
(1970) 07 BOM CK 0013
In the Bombay High Court
Case No : O.S. Suit No. 291 of 1970

Devlakshmi Harisukh Vahalia and Others	APPELLANT
Vs	
Vishwakanth P. Bhatt	RESPONDENT

Date of Decision : 09-07-1970

Acts Referred:

Trusts Act, 1882 — Section 9

Citation : AIR 1972 Bom 103 : (1971) 73 BOMLR 594 : (1972) MhLj 37

Hon'ble Judges : Vimadlal, J

Bench : Single Bench

Advocate : J.I. Mehta and M.R. Mody, for the Appellant; A.H. Mehta, for the Respondent

Judgement

1. This is an Originating Summons taken out by the plaintiffs who, along with the defendant, are the trustees under an Indenture of Trust dated the 18th of January 1927 executed by one Pranjivan Tuljaram, for the determination of certain questions propounded therein. The facts necessary for the purpose of disposing of this Originating Summons are very few. One Pranjivan Tuljaram executed an Indenture of Trust dated 18-1-1927 and the plaintiffs and the defendant are the present trustees of that trust. The relevant clause of the said Indenture of Trust which has been quoted in para 3 of the plaint is as follows:-

"To have and to hold the said land hereditaments and premises unto the trustees --- Upon trust To pay all rates taxes and outgoing out of the rents and profits thereof and all expenses of keeping the said hereditaments and premises in a proper state of repair and properly insured And that the Trustees shall pay the residue of the net rents and profits thereof to the Settlor during the term of his natural life and subject thereto . from and after the death of the s.ettler the trustees or trustee shall stand possessed of the residue of such rents income and profits hereinafter called the trust income upon the trust to pay the same unto the said Vishwakanth Pranjiwan (the deft) during his natural life and it is hereby further agreed and declared that from and after the death of the said

Vishwakanth Pranjivan the Trustees or trustee shall stand possessed of the said trust property to sell the same and it is hereby agreed and declared that the trustees or trustee of these presents shall hold the money to arise from any such sale after payment of all expenses attending such sale upon trust to divide or distribute the same together with the balance of the unapplied income thereof as if such sale proceeds and income had absolutely belonged to the said Vishwakanth Pranjivan at the time of his death and he had died intestate in respect, thereof."

The settlor died on 9th June 1930. On 25th October 1962, the defendant executed an Indenture of Release under which he released unto the trustees his entire right, title and interest as a beneficiary under the said trust. The plaintiffs have taken out this Originating Summons for the purpose of determining the legal effect of the said Indenture of Release.

2. Though, in the Originating Summons, the opinion of the court is sought on several questions, in effect, the question that arises is only one, and that is whether by reason of the release or disclaimer or surrender of his life interest under the Indenture of Trust by the defendant, by the said Indenture of Release dated 25th October 1962, the subsequent absolute interest granted by the said Deed of Trust to the heirs of the defendant as on an intestacy is accelerated or whether there is a resulting trust in respect of the income that was payable to the defendant during his life-time under the said Indenture of Trust. That is a question which has often arisen in England and has been the subject-matter of several judicial decisions in that country, but I have not been referred to a single reported decision on this point in India which could be said to be an authority in regard to it. In view, however, of the characteristic lucidity with which the ratio of judicial decisions on this point has been culled in the standard English works on the subject, it is not really necessary for me to consider all those decisions in this judgment; In Lewin on Trusts (16th Edn) at p.121, the law on the point is formulated as follows:-

"Where a life interest or some like interest income fails or comes to a premature end the question arises whether subsequent interests are accelerated or whether there is a resulting trust of the income. In the case of a will the question is slightly different because there, if there is no acceleration, the income falls into residue or is undisposed of. The principle is well settled in relation to wills, that where there is a gift to some person for life, and a vested gift in remainder expressed to take effect on the death of the first taker, the gift in remainder is construed as a gift taking effect on the death of the first taker or on any earlier failure or determination of his interest, so that the person entitled in remainder will take immediately on such an earlier failure or determination and will not be kept waiting until the death of the first taker. There is no reason for applying any different rule to a settlement inter vivos, though it may well be more difficult, in the case of a settlement, to collect the intention necessary to bring the doctrine of acceleration into play. Where it can be brought into play there is, of course, no

resulting trust for the settlor."

As pointed out in Halsbury's Laws of England (3rd Edn.) Vol. 34 pp. 607-608 para 1062 where the same principle is laid down, the doctrine of acceleration does not, however, apply if the remainder is not a vested remainder but is contingent on an uncertain event. The doctrine of acceleration of subsequent interests by the premature determination of the prior interest is however, based on the express or implied intention of settlor which enables the court to construe the grant of the subsequent interest as intended to take effect on the failure or determination of the prior interest in any manner. If, therefore, the document creating the trust expressly or impliedly indicates a contrary intention, the subsequent interests are not accelerated, but there is a resulting trust of the income in favour of the settlor or his estate (Vide Halsbury's Laws of England (3rd Edn.) Vol. 39, pp, 947-948/para 1434).

3. The learned counsel for the plaintiffs cited before me the decisions in the English cases of *Midland Bank Executor & Trustee of Midland Bank Executor & Trustee Co. v. Morrison*, 1943 Ch 300 & *Davies v. Mackintosh*, (1957) 3 All ER 52 which were both cases in which the doctrine of acceleration was applied to testamentary dispositions. In the *Midland Bank's* case the principle of acceleration was applied to annuities given subject to a life interest in the residuary income. In doing so, Simonds J. enunciated the principle of acceleration in the following terms (at pp. 301 - 302):-

"I see no reason why it should not be appropriate in the case of any interest, whether partial, such as an annuity, or residuary. The principle is the same. An interest is postponed that a prior interest may be enjoyed. If that prior interest is determined whether by the death of a prior beneficiary or for any other cause, the reason for postponement disappears and there is no reason why there should not be acceleration. Accordingly, when I find an annuity expressed to be subject to a life interest and that the tenant for life has disclaimed his life interest, I come to the conclusion that the annuity is to be accelerated, for it is just as if the direction for the payment of the annuity was "subject to the interest of the tenant for life which may be determined either by his death or for some other reason."

In the case of 1957-3 All ER 52 a testatrix gave the residue of her estate to be divided equally between her two sons and her step-daughter P. She further provided, "P's portion to be hers for life and then to be divided equally between her issue." The testatrix died on the 22nd March 1955, and by a deed dated 5th October 1956, P irrevocably renounced and disclaimed all the life or other interest in the residuary estate of the testis conferred on her by the will. P was a widow aged 58 years. She had three children, the youngest of whom was nearly 21 years old. None of P's children had any issue. On the question as to how P's portion should be dealt with, it was held that the effect of the disclaimer was to accelerate the interest of P's children and preclude the participation to P's three children in equal shares absolutely. It was observed in the judgment of Vaisey, J.

(at p.54) that, but for the disclaimer, the funds would, at the death of P, have been divisible in comprising all her descendants or whatever degree (children and remoter issue) who had been in existence at any time between the death of the testis and the death of P. The learned judge state that each such person's interest would be an absolute vested interest, so that the class might include not only persons living at the death of P, but also the legal representatives of person who had predeceased her. The learned judge then pointed out that, at the time when he delivered judgment, the class however consisted only of the three children of P. In regard to the contention that the purely gratuitous act of one of the beneficiaries P, should not operate to deprive and dispossess a number of other beneficiaries, viz., P's grand- children and remoter issue, of the interest which the testatrix had given them by her will, the learned judge stated that it was clear that acceleration might and did sometimes alter the constitution of a class of beneficiaries from it would have been if the gift had not been accelerated. He then proceeded to apply the doctrine of acceleration and declared that the fund belonged to the three children of P in equal shares absolutely.

4. Though, in the above two cases, the principle of acceleration was applied to testamentary dispositions, the same principle has been held to be applicable to trusts inter vivos also. In the case of *Flower v. Inland Revenue Commrs.* (1957) 1 All ER 462, the facts are that, by a settlement inter vivos, it was provided that the trustees should stand possessed of the trust funds during the lifetime of the settlor to apply the income of the trust funds in each year for such charitable and benevolent purposes as they might from time to time direct, with power to accumulate any income not so paid and to apply such accumulations for the like purpose. It was, however, provided that though the said trust was not confined to purposes charitable in law and the trustees could make payments of subscription or gifts, no payment was to be made which would benefit the settlor or any of trustees. The said settlement laid down, that after the death of the settlor, the trustees were to hold trust fund upon trust to pay the annual income to the settlor's wife for life and, on the death of the survivor of them the settlor and his wife, to hold the capital and income for the settlor's three children in equal shares. The settlor's wife died, and then the settlor himself died. It was common ground that the discretionary trust during the settlor's life was void for uncertainty. For the purpose of ascertaining whether estate duty was payable in connection with the death of the settlor in respect of the trust funds, it became necessary to decide whether the result of the invalidity of the discretionary trust was to accelerate the interests expressed to take effect after the death of the settlor, or to give rise to a resulting trust in favour of the settlor so that the trust funds passed on his death. *Henkins, L.J.* funds passed on his death. *Jenkins, L.J.* who delivered the leading judgment laid down (at p. 465 that, although all the authorities in regard to the principle of acceleration in regard to the principle of acceleration which had been referred to before him were concerned with wills, there was no reason for applying any different rule to a settlement inter vivos.

and that the principle must be broadly the same. He, however, went on to observe that he could not help feeling that it might "well be more difficult, in the case of a settlement, to collect the intention necessary to bring the doctrine of acceleration into play." He then went on to hold that the interests of those beneficially entitled after the death of the settlor were not accelerated, because the character of the disposition made by the settlement in that case showed that the settlor's intention was that during his life neither he nor his wife nor his children should have any beneficial interest in the trust fund, and that, therefore, there was a resulting trust in favour of the settlor and the fund must be held to have passed on his death for the purposes of the Finance Act of 1894. The learned judge stated (at p. 468) that, having regard to the terms of the deed of settlement before him. " It would be a large and unwarrantable extension of the doctrine (of acceleration) so to apply it" in the said case. It will thus be seen that though the principle of acceleration was in fact not applied in *Flower's* case because the settlor had manifested a contrary intention, its applicability to trusts inter vivos was recognized and accepted by the Court of Appeal in England.

5. Three decisions of the courts of this country were cited before me by the learned counsel for the plaintiffs but, in my opinion, none of them can be said to be an authority in regard to the doctrine of acceleration. In the case of *The Commissioner of Income Tax, Bombay Vs. Smt. Kasturbai Walchand Trust, Bombay*, the facts were that, under a deed of trust inter vivos created by Seth Walchand and his wife Kasturbai, the said Kasturbai had a life interest in respect of the income of the trust funds as well as a right of free residence in some of the properties. By clause 8 of the said deed of trust it was provided that after the death of Kasturbai, the trustees were to apply the income of the properties to the charitable purposes enumerated in the deed of trust. After the death of Seth Walchand, Kasturbai executed a deed dated 21st July 1955 whereby she surrendered and released her life interest in the income as well as her right of free residence and her entire beneficial interest under the said deed of trust "to the intent that her beneficial interest may be determined as aforesaid and the same may be immediately vested in the trustees and that the trustees may utilise the same for charitable purposes mentioned in the said indenture of settlement." The Supreme Court held that the deed executed by Kasturbai was valid in view of the provision contained in Section 58 of the Indian Trusts Act, 1882, which provided that the beneficiary, if competent to contract, could transfer his interest that by executing the said deed dated 21st July 1955 Kasturbai had surrendered all her rights, and that the income of the trust property became exempt from liability to Income Tax as soon as the rights of Kasturbai ceased on execution by her of the deed of surrender dated 21st July 1955, since the same would have to be applied for charitable purposes in accordance with the other terms of the deed of trust. The Supreme Court, however, did not decide the further question as to whether the trustees were entitled to apply the funds of the trust properties for charitable purposes immediately on the execution of the deed of surrender, or were required to

accumulate the income and apply the same to charitable purposes on the death of Kasturbai under Cl, 8 thereof, as it took the view that in either case the income would be exempt from Income Tax under the provisions of Section 4 (3) (I) of the Indian Income Tax Act, 1922. The decision in The Commissioner of Income Tax, Bombay Vs. Smt. Kasturbai Walchand Trust, Bombay, is, therefore, not an authority for holding that the doctrine of acceleration applies to deeds of settlement inter vivos. That decision was followed by a Division Bench of this Court in the case of Commissioner of Income Tax Vs. Trustees of Sir Kikabhai Premchand Trust, and the same is also, therefore, of no assistance for the purpose of deciding the question before me. The last case referred to by the learned counsel on behalf of the plaintiffs was a decision of the Division Bench of this court in the case of Commissioner of Income Tax v. Lady Ratanbhai Mathuradas 1967-68 ITR 504), but in the judgment in that case the application of the doctrine of acceleration appears to have been assumed and it was stated (at p.510) that the sole question was whether the shares of the beneficiaries under the trust deed were indeterminate and unknown, so as to make the trustees assessable at the maximum rate under the proviso to Section 41 of the Indian Income Tax Act, 1922.

6.The Indian Trusts Act was intended to codify the law relating to private trusts and trustees. The use of the expression "define and amend" in, and the omission of the word "consolidate" from, the preamble to the said Act shows that, whilst the Act is exhaustive in respect of any matter specifically provided for in it, not exhaustive of all matters relating to private trusts. In cases covered by the Act is exhaustive in respect of any matter specifically provided for in it, not exhaustive of all matters relating to private trusts. In cases, covered by the Act, therefore, the provisions of the Act alone must be applied, but in any case not covered by the Act, the Court is entitled to apply rules of English law, as laid down by judicial decisions in that country, which are not inconsistent with the Act, as the rules of justice, equity and good conscience AIR 1932 158 (Privy Council) . Though Section 9 of the Indian Trusts Act, 1882, provides for a beneficiary renouncing his interest under a private trust by disclaimer, the said Act does not contain any provision relating to the acceleration of subsequent interests on the failure or premature determination of a prior interest. In such a situation Courts of this country must, therefore, resort to the principles of English law on the subject as laid down by judicial decisions in that country. The English doctrine of acceleration of subsequent interests when a prior interest fails or comes to a premature end is not inconsistent with any provision of the Indian Trusts Act, 1882. I accordingly hold that the said doctrine applies in India, both to trusts created by will as well as to settlements inter vivos, provided two conditions are fulfilled, viz., (1) the settlor has not shown a contrary intention in the document creating the trust; and (2) the subsequent interest is vested interest, and not a contingent interest. Turning to the Indenture of Trust dated 18th January 1927 in the present case, it is impossible to find a contrary intention on the part of the settlor so as to negative the applicability of the

doctrine of acceleration. In fact, the intention of the settlor, as disclosed by the relevant clause of the Indenture of Trust quoted above is clearly that the heirs of the defendant as on an intestacy should be the only persons who are to be beneficiaries on the failure or determination of the defendant's life interest, whatever be the manner in which the same comes to an end. The words "and he had died intestate in respect thereof" in that clause do not, in my opinion, disclose a contrary intention so as to negative the applicability of the principle of acceleration, but merely describe the class of beneficiaries amongst whom the trust property is to be distributed. There can also be no doubt that the interest which has been conferred on the said class of beneficiaries is a vested interest within the terms of Section 19 of the Transfer of Property Act, 1882, in so far as the condition upon which is certain to occur, and is not in the nature of an uncertain event so as to make it a contingent interest. Moreover, as observed by Vaisey.J, in the case of 1957 3 All ER 52 cited above (at p.54) the application of the doctrine of acceleration may, and does sometimes, alter the constitution of class of beneficiaries from what it would have been if the gift had not been accelerated. The terms of the relevant clause of the Indenture of Trust in the present case are very similar to the terms of the trust created under the will in the old case of Pestonji v. Khurshedbai, (1905-7 Bom LR 207) in which a bequest was made to D for life and, after her death, the corpus was to be divided between her issue "according to the law or statute for the time being in force in India relating to intestate succession among Parsees." The testator died in 1885 when D had two sons and two daughters. One daughter died in 1885, One son F died in 1889, D herself died in 1904. It was held (at p.211) that, on the death of the testator, the legacy became vested in the class of persons preferred to and described in the will, viz., the issue of D. In the present case also, the interest granted to the defendant's heirs under the Indenture of Trust dated 18th January 1927 is therefore, a vested interest. Both the conditions necessary for the applicability of the principle of acceleration being satisfied, I have come to the conclusion that the legal effect of the execution of the Indenture of Release dated 25th October 1962 by the defendant is to accelerate the distribution of the trust funds among the class of persons answering the defendant as on an intestacy on whom a vested interest has been conferred by the Indenture of Trust dated 18th January 1927. I, therefore, hold that the trustees must distribute the corpus of the trust funds, as well as the unapplied income thereof (if any), amongst the persons who at the date of the Indenture of Release dated 25th October 1962 answered the description of being the heirs of the defendant as on an intestacy. I answer the question propounded by the Originating Summons as follows;

1. In the affirmative.
2. In the affirmative.
3. In the affirmative.

& 4. The trustees must sell the Trust property in the manner directed by the

Indenture of Trust dated 19th January 1927 and hold the money arising from any such sale, after payment of all expenses attending such sale, upon trust to divide or distribute the same, together with the balance of the unapplied income thereof, amongst the persons who would be the heirs of the defendant as on an intestacy if he had died on the 25th of October of 1962.

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8 Do not arise.

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& 11.

7.I order that the plaintiffs' costs of this Originating Summons, as between attorney and client, as well as the costs of the defendant, do come out of the trust estate.

8. Order accordingly,