

(1957) 01 CAL CK 0015
In the Calcutta High Court

IN RE FLOWERS SETTLEMENT TRUSTS : FLOWER AND OTHERS

Date of Decision : 25-01-1957

Acts Referred:

Finance Act, 1894 — Section 1

Citation : (1958) 34 ITR 3

Hon'ble Judges : Ormerod, J;Jenkins, J;Evershed, J

Bench : Full Bench

Judgement

LORD EVERSHED M. R. I will ask Jenkins L. J. to deliver the first judgment.

JENKINS L. J., having stated the facts substantially as set out above, continued : It will have been observed that the trust declared during the life of the settlor comprised a discretionary power given to the trustees to apply the income of the fund to an extremely wide and varied range of objects not confined to charitable purposes nor even to benevolent purposes, for the first proviso to paragraph 2 expressly provided "that the objects of the above trust are not confined to purposes which according to law may be held to be charitable purpose but shall include purposes of a benevolent and/or public character," and so on. I will not read the words again but the potential objects cover a very wide field.

It is common ground that the discretionary trust declared to take effect during the life of the settlor in these extremely wide terms was and is void for uncertainty so that no effective disposition was made of the income of the fund during the settlors lief. In that state of affairs it is contended by Mr. Cross for the appellants that on the principle recognised in a long line of cases the result of the invalidity of the trusts declared during the settlors lifetime was to bring about an acceleration of the interests of the persons taking in remainder. The effect of that, as I understand it would be that for with upon the execution of the settlement Dame Florence Flower, the widow became taint for life in possession of the fund with remainder to the three children in equal shares. If that were so it is common ground that no estate duty could be exigible on the death of Sir archibald under the provisions of section 1 of the Finance Act, 1894 or otherwise.

(1) (1876) 3 Ch. D. 703.

(2) (1886) 34 Ch. D. 357; 3 T. L. R. 204.

(3) (1938) A. C. 575; sub nom *In re Blake*, 54 T. L. R. 703; (1938) 2 All E. R. 362.

On the other hand it is contended on the part of the Crown by Mr. Pennycuik that the invalidity of the trusts declared in respect of the income during the settlors life brought about a resulting trust in favour of the settlor and consequently that at the time of his death he had a beneficial interest in possession for the period of his life in the fund. If that argument is well founded it is common ground that estate duty must have been exigible on his death by virtue of a passing u/s 1 of the Finance Act, 1894.

Mr. Cross referred us to several of the numerous cases bearing upon this topic. The principle I think is well settled, at all events 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, with the result that if the gift, to the first taker fails—as, for example, because he witnessed the will—or if the gift to the first taker does not take effect because it is disclaimed, then the person entitled in remainder will take immediately upon the failure or determination of the prior interest, and will not be kept waiting until the death of the first taker.

It has long been settled that this principle applies not only realty (in respect of which I think it was first introduced) but equally in respect of personality; and although all the authorities to which we have been referred have been concerned with wills, Mr. Cross submits—and I do not think that Mr. Pennycuik disputes—that there is no reason for applying any different rule to a settlement inter vivos. As to that I would say that I am disposed to agree that the principle must be broadly the same; but I cannot help feeling that 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.

Of the authorities I need refer only to *Lainson v. Lainson* 1, and secondly to *In re Hodge* 2. In *Lainson v. Lainson* 1 the first paragraph of the headnote is in these terms : "The words, from and immediately after his decease following a limitation for life, in general point out the order of limitation merely. Where therefore a testator revoked a limitation for life, which was followed by those words introducing subsequent limitations : Held that the remainders were accelerated."

(1) (1854) 5 De G. M. & G. 754.

(2) (1943) Ch. 300; 59 T. L. R. 373; (1943) 2 All E. R. 304.

Turner L. J. said 1 : "The question in this case is not whether an intention is to be collected in favour of the testators son and heir (who requires no intention in his favour), but whether there is an intention in favour of the grandson. The

question may be considered in two points of view; first, as regards the will; secondly, as regards the codicil. By the will the estate is given upon trust for the testators son for life; and from and immediately after his decease, upon trust for his first and other sons in tail. These words may have one of two imports, either that the grandson was to take nothing till after the death of his father, or else merely to show the order of the limitations, through which the estate was to pass. I take the cases cited to establish the proposition, that prima facie these words are to be understood as denoting the order or succession of the limitations. Is there then anything in the will to lead to a different conclusion ? I can see nothing."

It is to be observed that the Lord Justice said that prima facie these words are to be understood as denoting the order or succession of the limitations. But earlier in the passage I have quoted he said : "The question in this case is not whether an intention is to be collected in favour of the testators son and heir (who requires no intention in his favour); but whether there is an intention in favour of the grandson." By that I think he meant that the testator must be taken prima facie to have intended the heir to take any interest not effectively disposed of so that the question was whether that intention was displaced by this particular provision. Mr. Pennycuik submits that, similarly in the case of a settlement, prima facie anything not disposed of by the express terms of the settlement reverts to the settlor under a resulting trust, so that where acceleration is alleged the question is whether an intention to produce acceleration in lieu of a resulting trust is manifested by the language of the instrument.

In *re Hodge* 2 was a decision of Simonds J., and the headnote reads : "a testatrix by her will directed that annuities should be paid to two annuitants subject to a life interest in the residuary income the first payments to be made three months after the death of the tenant for life. The tenant for life having disclaimed his life interest : Held that the annuities were accelerated so as to take effect as from the death of the testatrix."

Simonds J. in his judgment said 3 : "The principle of acceleration was first established in regard to remainders in real estate, and probably the origin is to be found in the technicalities of real property law. However that may be the principle became extended to interests in personalty and, although counsel have not found any authority where it has been applied except in the case of what may be called a residuary interest 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 interests of the tenant for life which may be determined either by his death or for some other reason."

(1) (1854) 5 De G. M. & G. 754, 756.

(2) (1943) Ch. 300.

(3) (1943) Ch. 300, 301.

The question then is whether, having regard to that principle the intention necessary to produce acceleration in the present case is to be collected from the terms of the settlement. The judge was of opinion that no such intention could be collected from the language used with any sufficient degree of certainty. He took the view that in these circumstances his proper course was to follow the literal meaning of the language used; and taking that course he found that there was no ground for holding that the interest in remainder were accelerated so as to take effect during the lifetime of the settlor.

In my view the judge was clearly right. The point is a short one which does not admit of much elaboration in argument; but in my opinion there is no sufficient reason here for holding that the interests in remainder were accelerated. On the contrary it seems to me that when the settlement is examined such indications as there are point in the other direction. One may observe first that the trustees, in whom the purported discretionary power of distributing income was vested, were in fact the settlor himself, his wife and the three children. One being, therefore, with this, that what the settlor had immediately in view was a trust operating during his life under which the income of the fund could be applied for a wide variety of purposes excluding himself and his wife and children at the joint discretion of those persons in their capacity as trustees; and he made by the settlement no further or other disposition of the fund during his life save by conferring on the trustees—that is to say, himself and his family—these discretionary powers of disposal.

Next I would observe that the trusts in this document are declared in two separate and distinct branches. First by paragraph 2 it is provided that the trustees shall stand possessed of the trust funds during the life of the settlor "to use apply and pay the income" thereof and so, forth and secondly in paragraph 3 : "After the death of the settlor the trustees shall hold the trust funds" upon trusts stated. It is not a case where the trusts during the life of the settlor and after his death are expressed in a continuous series without a break. On the contrary, the two set of trusts are declared quite separately which does to some extent suggest that they are to be regarded as independent of each other.

Next it is to be observed that to bring the doctrine of acceleration into operation something must be found here equivalent to the gift of : vested remainder to a person expressed to take effect on the death of the first taker. Here it seems to me that Mr. Cross argument recall : meets with insuperable difficulties. This is

not a case in which a fund is given to A for life, and from and after the death of A to B that being the simplest example of a proper case for the application of that doctrine. It is a disposition of the fund during the life of the settlor for objects which do not include the settlor.

Therefore it is not possible to bring the doctrine into play to treating the trusts in remainder as taking effect on the death of that the settlor, or the earlier failure or determination of his interest, because the settlor in truth had no beneficial interest at all. It would be necessary effect on the death of the settlor or the prior failure or determination the trusts limited to take effect during his lifetime. That seems to me to involve an extension of the doctrine which to my mind would wholly unwarranted.

Next one finds references to the death of the settlor which, I think make it reasonably plain that the event referred to is the death of the settlor in the literal sense, and nothing else. For example, one first towards the end of the first proviso to paragraph 2 the word "power for the trustees to enter into contracts for the payments of annuities or gifts for any term of years but determinable on the death of the settlor." That I would say means the actual death of settlor.

Then one has in paragraph 3 the words : "After the death of settlor" introducing the trusts in remainder, and that, I should he thought was in contradistinction to the separate fasciculus of declared by paragraph 2 during the life of the settlor. Then again sub-paragraph (ii) of paragraph 3 one finds : "On the death of survivor of them the settlor and the said Florence Flower." This should have thought again must be the actual death of the longest liver of the two of them.

These considerations lead me to the conclusion that the judge was right in holding that there was no acceleration in this case. The language of the settlement read literally seems to me to be wholly consistent with that view. There is here no evidence of intention, such as might be looked at by way of surrounding circumstances, to spell and intention that an acceleration should take place in events such as those that have happened out of the language used. If the surrounding circumstances are looked at it seems to me in the highest degree improbable that the settlor (if the matter had been brought to his notice) would have intended acceleration to take place in favour of the persons interested in remainder so as to give the income of the entire fund immediately to his wife with remainder of the capital and income to his children. It appears to me to be plain from, the character of the disposition made 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 fund, but the fund was to be subject to a discretionary power jointly exercisable by him and them as trustees to apply the fund for, broadly speaking charitable and benevolent purposes such as a man in the position of the settlor would ordinarily feel himself and his family under a moral duty to support. The fund was to be held at the discretion of the trustees for the application of the income during his life for purposes such as those, with no idea whatever in his mind of giving his wife or his children any beneficial

interest until after his death. It seems to me that would have been an extraordinary departure from anything that the settlor could have intended for his wife to come into immediate possession of the income of the trust fund.

As I said earlier the point is a short one. For the reasons I have endeavoured to express I think that Mr. Cross submission fails, and I conclude by saying this. As I have already mentioned, Mr. Cross referred us to a number of cases, but was not able to find an authority in which it has been held or even argued that acceleration could take place in the case of a settlement inter vivos in the form of th settlement now under consideration. It appears to me that it would be a large and unwarrantable extension of the doctrine so to apply it in the present case.

For these reasons, in my view the judge came to a right conclusion, and I would dismiss the appeal.

ORMEROD L. J. I agree and I have nothing to add.

LORD EVERSHERD M. R. I also agree with the reasons which my brother has given and with the judgment of Upjohn J.

Appeal dismissed.

Solicitors : Stanley & Co. for R. Evans Parr & Co. Birmingham, Solicitor of Inland Revenue.