

(1933) 03 CAL CK 0043
In the Calcutta High Court

In Re: Maurice Saleh Manasseh

Date of Decision : 08-03-1933

Acts Referred:

Citation : AIR 1933 Cal 924 : 147 Ind. Cas. 489

Hon'ble Judges : Lort-Williams, J; Lord-Williams, J

Bench : Division Bench

Judgement

Lort-Williams, J.—This is a petition by Collector of Stamp Revenue of Calcutta, asking that an enquiry be held into the true value of the property of Maurice Saleh Manasseh, deceased. By an indenture made in 1869, the premises No. 55, Free School Street, were conveyed upon trust, inter alia, for Esther Saleh Manasseh for life, and, thereafter, for such of her children as she should appoint. In 1896 she executed a deed appointing the income thereof to her son Maurice for life, and thereafter for such persons as he should appoint. By her will, made in 1909, she demised premises No. 7/1, Marquis Street upon trust for Maurice for life, and thereafter for such persons as he should appoint, By a deed, made in 1917, premises No. 2/1, Russel Street, were conveyed upon trust, inter alia, for Esther for life, and after the expiration of five years from her death, as to one-sixth for Maurice for life, and thereafter for such persons as he should appoint. Esther died in 1924. By his will, made in 1929, Maurice demised all these properties upon trust, inter alia, to pay the income to his daughter for life. Maurice died in 1930, and his will was proved. But these properties were not included in the affidavit of assets filed by the executor.

2. The questions to be decided are, whether these properties belonged to Maurice at the time of his death, and are properties belonging to his estate and liable to probate duty. It is undisputed that all the properties were at all material times held in trust, and that Maurice had only a life interest with a general power of appointment, and it is assumed, for the purpose of the present issue, that he validly exercised this power by his will. It is assumed also that the rule against perpetuities does not apply. The issues raised turn upon the meaning and effect of the Court-fees Act of 1870. Sch. 1, Article 11, deals with probate, and directs

the fees to be charged upon "the amount or value of the property in respect of which the grant of probate is made." By an amending Act, passed in 1899, Sch. 3 was added. This provides a "form of valuation" to be filed by the executor of

all the property and credits of which the deceased died possessed, or was entitled to at the time of his death, and which have come or are likely to come to my hand.

3. Annexure A sets out a number of heads of property of the deceased; movable and immovable, the last one being "other property not comprised under the foregoing heads." None of the heads deals specifically with property over which the deceased had only a power of appointment. Annexure B, Schedule of debts, etc., deals with items which the executor is allowed to deduct, and includes "property held in trust, not beneficially or "with general power to confer a beneficial interest," and "other property not subject to duty." The meaning of the word "property" is not defined either in the Court-fees Act or the General Clauses Act. Section 91, Succession Act, provides that:

Unless a contrary intention appears by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power; and a bequest; of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

4. I have no doubt that property, over which a person has a general power of appointment, is not property within the ordinary meaning of that word in law. As stated by Fry, L.J., in *Ex parte Gilahrist, In re Armstrong* (1886) 17 QBD 521:

No two ideas can well be more distinct the one from the other than those of "property" and "power".... A "power" is an individual personal capacity of the donee of the power to do something. That it may result in property becoming vested in him is immaterial; the general nature of the power does not make it property. The power of a person to appoint an estate to himself is, in my judgment, no more his "property" than the power to write a book or to sing a song. The exercise of any one of those three powers may result in property, but in no sense which the law recognises are they "property."

5. Therefore the real question is, whether it is property within the meaning of the Court-fees Act, that is to say, property "in respect of which the grant of probate is made." In *Platt v. Routh* (1840) 6 MLW 756 it was decided that it was not property within the meaning of Section 38 of 55 Geo. 3, c. 184, namely,

the estate and effects of the deceased, for or in respect of which the probate is to be granted.

6. And Lord Abinger, C.B., gave very cogent reasons why this was so, at pages 790-93 of this report. This decision was affirmed on appeal, reported as *Drake v.*

The Attorney-General (1843) 10 C1 Fin 257. The material words of this section are almost exactly similar to those in 11. Sch. 1, Court-fees Act. Probably in consequence of these decisions, the law in England was altered by statute in Section 4, Stamp Act of 1860, and in Section 2, Finance Act, 189i, and all such property was made liable to duty. In India, no similar provision has been made, as was pointed out by Sir Richard Couch in *In the Goods of Julia Oram* (1874) 21 WR 245. In this case, as also in *In the goods of Olivia Hovenden George* (1870) 15 WR 457 the learned Chief Justice followed the decision in *Platt v. Routh* (1840) 6 MLW 756. But in *In re Lakshminarayana Ammal* (1902) 25 Mad 515, Sir Arnold White, J., refused to follow the decision in *George's case* (1870) 15 WR 457n; but *Oram's case* (1874) 21 WR 245 was not brought to his notice, and his decision was based obviously on some confusion of thought, and an incorrect reference, and is otherwise unsatisfactory. It is true that the learned Chief Justice eventually decided the case on the short ground that, in his opinion, a general power of appointment is property within the meaning of that word in the Court-fees Act, and he based his opinion partly on the words of the valuation form in Sch. 3, which, as he points out, was first introduced in 1899.

7. The final question therefore which remains to be decided is whether the introduction of this schedule has altered the law in India, and made such property liable to probate duty. In my opinion, it has not. Mr. Westmacott has very properly drawn my attention to the remarks of Lord Lindley in *Commissioner of Stamp Duties v. Stephen* (1904) AC 137 wherein he decided that mere general language in a probate duty statute applicable to the property of deceased persons, and to property subject to their general power of appointment, does not extend to property subject to a special power to appoint amongst a limited class. The intention to include the latter must be clearly expressed. Analogous reasoning, in my judgment, applies to the present case. It is true that the property, over which a testator has a general power of appointment, passes to his executor and not to the appointee: *In re Hoskin's Trusts* (1877) 6 Ch D 281, *In re Philbrick's Settlement* (1865) 34 LJCh 368 and *In re Hadley Johnson v. Hadley* (1909) 1 Ch 20. But the words in Sch. 3 are conjunctive, namely,

property of which the deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

8. The latter part of the sentence therefore does not add anything to the former, but, on the contrary, rather limits it. The only evidence of any intention on the part of the legislature to include property subject to a general power of appointment is the negative evidence supplied by Annexure B. In my opinion some plainer indication of intention if needed before the words of the Act can be so extended. The petition is dismissed with costs.