Controller Of Estate Duty, Gujarat vs H.H. Iqbal Mohomed Khan, Nawab Of ... on 19 April, 1967

Equivalent citations: [1967]66ITR484(SC)

Author: J.C. Shah

Bench: J.C. Shah

JUDGMENT

Ramaswami, J.

1. This appeal is brought, by certificate, on behalf of the Controller of Estate Duty, Gujarat, from the judgment of the High Court of Gujarat dated February 19, 1964, in Estate Duty Reference No. 1 of 1962.

2. The late Nawab of Palanpur, H. H. Taley Mohomed Khan (hereinafter referred to as the "deceased"), the father of the respondent, died on May 17, 1957. The deceased was the owner of a palace known as "Jorawar Palace". In the year 1954, the deceased sold the palace to the Government of Bombay for a sum of Rs. 15,00,000. In January, 1955 the possession of this palace was handed over to the Government of Bombay. A sum of Rs. 5,00,000 was paid by the Government of Bombay to the deceased immediately on taking over possession and the balance of Rs. 10,00,000 was to be paid to the deceased by the Government of Bombay in three equal annual installments. The respondent, who is the son of the deceased and the accountable person of the estate, contended before the Deputy Controller of Estate Duty that, out of the aforesaid sum of Rs. 10,00,000 due from the Government of Bombay, a sum of Rs. 9,00,000 was gifted to him by the deceased on May 3, 1955, and, therefore, the amount should not be included in the estate of the deceased. In support of this claim, the respondent produced before the Deputy Controller a photostat copy of a letter dated May 3, 1955, addressed by the deceased to the respondent. The Deputy Controller rejected the contention of the respondent, holding that the letter dated May 3, 1955, did not amount to a transfer of an actionable claim but that the gift was legally completed only on September 19, 1955, when the deceased intimated to the Government of Bombay his intention to make the gift to the respondent. The Deputy Controller accordingly held that the amount of Rs. 9,00,000 must be deemed to have passed to the respondent on the death of the deceased under section 9 of the Estate Duty Act, 1953, and as the gift was made within two years of the death of the deceased, it was chargeable to estate duty. The respondent took the matter in appeal to the Central Board of Revenue and it was contended on his behalf that the gift was governed by the Mohammadan law and section 120 of the Transfer of Property Act was not applicable and as the gift was made two years or more before the death of the deceased, it was not chargeable to estate duty. Reliance was placed on behalf of the respondent on the letter written by the deceased to the respondent on May 3, 1955, two draft letters

dated May 13, 1955, and an affidavit made on December 23, 1959, by Mr. Thacker, a partner of Messrs. Mulla & Mulla, who, in May, 1955, were acting as solicitors for the deceased. The draft letter, under which instructions were given to the Government of Bombay to pay the sum of Rs. 9,00,000 our of the unpaid balance of Rs. 10,00,000 directly to the respondent, was not signed on May 13, 1955, but was signed by the deceased on September 19, 1955, and sent to the Chief Minister thereafter. In view of the instructions contained in that letter, the amount of Rs. 9,00,000 was, in fact, paid to the respondent directly by the Government of Bombay. By its order dated January 27, 1960, the Central Board of Revenue held that the provisions of section 130 of the Transfer of Property Act applied to the case, that the letter dated May 3, 1955, did not complete the gift but there was a complete gift only on September 19, 1955, when the deceased signed the latter addressed to the Government of Bombay informing the Government of the gift to the respondent. The Central Board of Revenue accordingly held that there was no valid transfer of the sum of Rs. 9,00,000 prior to September 19, 1955, and confirmed the inclusion of that amount in the estate of the deceased. Under section 64(1) of the Estate Durt Act, 1953 (34 of 1953), the Central Board of Revenue stated a case for the opinion of the High Court on the following question of law :

> "Whether, on the facts and in the circumstances of the case, the gift of Rs. 9,00,000 should be regarded as having been made within two years of the death of the deceased and liable to estate duty ?"

3. At the hearing of the reference it was conceded on behalf of the respondent that section 130 of the Transfer of Property Act was applicable to the case but it was argued that the provisions of that section had been complied with, that the letter of the deceased dated May 3, 1955, itself effected the gift and the amount of Rs. 9,00,000 was not liable to be included in the estate of the deceased for the purpose of estate duty. The High Court held that the provisions of section 130 of the Transfer of Property Act applied to the case and the letter dated May 3, 1955, manifested clearly the intention of the deceased to make the gift of Rs. 9,00,000 to the respondent and that intention was sought to be carried out and effected by that letter. The High Court accordingly answered the question in favour of the respondent.

4. Section 130 of the Transfer of Property Act is to the following effect :

> "(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not :
>
> Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as

against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto.

Exception. - Nothing in this section applies to the transfer of a marine or fire policy of insurance, or effects the provisions of section 38 of the Insurance Act, 1938 (IV of 1938)."

5. It is manifest that this section contains a special scheme which has some of the features both of the English common law and of the principles of equity and it is analogous to the provisions which are contained in section 25(b) of the Judicature Act of 1873, which are now enacted in section 126 of the Law of Property Act of 1925. In other words, the section has some of the features of the statutory and some of the equitable modes of assignment. It resembles an equitable assignment in that it applies to assignments by way of charge as well as to absolute assignments and takes effect as between the assignor and the assignee from the date of the assignment. On the other hand it resembles a statutory assignment in that it must be in writing and that it enables the assignee to sue in his own name and to give a valid discharge.

6. The question to be considered in this appeal is whether the letter dated May 3, 1955, addressed by the deceased to the respondent was an instrument in writing signed by the deceased validly and effectively transferring the actionable claim in respect of Rs. 9,00,000 to the respondent or whether the said letter dated May 3, 1955, was a mere proposal or expression of an intention of the deceased to make a gift of the said sum to the respondent.

7. It is necessary at this stage to reproduce the letter of the deceased dated May 3, 1955, which is to the following effect :

"My dearest Iqbal, Good Bless you You must be remembering that when I promised to pay you Rs. 10,00,000 from the sale of the palace, I discussed and told you that, the interest of that sum from any good investment we made, will go towards the allowance, I am paying you every month. In other words, like I am paying you from the monthly rent income of the shops, buildings, etc., you know after deducting the rent, I pay the remaining sum of your monthly allowance. In the same way I suggested the new interest or such other income from this palace money also. I had been thinking since some time of avoiding any complication or brain work and within every consideration of my age, life and everything, it would be less troublesome for me and for you if I took another lac from the palace money and gave you Rs. 9,00,000 with no restriction or arrangement. I will continue to pay the monthly allowance after deducting the rent as I am doing today. You can do, what you like with your Rs. 9,00,000 and I have no worry to discuss your investments.

> If I live five years more, you will have got back that Rs. 1,00,000 safely and you have lost nothing, but if something goes wrong with me then, you may lose fifty thousand or less or more.
>
> I think this will be the best thing to do and I will have no interference or worry or bother about it. In the same way you are your own master. I have given you also everything belonging to your Mother and Her Jagir compensation will go fully to you. So I don't think I am unfair. So in that draft of Mulla, instead of Rs. 10,00,000 I will put as Rs. 9,00,000 and if he will give me the draft in time, I will complete it. Please inform Thacker also.
>
> Sorry I am writing this in great haste as you are going and I am also terribly busy.
>
> I could have improved this if I had time to touch it up, but I am sure you will be able to understand what I mean."

8. It is well-established that an instrument in writing under section 130 of the Transfer of Property Act is not required to be in any particular from. It is not necessary that any particular words should be used to effect the transfer of a debt or any beneficial interest in movable property if the intention to transfer in praesenti is clear from the language used (see Rama Iyen v. Venkatachalam Patter and Ramaswamy Chettiar v. K. S. M. Manickam Chettiar). In the present appeal, therefore, the question at issue depends upon the proper interpretation of the letter of the deceased dated May 3, 1955. It is apparent that the first part of the letter refers to a promise previously made by the deceased to the respondent that he would pay the whole of the unpaid balance, i.e., Rs. 10,00,000 in such a way that the income thereof would serve as allowance which was being paid to the respondent by the deceased. This is clear from following portion of the letter :

> "You must be remembering that when I promised to pay you Rs. 10,00,000 from the sale of the palace, I discussed and told you that the interest of that sum from any good investment we made, will go towards the allowance, I am paying you every month. In order words, like I am paying you from the monthly rent income of the shops, buildings etc., you know after deducting the rent, I pay the remaining sum of your monthly allowance. In the same way I suggested the new interest or such other income from this palace money also.

9. The next portion of the letter shows that the deceased had thought over that the matter afresh and came to two conclusions, namely, (1) that instead of retaining the amount of Rs. 10,00,000 and merely paying the income thereof or placing any restrictions on the corpus of the property and also in consideration of the trouble and anxiety the deceased would have to undergo for investing the amount in proper securities, the deceased would had over the corpus to the respondent without any restrictions of without any conditions, and (2) instead of paying the entire amount of Rs. 10,00,000, the deceased would retain Rs. 1,00,000 therefrom and had over the balance of Rs. 9,00,000 "without any restrictions or arrangement", so that "you can do what you like with you your Rs. 9,00,000 and I have no worry to discuss your investments". But there is nothing in the letter to

suggest that the deceased was making a transfer of the amount of Rs. 9,00,000 in praesenti to the respondent. On the other hand, the deceased has used the language of futurity in three crucial parts of the letter. After stating that he had come to the decision about handing over the sum of Rs. 9,00,000 to the respondent without any restrictions or arrangement, the deceased proceeded to state as follows :

> "... if I took another lac from the palace money and gave you Rs. 9,00,000 with no restriction or arrangement. I will continue to pay the monthly allowance after deducting the rent as I am doing today."

10. The use of the word "if" in this portion of the letter suggests that what was written there was intended to be a mere proposal or a mere wish on the part of the deceased to make a gift of Rs. 9,00,000 to the respondent. Later on, the deceased continued to say :

> "I think this will be the best thing to do and I will have no interference or worry or bother about it."

11. Lastly, the deceased concludes by stating :

> "So in that draft on Mulla & Mulla, instead of Rs. 10,00,000 I will put as Rs. 9,00,000 and if he will give me the draft in time, I will complete it."

12. On behalf of the respondent Mr. Bhaba referred to the following sentence in the first part of the letter :

> "You can do what you like with your Rs. 9,00,000 and I have no worry to discuss your investments."

13. But this sentence has to be read in the context and background of the other portions of the letter to which we have made reference, and so interpreted the sentence means "you will be able to do what you like with you Rs. 9,00,000 and I shall have no worry to discuss your investments." Having analysed the language of the letter dated May 3, 1955, in its entirety and in its context we are of the opinion that there was merely a proposal or expression of the intention of the deceased to make the gift of the sum of Rs. 9,00,000 to the respondent and there was no transfer in praesenti of that amount to the respondent carried out and effected by means of that letter within the meaning of section 130 of the Transfer of Property Act. It follows, therefore, that the transfer of the actionable claim was not completed on May 3, 1955, but the transfer became effective on September 19, 1955, when the deceased signed the draft letter to the Bombay Government requesting it to arrange for the payment of the said sum of Rs. 9,00,000 directly to the respondent. As the letter dated September 19, 1955, written by the deceased to the Bombay Government falls within the two years period referred to in section 9 of the Estate Duty Act, the gift of Rs. 9,00,000 should be regarded as being chargeable to estate duty and the question of law referred to the High Court must be answered against the respondent and in favour of the Controller of Estate Duty, Gujarat.

14. On behalf of the respondent Mr. Bhaba referred to an affidavit of Mr. J. P. Thacker of Messrs. Mulla and Mulla dated December 23, 1959, in which he stated that "some time in May, 1955, I was called by His Late Highness at his residence in Bombay and he told me that he had made a gift to his son Iqbal, the present Nawab of Palanpur, of a sum of Rs. 9 lakhs, out of the sum of Rs. 10 lakhs, being the balance of the purchase price of the said Joravar Palace which was due and payable by the State of Bombay." Learned counsel also referred to the draft of two letters dated May 13, 1955, produced along with the affidavit of Mr. Thacker. But it is admitted for the respondent that the deceased did not sign either of these draft letters on May 13, 1955, but that the letter to the Bombay Government was signed only on September 19, 1955. Mr. Bhaba stressed the argument that the alleged declaration of the deceased made to Mr. Thacker early in May, 1955, was admissible in evidence in the matter of construction of the letter of the deceased dated May 3, 1955. To put it differently, the argument of the respondent was that the alleged declaration of the deceased to Mr. Thacker was made soon after the letter of May 3, 1955, and constituted part of the same transaction and was, therefore, admissible in evidence. In support of this argument learned counsel referred to the decision of the House of Lords in Shephard v. Cartwright, but that decision has no bearing on the question presented for determination in the present case. It was held in that case that subsequent acts of the parties are, in general, inadmissible with regard to the rebuttal of the presumption of advancement but there was an exception that evidence may be adduced in rebuttal in regard to acts, circumstances and declarations leading to or forming part of the transaction or so immediately following or connected with it as in effect to be contemporaneous with or forming part of it. It was pointed out in that case that, as advancement is a question of intention, facts antecedent to or contemporaneous with the purchase, or so immediately after it as to constitute part of the same transaction may be put in evidence for the purpose of rebutting the presumption. The doctrine enunciated in this case has manifestly no application to the question to be decided in the present case. It was then contended by Mr. Bhaba that, if the language of the letter dated May 3, 1955, is ambiguous, evidence is admissible of surrounding circumstance in order to enquire what is the meaning of the language used by the deceased in the document. We do not, however, agree that there is any ambiguity in the letter dated May 3, 1955. The question of construing the letter is somewhat difficult, but the problem in this case does not go beyond the sphere of difficult construction into the sphere of ambiguity. The difficulty is purely one of construction and which can and should be overcome. We are, therefore, of the opinion that the subsequent declaration alleged to have been made by the deceased to Mr. Thacker as mentioned in the draft letters and the affidavit is not admissible in the matter of interpretation of the letters and the affidavit is not admissible in the matter of interpretation of the letter dated May 3, 1955. We accordingly reject the argument of the respondent on this aspect of the case.

15. As regards the question whether a part of an actionable claim can be the subject-matter of a gift or not, the view taken by the Central Board of Revenue is that the debt was capable of partition and there was no valid transfer of the sum of Rs. 9,00,000 prior to September 19, 1955, when the debt was actually partitioned. The High Court, however, has overruled the view of the Central Board of REvenue and held that there is nothing in section 130 of the Transfer of Property Act or any other portion of that act which prohibits the transfer or gift of a part of an actionable claim and, therefore, such transfer of a part of an actionable claim was permissible in law. It is not, however, necessary for us, in the present appeal, to express any opinion on this aspect of the case or to examine whether the

view taken by the High Court on this point is correct.

16. For the reasons already expressed we consider that, in the facts and circumstances of the case, the gift of Rs. 9,00,000 should be regarded as having been made within two years of the death of the deceased and was liable to estate duty. We accordingly hold that the judgment of the High Court should be set aside and he question referred to the High Court should be answered against the respondent and in favour of the Controller of Estate Duty. The appeal is accordingly allowed with costs.

17. Appeal allowed.