

ORIGINAL CIVIL.

Before Panckridge J.

MAHOMED HABEEB ALUM

v.

ANJUMAN ARA BEGUM.*

1934

Nov.
19, 22.

*Limitation—Vested in trust—Specific purpose—Indian Limitation Act
(IX of 1908), s. 10.*

Where a sum of money was paid monthly to A for the benefit of B during her minority, the sum became vested in trust for a specific purpose, within the meaning of section 10 of the Indian Limitation Act.

APPLICATION to set aside the report of the Assistant Referee.

The petitioner in this case is the daughter of Khwaja Abdus Salim, a cousin of the late Nawab Sir Ahsanulla of Dacca, and of Shahebzadi Chand Begum, a daughter of the late Mahomed Sultan Alum. Abdus Salim was allowed a monthly sum of Rs. 25 out of the *wākf* estate of the Nawab of Dacca and the said allowance was to inure to the benefit of the petitioner during her minority. When Abdus Salim died in 1899, the petitioner was four months old and since then the said allowance was regularly paid to the late Sultan Alum, until June, 1918. Sultan Alum died in 1922. The present claim was made by the petitioner in an administration suit filed by Habeeb Alum, a son of Sultan Alum, on the 14th November, 1922. The claim was made in June, 1932 and the Assistant Referee, by his report, dated 9th May, 1934, held that the claim was barred by limitation. The petitioner moved by way of an exception to the report.

Sudhir Ray for the petitioner. The Assistant Referee was wrong in applying the Indian Trusts Act

*Application in Original Suit No. 3166 of 1922.

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to this case, as is clear from the notification of 5th March, 1913. *Ma Thein May v. U. Po. Kin* (1) cannot, therefore, be applied and even if Sultan Alum was merely a trustee *de son tort* he was in the position of an express trustee: *Dhanpat Singh Khettry v. Mohesh Nath Tewari* (2).

So long as a trustee has possession of and control over a property it is vested in trust, the trustee need not become the owner of the property. *Kishtappa Chetty v. Lakshmi Ammal* (3), which follows *Soar v. Ashwell* (4). See also *Pachaiyappa Chetti v. Sivakami Ammal* (5), *Kherodemoney Dossee v. Doorgamoney Dossee* (6), *Secretary of State for India in Council v. Guru Proshad Dhur* (7), *Narasimha Ayyangar v. Official Assignee of Madras* (8) and *Bibhutibhushan Datta v. Anadinath Datta* (9).

There need not be any declaration of trust; it is enough if an inference can be drawn from the conduct of the parties. *Lyell v. Kennedy* (10), *Taylor v. Davies* (11).

Specific purpose must mean purpose defined in the deed or that which from the specific terms can be certainly affirmed. *Khaw Sim Tek v. Chuah Hooi Gnoh Neoh* (12). Here the purpose was the benefit of the petitioner.

S. N. Banerjee (with him *J. N. Majumdar*) for the respondent, Secretary, Mysore Family Fateha Fund. The late Sultan Alum was not a trustee, for a trustee must be as defined by section 3 of the Indian Trust Act (II of 1882). *Ma Thein May v. U. Po. Kin* (1).

A person, with whom money is kept, is not necessarily a trustee. He must become the owner of

(1) (1925) I. L. R. 3 Ran. 206.

(7) (1892) I. L. R. 20 Calc. 51, 67.

(2) (1920) 24 C. W. N. 752, 755.

(8) (1930) I. L. R. 54 Mad. 153, 157.

(3) (1923) 44 Mad. L. J. 431, 433.

(9) (1933) I. L. R. 61 Calc. 119, 123.

(4) [1893] 2 Q. B. 390, 394, 396, 401.

(10) (1889) 14 App. Cas. 437, 454 *et seq.*

(5) (1925) 49 Mad. L. J. 468, 471.

(11) [1920] A. C. 636, 650 *et seq.*

(6) (1878) I. L. R. 4 Calc. 455, 468.

(12) (1921) L.R. 49 I.A. 37, 43.

the property and mere fiduciary relationship is not enough. *Kalyan Mal v. Kishan Chand* (1).

As to the meaning of "vested in trust for any "specific purpose" see *Kherodemoney Dossee v. Doorgamoney Dossee* (2), *Greender Chunder Ghose v. Mackintosh* (3), *Barkat v. Daulat* (4), *Krishna Pattar v. Lakshmi* (5), *Vidya Varuthi Thirtha v. Balusami Ayyar* (6) and *Bibhutibhushan Datta v. Anadinath Datta* (7).

All the Indian cases clearly show that section 10 can have no application to a case like this. The English cases can have no application.

Ray, in reply.

Cur. adv. vult.

PANCKRIDGE J. This is an application by Shahebzadi Badshah Begum that the report of the Assistant Master and Referee be set aside and discharged, and that it be directed that the petitioner do receive and recover out of the estate of Shahebzada Mahomed Sultan Alum the sum of Rs. 10,401-4-6 with costs of the reference.

The petitioner is the daughter of Abdus Salim, deceased. By an arrangement come to, as long ago as 1881, Abdus Salim received a monthly sum of Rs. 25, which was to inure to the benefit of the petitioner during her minority after the death of Abdus Salim. Abdus Salim died, when the petitioner was a child of four months old, and the petitioner thereupon became entitled to receive the monthly sum up to the date on which she attained majority, namely, up to June 29, 1918. The source of this monthly sum was the *wâkf* estate of the Nawab of Dacca.

The petitioner's mother was the daughter of one Shahebzada Mahomed Sultan Alum, an attorney of this Court. It appears that, after the death of the

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(1) (1919) I. L. R. 41 All. 643, 645.

(5) (1921) I. L. R. 45 Mad. 415, 419.

(2) (1878) I. L. R. 4 Calc. 455.

(6) (1921) I. L. R. 44 Mad. 831;

(3) (1879) I. L. R. 4 Calc. 897.

L. R. 48 I. A. 302.

(4) (1882) I. L. R. 4 All. 187.

(7) (1933) I. L. R. 61 Calc. 119.

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petitioner's father, those in charge of the *wâkf* estate paid the sum of Rs. 25 to Mr. Alum. There is some evidence that both the books of the estate and the receipts granted by Mr. Alum show that the intention in making the payment was that Mr. Alum should apply it towards maintenance of the petitioner. There is nothing to show that it was so applied and apparently Mr. Alum kept no separate account, but mixed the moneys so paid by the *wâkf* estate with his own money. Mr. Alum died in 1922 and the present suit was instituted for the administration of Mr. Alum's estate.

On March 4, 1925, a preliminary administration decree was passed and the usual accounts were ordered to be taken and the customary enquiries made. On June 15, 1932, the petitioner filed her claim for Rs. 10,400, being the amount of the monthly allowances paid to Mr. Alum together with interest thereon at 6 per cent.

The learned Assistant Referee, to whom the accounts and enquiries were delegated, has found the facts to be as I have stated, but he has come to the conclusion that the petitioner's claim must fail on the ground that it is barred by limitation. Having regard to the dates which I have mentioned, it seems to me that it is so barred unless it can be saved by the operation of section 10 of the Indian Limitation Act. The Assistant Referee has considered this aspect of the matter with great care and he has come to the conclusion that section 10 has no application, chiefly upon the ground that the property cannot be said to have ever become vested within the meaning of the section. I have given the matter considerable thought and I do not find that any of the cases cited to me are of much assistance: but from the language of the section, apart from authority, I have come to the conclusion that the Assistant Referee was in error and that the section has application to the present case. In other words, in my opinion, the property, that is to say, the monthly sums paid to Mr. Alum, became vested in trust for a specific purpose.

Now, with regard to the words "specific purpose" it is not, I think, very helpful to spend much time in discussing the question whether a trust for a specific purpose is in all respects equivalent to what is called in English law an "express trust". I have been referred at some length to the case of *Soar v. Ashwell* (1). There the difference between "express trusts" and "constructive trusts" from the point of view of limitation is considered and explained. In my opinion, whatever meaning is to be assigned to the words "specific purpose", the trust in the present case must be a trust for a specific purpose. A trust for a specific purpose quite clearly includes a case where the purpose of the trust is specified by the instrument creating the trust: but I think the term is not confined to such cases, and that when, as here, it is possible from the evidence before the Court to say with reasonable certainty that the money was paid to Mr. Alum with the intention and on the understanding that it should be applied to the maintenance of the petitioner, there is a trust for a specific purpose.

It remains to be considered whether the property can be said to have become vested. Now, it has been pointed out that from one point of view a trustee cannot be said to be the owner of the trust property. If that view is correct, vesting means something different from ownership. It has been also said in other cases that vesting means something more than management or control. The salient circumstances of this case appear to me to be that when the payments were made to Mr. Alum the *wākf* estate abandoned all interest in the money, and completely divested itself of its property therein. The money remained with Mr. Alum, subject only to the right of the beneficiary to enforce the trust. The *wākf* estate, which may be described as the settlor, had no further legal interest in the matter. Mr. Alum did not hold it as the agent of the petitioner, because, being a minor, the petitioner was not legally able to employ

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an agent, neither did Mr. Alum hold the money as the petitioner's guardian, for he was neither her natural guardian nor had he been appointed guardian of her property by a Court. It appears to me, therefore, he must have held it as a trustee and had complete control over it, subject, as I have said, to the right of the beneficiary to enforce the trust. In my opinion, the money when it was paid became vested in Mr. Alum within the meaning of section 10 of the Limitation Act.

In my opinion, the report of the Assistant Referee should be set aside on the ground that the claim is not barred by limitation. The Assistant Referee will, therefore, proceed with the accounts and enquiries on that basis.

The costs of this application will come out of the estate. Costs of counsel appearing before the Assistant Referee are allowed.

Exception allowed.

Attorney for petitioner: *D. N. Ganguli.*

Attorney for respondents: *H. N. Ghosh;
Rajkumar Basu.*

S. M.