
(1986) 04 CAL CK 0020

In the Calcutta High Court

Case No : Matter No. 311 of 1974 and 632 of 1979

Controller of Estate Duty

APPELLANT

Vs

Ratanlal Roy and Others

RESPONDENT

Date of Decision : 29-04-1986

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 24, 27(1), 44, 44A
Gift Tax Act, 1958 — Section 2
Transfer of Property Act, 1882 — Section 100
Trusts Act, 1882 — Section 11

Citation : (1986) 57 CTR 55 : (1987) 164 ITR 48 : (1987) 30 TAXMAN 85

Hon'ble Judges : Shyamal Kumar Sen, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : B.K. Bagchi, for the Appellant; P.K. Pal, amicus curiae, for the Respondent

Judgement

Dipak Kumar Sen, J.—The facts on record found or admitted in the above references under Sections 64(1) and 64(3) of the Estate Duty Act, 1953, are, inter alia, that one Nundalal Roy, since deceased, executed a deed of settlement on September 12, 1929, whereby he created a trust in respect of various movable and immovable properties mentioned in the deed. The properties were conveyed to himself and his wife, Sharnran-gini Roy Chowdhurani, for the use of himself for and during the term of his natural life and his wife, Shyamrangini Roy Chowdhurani. It was further provided that after the death of the settlor, the surviving trustee, Shyamrangini Roy Chowdhurani, would stand possessed of the said properties upon the trusts mentioned in the said deed subject to the powers and provisions contained therein, as follows :

(a) The surviving trustee would pay out of the rents, issues and profits of the immovable properties and out of the income of the existing investments after meeting all outgoings including taxes, the expenses for maintenance of the family of the settlor, viz., the surviving trustee, the four sons of the settlor, viz., Nanilal Roy, Rangalal Roy, Kshirode Lal Roy and Jaladhilal Roy, and their wives

and children and the grandchildren and the great grandchildren and the grandsons in the male line;

(b) The surviving trustee would spend amounts in her discretion to carry on the seba of a Deity Sri Sri Lachminarayan Thakur installed at Bhagyakul;

(c) The surviving trustee was empowered to spend amounts for the marriage expenses of the members of the family of the settlor including daughters and grand-daughters in the male line ;

(d) All expenses of the children and grandchildren in the male line were directed to be borne by the surviving trustee from the income of the trust including expenses for education abroad ;

(e) The surviving trustee was directed to bear the expenses of the education of Jaladhilal Roy, the youngest son of the settlor, abroad to the extent of Rs. 600 per month ;

(f) The surviving trustee was directed to satisfy and settle the legitimate debts and dues of Rangalal Roy, the second son of the settlor, to the Co-operative Hindusthan Bank Ltd.

(g) The surviving trustee was directed to pay to Nalini Sundari, the married daughter of the settlor, Rs. 50 per month for her pocket expenses and to provide for clothing of the latter's husband and children to the extent the surviving trustee would think fit and proper. The surviving trustee was also directed to pay to the said daughter a sum of Rs. 15,000 for her absolute benefit.

2. The other material clauses in the said deed were as follows : Clause 11: The surviving trustee would be entitled to appropriate for her own benefit and use a sum of Rs. 10,000 (Rupees ten thousand) out of the trust estate and to spend the same in any way she likes. Besides the above sum, she would during the term of her natural life get from the trust estate interest at the rate of Rs. 6% per annum on a sum of rupees one lakh to be invested for that purpose in good securities. She will also be entitled to spend from the trust estate any amount of money she might think fit and proper for the purpose of purchasing clothing for herself, for the spiritual benefit of the settlor and for going to holy places of pilgrimage and also for going to and residing in health stations or health resorts for her health or peace of mind according to her absolute discretion."

3. Clause 14 : "The surviving trustee would have no power to make any gift or gratuitous transfer whatever but subject to the said restriction would be entitled to sell, transfer, exchange, lease out or otherwise alienate absolutely or conditionally or for any period however long any movable Or immovable property or properties belonging to the trust estate provided, however, that before doing so she would consult and take the opinion of the said four sons of the settlor or the survivor or survivors of them or so many of them whose opinion would be available on proper notice to them. If the opinion of the majority of the said four sons of the settlor or survivors of them or of such of them whose opinion would

be available in the manner hereinbefore stated, is against such sale, transfer, exchange, alienation or lease, the surviving trustee would not be entitled to make such transfer, sale, exchange, alienation or lease."

4. Clause 16: "After the death of the surviving trustee, Sreemati Shyamrangini Roy Chowdhurani, the trust hereby created would cease and determine save and except that out of the properties both movable and immovable then existing, the said Rangalal Roy would upon her death be paid a sum of Rs. 50,000.

5. Clause 17 : "Subject to the aforesaid trusts, all the unexhausted residue of the trust estate both movable and immovable and the equitable and beneficial interest therein would vest in equal shares in the settlor's said four sons, Nanilal Roy, Rangalal Roy, Kshirode Lal Roy and Jaladhilal Roy, absolutely and for ever and be their absolute property for ever."

6. Nundalal Roy, the settlor, died on August 5, 1930. After the death of Nundalal, Shyamrangini Roy Chowdhurani continued as the surviving trustee. During her period of trusteeship, Jaladhilal Roy, the youngest son of the settlor, died.

7. On September 19, 1940, Shyamrangini Roy Chowdhurani, the surviving trustee, executed two deeds. By the first deed, Shyamrangini Roy Chowdhurani, the surviving trustee, relinquished her share in the estate of Jaladhilal which devolved on her, in favour of her three remaining sons including the beneficial interest under the said deed dated September 12, 1929.

8. On the same day, another deed was executed by Shyamrangini Roy Chowdhurani and the three surviving sons, Nanilal, Rangalal and Kshirode Lal. It was recorded in the said deed, inter alia, as follows :

(a) The said deed being executed between Nanilal, Rangalal and Kshirode Lal as settlors and Shyamrangini Roy Chowdhurani, the sole surviving trustee, under the trust created by the deed dated September 12, 1929, Shyamrangini and the said three sons were declared to be trustees of the endowment created by the said deed.

(b) Jaladhilal died in London on May 1, 1940, and before his death, he had expressed his last wish for the establishment of a charitable institution to perpetuate the memory of his father, Nundalal Roy, but failed to carry into effect the said desire by execution of a proper will or deed.

(c) The settlors were desirous of carrying into effect the said wish of their deceased brother by establishing a charitable hospital in the town of Calcutta.

(d) For the said purpose, the settlors were transferring on the date of the execution of the said deed a sum of Rs. 1 lakh and intended to transfer a further sum of Rs. 4 lakhs, thereafter. The payment of the balance sum of Rs. 4 lakhs would be secured by charge on specified properties of the trust estate created by the deed dated September 12, 1929, including the interest of the deceased son, Jaladhilal, which had devolved on the surviving sons.

(e) Shyamrangini as the surviving trustee under the said deed dated September 12, 1929, consented to the said transfer of the said amount of Rs. 5 lakhs for the creation of the said charge. The properties mentioned in the schedule to the said deed were stated to be charged for the purpose of payment of the said amount of Rs. 4 lakhs.

(f) Apart from the amount of Rs. 1 lakh, a further sum of Rs. 50,000 was to be made over to the trustees of the endowment within one year and out of the said sum of Rs. 1,50,000, a plot of land or building would be acquired for the establishment of the charitable hospital. The balance amount of Rs. 3,50,000 would be made over to the endowment trust after the charitable hospital was established. The said balance amount would carry interest at the rate of 5% to be paid in monthly instalments from the date of the opening of the hospital.

9. On July 29, 1948, Shyamrangini, the surviving trustee, died upon which the unexhausted residue of the trust estate vested in equal shares in the three surviving sons, Nanilal, Rangalal and Kshirode Lal. On September 7, 1965, Rangalal Roy died.

10. On the death of Rangalal Roy, his estate was assessed to estate duty. A claim was made by the accountable person that 1/3rd of the amount of Rs. 3,50,000 for which a charge had been created over the properties should be excluded from the estate. The Assistant Controller of Estate Duty rejected the claim of the accountable person and held that u/s 44A of the Estate Duty Act, 1953, the claim that the said amount should not be included was not tenable. In respect of the debt created in favour of the trust fund, the deceased had made a disposition of his own interest to the extent of 1/3rd of Rs. 3,50,000, viz., Rs. 1,16,666.67. There was no consideration in money or money's worth for the debt and the debt was not wholly for the own use and benefit of the deceased.

11. Being aggrieved, the accountable person preferred an appeal to the Appellate Controller of Estate Duty. The Appellate Controller upheld the decision of the Assistant Controller. The Appellate Controller held that in order to be allowed deduction in the computation of estate duty, a basic requirement was that the debt should be enforceable in a court of law and it should have been incurred for consideration of money or money's worth. The claim made in respect of the debt in the instant case was held not to fulfil either of the two requirements. The Appellate Controller found that the deed of endowment dated September 19, 1940, was nothing more than a family arrangement whereby the mother and the sons agreed to set aside a portion of the family wealth for a charitable purpose. This arrangement could not be enforced by a suit. The beneficiary was not in the picture at all and the promise to pay money in the shape of gift did not create a contract in law. In any event, there was no consideration in money or money's worth for the same.

12. A contention made that the consideration for the said debt in favour of the charitable hospital was the relinquishment by Shyamrangini of her interest in the

estate of Jaladhilal Roy, the predeceased son, was not accepted by the Appellate Controller.

13. The accountable person preferred a further appeal to the Income Tax Appellate Tribunal from the order of the Appellate Controller. It was contended before the Tribunal that the deceased succeeded to an estate which was subject to a charge created and that the decision of the Assistant Controller that Section 44(a) of the Estate Duty Act, 1953, was attracted to the facts was not correct. It was submitted that though in the deed dated September 19, 1940, the three surviving sons had been described as settlors, they were not owners of the estate and did not have title to the properties. Shyamrangini, the surviving trustee, being alive, they had only a beneficial interest in the trust properties. It was contended that it was Shyamrangini, the surviving trustee, who had transferred the funds in favour of the charitable hospital and had created the charge. It was also contended that in the wealth-tax assessment for 1957-58, the Appellate Assistant Commissioner had accepted the validity of the charge and had given relief accordingly. It was further urged that if Rangalal, as one of the settlors, had created the charge, the same was for consideration.

14. Contentions to the contrary were made on behalf of the Revenue. It was submitted that Section 44(a) of the Estate Duty Act, 1953, was attracted to the facts of the case and as no consideration passed, the deduction claimed for the debt should not be allowed. It was also contended that in the deed of relinquishment it was recorded that the relinquishment was made in consideration of a charitable disposition for a hospital. Relying on Clause 14 of the original deed dated September 12, 1929, it was submitted that Shyamrangini had been prohibited from making any gift or gratuitous transfer and, therefore, in any event, the trust and the charge created were invalid.

15. It was contended in reply on behalf of the accountable person that under the deed dated September 19, 1940, no gift or gratuitous transfer was made but the said deed resulted in an alienation which was at the , most an avoidable transaction at the instance of the persons affected.

16. The Tribunal noted the contents and the clauses of the deed of settlement dated September 12, 1929, including Clauses 11 and 14 thereof as also the provisions of the deed dated September 19, 1940. The Tribunal found that in the deed of endowment dated September 19, 1940, it was mentioned that the hospital was being set up for perpetuating the memory of Nundalal which was also the last wish of Jaladhilal. Under the trust deed dated September 12, 1929, Shyamrangini was entitled to spend any amount for the spiritual benefit of Nundalal, the deceased settlor, which was a purpose mentioned in Clause 11 thereof, as she thought fit and at her absolute discretion. The Tribunal also noted that after the death of Nundalal, Shyamrangini had become entitled to the entire trust estate which vested in her absolutely. No one else had any right, title or interest in the corpus. The sons, by themselves, had no right to dispose of any part of the original trust estate. The Tribunal held that Clause 14 of the deed

dated September 12, 1929, had to be construed in the context of the entire provisions of the deed. The said clause did not prohibit transfer but permitted transfer with the consent of the majority of the sons. A charge over immovable property was not a transfer of property within the meaning of the Transfer of Property Act.

17. The Tribunal thereafter construed the deed of endowment dated September 19, 1940, and found that the three surviving sons had been made parties to this deed so that they could signify their acceptance of their trusteeship in the deed itself. The said sons did not declare that they were owners of the fund or the property or that it was their money or property which was being transferred. The Tribunal noted that the mere fact that the sons were described as settlors in the deed of 1940 did not affect the transfer of funds by Shyamrangini, the surviving trustee, out of the parent trust estate and the charge created by her by the said deed did not militate against the deed of settlement of 1929. The Tribunal held that the charge was created and the transfer of funds was also made by the surviving trustee out of the parent trust. The Tribunal came to the conclusion that after the death of Shyamrangini, the sons took the estate burdened with the liability and the charge which were not created by Rangalal and Section 44(a) of the Estate Duty Act, 1953, was not attracted. The Tribunal held that disallowance of 1/3rd of the liability in respect of the said sum of Rs. 3,50,000 was untenable and allowed the appeal.

18. The Tribunal also came to the conclusion that the transaction effected by Shyamrangini might be a voidable transaction and the same could be avoided by the persons affected. The Tribunal noted that the sons in whom the residue of the original trust estate vested had agreed to the transaction and by their conduct, they acquiesced in the same and were not in a position to avoid the transaction. The validity of the charge created by Shyamrangini was not affected by a mere possibility of an action by the sons which could not affect the validity of the transaction at the relevant time. The Tribunal also noted that it was on record in the wealth-tax assessment that under the endowment of 1940, land had been acquired for the purpose of putting up a charitable hospital.

19. On an application by the Revenue u/s 64(1) of the Estate Duty Act, 1953, the following question has been referred by the Tribunal as question of law arising out of this order for the opinion of this court:

"Whether, on the facts and in the circumstances of the case and on a proper interpretation of the trust deed dated September 12, 1929, and the trust deed dated September 19, 1940, the Tribunal was justified in law in directing the deduction of Rs. 1,16,667 and holding that Section 44(a) was not attracted ?"

20. This is the subject-matter of the above Reference No. 311 of 1974.

21. On an application by the Revenue u/s 64(3) of the Estate Duty Act, 1953, this court directed the Tribunal to refer also the following questions as questions of law arising out of the order of the Tribunal for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case and on a proper interpretation of Clause 14 of the trust deed dated September 12, 1929, the surviving trustee, Smt. Shyamrangini Roy Chowdhurani, was entitled, either independently by herself or with the consent of her sons, to transfer any amount out of the trust estate for the establishment of the charitable hospital or to create a charge on the trust properties for securing the transfer of any amount for the said purpose ?

2. Whether, on the facts and in the circumstances of the case, the disposition made by Smt. Shyamrangini Roy Chowdhurani of the sum of Rs. 5,00,000 under the indenture dated September 19, 1949, was void and, accordingly, the deduction of any part of the unpaid sum of Rs. 3,50,000 was allowable in computing the value of the estate of the deceased ?

3. Without prejudice to questions Nos. 1 and 2 whether, on the facts and in the circumstances of the case and on a proper interpretation of the indenture dated September 19, 1940, any valid debt was incurred or an valid incumbrance was created to the extent of Rs. 1,16,667 and whether such debt or encumbrance was allowable u/s 44 of the Estate Duty Act, 1953, in determining the value of the estate of the deceased ?"

22. The above three questions are the subject-matter of the above Reference No. 632 of 1979.

23. At the hearing, the learned advocate for the Revenue drew our attention to the following section of the Estate Duty Act:

24. Section 44 : "Reasonable funeral expenses and, with some exceptions, debts and incumbrances to be allowed for in determining chargeable value of estate.-- In determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding rupees one thousand) and for debts and incumbrances; but an allowance shall not be made--

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of Section 27, such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or..."

25. The learned advocate for the Revenue also drew our attention to Section 100 of the Transfer of Property Act, 1882, which reads as follows :

"Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge."

26. The learned advocate also drew our attention to Section 11 of the Indian

Trusts Act, 1882, the material part whereof is as follows :

Section 11 : The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract."

27. The learned advocate for the Revenue contended that Rangalal, the deceased, was a party to the deed of endowment dated September 19, 1940, and to the charge or encumbrance created by the said deed and the disposition made thereby. Without the concurrence of her sons, Shyamran-gini could not have made or effected the disposition or created the charge and, therefore, to the extent Rangalal was a party thereto, the transaction came within the mischief of Section 44(a).

28. The learned advocate contended further that, in any event, Rangalal as the beneficiary under the original deed of settlement dated September 12, 1929, had consented to the said disposition and the charge created by the subsequent deed dated September 19, 1940. For that reason also, the transaction came within the mischief of Section 44(a) of the Estate Duty Act. In support of his contentions, the learned advocate for the Revenue cited the following decisions :

(a) A.N.K. Rajamani Ammal Vs. Controller of Estate Duty, . In this case, a Division Bench of the Madras High Court construed the expression "disposition" occurring in Section 27(1) of the Estate Duty Act, 1953, and held, inter alia, that such a disposition was a bilateral or multilateral act. The unilateral act of a coparcener by which he could throw his self-acquired property into the common stock of the joint Hindu family would not be such a disposition. The said unilateral act would also not be a disposition within the meaning of Explanation (1) to Section 2(15) of the Estate Duty Act, 1953.

(b) Rajkumari Mathuramba Rajayee Vs. Controller of Estate Duty, . This is a decision of another Division Bench of the Madras High Court. In that case, it was held on the facts that an agreement by a deceased person to pay a sum of Rs. 4 lakhs to his wife, a part of which was paid and the balance of which remained outstanding, was not an enforceable debt due by the deceased and was not allowable in determining the value of the property which would pass.

29. As no one appeared on behalf of the assessee, we invited Mr. Pranab Pal, a learned advocate of this court, to assist us in the matter as *amicus curiae*. Mr. Pal has assisted us in the matter ably and we record our appreciation for the assistance rendered by him. He drew our attention to the various provisions of the relevant deeds and the Sections of the statutes involved. He also drew our attention to a decision of the Supreme Court in *The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao*, , where the Supreme court construed the meaning of the expression "disposition" occurring in Section 2(xx)(iv) of the Gift-tax Act. Construing the said section, the Supreme Court observed that the word "disposition" meant that it was one of the modes of transfer of property. It was held that partition in a Hindu undivided family could

not be considered to be a disposition within the meaning of the said section of the Gift-tax Act. The Supreme Court said that the word "disposition" should also be construed in a similar manner in Section 24 of the Estate Duty Act.

30. Two main questions fall for our determination in the above reference. The first question is whether the deceased, Rangalal, had any part to play in the creation of the endowment under the subsequent deed dated September 19, 1940. If we construe the said deed dated September 19, 1940, in the background of the original deed of settlement dated September 12, 1929, it would appear that the legal ownership of the trust property remained vested in the surviving trustee, Shyamrangini, as long as she was alive and it was she who could transfer or dispose of the property held under the said trusts.

31. It also appears that the disposition by Shyamrangini under the deed of endowment dated September 19, 1940, was not with the consent of all the beneficiaries under the first deed of settlement. Apart from the sons, there were other beneficiaries who did not consent to the disposition in favour of the charitable hospital.

32. We also note that the charitable hospital was to be set up in the name of the deceased, Nundalal, and under the original deed of settlement dated September 12, 1929, Shyamrangini could spend any amount of money from the trust estate for the spiritual benefit of Nundalal. In the background of the aforesaid, we agree with the finding of the Tribunal that it was Shyamrangini who had made the disposition of the amount of Rs. 5 lakhs and created the charge and Rangalal Roy did not have the power to effect the disposition.

33. His consent was recorded in the deed of endowment dated September 19, 1940, possibly for greater safety and as any disposition of the trust property required the consent of the majority of the sons. But we hold that even without such consent, Shyamrangini would be within her rights in making the disposition under Clause 11 of the first deed.

34. The other question which remains is whether the disposition made by Shyamrangini is void. On our construction of the two deeds noted hereinabove, it cannot be said that the disposition by Shyamrangini is void ab initio. As the legal owner of the trust properties, Shyamrangini, in any event, could transfer the trust property validly to a third party. The persons who could object were the beneficiaries and, in the instant case, the majority of the beneficiaries having concurred with the transfer, it would not lie in their mouths now to challenge the transfer. The disposition has already been partly carried out by purchasing the land in which the charitable hospital would be set up.

35. For the reasons as aforesaid, we also agree with the conclusion of the Tribunal that the disposition made by Shyamrangini was not a void but a valid disposition.

36. The two decisions cited on behalf of the Revenue, in our view, have little

relevance to the facts before us and on the view we have taken of the facts, Section 44(a) of the Estate Duty Act, 1953, has no application on the facts inasmuch as we have come to the conclusion that the disposition was made and the charge was created not by the deceased but by Shyamrangini, the surviving trustee after whose death the residual property vested with the deceased subject to the charge.

37. For the reasons as aforesaid, we answer the question referred in Matter No. 311 of 1974 in the affirmative and in favour of the accountable person.

38. Question No. 1 referred in Matter No. 632 of 1979 has also to be answered in the affirmative in view of our answer to the question in Matter No. 311 of 1974 and in favour of the accountable person.

39. Question No. 2 referred in Matter No. 632 of 1979 is corrected as follows :

"2. Whether, on the facts and in the circumstances of the case, the disposition made by Smt. Shyamrangini Roy Chowdhurani of the sum of Rs. 5,00,000 under the indenture dated September 19, 1940, was void and, accordingly, the deduction of any part of the unpaid sum of Rs. 3,50,000 was not allowable in computing the value of the estate of the deceased ? "

40. The said question is answered in the negative and in favour of the accountable person.

41. Question No. 3 referred in Matter No. 632 of 1979 is answered as follows:

42. By the indenture dated September 19, 1940, a valid debt and encumbrance were created to the extent of Rs. 1,16,667. We further state that Section 44 of the Estate Duty Act, 1953, was not attracted to the facts of the case. The said debt was allowable otherwise in determining the value of the estate of the deceased. Question No. 3 is also answered in favour of the accountable person.

43. In the facts and circumstances of the case, there will be no order as to costs.

Shyamal Kumar Sen, J.

44. I agree.