PETITIONER:
CONTROLLER OF ESTATE DUTY, WEST BENGAL

Vs.

RESPONDENT:
USHA KUMAR & ORS.

DATE OF JUDGMENT20/11/1979

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
TULZAPURKAR, V.D.

CITATION:
1980 AIR 312 1980 SCR (2) 241
1980 SCC (1) 315

ACT:
Estate Duty Act 1953, S5-Estate Duty-Trust deed providing property to belong to and remain with trust-Income from trust property-utilization for religious, charitable purposes and benefit of descendants of settlor-Whether valid trust-whether property devolved on settlor's son and passed on his death-liability to estate duty.

HEADNOTE:
One 'W' executed a deed of trust transferred all his properties to the said trust and appointed himself as the first managing trustee for a period of one year and directed that after he ceased to be the trustee, his son the deceased should act as the managing trustee of the Trust and on his death, the deed directed that his sons, grand-sons etc. should be appointed as trustees. The deed provided that the properties should belong to the trust and continue to remain with the trust and that none of the heirs of the author of the trust could have the power to deal with them as their own or to alienate them. The trust deed provided that out of the income from the trust properties in any year, one-fourth thereof should be utilized for the payment of taxes, expenses of the repairs, alterations, reconstructions etc. Of the trust properties. One-half of the balance, i.e. one-half of three-fourths of the income should be spent for the sevas of the family deities, performance of certain specified pujas, sradhas and certain other religious purposes. The remaining income i.e. three-eights of the total income was permitted to be used by the trustees and other members of the family.

After the death of the author of the trust, his son, the deceased, became the trustee. On his death, the question whether the properties which were the subject matter of the trust should be included in the estate passing on his death arose for consideration in the estate duty proceedings.

The accountable persons contended before the assessing authority, the Deputy Controller of Estate Duty, that no estate duty was payable in respect of the properties comprised in the trust, as the said properties did not pass on the death of the deceased. The Deputy Controller held that the provisions of the trust were such as to keep the properties tied up in perpetuity without any power of

alicnation and since the purpose for which the trust was created was not a public or charitable one, the trust as a whole was void, and held that the properties passed on the death of the deceased under section 5 of the Act.

In appeal, the Central Board of Revenue held that even though the purpose of the trust was said to be for certain religious purposes, the further directions contained in the deed providing for certain personal expenses of the author of the trust, his heirs to succeed him as trustees, and stipulating that the trustees were not competent to alienate the trust properties led to the inference that the intention of the author executing the deed of the trust was "not only to provide for the worship of deities but also for meeting the secular expenses of the family
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members and future heirs" and since the trust offended the rule against perpetuities it was void in law and all the properties comprised in the said trust should be held to pass under section 5 of the Act.

The High Court in the reference under section 64(1) of the Act at the instance of the accountable persons, held that the properties comprised in the deed which created a Hindu religious trust could not be included in the estate of the deceased as properties passing on his death.

In the appeal to this court on the question whether all or any part of the properties which were the subject matter of the trust could be treated as passing on the death of the deceased for purposes of levy of estate duty under the Estate Duty Act, 1953.
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HELD : 1. Only one-half of the properties which were the subject matter of the trust deed passed on the death of the deceased under section 5 of the Act and the remaining one-half did not. [248 D]

2. The High Court was in error in holding that the whole of the trust properties constituted a religious endowment and did not pass on the death of the deceased. [248 C]

3. If the terms of the document under which the properties or their income are gifted or bequesthed or settled amount to their complete dedication for religious or charitable purposes, then any part thereof which is given away by way of gift or bequest or settlement to any person contrary to the rule against perpetuities or the rule against the accumulations enures to the benefit of the endowment and becomes a part of the properties endowed. On the other hand, if the dedication is partial such part which is hit by the rule against perpetuities or the rule against accumulations reverts to the executant of the document or his heirs. [247 F-G]

In the instant case, under the trust one-half of the total income from the properties in question had been directed to be used for religious purposes. The remaining one-half of the income was permitted to be used by the trustees for the purpose of defraying joint family expenses, to engage servants, maintain a conveyance, meet the expenses of the marriage of the daughters of the trustees etc. There was no transfer of the properties to any idol or deity, the title to the properties remaining only with the trustees, who were allowed to enjoy one-half of the net income not because they were shebaits but because they were members of the family. [246 F-G, 247 B]

4. The dominant intention in creating the trust was to benefit the members of the family of the author of the trust and to see that the properties were not alienated by them

for ever. There was only a partial dedication under the deed for religious purposes. The provision for the benefit of the trustees and other heirs and relatives of the author of the trust fails as it is hit by the rule against perpetuities. This does not however affect the validity of the religious endowment. [247 C-D]

5. One-half of the properties covered by the trust corresponding to one-half of the total income which had to be spent on religious purposes considered as not passing on the death of the deceased. The religious endowment made in
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this regard would not fail despite the fact that the remaining one-half of the properties retained their private and secular character. The remaining one-half of the properties remaining undisposed of and being held by the decased immediately before his death, should be deemed to pass on his death for purposes of section 5 of the Act. [248 A-B]

S. Shanmugam Pillai & Ors. v. K. Shanmugam Pillai & Ors. (1973) 1 S.C.R. 570 ref. to.

JUDGMENT:

CIVIL. APPELLATE JURISDICTION : Civil Appeal No. 401 of 1973.

From the Judgment and Order dated 21-5-1971 of the Calcutta High Court in Matter No. 95/65.

T. A. Ramachandran and Miss A. Subhashini for the Appellant.

V. S. Desai, D. N. Mukherjee and N. R. Chaudhary for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. In this appeal by certificate, the question which arises for consideration is whether all or any part of the properties which were the subject matter of a trust can be treated as passing on the death of Panchu Gopal Banerjee (hereinafter referred to as 'the deceased') for purposes of levy of estate duty under the Estate Duty Act, 1953 (hereinafter referred to as 'the Act').

The deceased was the son of Woomesh Chandra Banerjee. Woomesh Chandra Banerjee executed a deed of trust on June 27, 1939 constituting a trust known as 'Sri Sri Iswar Jagadhatri Sampad' and transferred all his properties which were described in the Schedule attached to the deed to the said Trust and appointed himself as the first managing trustee for a period of one year. He directed that after he ceased to be the trustee, his son, the deceased should act as the managing trustee of the trust. On the death of the deceased, the deed directed, that his sons, grand-sons etc. should be appointed as trustee. The deed provided that the properties should belong to the trust and continue to remain with the trust and that none of the heirs of the author of the trust could have the power to deal with them as their own or to alienate. The trust deed provided that out of the income from the trust properties in any year, one-fourth thereof should be utilized for payment of taxes in respect of the trust properties and for the expenses of the repairs, partial constructions, additions, alterations and re-constructions of the houses referred to in the Schedule attached to the deed. If there was any surplus remaining in the said one-fourth after paying the taxes and meeting the expenses referred to
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above, it was open to the trustees to acquire new properties

and the properties so acquired should be deemed to be the trust properties. The deed further directed that one-half of the balance i.e. one-half of three-fourths of the income should be spent for the sevas of the family deities, performance of certain specified pujas and sradhas and certain other religious purposes. There was a specific direction that the said portion of the income should be spent entirely on religious work and that at no point of time there should be any departure therefrom. In other words, the trust deed directed that three-eights of the total income should be spent towards religious and charitable works. The remaining income i.e. three-eighths of the total income was permitted to be used by the trustees and other members of the family. Since one-fourth of the total income which was ear-marked for payment of taxes in respect of all the properties and for their repairs etc. and any surplus remaining out of it was to be utilized for acquiring new properties for the trust, the only inference which could be drawn from the reading of the entire deed is that in all one-half of the total income was earmarked for religious purposes and the remaining one-half for the benefit of the trustees and the members of their family.

Woomesh Chandra Banerjee, the author of the trust deed died in or about the year 1941 and his son, the deceased, became the trustee under the deed of trust. The deceased died on April 17, 1955 and on his death, the question whether the properties which were the subject matter of the trust should be included in the estate passing on his death arose for consideration in the estate duty proceedings. The accountable persons contended before the Deputy Controller of Estate Duty who was the assessing authority that no estate duty was payable in respect of the properties comprised in the trust (valued by the Deputy Controller at Rs. 2,89,000) as the said properties did not pass on the death of the deceased. The Deputy Controller held that the provisions of the trust were such as to keep the properties tied up in perpetuity without any power of alienation and that since the purpose for which the trust was created was not a public or charitable one, the trust as a whole was void. He accordingly held that the said properties passed on the death of the deceased under sections 5 of the Act. This part of the order of the Deputy Controller was affirmed in appeal by the Central Board of Revenue in Estate Duty Appeal No. Cal./134 by its order dated April 3, 1961. The Board held that even though the purpose of the trust was said to be for certain religious purposes, the further directions contained in the deed providing for certain personal expenses of the author of the trust, his heirs who would succeed him as trustees and the members of his family and stipulating that the trustees were not
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competent to alienate the trust properties led to the inference that the intention of the author executing the deed of trust was "not only to provide for the worship of deities but also for meeting the secular expenses of the family members and future heirs" and that since the trust offended the rule against perpetuities, it was void in law and all the properties comprised in the said trust should be held to pass under section 5 of the Act.

On a reference under section 64(1) of the Act at the instance of the accountable persons, the High Court of Calcutta held that the properties comprised in the deed which created a Hindu religious trust could not be included in the estate of the deceased as properties passing on his death. Aggrieved by the decision of the High Court, the

Controller of Estate Duty has filed the above appeal.

The learned counsel for the parties cited a large number of decisions before us bearing on the question whether the properties which were the subject matter of trust had been absolutely dedicated for religious purposes or whether they retained their private and secular character but subject only to a charge in favour of religious trust. It is enough for the purpose of this case to refer to only one of them i.e. S. Shanmugam Pillai & Ors. v. K. Shanmugam Pillai & Ors.(1) in which it is observed by this Court as follows :-

> "As observed by this Court in Menakuru Dasaratharami Reddi & Anr. v. Duddukuru Subba Rao & Ors. (AIR 1957 S.C. 797) that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete a trust in favour of a charity is created. If the dedication is partial, a trust in favour of a charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not a dedication is complete would naturally be a question of fact to be determined in each case on the terms of the relevant document if the dedication in question was made under a document. In such n case it is always a matter of ascertaining the true intention of the parties, it is obvious that such an intention must be gathered on a fair and reasonable construction of the document considered as a whole. If the income of the property is substantially intended to be used for the purpose of a charity and only an insignificant and minor portion of it is
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> allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication".

In that case, the document under which it was claimed that a complete dedication of certain property had been made for religious purposes contained a recital which read as follows :-

> "If, after conducting the said charities properly, there be any surplus, the same shall be utilized by the said Shanmugam Pillai and his heirs for family expenses. They should also look after the same carefully and properly."

On the basis of the evidence available in the case and the recitals in the document including the one extracted above, the Court concluded : "This shows that the entire income of the properties set apart for charities was not thought to be necessary for conducting the charities. It was for the plaintiffs to establish that the dedication was complete and consequently there was a resulting trust. As they have failed to establish the same, for the purpose of this case, we have to proceed on the basis that the dedication was only partial and the properties retained the character of private properties."

In this case the only question which arises for consideration is whether the trust properties or any part thereof has ben endowed for religious and charitable purposes or not. Even according to the Central Board of

Revenue under the trust deed a portion of the income from the properties in question had been directed to be used for religious purposes. The portion of the income so ear-marked in the instant case as observed by us earlier could be reasonably taken to be one-half of the total income. The remaining one-half of the income was permitted to be used by the trustees for the purpose of defraying the joint family expenses, to engage servants, to maintain a motor car or a horse and carriage and to meet the expenses of the marriages of the daughters of the trustees. It is also seen that the author of the trust directed that "if any one of the daughters-in-law of my line happens to be a child widow or without a son and if she be adhering to her own faith, observes purdas, and lives in the joint family and house along with the trustees she shall get her maintenance etc. from the joint
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family." A similar provision was made with regard to the daughters of the family who happened to be widows in indigent circumstances.

There was no transfer of the properties to any idol or deity. The title to the properties was directed to remain only with the trustees. The members of the family were also permitted to reside in the joint family house. Moreover the author of the trust disposed of all his properties under the deed and his heirs whom he did not want to disinherit could utilize one-half of the net income which was by no means insignificant for their maintenance. They were allowed to enjoy such income not because they were shebaits but because they were members of the family. In fact the trustees could draw if they so desired only Rs. 25 per month as their remuneration. The dominant intention in creating the trust was to benefit the members of the family of the author of the trust and to see that the properties were not alienated by them for ever. From a fair reading of the deed, we are of opinion that there was only a partial dedication under the deed for religious purposes. It follows that the properties retained their private and secular character and were only subject to a charge for religious purposes. In the circumstances, the provision for the benefit of the trustees and other heirs and relatives of the author of the trust fails as it is hit by the rule against perpetuities. This, however, does not affect the validity of the religious endowment. What should happen to the properties which are gifted or settled on persons in contravention of the rule against perpetuates in cases of this nature where properties are given away partly by way of religious endowments and partly for the benefit of certain individuals for their use, may be stated thus: If the terms of the document under which the properties or their income are gifted or bequeathed or settled amount to their complete dedication for religious or charitable purposes, then any part thereof which is given away by way of gift or bequest or settlement to any person contrary to the rule against perpetuities or the rule against accumulations enures to the benefit of the endowment and becomes a part of the properties endowed. But on the other hand if the dedication is partial such part which is hit by the rule against perpetuities or the rule against accumulations reverts to the executant of the document or his heirs. Applying the above rule, we held that the transfer of one-half of the properties which were dealt with by the deed corresponding to one-half of the income which was directed to be utilized by the members of the family of the author of the trust in contravention of the rule against perpetuities was void and that the said one-half of the

properties continued to be the properties of the author of the trust notwithstanding the execution of the trust deed.
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From the facts and in the circumstances of the case, we are of the view that only one-half of the properties covered by the trust corresponding to one-half of the total income which had to be spent on religious purposes should be considered as not passing on the death of the deceased since the religious endowment made in that regard would not fail despite the fact that the remaining one-half of the properties retained their private and secular character. We are also of the view that the remaining one-half of the properties which is held to be remaining undisposed of and which was held by the deceased immediately before his death should be deemed to pass on his death for purposes of section 5 of the Act. The High Court was, therefore, in error in holding that the whole of the trust properties constituted a religious endowment and did not pass on the death of the deceased.

The appeal is, therefore, partly allowed. We hold that only onehalf of the properties which were the subject matter of the trust deed dated June 27, 1939 (Jagadatri Sampad Trust) passed on the death of the deceased under section 5 of the Act and the remaining one-half did not. We direct that the parties shall bear their own costs since the appeal has succeeded in part.

N.V.K. Appeal allowed in part.
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