Privy Council Appeal No. 39 of 1943

Pandit Shambhu Nath Shivpuri - - - - *Appellant*

v.

Pandit Pushkar Nath and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

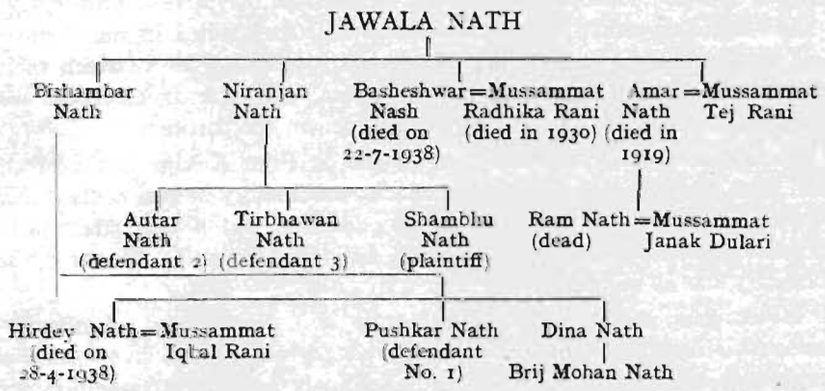
JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JULY, 1944

Present at the Hearing:

LORD PORTER
LORD GODDARD
SIR MADHAVAN NAIR

[*Delivered by* LORD PORTER]

This is an appeal from a decree of the High Court at Lahore, dated the 15th May, 1942, which modified in favour of the first respondent a decree of the Subordinate Judge of Delhi. The suit was initiated for the partition of the estate of Pandit Basheshwar Nath Shivpuri who had recently died. The appellant is one of his nephews. There were four defendants, and the relationship of the parties one to the other is shown by the table following:—



The fourth defendant, Pran Kishori, was a niece (the daughter of the deceased man's wife's sister).

Among the assets left by the deceased were the following:—

(1) Fixed deposit receipt of the Central Bank of India Limited for Rs.48,500, in the joint names of the deceased and the first defendant.

(2) Ditto for Rs.7,000 in the joint names of the deceased and the second defendant.

(3) Five postal cash certificates of Rs.1,000 each, in the joint names of the deceased and the second defendant.

(4) Four ditto, in the joint names of the deceased and one Hirdey Nath, elder brother of the first defendant, then deceased.

(5) Hundred shares in the Central Bank of India Limited, value Rs.3,130-4-0, in the joint names of the deceased and the first defendant.

(6) Fixed deposit receipt of the Punjab National Bank Limited for Rs.4,000, in the joint names of the deceased and the fourth defendant.

(7) Rs.279-10-6 in the Home Saving Safe Account of the Central Bank of India Limited, in the joint names of the deceased and the first defendant.

(8) Rs.450 in cash (spent on funeral expenses).

(9) A pucca house No. 1550—Ward No. 9, in Delhi.

As appears from this list certain of the assets were held in joint names and the question which their Lordships have to determine is whether the learned Subordinate Judge was right in saying that these assets were nevertheless the absolute property of the deceased man at the time of his death or whether his object was that they should be so held for the advancement of those whose name was joined with his in the several instances.

The first Court held that all the joint holdings stood in the names of the parties to the suit as nominees except that in the name of the fourth defendant Pran Kishori. The High Court agreed in the last result but held that all the joint holdings like hers were for the advancement of those whose names were joined with that of the deceased and should be excluded from the partition.

The law in India in this matter is not in doubt and is authoritatively stated by their Lordships in *Guran Ditta v. Ram Ditta* 55 I.A. 235 in the words " the deposit by a Hindu of his money in a bank in the joint names of himself and his wife and on terms that it is payable to either as survivor does not on his death constitute a gift by him to his wife. There is a resulting trust in his favour in the absence of proof of a contrary intention, there being in India no presumption of an intended advancement in favour of a wife."

The rule, however, is not confined to assets in the joint names of the deceased man and his wife. It is conceded that it is of universal application whatever the property and whatever the relationship.

It was common ground therefore before their Lordships that it was for the first respondent to establish a contrary intention. If he succeeded in doing so he kept the assets standing in the joint names of the deceased and himself. If not those assets must be included in the partible property.

The first respondent and Pran Kishori had maintained in the original suit as they did throughout that the property in the cases in which their names were to be found had become theirs, the other members of the family contended that it must all be included in the partition.

The question is one of fact and so far as Pran Kishori is concerned has been decided in her favour by concurrent findings in two courts. No appeal is taken from this part of the decision, but it was strenuously argued that no sufficient evidence had been given to discharge the ordinary rule in the case of the first respondent.

It was said in the first place and truly said that no plea of advancement had been put forward. by him either in his written statement or in argument in the Court of the Senior Subordinate Judge: the contention was that the deceased had either made an out-and-out immediate gift or that there had been a *donatio mortis causa,* and that neither contention had been established. The Subordinate Judge so found, the High Court agreed with him and their Lordships take the same view.

The changes which the deceased made in the names associated with his from time to time and the fact that the interest was directed to be paid and was paid to him sufficiently establish that there was no immediate gift. The evidence that the assets or the titles to them were handed over to the persons in whose joint names they stood is unsatisfactory and was not accepted by the Subordinate Judge and the evidence that when the joint names were inserted the deceased man had any immediate expectation of death is open to the same criticism. Is there then evidence of an intention to advance? It cannot be fatal to such an argument that the true legal position was not recognised in the first instance or adopted before the Subordinate Judge, and it is not suggested that any further evidence could have been given or if given would have affected the result.

It was open therefore for the High Court to consider the evidence as a whole and for their Lordships to appraise the correctness of their conclusion.

The High Court in the first place was influenced by its view that the relations between the deceased and the first respondent and his branch of the family were closer than those with the appellant and his branch. It is true that there is some evidence both ways, but their Lordships agree with the High Court that the evidence taken generally does establish the closer relationship of which the High Court speaks.

But it is in his dealings with the assets that the intention of the deceased to provide advancement for his relatives and not merely to use their names as nominees is said to be found.

It is pointed out that in the first instance, whilst his wife was alive, the deceased man invested his money in the names of himself and his wife. When she died he kept his money in his own name for three or four years. Thereafter he began transferring his investments into the names of his various relatives, beginning with the appellant's branch, in whose names jointly with his own he put comparatively small sums. At this time, however, he owned a valuable house which he is said originally to have intended to transfer to the first respondent's branch, but delayed to do so as the government were going to acquire it.

The government purchase was ultimately completed in February, 1937, and the compensation money received in July, 1937. The bulk of this money was at once transferred to the first respondent's elder brother Hirdey Nath, two other sums added later and a little later still Rs.4,000 deposited in the joint names of the deceased and Pran Kishori.

Hirdey Nath died childless on the 28th April, 1938, leaving a widow Iqbal Rani, and four days later the deceased wrote to the bank to renew the three deposits standing in the joint names of himself and Hirdey Nath and transfer them to the joint names of himself and the first respondent.

Pran Kishori may be considered separately, but it is observable that in the case of the two family branches, the property was put in the names of the eldest brother's sons, and when Hirdey Nath died transferred to the name of the eldest brother's surviving son. As the High Court point out the persons chosen as joint names, combined with the transfers from one to the other, suggest that the deposits were made not benami but for advancement.

The dealings with the various sums are most readily traced in an analysis furnished to their Lordships' Board by the appellant's representatives which shows one instance of transfer from the first respondent's branch to the appellant's branch of a sum of Rs.4,000 at a time when the deceased began to make the smaller deposits in the name of the latter and three deposits in the joint names of the deceased together with (1) Mussammat Tej Rani, widow of his deceased brother, Amar Nath; (2) Mussammat Janak Dulari, widow of that deceased brother's son; and (3) Pran Kishori, above mentioned.

Their Lordships agree with the High Court in thinking that the deceased would have been unlikely to choose destitute widows as joint holders of property if their names had been made use of as nominees only. In their view the number of the nominees, the transfers from one name to another, the fact that some were Pardanashin ladies, unable and unfit to deal direct with the banks, and that the absence at times of the male depositees in distant parts of India all lead to the inference that the deposits were for advancement and that those whose names were used were not merely nominees.

Two other matters were, however, argued before their Lordships which were said to lead to the inference that the names were benami only.

Firstly, it was said that two postcards written to Autar Nath, the one on the 13th July, 1931, and the other on the 26th September, 1933, showed an intention by the deceased man to divide his property amongst his

nephews equally. Both undoubtedly show affection for Autar and a desire to benefit him. The first contains the statement: " All that I possess I have to give away to all of you, who are dear to me. There is no one dearer to me in the world than you," and the second expresses a desire to deposit Rs.5,000 in joint names of the deceased and Autar, and a like sum in the names of the deceased and Hirdey Nath.

It may be that at that time and to that extent the deceased wished to benefit his nephews alike but the earlier letter speaks of " giving," which is inconsistent with the recipients being nominees, but not with the deposits being for their advancement.

Secondly, the appellant relies upon a document which was prepared on the 6th August, 1938, fifteen days after the deceased man's death. It is said to be an agreement to divide up the property equally or at any rate to acknowledge that it is so divisible.

Stress is laid upon the statement contained in it. " The following articles . . . belonging to Pandit Basheshwar Nath Shivpuri were found after his death." And there follows a list containing inter alia the assets in question. Later it says that the respective joint holders will for the present keep the holdings standing in their names and continues: " In October, 1938, when Autar Nath and Shambhu Nath will return from Simla, we, Pushkar Nath, Autar Nath, Tirbhawan Nath, Shambhu Nath and Brij Mohan Nath will divide Rs.59,500 Bank shares, ornaments, other articles, etc., according to our respective legal rights amongst ourselves privately."

Like the High Court, their Lordships do not think much importance can be attached to the description of the assets as belonging to the deceased man. They had belonged to him and might not unnaturally be so described whether they had been intended for advancement or not. Moreover, the undertaking to divide the Rs.59,500, Bank shares, ornaments, other articles, etc., according to the respective legal rights is at least not inconsistent with a contention that they were not divisible in equal shares.

Apart from this it appears in evidence that the parties were at issue as to whether such of the estate as was divisible was to be divided per stirpes or per capita and were ignorant as to whether Brij Mohan was entitled to a share. In such circumstances they might well desire to postpone the distribution until the legal rights of the parties were ascertained, and it is consistent with this view that after taking legal advice the first respondent claimed the assets standing in his name as his own.

In their Lordships' opinion this document carries the matter no further.

Like the High Court they think the evidence and circumstances point to an intention on the part of the deceased man to advance the joint holders and will therefore humbly advise His Majesty to dismiss the appeal.

The appellant must pay the first defendant's (respondent's) costs.

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In the Privy Council

PANDIT SHAMBHU NATH SHIVPURI

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PANDIT PUSHKAR NATH AND OTHERS

DELIVERED BY LORD PORTER

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1944