
(1929) 10 BOM CK 0003
In the Bombay High Court

Ma Yait

APPELLANT

Vs

The Official Assignee

RESPONDENT

Date of Decision : 28-10-1929

Acts Referred:

Transfer of Property Act, 1882 — Section 6(a), 6(e)

Citation : (1930) 32 BOMLR 125

Hon'ble Judges : Thankerton, J;Lancelot Sanderson, J;John Wallis, J;Atkin, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Atkin, J.—This is an appeal from the High Court of Judicature at Rangoon in a suit which was brought originally by one Ebrahim Moolla, who was the assignee of one Maung Chit Maung. The plaintiff claimed to have a declaration of the interests of the assignor under a settlement made by the assignor's father in the year 1908. The defendants, who are the present appellants, are the trustees of the settlement, and the defence to the suit was an allegation that the assignment was invalid by reason of its being in breach of Section 6 of the Transfer of Property Act (Act IV of 1882), which applies to the dispositions of this particular settlor. The clauses relied on are Clause (a) of Section 6, which says : "The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred"; and Clause (e), which says that a mere right to sue cannot be transferred.

2. The question at issue was whether the rights that were given, if any, to the assignor of the plaintiff, the eldest son, were a possibility of a like nature of an heir-apparent succeeding to an estate and so forth, or were a right to sue. That turns upon the construction of the settlement. Without going into it in detail it may be described as an ordinary settlement made in the settlor's lifetime, by which the settlor transferred to the trustees a large amount of property, in substance, probably, the whole of his property, in trust to allow the settlor during

his lifetime to manage the property, and to have the sole benefit of the income both from the immovable and movable property. The settlement then proceeded to declare certain trusts that should come into operation after his death. The trusts to come into operation after his death were that, as to the property comprised in three schedules, the trustees, during the life of the widow and until the youngest child attained the age of twenty, were to distribute the income in the manner provided, namely, that they were to pay 1,000 rupees a month to the widow, and to divide the remainder amongst the children, including the eldest son, Maung Chit Maung, the assignor of the plaintiff. After the youngest child attained the age of twenty, property was to be sold, and the proceeds were to be divided in equal shares between the children then surviving, the issue of any child who was dead to represent his father's share. There was a slight alteration in the trust in relation to the property comprised in the fourth schedule, because in that case the property was not to be distributed until the death of the youngest child, and it was to be divided then amongst the children living at that date.

3. Now, it is plain that the result of this disposition was to create first of all, a vested interest in all the children in the income of the property; secondly, it created a contingent interest in all the children in the corpus in respect of all the property until, at any rate, the youngest child reached the age of twenty. When the youngest child reached the age of twenty, the children who were alive at that date obtained a vested interest and a right to have the proceeds distributed among them as to the property in the first, second and third schedules. As to the property of the fourth schedule, all the children took a contingent interest until the death of the youngest child, and, as soon as the youngest child died, the children then surviving, and, of course, their issue, obtained a vested right to have the property distributed among them. That is a very plain and ordinary settlement, and it gives very plain and well-understood rights to all the parties who benefit under the settlement: a vested right in the income, contingent rights in the corpus ; and it appears to their Lordships to be plain that the contingent interest which the children took, whether they took it under the first, second and third schedules or under the fourth schedule, was something quite different from a mere possibility of a like nature of an heir-apparent succeeding to the estate, or the chance of a relation obtaining a legacy, and also something quite different from a mere right to sue. It is a well ascertained form of property- it certainly has been transferred in this country for generations-in respect of which it is quite possible to raise money and to dispose of it any way that the beneficiary chooses.

4. Their Lordships think, therefore, that the defence failed, and that the Courts were perfectly right in making the decree which was eventually asked for, not by the assignee himself, but by his assignee in bankruptcy, who succeeded to his rights.

5. Their Lordships think it desirable to say that they are not prepared to accede

to the whole of the reasoning of the Courts below, who seem, with great respect, to have treated the interest in the corpus as being a vested interest at the time of the assignment, when, quite plainly, in their Lordships' view, it was not; nevertheless, it being of the nature that their Lordships have described, it was such an interest as could be assigned, and the Courts were, in their Lordships' opinion, quite right in making the decrees complained of. It is not unnatural, as it appears to their Lordships, that when the matter comes to be carefully looked at, counsel for the appellants find it impossible to put any different view before their Lordships from that which they have already expressed ; the case is indeed unarguable.

6. Their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.