammaden or Hindu, in the name of his son, you are not at liberty to draw the presumption, which the English law would draw, of an advancement in favour of that son. Again the mere fact that the property was purchased not in the sole name of his son, but in the name of the wife as well as of the son affords a strong argument in favour of the hypothesis that it was a benami purchase (see *Moulvi Sayud Uzhur Ali v. Mst. Bibee Ultaf Fatima* [1869] 13 M.I.A. 232 (P.C.) and *Nawab Azimut Ali Khan v. Hurdwaree Mull* [1870] 14 M.I.A. 395 (PC.).

19. In *Parvathi Ammal and Others Vs. M. R. Sivarama Iyer*, , it was emphasised that the English law of presumption of the wife's advancement does not exist in the Indian law, but, on the contrary, the presumption here is that where a document is taken in the name of a man and his wife, the former providing the money, the transaction is, so far as the wife is concerned, benami for the husband. The mere fact, therefore, that money was deposited in the name of the wife does not justify a presumption that she was the beneficial owner of the money. When a person purchases a property in the name of his son or wife or near relation, there is always, in India, a resulting trust in his favour, and the presumption is that he is the real owner thereof, and it will not be presumed that the son or wife or any other person, in regard to whom he occupies the position of toco parents was intended to be benefited by the said purchase.

20. It is thus clear that the initial burden of proof that a transaction is benami is on the person who asserts it. In the present case, the department had the initial burden of proving that the allotment of shares in the name of the wife and sons was benami for the deceased, the real owner of the shares being the deceased. The law seems to be well-settled that if the source of purchase money is proved, the fact that the transaction stands in the name of another person will raise a presumption that the transaction was benami; and, on proof of the source of purchase money, without any contribution by the person in whose name the purchase stands, the burden would shift, and, thereafter, it would be upon the benamidar to prove that a beneficial interest was intended to be conferred on him. The presumption is that the person who pays the money is the real owner and not the person in whose name the property is purchased. This presumption is rebuttable. The burden lies on the ostensible owner to prove the other circumstances, for example, the intention to benefit possession by receipt of rent and profits, or custody of the title deeds, the motive behind entering into the transaction. Thus, it was not for the department to prove the motive, or the possession and custody, or the realization of the income, etc. The applicant had to establish these facts. The basic finding of fact is that the applicant has failed to establish that the nominees utilised the dividend income of the shares. There is no evidence on the record (and none was pointed out to us) as to the motive impelling the deceased to get the shares allotted in the names of his sons and the wife. There is no evidence as to who had the custody or possession of title deeds of the shares. When there is no evidence on these aspects, the applicant, who had the burden of establishing these facts, and who alone had the special

knowledge of these facts, cannot castigate the Board for giving its finding by ignoring these aspects. These aspects had to be ignored, when there was no evidence to prove them. In the absence of any evidence, the applicant would fall, because the burden was upon him. In the absence of the other relevant facts, the proof that the purchase money was provided by the deceased would, prima facie, be sufficient for the finding that the shares belonged to him. In our opinion, there is no merit in the submission that the finding of fact is perverse. We would, therefore, answer the first question called for by this court by saying that the question is one of fact and not of law, and, hence, was not liable to be referred for the opinion of this court.

21. The question originally referred by the Board does not really arise. On the finding that the transaction was benami and that the deceased was the real owner of the shares, the wife must be held to have no interest or title in the shares. She was merely a name-lender. Since she had no interest at all, Section 14 of the Hindu Succession Act will not apply, because that provision applies to a Hindu female having a limited ownership in a property. Such limited ownership becomes absolute ownership, under that provision. Here, the wife had no ownership whatever in the shares. We would answer this question in the negative.

22. The third question relates to Section 6 of the Estate Duty Act. Section 6 enacts that the property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. It was urged by Mr. Khare that on the finding that the shares were held in the names of the wife and children benami for the deceased, the deceased only had the beneficial interest, the legal title in the shares vesting in the wife and the sons; so, the deceased was not competent to dispose of the shares, until either he obtained a release from the benamidars or instituted a suit for a declaration and obtained a decree that he was the real owner, and that the legal title vested in him. No such steps having been taken by the deceased till the date of his death, he remained incompetent to dispose of the shares; and, so, the shares cannot, u/s 6 of the Estate Duty Act, be deemed to pass on his death, so as to be included in his estate.

23. Learned counsel relied upon the decision of the Andhra Pradesh High Court in BIBI GURDARSHAN KAUR (DECEASED) (THROUGH LEGAL HEIRS) Vs. COMMISSIONER OF Income Tax, NEW DELHI., . There, it was held that a garden valued at Rs. 35,000 was held by the husband benami in the name of his wife. It was observed that since the deceased husband could not dispose of the garden, as it was in the name of his wife, that property cannot be said to form part of the estate of the deceased. The argument that the wife herself, not having any real title, could not have transferred it, and that, in any event, any transfer by her would not pass the title to the purchaser, was repelled on the basis of Section 41, Transfer of Property Act. Section 41 states :

"Where, with the consent, express or implied, of the persons interested in

immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

24. The Bench observed:

"... so long as the document stands in the name of his wife, he could not dispose of the property. It is true that it was open to him to have obtained a declaration that he was the beneficial owner thereof notwithstanding the fact that his wife was the ostensible owner. But, so long as the husband does not have any recourse to these proceedings for obtaining such a relief, he would not have been in a position to dispose of the property standing in the name of a third person as his own."

25. This decision was followed by another Bench of the same High Court in SMT. DENABAI BOMAN SHAH Vs. CONTROLLER OF ESTATE DUTY, A.P., . Learned counsel appearing for the department did not invite our attention to any decision taking a different view. As at present advised, we find ourselves in agreement with these decisions.

26. On the finding that the shares stood in the name of the wife and the sons, etc., benami for the deceased, it must be held that the deceased had no power to transfer them. It is no one's case that the deceased had obtained a release from the benamidars or that he had obtained a declaration from an appropriate court of law. Under the circumstances, he remained incompetent to transfer the shares till his death; and, so, the property in those shares did not pass on his death. Those shares could not be included in the estate of the deceased. The third question is liable to be answered in the negative.

27. We, therefore, answer the questions referred to us as follows :

1. No.

2. The question is one of fact. It does not raise any point of law

3. No.

28. Let these answers be returned to the Board with a copy of this judgment under the signature of the Registrar and the seal of the court.