

**MAHENDRA RAMBHAI PATEL**

v.

**CONTROLLER OF ESTATE DUTY, GUJARAT**

October 28, 1966

[J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

*Estate Duty Act, 1953 (34 of 1953), ss. 2(15), 5 and 23—Property settled by deed of trust—Beneficiaries entitled to maintenance but not to hold the property before attaining age of 25 years—One of the beneficiaries dying before that age—His interest whether 'property' under s. 2(15)—Whether passes under s. 5.—Applicability of s. 23.*

Under a deed of trust 160 shares of a company were settled equally upon the appellant and his younger brother. According to the deed the trustees were to hold the shares of each beneficiary till he attained the age of twenty-five years. Before that the income from the shares was to be applied for the benefit and advancement of the beneficiaries. If either of them died before attaining the age of twenty-five years his shares were to devolve on persons named in cls. 6 and 7 of the deed but the accumulated income was to devolve on his heirs. Clause 5 of the deed laid down that the beneficiaries could not before attaining the age of twenty-five years mortgage or encumber the shares or sell the same. The appellant's younger brother died in 1954 while he was still a minor and unmarried. The Assistant Controller of Estate Duty held that the deceased's interest passed to the appellant under s. 5 of the Estate Duty Act, 1952 and levied tax accordingly. The Central Board of Revenue and the High Court upheld the finding. The appellant contended before this Court that before attaining age of twenty-five years neither beneficiary had any interest in the property being entitled under the deed only to maintenance. Reliance was also placed on s. 23 of the Act.

**HELD :** Though the shares were not to be delivered to the deceased until he attained the age of twenty-five years, the shares belonged to him since the execution of the deed of trust, and he was also beneficially entitled to the income of the shares. His interest in the shares and the income was not an estate in remainder or reversion, nor was his interest a future interest. He was presently entitled to the whole income of his one-half share in the said 160 shares, and after provision of maintenance, if any surplus remained, he was the beneficial owner of the accumulation of such surplus income. But for cl. 5 he could dispose it of as he willed, and if he died it was heritable by his heirs. [196 G-H]

In the circumstances, the interest of the deceased in the shares and in the accumulated income was 'property' within the meaning of s. 2(15) of the Act. On his death the property passed to the appellant who was liable to estate duty. [195 D-E]

Since the interest of the deceased did not fail or determine before it became an interest in possession s. 23 of the Act had no application to the case. [195 H]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 1067 of 1965.

Appeal from the judgment and order dated October 28, 1963 of the Gujarat High Court in Estate Duty Reference No. 1 of 1963.

*A. K. Sen, G. L. Sanghi and B. R. Agarwala*, for the appellant. A

*S. T. Desai, A. N. Kirpal and R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

**Shah, J.** Under a deed of trust dated June 26, 1941, one Rambhai Patel settled under a deed subject to certain terms and conditions 80 shares of the Central Cotton Trading Company (Uganda) Ltd. for the advancement and maintenance of his son Manubhai, and an equal number of shares for the benefit of his son Mahendra. Manubhai died on June 7, 1954, when he was a minor and unmarried. The Deputy Controller of Estate Duty, by order dated August 26, 1959, brought the interest of Manubhai in the settlement to tax in the hands of his brother Mahendra on the footing that it was vested in possession in Manubhai and was chargeable to estate duty under s. 5 of the Estate Duty Act 34 of 1953. The order of the Deputy Controller was confirmed in appeal to the Central Board of Revenue. B C

The Central Board of Revenue referred the following question to the High Court of Gujarat under s. 64 of the Estate Duty Act 34 of 1953 : D

“Whether on the facts and in the circumstances of the case, the inclusion, in the estate of the deceased, of the amount of Rs. 10,43,050/- being the trust fund, was justified in law ?” E

The High Court recorded an affirmative answer to that question. Against that order, with certificate granted by the High Court, this appeal has been preferred.

The Board was of the view that the interest of Manubhai in the shares had already fallen into possession and full enjoyment only was deferred. The Board also held that the accumulated unused income falling to the share of each beneficiary passed according to the normal law of succession on his death before he attained the age of twenty-five years, and since there had been change in the person beneficially interested before and after death, the value of shares was liable to be added to the estate of Manubhai on his death. The Board rejected the argument that the interest enjoyed by the deceased was not an interest in property, but only an ancillary right, and further held that Manubhai was entitled to the half share of the income from the date of the deed of trust, and the deed provided for the disposition of the corpus only in the event of premature death, while the deceased's heirs would be entitled to the savings from the income upto the date of death. The correctness of that view was challenged before the High Court, but without success. F G H

A Determination of the question in dispute depends upon the provisions of the deed of trust, which may in the first instance be set out :

B “NOW THESE PRESENTS WITNESS that in consideration of the above premises and in consideration of natural love and affection the Settlor bears towards the said Beneficiaries, . . . . . the settlor himself shall transfer to the name of the trustees the said 160 fully paid up shares to hold in trust for the benefit and advantage of the said beneficiaries in equal shares.

C 2. The trustees shall stand possessed of the said shares until each of the said beneficiaries shall complete the age of 25 years and until the said time, out of the profits arising therefrom to apply either the whole or part thereof as the said trustees may deem fit and proper in the maintenance and advancement of the said beneficiaries. The trustees are hereby authorized to invest such unused or accumulated funds from the profits in any security or concern as they may deem fit and proper.

D 3. The trustees are further authorised to sell the said shares and invest the same in any other security or concern as they may deem fit and proper.

E 4. If and when each of the said beneficiaries complete the age of 25 years the trustees shall transfer out of the said 160 shares his portion of the shares and the accumulation thereof or any other investment in lieu thereof as provided in clause 2 and 3 hereof absolutely.

F 5. The said beneficiaries shall not have any right to mortgage or create any incumbrance of any description or sell the same until each of them complete the age of twenty-five years.

G 6. In event the said beneficiaries or any of them shall die before completing the age of twenty-five years leaving male issue or issues, the trustees shall stand possessed of the said shares in trust for such male issue or issues (if more than one in equal shares) till each of them completes the age of twenty-one years.

H 7. In event of said beneficiaries or any of them shall die before completing the age of twenty-five years without leaving any male issue, the trustees shall stand possessed of the said shares in trust for the other then living sons of the said Rambhai Somabhai Patel in equal shares after making the following provisions:”

[Clauses (a) & (b) make provision for the benefit of the widow of the beneficiary dying before the age of twenty-five years and the female children of the beneficiary in the event of his death before attaining the age of 25 years].

"8. The trustees shall not charge, mortgage or otherwise incumber the said shares in any manner whatsoever."

Under the terms of the deed of trust, each beneficiary was entitled to 80 shares of the Central Trading Company. The trustees were to hold 80 shares for each beneficiary till he attained the age of twenty-five years, and the trustees were to apply either the whole or part of the profits arising from the shares, as the trustees deemed "fit and proper", for the maintenance and advancement of the beneficiaries, and to invest the surplus in securities or concerns as they deemed proper. In the event of death of either beneficiary before he attained the age of twenty-five the shares settled on him, but not the accumulated surplus income, were to devolve on the persons mentioned in cls. 6 & 7. Till each beneficiary attained the age of twenty-five years, management of the shares was to remain with the trustees and provision for maintenance and advancement for the benefit of the beneficiary was to be made by the trustees. But the income which remained unused after providing for maintenance and advancement was not directed in the event of death of the beneficiary before he attained the age of twenty-five years to go to the persons named in cls. 6 & 7 and was to devolve upon the heirs of the beneficiary according to the personal law of succession and inheritance. This clearly indicates that the entire income accruing to each beneficiary in respect of his 80 shares belonged to him. Clause 5 also indicated that but for that clause the beneficiaries would have been entitled to exercise the right to mortgage or create any incumbrance or sell the shares and the accumulations thereof. By cl. 4 it was expressly provided that on the attainment of the age of twenty-five years by each beneficiary the trustees shall transfer 80 shares and the accumulations thereof or any other investment in lieu thereof as provided in cls. 2 & 3 of the deed.

On the clauses set out earlier, we are unable to accept the contention that each beneficiary, until he attained the age of twenty-five years, was entitled merely to receive maintenance and provision for advancement, and had no interest in the corpus of the shares. We are of the opinion that under the deed of trust the right to 80 shares and to the income thereof arose from the date on which the deed of trust became operative and it was not deferred till the beneficiary attained the age of twenty-five years.

We may now consider whether estate duty in respect of the shares and the accumulated income thereof became payable when

- A** Manubhai died on June 7, 1954. Section 5 of the Act, sub-s. (1), provides :

**B** “In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, . . . . . which passes on the death of such person, a duty called “estate duty” at the rates fixed in accordance with section 35.”

**C** The expression “property” is defined in s. 2(15) as inclusive of “any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method.” Explanations 1 & 2 are not relevant. Section 2(16) defines “property passing on the death” as inclusive of “property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and “on the death” includes “at a period ascertainable only by reference to the death”.  
**D** Interest of Manubhai in the shares and in the accumulated income was ‘property’ within the meaning of s. 2(15). That property did, as we have already pointed out, vest in ownership in Manubhai immediately on the execution of the deed of trust.  
**E** On Manubhai dying unmarried, the property as to the shares under cl. 7 of the deed and as to the accumulated income under the law of inheritance devolved upon his brother Mahendra. On Manubhai’s death there was under the deed of trust a change in the person who was beneficially interested in the shares.

- F** Counsel for the appellant relied upon s. 23 of the Estate Duty Act, which insofar as it is material, provides :

**G** “In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest.”

**H** That the 80 shares under the deed of trust were settled property is not disputed; and Manubhai had an interest in those 80 shares. But the interest of Manubhai in the shares did not, for reasons already set out, fail or determine before it became an interest in possession. Section 23 therefore has no application to the present case.

Counsel for the appellant relied upon an Irish case reported in *The Attorney-General v. Power and Another*<sup>(1)</sup>. In that case, under a settlement, one H took a vested legal estate as tenant in common in fee, with a limitation over on his dying under the age of twenty-one. The legal estate was subject to the proviso that during minority of H the trustees were to enter into receipt of the rents, providing thereout for his maintenance etc. and to accumulate the surplus upon trust, if H should attain his age, for him, and if H should die under-age, for the persons who should ultimately become indefeasibly entitled. H died under-age, and the defendants became indefeasibly entitled as tenants-in-common in fee of all the lands in the settlement, including H's share. It was held that estate duty was not payable as on a property passing on H's death, that H's interest had not become a beneficial interest in possession in the land at his death, and that accordingly, s. 5, sub-s. (3) of the Finance Act, 1894, was inapplicable. Section 5(3) of the Finance Act, 1894, which was later amplified by s. 48 of the Finance Act, 1938, was substantially in the same terms as s. 23 of the Estate Duty Act. But *Power and Another's* case<sup>(1)</sup> was decided on the footing that the settlor's interest was not vested in H in possession during his minority. The Court held that mere possibility of receiving maintenance at the discretion of the trustees was not *per se* an interest in possession for the purpose of s. 5(3) of the Finance Act, 1894. An interest in property liable to be divested on the death before the beneficiary attains a certain age, coupled with a direction to accumulate the income in the meantime, so far as it is not required for maintenance so as to make the accumulated income an accretion to the capital is in substance a contingent interest, and the property may be exempt from estate duty, if the beneficiary dies before he attains the age specified. But where, as in the present case, the income of the property absolutely belongs to the beneficiary and such part of the interest as is not applied for the benefit of the beneficiary, is liable to be accumulated for his benefit, and in the event of his death before he attains the age specified in the deed of trust, it is to devolve upon his heirs, creates in the beneficiary an interest in possession and not an interest in expectancy.

The High Court was in our judgment, right in holding that though the shares were not to be delivered over to Manubhai until he attained the age of twenty-five years, the shares belonged to him since the execution of the deed of trust, and he was also beneficially entitled to the income from the shares, that his interest in the shares and the income was not an estate in remainder or reversion, nor was his interest a future interest, and that he was presently entitled to the whole income of his one-half share in the said 160 shares and after provision of maintenance and advancement, if any surplus

(1) [1906] 2 I. R. 272

† A remained, it was to be accumulated and he was the beneficial owner of the accumulation of such surplus income and but for cl. 5 he could dispose it of as he willed, and if he died it was heritable by his heirs.

The appeal therefore fails and is dismissed with costs.

B

G.C.

*Appeal dismissed.*