

Before Mr. Justice Mukerji and Mr. Justice Bennet.

1931
February, 11

PAUL (DEFENDANT) v. NATHANIEL GOPAL NATH
(PLAINTIFF).*

Gift—Presumption—Money kept in joint names of husband and wife, payable to either or survivor—Does not amount to a gift—Transfer of Property Act (IV of 1882), section 123.

The rule of English law that where a deposit is made in the joint names of husband and wife, a gift is to be presumed in favour of the wife, the gift being defeasible on the death of the wife in the lifetime of the husband, does not apply to India. In India the case is governed by section 123 of the Transfer of Property Act, under which a gift of movable property must be effected either by a registered instrument or by delivery.

So where a person, domiciled in India and governed by the Indian law, made certain deposits of money in a Bank in the following terms, "Mr. G. J. Hope and Mrs. Clara Hope, repayable to either or survivor", it was held that there being no delivery of the money by the husband to the wife, the husband having full power to withdraw the money without any concurrence on the part of the wife, there was no gift in favour of the wife.

Mr. *U. S. Bajpai*, for the appellant.

Messrs. *P. L. Banerji* and *Balmukand*, for the respondent.

MUKERJI and BENNET, JJ. :—This is the defendant's appeal arising out of a suit for a declaration and injunction instituted under the following circumstances. One Mr. G. J. Hope, who resided before his death at Mirzapur, deposited with the Imperial Bank of India three sums of money. He died on the 24th of March, 1926. About twenty two days before his death he executed a will and appointed the respondent and another the executors. The fixed deposits were in the following terms: "Mr. G. J. Hope and Mrs. Clara Hope, repayable to either or survivor."

*First Appeal No. 362 of 1927, from a decree of Gauri Prasad, Subordinate Judge of Mirzapur, dated the 30th of June, 1927.

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On the death of Mr. Hope his wife withdrew two sums of money, namely Rs. 7,000 and Rs. 1,000 as they fell due, leaving a fixed deposit of Rs. 5,000 untouched. Mrs. Hope died in or about August, 1926. Before her death she also executed a will and by it left all her property to the defendant appellant. When the respondent applied for a probate of the will of Mr. Hope a contest was raised, presumably at the instance of the appellant, that the sum of Rs. 5,000 left in fixed deposit by Mrs. Hope was the property of the defendant. The learned District Judge, by his order dated the 4th of February, 1927, left the matter open and suggested that the question of title should be decided by a separate suit. It was according to that suggestion that the suit out of which this appeal has arisen was brought by one of the executors of the will of Mr. Hope. The plaintiff asked for a declaration that the money in deposit with the Imperial Bank at the testator's death was the property of the testator, and asked for an injunction.

The contention of the defendant appellant was that Mr. Hope had virtually given away the entire money in deposit with the Imperial Bank of India to his wife and, therefore, the wife was competent to dispose of the same by her own will. Another point was raised, but it was not decided and it was not necessary to decide it in these proceedings. We will also not decide the point for the same reason.

There are only two points that we have to decide in this case. The first is whether there was a gift of the money, in deposit in the Imperial Bank of India, in favour of Mrs. Hope and secondly whether the court was right in making the defendant pay the entire costs of the suit.

The learned counsel has argued on the strength of English law that where a deposit is made in the joint names of husband and wife, a gift is to be pre-

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sumed in favour of the wife, the gift being defeasible on the death of the wife in the lifetime of the husband. He quotes for his authority two statements of law contained in Lord Halsbury's Laws of England, Volume 15, page 414, paragraph 823 and Volume 16, page 394, paragraph 793. He also relies on an English case, *Dummer v. Pitcher* (1). We need not consider the English law, because that law is not applicable to India at all. The deceased was domiciled in India and was governed by the Indian law. The Transfer of Property Act is the law that would govern this case and section 123 of that Act will be our guide to determine whether there was a gift of the moneys in favour of the wife. Section 123 says: "For the purpose of making a gift of movable property the transfer may be effected either by a registered instrument signed as aforesaid or by delivery."

Now in this case we find that there was no delivery of the goods, as the deposit stood in the following terms: "Mr. and Mrs. Hope, payable to either or survivor." It was clear that Mr. Hope had the full authority to withdraw the money when the fixed deposits fell due, without any concurrence on the part of his wife. Further, we have it in evidence of Mr. J. M. Christian that Mr. Hope kept with himself the deposit certificates and Bank receipts and that they had not been handed over to Mrs. Hope. We have further in evidence that Mr. and Mrs. Hope were not on the best of terms and at one stage of their life, shortly before the death of Mr. Hope, Mrs. Hope had to take recourse to the criminal court for a maintenance allowance. The defendant appellant herself admitted that she got hold of the deposit certificates from one of the executors of Mr. Hope. We hold, therefore, on evidence and in view of the circumstances that there was no gift in favour of Mrs. Hope. We may further point out that the law has been declared

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by their Lordships of the Privy Council in the case of *Sura Lakshmiiah v. Kothandarama Pillai* (1). Their Lordships definitely ruled that in India the principle of English law that when a property is purchased in the name of a wife, or a deposit is made in the wife's name, it would be presumed that the purchase or deposit was intended for her advancement, does not hold good in India. This being so, we hold that Mrs. Hope was not entitled to take more than one half of the money deposited with the Bank at the time of Mr. Hope's death. She has already withdrawn more than one half of the amount and the remaining amount must be available to the executors for the carrying out of the wishes of the deceased gentleman.

The second question is as to costs. The order of Mr. Hunter shows that the title of the executors to the money was contested by the defendant. Even in the present litigation the defendant claimed the money. In the circumstances there is no reason why the costs of this litigation should come out of the estate of the deceased person.

In the result, we dismiss this appeal with costs.

Before Justice Sir Shah Muhammad Sulaiman and Mr.
Justice Niamat-ullah.

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February, 18.

BAHADUR AND ANOTHER (DEFENDANTS) v. MAHARAJA
OF BENARES (PLAINTIFF).*

Agra Tenancy Act (Local Act III of 1926), sections 84, 197, 268, 269—Grove-holder—Houses built on grove-land—Suit for ejection—Forum—Jurisdiction—Civil and revenue courts—Question of jurisdiction not raised in first court—Limitation—Section 269 cannot get round bar of limitation which would be applicable if suit had been brought in revenue court.

A grove-holder built certain houses on a considerable portion of the grove-land. Some years later the landlord

*Second Appeal No. 409 of 1928, from a decree of K. A. H. Sams. District Judge of Benares, dated the 9th of February, 1928, reversing a decree of Niraj Nath Mukerji, Additional Munsif of Benares, dated the 31st of October, 1927.