

(1978) 08 GUJ CK 0015

In the Gujarat High Court

Case No : First Appeal No. 418 of 1974 with Cross Objections

Vanitaben Bhaibankar Pandya

APPELLANT

Vs

Divaliben Premji and Others

RESPONDENT

Date of Decision : 03-08-1978

Acts Referred:

Trusts Act, 1882 — Section 82

Citation : AIR 1979 Guj 116 : (1979) 20 GLR 148

Hon'ble Judges : S.H. Sheth, J;M.K. Shah, J

Bench : Division Bench

Advocate : Suresh M. Shah, for the Appellant; J.R. Nanavati, for the Respondent

Judgement

M.K. Shah, J.—This first appeal and the cross-objections filed therein arise out of the judgment and decree of the learned Civil judge (Senior Division), Rajkot in Special Civil Suit No, 65 of 1971. The appellant is the original plaintiff and she is a married daughter of deceased Bhaishankar Odhavji Pandya who died intestate on 4th Oct., 1969 at Rajkot, The respondents are the original defendants. Defendant No. 1 is the widow of the deceased. Defendants Nos. 2 and 3 are his sons and defendants Nos. 4. 5 and 6 are his daughters.

The plaintiff filed the suit for partition of the properties mentioned in Schedules A and B attached to the plaint, The property mentioned in Schedule "A" is a house called Pandit Niwas situated in the area called Prahlad Plot at Rajkot valued at Rs. 40,000/- by the plaintiff. The property mentioned in Schedule "B" consists of cash amounts alleged to have been deposited in two Banks at Rajkot and certain amount alleged to be in the postal savings bank account at Rajkot, as also gold and silver ornaments cash at hand amounting to Rs. 2,000/- and other movable articles. It was the plaintiffs case that the plot of land on which the house was later constructed was purchased by the deceased in the name of defendant No. 1 by his own moneys and he later got the house constructed thereon also at his expense. The cash and other movables also belonged to the deceased. The plaintiff, therefore, claimed 1/7th share in the said properties.

2 to 4. x x x x x x x x.

5. Mr. Suresh M. Shah, the learned Advocate appearing for the appellant submits that the lower court erred in holding that the house belonged to defendant No. 1 in spite of the finding by that court that initially the land was purchased, as well as construction put up thereon, by the funds contributed by the husband. Mr. Shahs contention is that, unless it is shown by defendant No. 1 that the land was purchased by her own earnings and that the cost of construction also was met from her exclusive funds, it cannot be held that the house belongs to her and the learned judge, therefore, erred in not holding that the house was the property of the husband left behind him to be inherited by his heirs including the plaintiff who had 1/7th share therein and that she was, therefore, entitled to partition.

6 to 17. x x x x x

18. The cross-objections are confined to the finding with regard to the bank accounts and movables. So far as the bank accounts are concerned, it is an admitted fact that they originally stood in the joint names of defendant No. 1 and her deceased husband. Beyond the bare word of defendant No. 1, there is nothing to show that the amount of Rs. 21,000/- admittedly standing in the joint names was her exclusive property. in such cases, it has to be borne in mind that a Hindu husband has a tendency to deposit such savings in the joint names of himself and his wife. As observed in AIR 1928 172 (Privy Council) an exception made in English law to the effect that a gift to a wife is presumed, where money belonging to the husband is deposited at a Bank in the name of a wife, or, where a deposit is made, in the joint names of both husband and wife, has not been admitted in Indian law under the different conditions which attach to family life and where the social relationships are of an essentially different character. The principle to be applied has been stated in *Kerwick v. Kerwick.*, AIR 1921 PC 56 in the following terms :-

"The general rule and principle of the Indian law as to the resulting trusts differs but little, if at all, from the general rule of English law upon the same subject, but in their Lordships' view it has been established by the decisions in the case of *Gopeekrist v. Gungapersaud* (1854) LR 6 I A 53 (PC) and *Uzhur Ali v. Bebee Ultaf Fatima* (1869) 13 Moo Ind App, 232 (PQ, that owing to the widespread and persistent practice which prevails amongst the natives of India, whether Mohammedan or Hindu, for owners of property to make grants and transfers of it benami for no obvious reason or apparent purposes, without the slightest intention of vesting in the donee any beneficial interest in the property granted or transferred, as well as the usages which these natives have adopted and which have been protected by statute, no exception has ever been engrafted on the general law of India negating the presumption of the resulting trust in favour of the person, providing the purchase money, such as has, by the courts of Chancery in the exercise of their equitable jurisdiction, been engrafted on the corresponding law in England in those cases, where a husband or father pays the money and the purchase is taken in the name of a wife or child. In such a case

there is, under the general law in India, no presumption of an intended advancement as there is in England".

It was, therefore, held that there was no presumption in the deposit note of an intended advancement in favour of Mt. Guiji and that the sum of Rs, 1,00,000/- and interest were the property of Teku Ram and remained at his disposal at the date of his death as found in the decision of the Courts below. Here also, there cannot be any presumption that the amounts, which as admitted by defendant No. I were deposited in the bank accounts by her husband in the joint names of herself and her husband Aid exclusively belong to her. On the contrary, the presumption would be that the amounts belonged to the husband and he, owing to the aforesaid widespread and persistent practice deposited the same in the joint names of himself and his wife. The finding of the learned Judge therefore, that the State Bank deposit to the tune of Rs. 21,000/- was the property of the deceased cannot be said to be erroneous. There is no evidence on record, except the bare word of defendant No. 1, and the fact that the amounts were in the joint names of herself and her husband, to show that the same belonged to her exclusively, But she would be entitled to a deduction of Rs. 2,000/- spent for the funeral and other ceremonies as held by the trial court and the decree, therefore, in this respect of the trial court is confirmed.

19. xxxxxxxxxx

20. The result will be that both appeal as well as cross-objections will be dismissed. However, there will be no order as to costs in both.

21. Appeal and Cross Objections dismissed.