Supreme Court of India
Biswaranjan Bysack vs Commissioner Of Income-Tax, ... on 4 April, 1967
Equivalent citations: 1967 66 ITR 452 SC
Author: Ramaswami
Bench: J Shah, V Ramaswami
JUDGMENT Ramaswami J.

1. These appeals are brought, by certificate, from the judgment of the Calcutta High Court dated March 13, 1964, in Income- tax Reference No. 39 of 1960.

2. One Kedarnath Bysack, a Hindu governed by the Bengal school of Hindu law, died on July 10, 1887, leaving behind his widow, Kailashmoney Dasi, a son, Sarbaranjan Bysack, and his nephew, Dakhinaranjan Bysack. He left a will dated May 30, 1887, and a codicil whereby he bequeathed his entire estate to two deities, Sree Sree Iswar Balaram Jew and Radhakanta Jew subject to the payment of certain legacies, annuities and expenses. There was a provision in the will that, in the event of the bequest or any part thereof in favour of the deities being held by a competent court to be void, the estate will be inherited by his heirs, his son, Sarbaranjan Bysack, and his nephew, Dakhinaranjan Bysack. Probate of the will was duly granted on August 18, 1887. The nephew, Dakhinaranjan Bysack, died in 1895, after having married Purnashashi Dassi in the year 1893. In 1896, Purnashashi Dassi filed a suit, O. S. 363 of 1896, on the original side of the Calcutta High Court against the widow of the testator and her son, Sarbaranjan Bysack, asking for a proper constructions of the will and declaration of her rights and of the other parties to the suit. She also asked for an enquiry to be made as to what was the proper provision to be made out of the said estate for the due performance of sheba and worship of the deities, Sree Sree Iswar Balaram Jew and Radhakatna Jew, on the footing that the gift made to them by the testator in his will was not intended to operate and did not operate as an absolute gift but only as a provision for the due and proper performance of sheba and worship of the said deities. Purnashashi Dassi prayed that, after such provision was made, the rest of the property of the testator might be directed to be divided in equal proportions between herself and the other heirs of the testator. The High Court granted a preliminary decree in O. S. 363 of 1896 on July 1, 1897. It was declared that the gift of the estate by the testator in favour of the deities was invalid and it was ordered that an enquiry should be made as to what provision was necessary for the sheba and worship of the deities in the same way as it was carried on by the testator. The commissioner, who was appointed to make the enquiry under the preliminary decree, made his report on July 4, 1900, stating :

"It is necessary to provide Rs. 1,500 annually, for the sheba of the said Thakoors Bolloramjee and Radhakanjee and Rs. 500 annually for gifts and donations on poojhas and for festival occasions and for that purpose the following properties in Calcutta should be set apart, namely, No. 1 Chytan Sett Street;

No. 60, Banstollah Street;

No. 85, Upper Chitpore Road; and No. 16, Brindaban Bysack Street."

3. The report was accepted by the High Court and a final decree was passed on September 22, 1903. Excepting these four properties, the other properties of the testator were divided between Purnashashi Dassi and Sarbaranjan Bysack.

4. For the assessment year 1952-53 to 1955-56, Sarbaranjan claimed that the four properties should be regarded as "debutter properties", that is to say, that ownership had passed from the assessee to the two family deities, and on that basis he did not file returns in respect of those properties. The Income-tax Officer requested Sarbaranjan to furnish particulars of income of these properties. Sarbaranjan replied as follows :

"As the properties mentioned in the copy of the final decree passed in Suit No. 363 of 1896 of the hon'ble High Court, Calcutta, and filed on 31st July, 1953, are neither secular properties nor even the assessee has any personal interest therein but the said properties are exclusively debutter, set apart by the order of the above final decree, the production of evidence of income of the said properties to assess the assessee with respect to his secular properties need not be asked for."

5. The Income-tax Officer refused to exempt the income from assessment. He estimated the income to be Rs. 12,429, after making the necessary allowance, for the first year, Rs. 13,114 for the second year, Rs. 13,114 for the third year and Rs. 14,000 for the last year of assessment. The assessee took the matter in appeal to the Appellate Assistant Commissioner who took the matter in appeal to the Appellate Assistant Commissioner who dismissed the appeal. The assessee appealed to the Appellate Tribunal and contended that the disputed properties had been exclusively set apart and dedicated for the performance of sheba and puja of the two deities and the title to the properties had vested in the said two deities. It was alleged that the income the disputed properties had been diverted at source as a result of the decree of the High Court and therefore the income was not taxable in the hands of the assessee. The Appellate Tribunal rejected the contention of the assessee and upheld the order passed by the Income- tax Officer. As desired by the assessee, the Appellate Tribunal referred the following question of law to the High Court under section 66(1) of the Income-tax Act :

"Whether upon a construction of the will of Kedarnath Bysack dated May 30, 1887, and the pleadings and proceedings of Suit No. 363 of 1896, in the High Court of Judicature at Fort William in Bengal (Sm. Poornasasi Dassi v. Smt. Koylashmoney Dassi & Anr.) including the decree therein dated July 1, 1897, the report dated July 4, 1900, the return dated September 15, 1903, and the order dated September 22, 1903, the four properties in question vested absolutely and belonged to the Thakoors Sri Sri Bolloramjee and Sri Sri Issur Radhakantjee or whether in the fact and circumstances, the said four properties vested in and belonged to Sarbaranjan Bysack, subject to a charge for meeting the expenses of sheba and worship of the said Thakoors, in the way the same was carried on by the said Kedarnath Bysack and his mother."

6. The High Court answered the question against the assessee and in favour of the Commissioner of Income-tax.

7. It was argued on behalf of the appellant that the four properties have not been partitioned by metes and bounds between Purnashashi Dassi and Sarbaranjan Bysack as has been done with

respect to the other properties in the residuary estate. It was also pointed out that the Commissioner has, in his report dated July 4, 1900, mentioned that the four properties were "set apart for the purpose of sheba and puja of the two deities for which it was necessary to provide a sum of Rs. 2,000 annually." The argument was therefore stressed on behalf of the appellant that, though there was a failure of the bequest to the two deities made by the testator in his will, there was a "debutter" created on account of the final decree of the Calcutta High Court and the commissioner's report already referred to. In our opinion, there is no justification for the argument put forward on behalf of the appellant. It is important to notice that, in the preliminary decree in Suit No. 363 of 1896, the bequest to the two deities was declared invalid by the High Court. The result was that Sarbaranjan and the heir of Dakhinaranjan became entitled to the residuary estate. The preliminary decree directed "an enquiry as to what provision should be made for carrying on the worship of the two deities, Sri Sri Bolloramjee and Radha Kant Jew, ... in the way the same was carried on by the said testator and his mother". The preliminary decree proceeded to state :

"And it is further declared that the said defendant, Sreemutty Koylashmoney Dassee, is entitled to act as Sebayet of the said Thakoor during the minority of the infant defendant, Surborunjan Bysack, and that thereafter the said defendants, Sreemutty Koylashmoney Dassee and Surborunjan Bysack, will be entitled to act as Sebayots jointly. And it is further declared that, subject to the aforesaid provisions and payments being made, the plaintiff is entitled to the estate of the Hindoo widow to a moiety or one equal half part or share of the residue of the said testator's estate (the same into two equal parts or shares being considered as divided and hereinafter referred to as the said residuary estate) and that the said defendant, Surborunjun Bysack, is entitled to the other moiety or equal half part or share thereof :"

8. It is clear that the direction in the preliminary decree was that provision should be made out of the testator's estate for the performance of sheba and worship of the deities and for meeting the other legacies in the testator's will and thereafter the residuary estate was ordered to be divided equally between Purnashashi Dassi and Sarbaranjan Bysack. According to the direction of the preliminary decree, the commissioner reported that it was necessary to provide Rs. 1,500 annually for the sheba of Thakoors Bolloramjee and Radhakantjee Jew and Rs. 500 annually for gifts and donation on poojhas and for festival occasions. He recommended that four properties should be set apart for these purposes. It does not mean that the commissioner intended that the title to the four properties should be vested in the deities. The intention was that a fixed sum of Rs. 2,000 annually should be spent for sheba and worship of the deities and it is not possible to draw any inference that there had been a gift of the deities should be met from the income of the four properties to the deities. The words "set apart" used in the commissioners report only indicated that the expenses of worship and puja of the deities should be met from the income of the four properties but not that the title and ownership of the properties should pass the deities. In any case, even if there is an ambiguity in commissioners report, it should be read in context and background of the preliminary decree of the High Court in suit No. 363 of 1896. Having regard to the clear terms of the preliminary decree, we are of the opinion that there is no scope for the argument that there was any dedication of the four properties in favour of the two deities because of the commissioners report. It is manifest that the four properties formed part of the residuary estate of Sarbaranjan and Purnashashi Dassi subject, however, to a charge or obligation to perform the sheba and worship of the deities in the

manner provided in the commissioners report. The argument was stressed on behalf of the appellant that the four properties had not been partitioned by metes and bounds between Purnashashi Dassi and Sarbaranjan as had been done with respect to the other properties comprised in the residuary estate. But this circumstances alone cannot lead to the conclusion that the four properties became of these properties in view of his recommendation that the income from these properties should be spent for the sheba and worship of the two deities. On a true interpretation of the will of late Sri Kedarnath Bysack and his codicil and having regard to the preliminary and final decrees of the High Court, we are of the opinion that the four properties which had been set apart by the commissioner for the performance of sheba and worship of the deities formed part of the residuary estate of the testator and they were not dedicated for charitable purpose.

9. For these reasons we hold that the question was rightly answered by the High Court against the assessee and these appeals must be dismissed with costs. One set of costs.

10. Appeals dismissed.