

(1976) 07 BOM CK 0007

In the Bombay High Court

Case No : Estate Duty Reference No. 1 of 1966

Official Trustee of Bombay

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 23-07-1976

Acts Referred:

Estate Duty Act, 1953 — Section 11, 11(1), 24, 24(1), 7

Citation : (1979) 117 ITR 190

Hon'ble Judges : V.D. Tulzapurkar, J; R.M. Kantawala, J

Bench : Division Bench

Advocate : S.E. Dastur, for the Appellant; R.J. Joshi, for the Respondent

Judgement

Tulzapurkar, J.—In this reference made to his court by the Central Board of Direct Taxes, under s. 64(1) of the Estate Duty Act, 1953, the following question has been referred for our opinion :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 20, 85, 649 representing the value of 1/3rd share of the trust corpus, was correctly included in the principal value of the estate of the deceased for purposes of estate duty ?"

2. The estate duty assessment pertains to the estate of Her late Highness Maharani Chimnabai Gaekwar of Baroda, who died on 23rd August, 1958. It appears that an account of the property passing on the death of the deceased was furnished to the Deputy Controller of Estate Duty, Bombay, by Prince Khanderao Raje Gaekwar of Baroda and Her Highness Usha Raje Rani of Jath, who were the administrators of the estate of the deceased and accountable persons under the Act. The Deputy Controller found that the deceased had an interest under a trust settlement made by His late Highness Sir Sayaji Rao Gaekwar, Maharaja of Baroda, which had been accounted for. He called upon the official trustee, Bombay (who was the trustee of the settlement), as the accountable person to furnish the necessary account which he did under protest,

denying any liability to pay estate duty in respect of this item.

3. The material facts relating to this trust settlement which gave rise to an order made by the Deputy Controller under s. 11 and, alternatively under s. 7 of the E.D. Act, may be stated. By a deed of settlement dated April 1, 1905, H.H. Sir Sayaji Rao Gaekwar, the then Maharaja of Baroda, created a trust called "Royal Family Trust". The provisions of this deed were varied from time to time. By a deed of variation dated April 13, 1928, the settlor directed the trustees to hold in trust absolutely 1/4th part of the trust funds for the person "who shall, on the death of the settlor, succeed to the gadi of the Gaekwars" and to hold the balance (3/4ths) for the other specified purposes and trusts. Accordingly, 1/4th of the trust funds (which in aggregate amounted to roundly Rs. 1 crore) was set apart and subsequently transferred to the successor to the settlor and the balance of the trust funds amounting to Rs. 73,22,000 or thereabouts was held for other beneficiaries. On the very date, i.e., April 13, 1928, but in point of time prior to the aforesaid deed of variation an enactment called "The Royal Family Trust Act" was passed. Under s. 2 of that Act, it was provided that the deeds executed by H. H. the Maharaja Sayaji Rao Gaekwar on April 1, 1905, March 25, 1911, September 21, 1919, and April 6, 1927, and a deed intended to be executed by His Highness immediately after the passing of the Act of even date (being the deed of variation, dated April 13, 1928) were to form part of the enactment and were so to take effect. Section 3 conferred power upon H. H. the Maharaja Sayaji Rao Gaekwar to make any alternations at any time by act, deed, will or otherwise to the aforesaid deeds and it was provided that the said deeds so altered shall likewise form part of the Act thenceforth and then shall take effect. Section 4 conferred validity to all the deeds that had been executed by the settlor. Under the original deed to settlement and the Act of 1928 the deceased Her late Highness Maharani Chimnabai Gaekwar was entitled to 1/4th share of the income of the trust funds. When 1/4th part of the corpus of the trust was taken out separately in pursuance of the deed of variation dated April 13, 1928, the balance of the trust funds stood at 3/4ths of the original amount and hence the share of the deceased in the income of the reduced funds became 1/3 (1/3rd of 3/4ths being equal to 1/4th of the original). The deceased was accordingly held to be entitled to 1/3rd share of the income of the trust funds and she was in receipt of such income till her death. Clauses 4 and 8 the deed of variation dated April 13, 1928, which are material, run thus:

"4. The trustees shall hold the second one-fourth upon trust to pay the income thereof to Her Highness Maharani Chimnabai Saheb during her life. The interest on this amount will form part of the income Her Highness Maharani Chimnabai Saheb will receive. Upon the death of Her Highness Chimnabai Saheb, the Trustees shall hold the said second one-fourth upon the trusts declared in clause 8 hereof....."

"8. In the event of and after the ultimate failure or determination of the foregoing trusts concerning any share of the said trust funds (and subject to the

provisions regarding the vesting absolutely in the descendants so as not to offend against the law of perpetuity (as provided in the trust settlement of 1905) the trustees shall hold the same share in trust absolutely for the person who at the date of such failure or determination shall occupy the gadi of the Gaekwars of Baroda."

4. In other words, the deceased under clause 4 was entitled to receive 1/3rd share of the income of the trust funds during her lifetime and either upon her death or earlier determination of her interest, the trustees were to hold the same in trust absolutely for the person who at the date of such determination shall occupy the gadi of the Gaekwars of Baroda. The settlor died some time in 1939, and thereafter one of his sons, Fatesingh, occupied the gadi of the Gaekwars of Baroda. After the merger of the State of Baroda with the Indian Union, some difficulties were experienced in the matter of administration of the trust. The beneficiaries also desired that the corpus of the trust fund should be distributed amongst them and, therefore, they approached the Bombay Government for necessary action. The Bombay Government thereupon passed an enactment. "The Royal Family (Baroda) Trust Fund (Repealing) Act, 1956" (hereinafter called the "Bombay Act") which came into force on March 30, 1957. As a result the trust properties were vested in the official trustee to be held on trust in accordance with the provisions of the Bombay Act. Under s. 9(1) of the Bombay Act, until March 30, 1957, the official trustee had to "give effect, as far as possible, to the provisions of the settlement deeds by payment of the income thereof (i.e., of the trust) to the respective beneficiaries. After March 31, 1957, the official trustee had to transfer absolutely certain specified shares of the trust funds to certain named beneficiaries (the deceased was not one of them)-vide ss. 7 and 9(2) of the Act, provided that after March 31, 1957, and until each part of the trust fund including the proceeds of the trust fund has been transferred in accordance with the provisions of s. 7, the official trustee should hold each such part on trust for the respective beneficiaries and shall give effect as far as possible to the provisions of the settlement deeds as varied by the provisions of the Act by payment of the income thereof to the respective beneficiaries. In other words, under the aforesaid relevant provisions of the Bombay Act, the position became quite clear that it was only up to March 30, 1957, that the deceased, Her late Highness Maharani Chimnabai Gaekwar, was entitled to receive 1/3rd share in the income of the trust fund, but after March 31, 1957, onwards her said life interests came to an end and the corpus became liable to be distributed amongst the beneficiaries and till such corpus was so distributed amongst the beneficiaries the income became payable to the said beneficiaries. Notwithstanding the aforesaid position it may be stated that in point of fact, even after March 31, 1957, 1/3rd share in the income of the corpus was actually paid to the deceased till her death which occurred on August 23, 1958, but it is obvious that such payment must be regarded as some sort of bounty given to her as she was not entitled to the same under the provisions of the Bombay Act.

5. On the aforesaid facts and the Deputy Controller came to the conclusion that

by reason of the passing of the Bombay Act there was determination of the life interest of the deceased (Her late Highness Maharani Chimnabai Gaekwar) within the meaning of s. 11 of the Estate Duty Act and since the case was not covered by the exception provided in sub-s. (2), 1/3rd share of the trust property should be deemed to pass on the death of the deceased and he accordingly included the value thereof, viz., Rs. 20, 85, 649, in the principle value of the estate which he determined at Rs. 30, 59, 025. Alternatively, he took the view that there was a cesser of life interest within the meaning of s. 7 of the E.D. Act on the death of the deceased and even on the basis 1/3rd share of the trust property was includible in the principle value of the estate on which the estate duty was charged.

6. Against this order passed by the Deputy Controller on November 28, 1959, the administrators as well as the official trustee, Bombay, preferred appeals to the Board objecting, inter alia, to the inclusion in the assessment of the said sum of Rs. 20, 85, 649 representing the value of the share of the deceased in the trust settlement created by his late Highness Sir Sayaji Rao Gaekwar. A three-fold contention was urged on behalf of the administrators before the Board. In the first place, it was urged that the interest of the deceased ceased on March 31, 1957, in view of the Bombay Act and nothing passed at the time of her death on August 23, 1958; secondly, for the purpose of s. 11 of the E.D. Act, the disposition or determination of life interest must arise by voluntary act which could not be said to be the case here as the life interest of the deceased was terminated by an Act of the State; thirdly, it was contended that in any event exemption from estate duty under s. 24 of the Act was available. On behalf of the official trustee, the self-same contentions were adopted. The Board negatived all the contentions and held that there was liability to estate duty under s. 11 of the Act in respect of 1/3rd share of the trust property and that s. 24 was not applicable to the facts of the case. The Board also recorded an alternative finding that since the deceased had in fact continued to receive 1/3rd share of the income of the trust property till her death, the proportionate share of property became liable to duty under s. 7 of the E.D. Act. At the instance of the official trustee, the question set out at the commencement of the judgment has been referred to us for our opinion.

7. On the factual aspect there was no dispute with regard to three or four points which appear very clear on the record. It was undisputed that under the original settlement and the Baroda enactment called. The Royal Family Trust Fund Act, 1928, the deceased was entitled to 1/4th income of the trusts funds. It was further not in dispute that 1/4th part of the corpus was taken out separately in pursuance of the deed of variation dated April 13, 1928, and the balance of the trust funds stood at 3/4ths of the original amount and, therefore, the share of the deceased in the income of the reduced funds became 1/3rd (1/3rd of 3/4ths being equal to 1/4th of the original) and accordingly the deceased was entitled to 1/3rd of the income of the trust fund till her death. As a result of passing of the Bombay Act, which was admittedly done by the Bombay Government at the

request of the beneficiaries, the trust property became vested in the official trustee to be held on trust in accordance with the provisions of the said Act. On a reading of the provisions contained in ss. 7 and 9 of the Act it becomes abundantly clear that the deceased had a life interest in the 1/3rd share of the income of the trust funds up to March 30, 1957, and after March 31, 1957, she ceased to have any interest in the income of the trust funds as under s. 7 of the Act the official trustee had to transfer absolutely certain specified shares in the corpus to certain named beneficiaries, the deceased not being one of them and under s. 9(2) till such distribution of the corpus took place the official trustee was to hand over the income to such beneficiaries. It was also not disputed before us that though the aforesaid position obtained as per the provisions of the Bombay Act, in point of fact even after March 31, 1957, the deceased continued to enjoy 1/3rd share in the income of the trust funds till her death which occurred on August 23, 1958. But the position cannot be disputed that under the provisions of the Bombay Act her life interest came to an end on and after March 31, 1957. The question is whether, in such circumstances, the provisions of s. 11 of the E.D. Act, 1953, are attracted or not.

8. Section 11(1), which is the material part of the said provision, runs as follows;

11. Limited interests disposed of within a certain period before death.

(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by sub-section (2), then -

(a) if, had there been no disposition or determination, as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death u/s 5, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death; or

(b) If, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of section 7 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death."

9. It is unnecessary to quote the provisions of sub-s. (2) of s. 11 which provides for certain exceptions, but, admittedly, the instant case is not covered by such exceptions. Mr. Dastur appearing for the official trustee has raised two or three points in support of his contention that s. 11 of the Act is not attracted to the

fact of the case. In the first place, he urged-and this was the principal contention of his - that the disposition or determination of life interest spoken of by s. 11(1) must occur as a result of some voluntary act on the part of the person holding the life interest and that the section would not apply to a case where the disposition or determination of such life interest has taken place as a result of some involuntary act or measure over which the life tenant has no control, such as, the passing of an enactment like the Bombay Act in the instant case. He pointed out that the interest of the deceased which was limited to cease on her death in the trust funds had not been disposed of or determined by any voluntary act on the part of the deceased but her life interest got determined by reason of passing of the Bombay Act, viz., "The Royal Family (Baroda) Trust Fund (Repealing) Act, 1956." In support of his said contention he placed strong reliance upon the words "whether by surrender, assurance, divesting, forfeiture or in any other manner" occurring in s. 11(1) of the Act and he urged that the expression "in any other manner" should be construed ejusdem generis with the specific words that precede that expression and, according to him, the preceding specific words, viz., surrender, assurance, divesting and forfeiture clearly suggest that disposition or determination of life interest must be as a result of some voluntary act on the part of a life tenant. According to him, these specific words constitute one genus, the common denominator being the transaction brought about by the voluntary act of the person concerned. He urged that even the word "divesting" or the word "forfeiture" would only refer to something done by the person concerned as a result of which either divesting or forfeiture took place. He, therefore, urged that the expression, "in any other manner" should be construed ejusdem generis and if it was so construed, it would be clear that s. 11(1) would only apply if the disposition or determination of life interest occurs as a result of voluntary act on the part of the life tenant. He sought support for this construction of his by further urging that the object with which s. 11 had been provided was that the liability to pay the estate duty, which was otherwise there either under s. 5 or s. 7 of the Act, should not escape or should not be allowed to be avoided by the life tenant by indulging in any voluntary act cutting short his life interest. It is not possible to accept the construction of the expression "in any other manner" as suggested by him and consequently his contention must stand rejected for more than one reason. In the first place, it is well settled that the rule of ejusdem generis is applicable only where specific words which precede general words constitute a distinct genus. Now the specific words in the instant case are "surrender, assurance, divesting, forfeiture" and it is not possible to say, having regard to the normal meaning that is attached to each one of these words, that they constitute a genus. The words "surrender or assurance" would undoubtedly be referable to deeds which are executed voluntarily by the life tenant but the words "divesting" and "forfeiture" in their ordinary connotation would not be applicable to cases of voluntary acts of the life tenant. In their normal connotation divesting or forfeiture would refer to and include acts or deeds done by others whereby the divesting or forfeiture is incurred by the life tenant much against his will. Therefore, these four words do

not constitute genus, there being no common characteristic amongst them. If, therefore, the specific words which precede the general words do not constitute a genus, then it is not possible to interpret the general words, viz., "in any other manner", ejusdem generis. It is, therefore, not possible to accept Mr. Dastur's contention that s. 11(1) is attracted only if the disposition or determination of the life interest spoken of by it occurs as a result of some voluntary act on the part of the life tenant. The interest of the life tenant can get determined otherwise than by any voluntary act on his part and even then the case would be covered by s. 11(1) of the Act. In fact, by using four different words, each one having a different connotation, the legislature could be said to have clearly intended that s. 11(1) would apply to case where the life interest has been disposed of or has determined in any one of the methods specifically indicated by these words, viz., by surrender, assurance, divesting or forfeiture or "in any other manner", such as the manner in which it has got determined in the instant case, merely, by reason of the passing of an enactment like the Bombay Act. Secondly, it is true that the object of putting s. 11(1) on the state book was undoubtedly to plug loopholes of the nature pointed out by Mr. Dastur in his argument, namely, that the estate duty chargeable on the passing of property upon cesser of the life interest of a life tenant should not be allowed to escape by the life tenant resorting to a simple device of voluntarily cutting short his life interest by means of a deed of surrender but that is no reason for holding that the legislature did not want to ensure the charge in cases where such life interest has been either disposed of or has determined otherwise than by voluntary act on the part of the life tenant. Having regard to the language employed in sub-s. (1) of s. 11, therefore, it seems to us clear that disposition or determination of life interest spoken of by sub-s. (1) cannot be confined to disposition or determination of such life interest occurring only as a result of some voluntary act on the part of the life tenant.

10. Mr. Dastur next contended that s. 11(1) applies to a case where an interest limited to cease on a death alone has been created, that is to say, to a case where an interest limited to cease upon death alone has been disposed of or has determined in the manner indicated therein, for s. 11(1) opens with the words "where an interest limited to cease on a death has been disposed of or has determined." According to him, there should be a complete life interest created by the deed which must cease only upon death of the life tenant and such is not the case here. He pointed out that both under the original settlement deed as well as the deed of variation, the power to revoke the trusts created thereunder was vested in the settlor and even under the Baroda enactment, viz., "Royal Family Trust Act", s. 3 thereof conferred power upon the settlor to make any alternations at any time by act, deed, will or otherwise to the said deeds and the deeds so altered were to form part of the enactment and were to take effect in accordance with the alternations made. He, therefore, urged that since in the instance case the life interest created in favour of the deceased was liable to be altered or revoked by the settlor by act, deed, will or otherwise, it cannot be said

that this is a case where "an interest limited to cease on a death" had been created and, therefore, s. 11(1) would not be attracted or would not apply. It is not possible to accept this contention of Mr. Dastur in the face of the language employed in s. 11(1) itself. In the first place, s. 11(1) does not speak of an interest limited to cease on the death alone, having been created, and there is nothing in the section to suggest that if such life interest is capable of getting determined also in any other manner the section would be inapplicable; the word "alone" is not there to qualify the expression "interest limited to cease on a death". Secondly, it cannot be disputed that in the instant case the interest in favour of the deceased had been created by deeds and both under the deeds as well as under the provisions of the Baroda enactment such interest was unquestionably to cease upon the death of the deceased. That it was liable to be revoked by the settlor exercising his powers under the deeds or under s. 3 of the Baroda enactment would not make it any the less "an interest limited to cease on her death". It is, therefore, not possible to accept this contention of Mr. Dastur.

11. Reliance was placed by Mr. Dastur in support of his aforesaid contention upon the provisions of the U.K. Finance Act, 1940, where by an interpretation clause specific inclusive provision has been made. Section 11 of our enactment is completely based on s. 43 of the U.K. Finance Act, 1940, and the wording of both the provisions is identical and s. 58 of the U.K. Finance Act, 1940, is by way of interpretation clause and sets out various definitions and sub-s. (6) of s. 58 runs thus:

"References in the enactments relating to estate duty (including this Part of this Act) to an interest's being limited to cease on a death shall be construed as including references to its being subject to a limitation, in whatsoever form, having the effect of providing in the alternative, for its cesser on the death or on the occurrence of some event, or the expiration of some period, before the death."

12. What was urged by Mr. Dastur was that in the English enactment dealing with the estate duty a specific provision by way of an interpretation clause was required to be made as is to be found in s. 58(6) (quoted above) to make the position clear that in s. 43 and other sections dealing with estate duty reference to an interest's being limited to cease on a death shall be construed as including references to its being subject to a limitation, in whatsoever form, having the effect of providing in the alternative for its cesser on the death or on the occurrence of some event, or the expiration of some period, before the death, and he urged that in the absence of such interpretation clause in our Estate Duty Act, 1953, such inclusive effect cannot be given to similar expression occurring in s. 11(1) of our Act. In our view, having regard to the language employed in s. 11(1) itself the position is very clear and, therefore, it was not necessary to make any such specific provision in our Act as is to be found in s. 58(6) of the English enactment, as otherwise due effect cannot be given to the words "has been disposed of or has determined, whether by surrender, assurance, divesting,

forfeiture or in any other manner". The provision that is to be found in s. 58(6) of the U.K. Finance Act, 1940, appears to us to be merely clarificatory and the provision thereof is by implication incorporated in s.11 itself of our enactment.

13. Mr. Dastur then contended that s. 11 postulates that thought the interest in question (life interest) is determined, the trusts must continue to subsist and since in the instant case the trusts after cesser of life interest have been put an end to by the Bombay Act, the provision of s. 11 would not be applicable. There is no substance in this contention for the simple reason that there is nothing in the section to suggest that it will apply only if the trust continues to subsist after cesser of life interest. Acceptance of such a contention would mean that in no case where if the trust happened to be only for the purpose of creating a life interest for a person and thereafter the property were to revert back to the settlor s. 11 will come into operation. Such a situation could never be said to be contemplated by the legislature when it enacted s. 11 of the Act. Having regard to the above discussion, we are clearly of the view that s. 11(1) is attracted to the facts of the case and the value of 1/3rd share of the trust property has been correctly brought to Charge to estate duty under the said provision.

14. The alternative submission of Mr. Dastur was that even if s. 11 were held to apply to the facts of the case, the exemption provided for in s. 24(1) would come into operation and as such estate duty would not be chargeable. Section 24(1) deals with the subject of property reverting to dishonor and it runs as follows:

"24. Property reverting to dishonor.-(1) Where by a disposition of any property an interest is conferred on any person, other than the dishonor, for the life of such person or determinable on his death, the remainder being conferred upon the dishonor absolutely, and upon person enters into possession of the interest, and thenceforward retains possession of it, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverter to the dishonor in his lifetime."

15. It is difficult to appreciate how the provisions of s. 24(1) are at all attracted. What was sought to be urged by Mr. Dastur was that under the provisions of the Bombay Act, no sooner the life interest of the deceased ceased on and after March 31, 1957, the interest as well as the corpus in which the deceased was interested, upon distribution, has gone to Fatesingh Gaekwar being the ruler of the gadi and he also pointed out that even that was the position under clause 8 of the deed of variation dated April 13, 1928. According to him, in a sense after the cesser of life interest that interest along with the corpus has reverted to the dishonor who is no other than the ruler of the gadi of Gaekwars and as such the exemption under s. 24(1) is attracted. The argument is merely required to be stated to be rejected, for the simple reason that the "dishonor" contemplated under s. 24(1) is the settlor who has created the trust to whom the reverter should take place. The mere fact that upon cesser of interest of the deceased the income and corpus upon distribution has gone to Fatehsingh who happens to be the ruler of the gadi does not mean that reverter is to be settlor. Moreover, such

reverter must occur during the lifetime of the dishonor and admittedly in this case the settlor had died in 1939. In any view of the matter s. 24(1) is clearly not attracted.

16. Mr. Dastur next contended that the finding of the Deputy Controller as well as that of the Board is clearly erroneous to the extent to which the case has been brought to charge under s. 7 of the Act. Mr. Dastur is right in his said contention. The only basis on which s. 7 of the E.D. Act is held applicable has been that in point of fact after the Bombay Act came into operation and after March 31, 1957, under the relevant provisions of the Act though the income of the 1/3rd share in the trust fund was payable to the beneficiaries to whom the corpus was distributable it was in fact paid to the deceased till her death which occurred on August 23, 1958. It is not possible to accept the view of either the Deputy Controller or the Board that, because of such payment of income to the deceased till her death, the charge to duty under s. 7 could be attracted. In law, on and after March 31, 1957, the deceased had no interest left whatsoever and she was not entitled to any income thereafter and under the provisions of the Bombay Act, the income as well as the corpus was payable to the beneficiaries who did not include the deceased. If at all she has received income of the 1/3rd share in the trust funds till her death, the same must be regarded as a bounty to which she was not entitled. Section 7, therefore, would be clearly inapplicable.

17. In view of the above discussion, the charge of estate duty is clearly attracted to the facts of the case under s. 11 of the Act and the question that has been referred to us has to be answered in the affirmative, against the official trustee and in favour of the revenue and we answer it accordingly.

18. The official trustee will pay the costs of the reference to the revenue.