

(1967) 08 CAL CK 0018
In the Calcutta High Court
Case No : Matter No. 193 of 1963

Pran Krishna Das

APPELLANT

Vs

Controller of Estate Duty, West Bengal, Calcutta

RESPONDENT

Date of Decision : 14-08-1967

Acts Referred:

Estate Duty Act, 1953 — Section 10, 7(4)
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1968 Cal 496 : (1968) 2 ILR (Cal) 139 : (1968) 69 ITR 139

Hon'ble Judges : K.L. Roy, J;B.N. Banerjee, J

Bench : Division Bench

Advocate : B.K. Panda and K.M. Saha, for the Appellant; D. Gupta, for the Respondent

Judgement

Banerjee, J.—This is a reference u/s 64(1) of the Estate Duty Act and has been made in circumstances hereinafter stated

2. One Rajendra Nath Das died on July 4, 1955, Long before his death, he executed a Bengali deed of Arpannama, on December 12, 1938 whereby he dedicated 13 items of property to his family deity known as Sree Laxmi Narayan Jiu. Two of the dedicated properties are described in the body of the deed as hereunder :-

(1) "District and Sub-Registration office Midnapore. Midnapore Municipality, Mouza Bibiganj Mohalla Sahabharangbzar, Khatian No. 512, western portion of plot No. 1876 comprising Bastu land Kt. 1-2-3 (11/8th Kt. more or less i.e. 810 sft. approximately) for which revenue of Rs. 1/4 is payable to superior landlord Sri Bhupati Charan Das and in the same Mohalla. Khatian No. 959, western portion of Plot No 1890 comprising Bastu land of 5 chhatak 15 Padika (1/3rd Kt. or 240 sft approximately) for which revenue of -/3/6/ per annum is payable to superior landlord Sri Chandra Kanta Mondal: On these two holdings aggregating to 1 Kt 7 ch. of Bastu land with three storied pucca structure thereon with verandah, well, privy and compound wall which I had purchased from Sm

Jnanodamoyee Dasi and others on 2nd Ashar 1340 B. S. corresponding to 16, June 1933 under a registered conveyance and subsequently known as holding No 3 in the Municipal register.

(2) Within the said jurisdiction at Mouza Bibigani Mohalla Sahabharangbazar, Khatian No 586 Plot No 1874. bastu land comprising 01 and within the said Mohalla, Khatian No. 765. Plot No 1875, bastu land comprising .02 for which revenue of -/8/- is payable to the shebait of Pir Shaheb of Sahabharangbazar: on these two holdings aggregating to .01 of bastu land with pucca structure thereon with well privy and compound wall which I had purchased from Sri Hari Sadhan Bid on 23rd Kartick 1343 B. S. corresponding to 9th November 1936 under a registered conveyance and subsequently known as holding No. 5 in the municipal register."

3. The particular portions of the deed of Arpannama, with which we are concerned in this reference, reads.

"(a) The above-mentioned 13 items of properties acquired out of my own income have been dedicated this day under a deed of Arpannama to my family deity Iswar Sree Sree Laxmi Naraya Jiu for His deity worships:

(b) in the house described in item Nos. 1 and 2 of this Arpannama, Mouza Bibiganj, Midnapore town Sahabharangbazar the above deity has been installed in one of the rooms of the three-storeyed building. In that building, daily Seva Puja and other periodical festivals will be held. The deity will not be removed from this place by any shebait. This building with the exception of one verandah and one room on the front portion belongs to the deity and rooms on the ground floor are set apart for use of the shebait. One room and one verandah in the front portion of ground floor which is let out to a shop will be let out in future and the rent income will be spent for the Seva Puja of the deity. During my life time I shall act as shebait and after my death, my son, grandsons and other heirs by order of succession will perform the work of shebait"

By this deed of Arpannama the above properties of the deity will be treated as Debutter property of the above Thakur Jiu. The shebait will not be entitled under any circumstance to transfer or charge such properties for their personal benefit or reasons and the above properties will not be liable for any personal debts of the shebait

4. There was also another Arpannama, executed by the deceased on March 14, 1949, under which other properties were dedicated to the deity abovenamed. We are not however concerned with those dedicated properties in this reference.

5. The accountable person claimed before the Assistant Controller of Estate Duty that the deceased had no interest whatsoever in the Debutter properties and that the said properties did not pass on his death and were not chargeable to Estate Duty The Assistant Controller rejected the claim, being of the view that the properties were liable to be included in the estate of the deceased, under the

provisions of Section 10 or Section 12 of the Estate Duty Act and in that view included the value thereof in the principal value of the estate.

6. The accountable person filed an appeal before the Central Board of Revenue to which the appeal lay under the law as it then stood. It was inter alia, contended before the Board.

(1) that the deceased had made an absolute settlement long before his death and years before Estate Duty legislation was even thought of, which were circumstances indicating the bona fides of the settlement in favour of the deity.

(2) that the deceased had not reserved any benefit for himself in respect of the dedicated properties and that the entire income from the said properties was directed to be spent for Deva Seva.

(3) that although there was a right in the deceased to reside in the property, in which the deity was installed, this fact alone should not invalidate the trust.

(4) that the shebait being a trustee as well as holder of an office his position as a trustee would not attract the provisions of Section 10 of the Estate Duty Act.

(5) that the enjoyment of the usufruct as a shebait would not make the properties dutiable, in view of the provisions contained in Section 7(4) of the Estate Duty Act. The Board observed that by the Bengali Deed of Arpannama, dated 12th December, 1938 the following properties were dedicated to the family deity Sree Sree Laxmi Narayan Jiu.

i) House property at Bibiganj, Midnapore, Plot Nos. 1876, 1890

ii) House property at Sahabharangbazar Midnapore Plot Nos. 1874 and 1875.

iii) Agricultural land measuring 33.12 acres.

By the Arpannama, the Board found the deceased constituted himself as the shebait of the properties, during his life time, and there was a clear provision in the deed that the shebait would be entitled to reside and make use of the house property situated at Sahabharangbazar. On that finding, the Board observed further:

"So far as the first deed is concerned i. e. the deed of 12th December 1938, the deceased may have fully intended to dedicate the properties to the deity. I am even prepared to concede that, judging by the accounts produced before me which appear to have been properly maintained, the income from the various properties was being substantially spent for purposes connected with Debaseva. Nevertheless, the fact remains that, by reserving the right of residence for himself and his heirs, in the house wherein the deity was established and which formed part of the dedicated property the deceased had not excluded himself entirely. It cannot certainly be said that he had divested himself completely of all beneficial interest in these properties. In other words the question whether in this case the deceased was entirely excluded from possession and enjoyment of

the gifted properties within the meaning of Section 10 of the Act must clearly be answered in the negative, so far as the deed dated 12th December, 1938 is concerned."

In the view expressed the Board dismissed the appeal by the accountable person.

7. Aggrieved by the order, the accountable person induced the Board to refer the following question of law to this Court;

"Whether on the facts and in the circumstances of the case, all or any of the following properties covered by the Arpannama, dated 12th December, 1938. have been rightly included in the estate as property deemed to pass on the death of the deceased u/s 10 of the Estate Duty Act 1953.

(a) House property at Plot No 1890 Bibiganj, Midnapur District.

(b) House property at Plot Nos. 1874 and 1875 Sahabharangbazar. Bibiganj. Midnapur District;

(c) Agricultural lands measuring A. C 33.12 cents"

8. Mr. Basanta Kumar Panda, learned counsel for the assessee contended.

i) That the deity was installed in one of the houses and not in both the houses covered by the Deed of Arpannama and right of residence of the shebait was reserved in the one house, in which the deity was installed, and not in the other house Therefore, taken at the worst, only one house may be taken to have passed on the death of the deceased and nothing else. (This however, he did not admit but merely assumed for the sake of argument).

ii) That the dedication was an absolute dedication in respect of all the properties even in respect of the house in which the deity was installed. There was no reservation made in respect of the verandah and the shop room in the front portion let out to a shop and in respect of the portion reserved for resident of the shebait.

iii) The reservation of right of residence by a shebait is reservation of interest only as holder of an office and such an interest is not one which passes on death because of the provisions contained in Section 7(4) of the Estate Duty Act.

iv) that the dedication being absolute and without reservation, the deity must be deemed to have assumed bona fide possession and enjoyment of the dedicated properties to the exclusion of the settlor and as such the mischief of Section 10 or 12 was not attracted to the facts and circumstances of the case.

9. We propose to dispose of the first, second and third branches of the argument together first of all. The deed of dedication is somewhat difficult of construction. We have already extracted from the Arpannama the description of item NOS. 1 and 2 of the dedicated properties. The first item of property covers Plot No. 1876 in Khatian No. 512 and Plot No. 1890 in Khatian No. 959 of Mouja Bibiganj, Mahalla Sahabharangbazar, on which there is a three storeyed house with

verandah well, privy and compound wall. The second Item of property covers Plot No. 1876 in Khatian No. 586 and Plot No. 1875 in Khatian No. 765 in Mouja Bibiganj, Mahalla Sahabharangbazar, on which there is a pucca structure with privy, well and compound wall. These, as we read the deed, appear to be different houses on two different items of property dedicated to the deity. Later in the deed, however, it is stated;

"In the house described in "items Nos. 1 and 2" of this Arpannama mouza Bibiganj Midnapore town, Sahabharangbazar the above deity has been installed in one of the rooms of three storeyed building." (underlined (herein " ") for emphasis).

10. This gives an idea that on both the items of landed property, which may be contiguous, there is one house in which the deity is installed. The Tribunal, however, ignored this clause of the deed and proceeded on the theory that there were two houses one on Plots Nos. 1876 and 1890 and another on Plot Nos. 1874 and 1875. Then again, the Tribunal ignored the provision that a portion of the house, in which the deity was installed namely one room and one verandah in the ground floor stood let out to a shop and the rent receivable therefrom only was dedicated for Devasheba. Now, the golden rule of construction is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary and natural sense. To ascertain this intention, a court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has to a trained conveyancer a clear and definite significance and one can be sure about the sense in which such conveyancer would use it. It may not be reasonable and proper to give the same strict interpretation of the word, when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens, in the case of documents as regards disposition of properties, that there is a clear conflict between what is stated in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some properties are given absolutely to one person but later on, other directions about the same property are given, which conflict with and take away from the absolute title given in the earlier portion. It is well settled that in cases of such a conflict, the earlier disposition of absolute title should prevail and the later direction of disposition should be disregarded as unsuccessful attempt to restrict the title already given: vide *Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and Others*, . It is clear, however that an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible. e. g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same that the later provisions have to be held to be void, (vide the observation of the Supreme Court in *Ramkishore Lal Vs. Kamal*

Narain, .

11. Mr. Panda, learned Counsel for the assessee, submitted that in two places in the deed absolute dedication was indicated, firstly, immediately after the description of the properties in the body of the deed, it was stated ""the abovementioned 13 items of properties acquired out of my own income have been dedicated this day under a deed of Arpannama to my family deity Iswar Sree Sree Laxmi Narayan Jiu" and secondly, after stating the provision made for the shebait's residence and the description of the portion of the house let out to a shop room, it was stated "by this deed of Arpannama the above properties of the deity will be treated as Debutter property of the above Thakur Jiu."

12. Mr. Panda asked us to ignore the portions of the deed which indicated anything contrary to the intention of absolute dedication, which according to him was the dominant intention of the settlor. He also asked us to proceed on the theory of two houses as the Tribunal found, and not on the theory of one house as might be spelt out from the description of the house properties given in the later part of the deed, which was in conflict with the description of the properties in the earlier part of the deed of dedication.

13. We do not have the original deed before us. We have only a translation of the deed, which again is not an official translation of the original Bengali deed by a competent translator of this Court. The translation was made by the Revenue Department and Mr. Panda raised strong doubts about the correctness and accuracy of the translation. Be that as it may, we do not feel sure whether there was one house or there were two houses on items Nos. 1 and 2 of the dedicated property. It may just be that two blocks of one dwelling house were built on the two items of property. Since the Revenue which had firsthand information proceeded on the basis of two houses, we do not propose, on the meagre material of a conflicting description in the deed, to hold that there was only one house built on the two items of dedicated property. Then again, whether the shop-room in the house, in which the deity was installed, was outside the dedication is again a problematic question. It may be that since one room in the dedicated house stood let out as a shop room, that fact was only mentioned and in order to make that portion beneficially dedicated to the deity it was provided that the rent shall be applied to meet the Deva Seva expenses. We do not, therefore, propose to proceed on the basis that only a part of the house, in which the deity was installed was dedicated to him.

14. We now take up for consideration the effect of reservation of a part of the house, in which the deity was installed, for residence of the shebait.

15. Now, under the conception of Hindu Law, it is in an ideal sense that the dedicated property vests in an idol and in the nature of thing the possession and management of it must be entrusted to some person called as shebait or manager. In the case of *Prosunno Kumari Debya v. Golab Chand Baboo*, (1875) 2 Ind App 145. The Judicial Committee observed;

"It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant, heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of necessary funds to preserve and maintain them."

This human ministrant of the deity, who is its manager and legal representative, is known by the name of shebait. He is the person entitled to speak on behalf of the deity on earth and holds authority to deal with all its temporal affairs. As regards the temple property the manager is in the position of a trustee, but as regards the service of the temple and the duties that appertain to it he is rather in the position of the holder of an office of dignity.

16. The exact legal position of a shebait has been summarised by Dr. Bijan Kumar Mukherjea in his Tagore Law Lecture entitled "The Hindu Law of Religious & Charitable Trust" in the following language:

"It is now settled by the pronouncement of the Judicial Committee in *Vidyavaruthi v. Baluswami* 48 Ind App. 302 : (AIR 1922 PC 123) that the relation of a shebait in regard to the Debutter property is not that of a trustee to trust property under the English law in English law the legal estate in the trust property vests in the trustee who holds it for the benefit of the cestui que trust in a Hindu religious endowment, the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person, and the shebait or Mahant is a mere manager "A trust" thus runs the judgment of the Judicial Committee "in the sense in which the expression is used in English law is unknown in the Hindu system pure and simple. Hindu deity found expression in gifts to idols and images consecrated and installed in temples to religious institution of every kind and for all purposes considered meritorious in the Hindu social and religious system Under the Hindu law the image of a deity of the Hindu pantheon is a juristic entity, vested with the capacity of receiving gifts and holding property. Religious institutions known under different names are regarded as possessing the same juristic capacity and gifts are made to them *eo nomine* When a gift is directly to an idol or temple, the seisin to complete the gift is necessarily effected by human agency called by whatever name, he is only the manager and custodian of the idol or the institution. In almost every case he is given right to part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him nor is he a "trustee" in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration."

17. As regards the shebait's right of residence in the house dedicated to the deity, the usual practice is to make provision regarding it in the deed of dedication itself, A direction by the founder that the shebait for the time being would be entitled to reside in the house set apart for the deity does not make the

dedication in any way invalid or improper. In case of *Gnanendra v. Surendra* 24 CWN 1026: (AIR 1920 P. C. 27) the Privy Council observed:

"It is a perfectly reasonable arrangement to secure that the man on whose hands the supervision of the whole estate is vested shall have associated with his duties the right to reside in the named dwelling house."

18. in *Dr. Mukherjea's Treatise on Hindu Law of Religious and Charitable Trust* the learned author further says as follows:-

"Even if there is no provision in the deed of endowment, it seems that such right of residence would be implied in law unless there is any prohibition to that effect in the deed of endowment Not only the general feeling of the Hindu community is in favour of giving the Shebait a right of residence in the deity's house, but such right is really appurtenant to the duties which the shebait has got to discharge in regard to the spiritual and temporal affairs of the idol "

19. Since shebaitship is not merely an office but also property, in which duties and personal interests are mixed up and blended together, we have to overrule the argument of Mr. Pandey that the shebait occupies the house merely as a holder of an office and that the portion of the house occupied by him shall not be deemed to pass under the provisions of Section 7(4) of the Estate Duty Act.

20. We have now to see how far Gift of property to a deity falls within the purview of Section 10 of the Estate Duty Act, as it stood at the material time. That Section used to read as follows:-

"Section 10. Property taken under any Gift, whenever made shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise:

Provided that the property shall not be deemed to pass by reason only that it was, not, as from the date of the gift, exclusively retained as aforesaid, if by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit, to him for at least two years before the death."

21. This section came up for consideration before this Court in the case of *Rash Mohan Chatterjee and Others Vs. The Controller of Estate Duty, W. Bengal*, . What happened in that case was that, on July 1, 1954, the deceased Ratan Mohan Chatterjee settled certain premises in trust for the absolute use and benefit of his two sons in equal shares during their lives and upon the death of one or both sons for the use of the wife or wives of such son or sons with remainder to the male children of the two sons in equal shares per stirpes The upper portion of the premises was leased to the deceased himself, on a rent of 150/- per month for a term of five years with effect from the date of the settlement. The lease expired on June 30, 1959. but the deceased continued to

occupy that part of the premises for a few days thereafter until his death on July 11, 1959. The question was whether and to what extent Estate Duty was chargeable in regard to these premises u/s 10 of the Estate Duty Act, 1953. This Court held that the lease gave to the donor possession and enjoyment of the property itself and the case fell within the statutory charge u/s 10. The lease at whatsoever rent prevented the entire exclusion of the donor envisaged by that Section. As however, Section 10 provided that such property was chargeable only to the extent that the deceased was not excluded, Estate Duty was payable by the accountable persons only to that portion of the premises which was in the occupation of the deceased as a lessee. In holding as this court did, this court examined several analogous provisions of certain foreign statutes and foreign authorities and collected the following principles therefrom as applicable to the interpretation of the scope and effect of Section 10 of the Estate Duty Act. Those principles were:

"(a) In order to avoid the mischief of Section 10 of the Estate Duty Act, 1953 it must be established that the donee not only assumed bona fide possession and enjoyment of the property taken under the gift but also thenceforward retained the said property to the entire exclusion of the donor or any benefit to him by contract or otherwise.

(b) The single factor to be considered is whether the donor has been entirely excluded from the subjectmatter of the gift.

(c) if the donor has not been entirely excluded then it is not at all relevant to consider whether the non-exclusion of the donor has been advantageous to the donee or not. In other words, it is immaterial that the donee was receiving full consideration for what the donor was enjoying or possessing.

(d) Possession and enjoyment by the donor have to be judged in the light of the factual position alone.

(e) The "benefit to him by contract or otherwise" must however be based on enforceable right"

22. The section again came up for consideration before the Supreme Court on *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, , in the following circumstances. The property in question was a house at No 34, Mahatma Gandhi Road, Bangalore which had been purchased by the appellant's father, the deceased, in the joint name of himself and his wife, on February 14, 1940. They made a gift of the house to their two sons on October 29 1954. The document recited that the donees had accepted the gift and that they had been put in possession. But the parents continued to be in possession of the house, though the municipal tax was paid thereafter in the names of the sons. The deceased died, on September 30, 1959, more than 4 years after the date of the gift. The appellant, the accountable person, then filed a return showing the value of the estate left by his father at Rupees 93, 750/- excluding the value of the house at No 34, Mahatma Gandhi Road. The Assistant Controller of Estate Duty,

however, Included a sum of Rs. 1,50,000/- as the value thereon and determined the aggregate value of the estate at Rs 2,57,249/- and assessed the Estate Duty payable at Rs 15, 751. 54 P. The Appellant thereupon preferred an appeal to the Central Board of Revenue, which dismissed the appeal and affirmed the view taken by the Assistant Controller of Estate Duty. At the instance of the appellant the Board referred the following question of law for the determination of the High Court

"Whether on the facts and in the circumstances of the case, the property at No. 34, Mahatma Gandhi Road. Bangalore, was correctly included in the estate of the deceased as property passing or deemed to pass on his death u/s 10 of the Act."

23. The High Court answered the question in the affirmative, holding that the appellant was liable to pay Estate Duty with regard to the house. Thereafter the matter was taken before the Supreme Court, at the instance of the accountable person The Supreme Court upheld the opinion of the High Court on the following interpretation of Section 10 ;

"The question involved in this appeal depends upon the proper interpretation of Section 10 of the Act. The intention of the legislature in enacting Section 10 of the Act was to exclude from liability to Estate Duty certain categories of gifts. A gift of immovable property u/s 10 will, however be dutiable unless the donee assumes immediately exclusive and bona fide possession and enjoyment of the subject-matter of the gift, and there is no beneficial interest reserved to the donor by contract or otherwise. "

The crux of the section lies in two parts:

(1) the donee must bona fide have assumed possession and enjoyment of the property which is the subject-matter of the gift to the exclusion of the donor, immediately upon the gift, and (2) the donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor or of any benefit to him by contract or otherwise. As a matter of construction we are of opinion that both these conditions are cumulative. Unless each of these conditions is satisfied the property would be liable to Estate Duty u/s 10 of the Act."

The second part of the Section has two limbs; the deceased must be entirely excluded (i) from the property, and (ii) from any benefit by contract or otherwise. it was argued for the appellant that the expression by contract or otherwise," should be construed *eiusdem generis* and reference was made to the decision of Hamilton, J. in (1911) 2 K. B. 688. On this aspect of the case we think that the argument of the appellant is justified. in the context of the Section the words "should in our opinion." be construed *eiusdem generis* and it must be interpreted to mean some kind of legal obligation or some transaction enforceable at law or in equity which though not in the form of a contract, may confer a benefit on the donor. But it was contended by Mr. Sen for the respondent, that the case of the Revenue does not rest upon the second limb of

the section but upon the first limb which requires that the donor must have been entirely excluded from possession and enjoyment of the property. It was pointed out that there was no such exclusion in the present case and the finding of the Board is that the deceased continued to stay in the house till Ms death as the head of the family and was looking after the affairs of the house-hold. It was contended, therefore, that the first limb of the Section is not satisfied in this case and the property must be held to pass on the death of the deceased under that section. In our opinion, the contention of the respondent must be accepted as correct. As a matter of construction we hold that the words "by contract or otherwise" in the second limb of the section will not control the words "to the entire exclusion of the donor" in the first limb. In other words, in order to attract the section, it is not necessary that the possession of the donor of the gift must be referable to some contractual or other arrangement enforceable in law or in equity. Even if the donor is content to rely upon the mere filial affection of his sons with a view to enable him to continue to reside in the house, it cannot be said that he was "entirely excluded from possession and enjoyment" within the meaning of the first limb of the section, and, therefore, the property will be deemed to have passed on the death of the donor and will be subject to gift tax.

24. Thus, the Supreme Court not only affirmed the principles collected by this Court in *Rash Mohan Chatterjee and Others Vs. The Controller of Estate Duty, W. Bengal*, but to an extent even went beyond them. Keeping in view the law laid down by the Supreme Court, we have to see how far a settlor who dedicates property to a deity and constitutes himself as the Shebait excludes himself from the benefit of the Debutter property.

25. If a person absolutely dedicated property to a deity and does not constitute himself as the Shebait and does not directly or indirectly reserve any benefit for himself, it cannot be said that he did not exclude himself from the benefits of the endowed property. But in cases where the settlor constitutes himself as the Shebait but does not reserve for himself any benefit, excepting the position of a Shebait -- the law is different. In case of *Angurbala Mullick Vs. Debabrata Mullick*, the Supreme Court had to consider these aspects of the matter and laid down the following principle of law.

"The exact legal position of a shebait may not be capable of precise definition but its implications are fairly well established. It is settled by the pronouncement of the Judicial Committee in 48 Ind App. 302 ; (AIR 1922 PC 128) that the relation of a shebait in regard to debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of cestui que trust. In a Hindu religious endowment on other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as juristic person and the shebait or Mahant is a mere manager. But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the

shebaitship as mere office. The shebait has not only duties to discharge in connection with the endowment but he has a "beneficial interest" in the debutter property. As the Judicial Committee observed in the above case, in almost all such endowments the shebait has a "share in the usufruct of the debutter property" which depends upon the terms of the grant or upon custom or usage. Even where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the endowed property "which partially at least has the character of a proprietary right". Thus, in the conception of shebaiti both the elements of office and property of duties and personal interest, are mixed up and blended together, and one of the elements cannot be detached from the other. It is the "presence of his personal or beneficial interest" in the endowed property which invests shebaitship with the character of proprietary right and attaches to it the legal incidents of property." (underlined (here in" ") for emphasis)

26. if this be the position of a shebait then whether he retained some sort of Interest in the Debuttar estate, expressly under the deed of endowment. e. g., as in the instant case, a right of residence in one of the houses, or whether he did not do so but merely constituted himself as the shebait, that fact alone will endow the shebait with some sort of beneficial interest in the dedicated property and by functioning as the shebait he would be enjoying some beneficial interest in the properties dedicated to the deity. This would attract the mischief of Section 10 of the Estatt Duty Act because it cannot be said that a Shebait after dedication ceases to have any benefit or enjoyment in the dedicated property.

27. in the view that we take, we find that the Board of Revenue did not err in holding that the dedicated properties were such as should be deemed to have passed on the death of the deceased.

28. Even if the deceased did not reserve the right of residence in one of the properties, even then, in law he would be deemed to have retained some beneficial interest in the property dedicated to the deity and such retention of interest would have the effect that the dedicated property would be deemed to be properties which passed on his death The question referred to this Court should thus be answered in the affirmative and against the assessee.

29. The Controller is entitled to the costs of this reference.

K.L. Roy, J.

30. I agree.