Privy Council Appeal No. 50 *of* 1951

Isaac Manasseh Meyer - - - - - - - - *Appellant*

v.

Rebecca Meyer and others - - - - - - *Respondents*

FROM

THE COURT OF APPEAL OF THE HIGH COURT OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH OCTOBER, 1953

Present at the Hearing:

LORD NORMAND
LORD OAKSEY
LORD TUCKER
LORD ASQUITH OF BISHOPSTONE
LORD COHEN

[*Delivered by* LORD COHEN]

Sir Manasseh Meyer (hereinafter called "the testator") died domiciled in Singapore on the 1st July, 1930 having by his will dated the 12th October, 1926 appointed his sons Isaac, the present appellant, Jacob and Reuben to be the executors and trustee thereof.

By his said will the testator after making a number of bequests and devises, devised and bequeathed the ultimate residue of his estate upon trust for his said three sons in equal shares.

The will was proved in Singapore by Jacob and Reuben; the appellant never obtained probate thereof. Jacob died intestate on the 27th December, 1934 and letters of administration of his estate were granted to the first and second respondents. On the 7th December, 1934 the third respondent was appointed a trustee of the will of the testator by order of the High Court of the Colony of Singapore. Reuben died on the 16th April, 1951 and the fourth respondent is his legal personal representative.

The testator left very large estates both in the Colony of Singapore (consisting principally of immovable property) and outside the Colony. Protracted litigation both in Singapore and Calcutta ensued, but the differences between the parties were ultimately composed by an agreement dated the 18th July, 1947 which was approved and confirmed by an order of the High Court of the Colony of Singapore dated the 6th August, 1947.

Clause 2 of that agreement provided as follows:—

> "(2) Isaac will agree to the sale of the property set out in the First and Second parts of the Second Schedule hereto; Isaac, Jacob's administrators and Reuben will each be entitled in that order if they so desire to select one of the said properties for himself or themselves as the case may be. Such selection by any party shall be endorsed in writing and signed by the party or parties so selecting on this agreement at the time of execution hereof. Each party making any such selection shall be debited with the value of the said property as mentioned in the said Schedule, such value being inserted in the said Schedule for this purpose only and not so as to affect or restrict the

reserve prices to be put thereon in case of a sale by public auction. Any such selection must be so made as not to interfere with the sale of adjoining properties."

After making provision for the sale by advertisement of the properties not selected by the appellant, Reuben, or Jacob's administrators it was agreed by clause 5 that out of the assets of the estate a sum of $300,000 should be distributed equally amongst the appellant, Reuben, and Jacob's administrators. Then after laying down how other properties real and personal should be dealt with it was provided in clause 13 that with an exception not material to the issues in this appeal all accounts of the administration of the testator's estate and also of the management of the properties held in common from the date of the testator's death to the 22nd November, 1946 should be deemed to be correct and to have been stated and settled between all the parties thereto.

Clause 14 was in the following terms:—

"(14) In each half-yearly account of the estate, calculations have been made by the Accountants for interest on beneficiaries' drawings and the principle upon which such calculations have been made is agreed to by all the parties and is as follows. The beneficiary who has drawn the least is not debited with any interest but the other two beneficiaries who are for the time being overdrawn as compared with the beneficiary who has drawn least are debited with interest on such overdrawings at the bank rate of interest."

It is unnecessary to set out in detail any other of the provisions of the agreement but it should be noticed that in the course of the proceedings in Calcutta and Singapore the appellant had made allegations involving charges of fraudulent or dishonest conduct or culpable negligence against Reuben, the third respondent and Jacob and that it was a term of the agreement that the appellant should withdraw all such allegations.

In exercise of the option conferred on him by clause 2 of the compromise agreement the appellant selected one of the properties specified in the first part of the second schedule to the agreement. This was conveyed to him on the 22nd October, 1947 and he was debited in the trust accounts with the sum of $3,000,000 the value attributed to the said property in the said schedule.

On the 27th July, 1948 the accountants to the estate of the testator rendered to the trustees thereof the accounts for the half-year ended the 31st December, 1947. The said accounts were prepared on the footing that clause 14 of the compromise agreement was applicable and that the said sum of $3,000,000 was a drawing by the appellant which ought to be taken into account in calculating the interest chargeable under that clause.

The appellant disputed this construction of the agreement and on the 21st June, 1949 took out a summons in the administration action then pending in the High Court of the Colony of Singapore asking for an order that no interest was or would be chargeable against the appellant in respect of the said sum of $3,000,000. The summons came before Murray-Aynsley C.J. on the 2nd June, 1950 who held that the sum of $3,000,000 was a drawing against the interest of the appellant which it was proper to take into account in calculating the interest chargeable under clause 14 of the agreement. He accordingly dismissed the summons and ordered the appellant to pay the costs of the respondents to be taxed as between party and party.

The appellant appealed to the Court of Appeal in Singapore who dismissed the appeal and made a similar order as regards costs, but granted leave to the appellant to appeal to Her Majesty in Council.

Before this Board Mr. Sen on behalf of the appellant in a lucid argument raised in substance two points. First he contended that clause 14 was dealing entirely with accounts down to the 22nd November, 1946 and had no application to any subsequent accounts. Secondly he argued that

whether that was so or not clause 2 was self-contained. It contemplated an immediate partial distribution of the assets, a transaction carried out on the exercise of an option was not an advance and therefore no interest became payable.

Their Lordships are unable to accept either contention. If the first contention were well founded clause 14 would be wholly superfluous and it would have been unnecessary to explain the principle on which interest was calculated in the accounts to the 22nd November, 1946. Mr. Sen relied on the fact that the clause opened in the past tense, but the introductory words were necessary and, in their Lordships' opinion, were only inserted to lead up to a statement of what the principle was and to record the agreement of the parties to that principle, an agreement which in view of clause 13 would have been unnecessary unless it was to apply to accounts subsequent to the 22nd November, 1946.

Mr. Sen's second point also fails to satify their Lordships. As Evans J. pointed out in the Court of Appeal at the 31st December, 1947 the trust funds had not been set aside and no residue at that date had been ascertained. Moreover the parties could not reasonably have expected immediate distribution beyond the $300,000 mentioned in clause 5 of the agreement since, as Murray-Aynsley C.J. pointed out, the realisation of the properties to be sold must take an appreciable time though the parties in all probability did not contemplate such delays as actually occurred.

Mr. Sen realised that his construction would involve an inequality between the beneficiaries, but he said that that benefit to the appellant was the consideration he received for withdrawing the charges of fraudulent or dishonest conduct and culpable negligence. Their Lordships are unable to trace any evidence of such a bargain in the agreement and can attach no weight to this argument.

Mr. Sen relied on the fact that clause 2 contained no provision for interest but the agreement must be construed as a whole and this omission is explained by clause 14. Applying the principle there laid down, interest is chargeable not on the total drawings of each beneficiary but on the over drawings as compared with the drawings of the beneficiary who has drawn least. Accordingly interest might not be payable on the whole amount debited pursuant to clause 2.

Their Lordships agree with Murrey-Aynsley C.J. that the sum of $3,000,000 is a drawing against the interest of the appellant. That conclusion is supported by the provision in clause 2 which directs that the party making a selection shall be debited with the value of the property selected. "Debited" must mean debited in the trust accounts and the natural place in which to include such debit is the drawing account of the beneficiary.

As a subsidiary point Mr. Sen argued that Murray-Aynsley C.J. and the Court of Appeal had gone wrong in principle in allowing a separate set of costs (*a*) to the first and second respondents and (*b*) to Reuben (now represented by the fourth respondent). He relied on the decision of the Court of Appeal in England in *Re Gillson* (1949) Ch.D.99. In that case four respondents in the same interests and with precisely the same arguments to advance were represented by three different counsel and they were allowed only one set of costs between them. Lord Greene, M.R. said:—

> "The practice, in my experience, always was in such a case to allow only one set of costs, certainly where costs are being charged on residue, for instance, or on a fund in which the persons interested are either absent or are infants and, therefore, are not in a position to consent."

Their Lordships respectfully approve that practice but they observe that Lord Greene's observations were made when dealing with the costs of the proceedings before the Court of Appeal, not with an application to vary

an order as to costs made in a lower court. Their Lordships find nothing in those observations to justify their Lordships interfering with the orders of the Singapore Courts in a matter so essentially within their discretion as costs and they do not therefore find it necessary to consider whether the same practice is applicable where the order does not direct payment out of a fund but by a party to the litigation.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.

(21045) Wt. 8267—24 100 10/53 D.L.

In the Privy Council

ISAAC MANASSEH MEYER

v.

REBECCA MEYER AND OTHERS

DELIVERED BY LORD COHEN

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

1953