
(1933) 10 BOM CK 0008

In the Bombay High Court

Case No : O.C.J. Appeal No. 33 of 1933 and Suit No. 283 of 1933

Pestonji Jalbhoy Chichgar

APPELLANT

Vs

Jalbhoy Jehangir Chichgar

RESPONDENT

Date of Decision : 04-10-1933

Acts Referred:

Trusts Act, 1882 — Section 8

Citation : AIR 1934 Bom 64 : (1934) 36 BOMLR 42 : 150 Ind. Cas. 474

Hon'ble Judges : John Beaumont, J;Blackwell, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—This summons raises a question as to the construction of Section 8 of the Indian Trusts Act, a question on which there appears to be very little authority. The summons was taken out by the husband of one Gulbai against the executors of her will and her children, and the question raised is whether a trust declared by her will is a trust of a mere beneficial interest, and as such rendered invalid by Section 8 of the Indian Trusts Act.

2. The title to the alleged beneficial interest of Gulbai arose under a will dated March 27, 1899, of Ardeshir Maneckji Kaka who died on June 18, 1899. By Clause 6 of his will he gave eighty-five shares of the Bank of Bombay upon trust to his trustees with directions that they should either retain the shares or sell them and invest the proceeds and stand possessed of the shares or the proceeds of sale upon certain trusts during the lifetime of a daughter named Aimai and after her death or the marriage of certain other daughters he directed that his trustees should appropriate and set apart seventeen shares out of the said shares of the Bank of Bombay or the investments representing the proceeds to each of his five children, one of whom was named Baijai, and should pay the income of the share to the child to whom the same should have been appropriated during his or her life and after the decease of such child should hold the share appropriated to him or her in trust to equally divide the same among

the issue of such child.

3. Now, Gulbai the testatrix in this case was a child of the testator's daughter Baiai. No question is raised as to the meaning of "issue" in the ultimate gift to which I have referred, or as to the date on which the class of issue is to be ascertained. But whatever the exact meaning of "issue" may be, and whatever the composition of the class, it is clear that Gulbai as one of the children of Baiai became entitled to a share in the seventeen shares set aside for Baiai for life, since Gulbai, in my opinion, had a vested reversion in a portion of the shares set aside for Baiai. Gulbai died on March 14, 1929, in the lifetime of her mother Baiai, who died on September 6, 1931. Therefore at the death of Gulbai she was entitled to a vested reversion under the will of Kaka expectant on the death of Baiai, and before I read the will of Gulbai I will refer to the terms of the Indian Trusts Act. Section 8 provides that the subject matter of a trust must be property transferable to the beneficiary. So far there is no difficulty because a vested reversion is property transferable. Then the section goes on :?"It must not be a merely beneficial interest under a subsisting trust. "The learned Judge in this case held that the interest created under Gulbai's will, to which I will refer in a moment, amounted to the declaration of a trust of a merely beneficial interest under a subsisting trust, and was therefore void. "Beneficial, interest" in the Indian Trusts Act is defined by Section 3 as the right of the beneficiary against the trustee as owner of the trust property; so that where property is vested in a trustee upon trust for A or upon trust for "A" for life with remainder to B, it would seem that the beneficiary under Indian law has only a right to proceed against the trustee, and by virtue of Section 8 a trust of the beneficial interest, whether it be a life interest, or a reversion, or an absolute interest, cannot be created. What the section forbids is a trust upon a trust? a trust of a mere right of the beneficiary to proceed against the trustee, and if the will of Gulbai amounts to a declaration of a trust of her beneficial interest, that is, of her right to go against the trustees of Kaka's will, then the trust offends against Section 8. But, if on the other hand, her will amounts to a direction to her executors to receive the property which may become transferable to her under the will of Kaka on the death of her mother, and having reduced that property into possession to deal with it as part of her estate, then it would seem to me that that is not a trust of a merely beneficial interest; it is a trust which is only to operate when the beneficial interest has been converted into property? when the testatrix's estate has not merely the right to proceed against the trustees of the prior will, but has actually recovered the property from them. Therefore I read the will of Gulbai, or the relevant parts of it, in order to see into which of those two categories the material disposition fairly falls.

4. By Clause 1 of her will she appoints her mother Baiai and certain other persons executors and trustees and they are thereafter referred to as "my trustees". Then in Clause 3 she says:

As to all my Immovable and moveable property (which shall include also the

property and moneys, which under certain trusts, I am to get and which I may get after the death of my said dear respected mother Baiai).

5. That, in my opinion, creates a mixed fund consisting of her own property in possession and the property arising under her grandfather's will when it falls into possession. Then she goes on:

I give the same to my trustees [which by the definition will include the executors] in trust and with powers mentioned below that is to say, my trustees shall (from time to time) sell and convert into money the moveable and the Immovable property to which I may be entitled at the time of my death (as also) the trust moneys or securities which I am to get and which I may get after the death of my said respected mother.

6. There again, in my opinion, she is not dealing with her present reversion, She is only dealing with the moneys and securities when they fall into possession. But she directs the trustees out of the cash thus realised to make the outlays which have to be made in connection with her death and all expenses relating to probate and to pay her debts, and then trusts are declared as to the balance of that mixed fund consisting of what is left of the proceeds of the property to which the testatrix was entitled in possession at the time of her death, and the property to be received on the death of her mother, after payment of debts and probate expenses. That is the only fund of which a trust is declared, and it seems to me that that is not a trust of a beneficial interest. The trust does not operate until the property, which no doubt at the date of the will and of the death of the testatrix, was a mere beneficial interest vested in the testatrix, has come home and been received by the estate of the testatrix from the trustees in whom it was vested at the date of the will. That being so, it seems to me that the trust is not a trust of a mere beneficial interest; it is a trust of the actual property given by the will of Kaka to Gulbai receivable by her on the death of her mother. I think, therefore, that the construction which the learned Judge put upon the will was not justified and that we must declare that the trust in Clause 3 is valid.

7. Costs of all parties as between attorney and client to come out of the estate.

Blackwell, J.

8. I agree.