

(1971) 12 CAL CK 0004
In the Calcutta High Court

INLAND REVENUE COMMISSIONERS

APPELLANT

Vs

PARK AND OTHERS.

RESPONDENT

Date of Decision : 09-12-1971

Acts Referred:

Citation : (1972) 84 ITR 446

Hon'ble Judges : Russell, J

Bench : Division Bench

Judgement

RUSSELL L. J. read the judgment of the court. The facts in this appeal are fully set out in the report of the case before Foster J.

The question for decision is whether the gift of assets worth some Pounds 80,000 Pounds by the settlor to his grandson, constituted by the settlement dated May 25, 1962, and the subsequent marriage on September 8, 1962, of the grandson to Miss Stockwell, was "a gift made in consideration of marriage." If so, the contents of the gift are exempt from estate duty in respect of the death of the settlor on September 22, 1963. Foster J. held that it was not such a gift so that the exemption did not apply.

There are some matter that are perfectly plain. First : when the gift took effect it did so absolutely in favour of the grandson, and the settled property became his absolute property with no qualifications known to the law. Second : it was a gift contingent upon the marriage of the grandson and Miss Stockwell taking place. Third : it was a gift to take immediate effect upon the celebration of that marriage. Fourth : it was a gift to one of the parties to that marriage and to nobody else.

We ask ourselves how can such a gift be other than a gift made in consideration of marriage when it has those four qualities ?

Now it is perfectly true that the second recital in the document is not correct. That recital reads as follows :

"The settlor has agreed with the husband that in consideration of the said marriage duly taking place he will make provision for the husband and has in pursuance of the said agreement caused to be transferred into the joint names of the trustees the property specified in the schedule hereto."

There was no agreement. But in ascertaining whether the gift be within the language of the exemption it would have been no different had the recital been : "The settlor having determined that if and when the said marriage duly takes place he will..... and has in pursuance of the said determination caused....." Similarly, if the later phrase in the document had been "Now therefore" instead of "Now in consideration of the said intended marriage."

Reliance is placed by the Crown on what was said in *Rennell v. Inland Revenue Commissioners*, in this court and the House of Lords. Now it is important to notice that in that case no one within the marriage consideration was given any right to receive any benefit under the settlement : they were only included with other members of the settlors family in a discretionary class. Apart from the fact that the settlement was contingent and operative upon a marriage of two of the discretionary class there was no gift related to a marriage, though the settlement was expressed to be in consideration of the marriage. The first contention of the Crown was that the settlement could not in law involve a gift made in consideration of marriage (for purposes of exemption) unless it was exclusively for the benefit of persons within the marriage consideration as that phrase is generally understood by the law, subject perhaps to ultimate remainders in default of such persons to take. The House of Lords by a majority did not accept that contention. The next question was whether on the facts of that case it could properly be said that the gift involved in the settlement was made in consideration of marriage. At this point counsel for the taxpayer was faced with the problem of finding some definition or limitation that would fit the facts of the case without having to contend that every gift to anyone effective and contingent upon any marriage was within the exemption. For this reason he made the submission that there was a third requirement, that the gift must be made for the purpose of, or with a view to, encouraging or facilitating the particular marriage. Proceeding on that submission the taxpayer contended that the history of the case began with an idea of the settlor making a settlement of a more ordinary kind on his daughter on her marriage, and that what happened was that, on the suggestion of the solicitor, the idea was expanded to embrace more money and more members of the family. The majority of the House of Lords expressed themselves as content to accept this third requirement in that case, and considered that the settlors original purpose sufficiently remained to make the settlement a gift made in consideration of the marriage, notwithstanding the addition of money and of beneficiaries outside the marriage consideration, and the wish to save estate duty.

Now in those circumstances it does not seem to us that the *Rennell* case in any way suggests that in the present case the settlement did not involve a gift made

in consideration of marriage. Indeed, our impression is that it would never have occurred to any of their Lordships that anything said by them would suggest for a moment that the facts in our case involved anything other than a relevant gift made in consideration of marriage. Indeed, if anything, the decision is an extension of the ambit of that phrase beyond the facts in this case.

It was argued for the Crown that the Rennell case, totally jettisoned the conception of persons ordinarily regarded by the law as within the marriage consideration as relevant to this exemption and that consequently the circumstances in all cases must be fully investigated in order to probe the motive or main purpose of the donor or settlor. We do not accept this. We have listed the four significant facts of this settlement or gift. In our judgment, the fourth of these, granted the others, must speak for itself to define the gift as one made in consideration of marriage. The Crown instanced an employer who selected an employee on the verge of marriage, and who, contingent and effective upon that marriage, settled a substantial sum upon him absolutely after making it plain to the employee that he was expected after marriage to transfer the money or property to children of the employer. But if in such case there was nothing in law or equity binding the employee to do this, we do not see why this should not be within the terms of the exemption, any more than in the instant case.

We must stress that the property after the marriage was absolutely the property of the grandson. Had he died a week after the marriage, estate duty would have been exigible thereon on his death. It is true that later he settled some Pounds 55,000 worth of the funds on descendants of the settlor (other than, for obvious reasons, himself and his wife). But he would only have done this, we have no doubt, after legal advice that in law this would be a voluntary gesture on his part, and that it was against his interest and that of his wife and future children (by the marriage on the occasion of which he received the Pounds 80,000) that he should do it. We say all this in order to stress the obvious : that the settlor intended this to be, and it was, in law and equity absolutely the grandsons property, provided that and when, he married Miss Stockwell; and that is true whatever may have been the hopes of the settlor that, by voluntary action of the grandson, other members of the settlors family would share in a fund free of estate duty. The settlor no doubt considered, when he made this gift, that the risk was small that his grandson would not act in a gentlemanly fashion : but that is no way to impose a trust.

It is not in our view irrelevant to observe that, if the settlement in this case had taken the form of a covenant to transfer the property to trustees upon trust for the grandson if and when the marriage took place, it cannot be doubted on authority that the trustees could, and would be required to, enforce the covenant at the instance of the grandson because it was a marriage settlement and the beneficiary was within the marriage consideration. In an action in such a case, with the grandson as plaintiff (seeking transfer of the property to himself or to the trustees upon trust for him) and the settlor and the trustees (if unwilling to

sue) as defendants, the plaintiff grandson would plead that the covenant was a covenant entered into consideration of his marriage to Miss Stockwell, which marriage took place on etc., etc. The settlor could not deny this allegation nor (the grandson being within the marriage consideration) resist the claim. Moreover, the allegation would not require to be based upon any statement in the settlement that it was made in consideration of marriage : it would be self-evident from the fact that the covenant and trust were for the benefit of the husband of the marriage to take effect if and when the marriage took place. We cannot conceive that in such case it would be open to the settlor to assert that what he had done was not done in consideration of marriage (and that therefore the covenant was not specifically enforceable) because his main purpose was, in the hope that the grandson would "play the game," to achieve a distribution of a substantial part of his assets among his family (including the grandson) free from a charge to estate duty should he die in the reasonably near future. We should add that at one stage in argument for the Crown the grandson in this case was referred to as a mere conduit pipe. But a mere conduit pipe need take no action and the analogy or metaphor is wholly false.

In short, therefore, in our judgment all reference in the Rennell case, to the purpose or motive of the donor or settlor is wholly irrelevant to a case where the sole absolute beneficiary is a spouse of the marriage in question. In applying to such a case any such consideration *Foster J.* was, we consider, in error. Consequently, in our judgment, the appeal should be allowed, with an appropriate declaration to the effect that the subject matter of the settlement was exempt from estate duty on the occasion of the settlors death.

Appeal allowed with costs.