
(1955) 04 MAD CK 0032
In the Madras High Court
Case No : O.S.A. No. 22 of 1954

Mrs. Avis Fitzalan Cowdrey

APPELLANT

Vs

Imperial Bank of India and another

RESPONDENT

Date of Decision : 21-04-1955

Acts Referred:

Citation : (1955) 04 MAD CK 0032

Hon'ble Judges : Rajamannar, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : V. Ramakrishna Sastri, for the Appellant; King and Partridge and Pais, Lobo and Alvares, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This appeal against the judgment of Chandra Reddi J., arises in the following circumstances: One Katherine Mary Jones, a resident of Bangalore was a constituent of the Bangalore branch of the Imperial Bank of India and had a current account with it in her sole name. On 13-5-1951, she addressed a letter to the Manager of the Bank asking him to arrange to have her current account, in which an amount of Rs. 17,683-15-7 stood to her credit, changed to a joint account with Mrs. Esme Folkes of No. 7 Vivdani Road, Richards Town, Bangalore.

Mrs. Jones and Mrs. Folkes filled up the necessary form for opening a current account in their joint names and both of them also filled up what is called an "Either or survivorship" form, which is in the form of a letter addressed by them to the Manager in the following terms:

With reference to the current account to be opened in your books in our joint names, please note that such account is to be operated on by either of us and by the survivor of us, until you receive notice from either of us to the contrary.

Accordingly, a join account was opened in their names on 14-5-1951, Mrs. Jones died on 20-10-1951 and on that date, the balance at credit in the joint account

was Rs. 21,199-1-1. The appeal relates to this sum.

2. Mrs. Jones left behind her a will dated 25-5-1951 in and by which she appointed the Imperial Bank of India as sole executor. She bequeathed all her clothing and wearing apparel to Mrs. Folkes and two pecuniary legacies of Rs. 2,000 and Rs. 3,000 to Miss Brito and to Mrs. Folkes respectively. She devised and bequeathed all the residue of her property, real and personal, immoveable and moveable, subject to the payment of just debts, funeral and testamentary expenses to her cousin Mrs. A. F. Cowdrey, residing in Southern Rhodesia.

The Imperial Bank of India duly obtained probate of the will. On 1-11-1951 Mrs. Folkes wrote to the Manager of the Bank that the current account of the deceased Mrs. Jones had been converted into a joint either or survivor account at the express wish of the deceased, so that she, Mrs. Folkes, could help the deceased in her last days and the balance would go to herself on the death of Mrs. Jones, and claimed the said amount. Mrs. Cowdrey, the residuary legatee, opposed this claim and herself made a claim to this amount as residuary legatee.

She made a special claim in respect of two amounts which were included in the joint current account, namely, a sum of Rs. 5006-7-6 being the total of the amounts alleged to have been sent to the deceased by her (Mrs. Cowdrey) for the express purpose of paying the doctor's bills, nursing fees, medicines etc., of the deceased, and to a sum of Rs. 7281-12-0, being the redemption proceeds of 3 per cent Government of India loan, 1951-54 bonds of the face value of Rs. 7300 belonging to the deceased.

In view of the conflicting claims, the Imperial Bank of India filed an application to this court under S. 302 of the Succession Act for directions as to the disposal of the balance at credit of the joint either or survivor account with the Bank standing in the names of the deceased Mrs. Jones and Mrs. Folkes. Mrs. Cowdrey and Mrs. Folkes set out their respective claims to the amount in question.

The learned Judge held that Mrs. Folkes title to the balance of the said joint account as on the date of the death of Mrs. Jones had been established and directed the Bank to pay Mrs. Folkes the said balance. Mrs. Cowdrey appeals against this order of Chandra Reddi J.

3. The main contentions on behalf of the appellant were that the conversion of her sole current account by the late Mrs. Jones into a joint either or survivor account in the names of herself and Mrs. Folkes was only for the purpose of convenient operation of the account during her lifetime owing to her ill-health and defective eye-sight, that Mrs. Folkes did not obtain any right to the said amount or any balance that may be left out of such amount that there was in fact no gift by the deceased to Mrs. Folkes and that there was in any event no valid gift or disposition in law of the said amount and that therefore the amount fell into the residue to which she, Mrs. Cowdrey became entitled as residuary legatee.

It was contended on behalf of Mrs. Folkes that at or about the material time Mrs. Jones was in advanced age and incapable of adequately looking after herself and that she was assisting her in looking after her affairs, that she was attending on her both morning and evening, and that she had no other relations or friends to render her any help, that she :Mrs. Jones), in consideration of Mrs. Folke's services, desired that she should be provided with a reasonable portion of her estate and with that intention, the sole current account was converted into a joint either or survivor account, so that whatever amount remained to the credit of that account at the time of the death, of Mrs. Jones may be taken by her (Mrs. Folkes).

4. In support of her case, the appellant, Mrs. Cowdrey, relied upon that fact that Mrs. Jones was at the time physically feeble and practically blind, that there was no mention of any gift of the amount in question to Mrs. Folkes in the will and that there was a specific bequest of Rs. 3,000 only to Mrs. Folkes. We agree with the learned Judge, Chandra Reddi J. that none of these facts is conclusive.

The fact that Mrs. Jones was weak and of failing eyesight might well support the case of Mrs. Folkes that on that account Mrs. Jones had to rely entirely on Mrs. Folkes and would naturally have intended to reward her (Mrs. Folkes) for her services. The omission in the will of any mention of the amount in the joint account may well be explained by a consciousness on the part of Mrs. Jones that she had already made an arrangement for the disposal of the balance that may remain in that account by opening an either or survivor account.

5. As against these circumstances relied on by the appellant, the respondent, Mrs. Folkes, relied on the positive evidence adduced by her to the effect that Mrs. Jones clearly manifested an intention that whatever balance was left in the joint account should be taken by Mrs. Folkes. Dr. Ross, who was the medical consultant of Mrs. Jones during her last days, swore to an affidavit in which he deposed that the deceased was considerably attached to Mrs. Folkes who was her constant help and attended to her needs for several years up to the time of her death and that Mrs. Jones informed him that the "proceeds of joint either or, survivor account which Mrs. Jones had desired to be opened in their joint names was intended for the benefit of Mrs. Folkes.

He had no hesitation in saying that to his personal knowledge Mrs. Jones had opened that account with the object and intention that the survivor should be entitled absolutely to the proceeds of the account. Rev. Mathew Hickey, Catholic Priest and Vice-Provincial of Redemptorist Congregation deposed in an affidavit that he had visited Mrs. Jones sometimes in his capacity as a Catholic priest and that Mr. Jones explicitly mentioned to him that she had intended that the proceeds of the joint either or survivor account in the Imperial Bank of India should go to Mrs. Folkes.

Mr. Harden, the agent of the Imperial Bank of India in 1951 swore to an affidavit in which he inter alia stated that he remembered Mrs. Folkes calling on him in

May 1951 and informing him that Mrs. Jones wished to have her personal current account converted into a joint either or survivor account with Mrs. Folkes for two reasons, namely. (1) that Mrs. Folkes could operate on the account at her discretion, and (2) that in the event of the death of Mrs. Jones the balance would automatically go to Mrs. Folkes.

On this evidence which the learned Judge accepted it is clear that the intention of Mrs. Jones in converting her sole current account with the Bank into a joint either or survivor account in the names of herself and Mrs. Folkes was to give absolutely such balance as may remain to the credit of that account at her death to Mrs. Folkes.

6. On this finding of fact, there is very little scope for legal argument. In - AIR 1928 172 (Privy Council) , which no doubt dealt with money deposited in the Bank by a Hindu, the Privy Council laid down a general principle, thus :

The general principle of equity, applicable both in this country and in India, is that in the case of a voluntary conveyance of property by a grantor, without any declaration of trust, there is a resulting trust in favour of the grantor, unless it can be proved that an actual gift was intended.

Their Lordships then referred to an exception made in English law where money belonging to the husband is deposited at a bank in the name of a wife or in the joint names of husband and wife, when a gift is presumed This is the rule or presumption of an intended advancement in favour of a wife, which rule however does not obtain in India, where there is a widespread practice among Mohamedans and Hindus to make benami grants and transfers.

As Mrs. Folkes is not even related to Mr. Jones, there is of course no question of any presumption of an intended advancement. Learned counsel for appellant relied upon certain decisions and contended that there was no declaration of trust in favour of Mrs. Folkes. We agree with him, but that does not carry him all the way, because we have held that it has been proved that an actual gift was intended or does the decision in - "Williams v. Ball", 1917-1-Ch. I (B), help the appellant in any way. There the owner of a life policy gave it to his housekeeper with an indorsement authorising her to draw the insurance in the event of his predeceasing her.

It was held that this indorsement did not have the effect of transferring any title to the housekeeper, as the assignment was an incomplete gift and there was no testamentary document duly executed to support her claim on the basis of a legacy In the present case, the conversion of the individual current account into a joint either or survivor account operates to vest the title to the amount in the account in both Mrs. Jones and Mrs. Folkes, subject to the condition that on either of them surviving the other the balance is taken by the survivor absolutely.

7. We may now briefly refer to certain decisions of the English courts cited to us. Sir George Jessel M. R. discussed in - "Marshall v. Crutwell", (1875) 20 Eq. 828

(C), the general rule to be followed in cases where a banking account in joint names is opened, He observed :

As I understand it, the law is this; The mere circumstance that the name of a child or a wife is inserted on the occasion of a purchase of stock is not sufficient to rebut a resulting trust in favour of the purchaser if the surrounding circumstances lead to the conclusion that a trust was intended.

Although a purchase in the name of a wife or a child, if altogether unexplained, will be deemed a gift, yet you may take surrounding circumstances into consideration, so as to say that it is a trust, not a gift. So in the case of a stranger, you may take surrounding circumstances into consideration so as to say that a purchase in his name is a gift, not a trust.

In the particular case before him, the Master of the Rolls came to the conclusion that in opening an account in the joint names of himself and his wife, the husband did not intend to make a provision for the wife, but that it was a mere arrangement for convenience. He said:

Having regard to the rule which is now binding on me that I must infer from the surrounding circumstances what the nature of the transaction was, I come to the conclusion that it was not intended to be a provision for the wife, but simply a mode of conveniently managing the testator's affairs, and that it leaves the money therefore still his property.

In the present case, we have come to the conclusion from the surrounding circumstances that Mrs. Jones did intend to make a provision for Mrs. Folkes in case she died before Mrs. Folkes. Following the general rule enunciated by the learned Master of the Rolls, Russell J. held in *In re, Harrison*, (1920) 90 LJ Ch 186 (D), on different facts that in that case it was not a mere arrangement for convenience but that it was intended to be a provision for the wife.

We agree with the learned Judge that both in fact and in law, on the death of Mrs. Jones Mrs. Folkes became entitled to the balance standing to the credit of the joint account in the names of both.

8. The appeal is, therefore, dismissed. Costs of all parties will come out of the estate.