

Chambers - - - - - Appellant

v.

Chambers and others - - - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH MARCH, 1944

Present at the Hearing :

VISCOUNT MAUGHAM

LORD MACMILLAN

LORD WRIGHT

[*Delivered by* LORD MACMILLAN]

The late George Alexander Chambers of Madras, being minded to make provisions for his wife and children and other relations, and being also animated with the less laudable desire to prevent the Government of India, as he put it, from "grabbing death duties" on the whole of his estate, took certain steps which he conceived would achieve these objects. The present proceedings are concerned with the question of the legal effect of these steps.

Mr. Chambers carried on business as a leather merchant in Madras under the style of The Chrome Leather Company. The business belonged to and was conducted by himself alone and the company name was no more than an alias for himself, but for the object he had in view he purported to treat the company as if it had an independent being.

At the time of the transactions about to be narrated Mr. Chambers's family consisted of his wife Ethel Mary Chambers, a son who is the present appellant, and two daughters, Phyllis Dora Chambers (Mrs. Michell) and Sheila Florence Chambers. His wife died in 1924. He married a second wife who died in 1927 leaving an infant son, who is the fourth respondent. In 1930 he married the first respondent as his third wife. The first, second and third respondents are the trustees and executors of Mr. Chambers, who died on 16th November, 1937, and the first respondent is also the guardian of her infant stepson the fourth respondent. The appellant is the sole trustee and executor of his mother, the first wife of Mr. Chambers, hereinafter called "Mrs. Chambers."

In the year 1917 Mr. Chambers caused entries to be made in the books of the Chrome Leather Company crediting Mrs. Chambers, his children by her, and certain other relatives with various sums of money and debiting his capital account in the company's books with these sums. Separate accounts were opened in the respective names showing the sums so credited. In particular in the case of Mrs. Chambers a separate account was opened in the company's books in May, 1917, showing two sums of Rs.15,000 and Rs.30,000 credited to her in that month. A further sum of Rs.1,55,000 was credited to her account on 1st April, 1919, as a "transfer" from Mr. Chambers' "capital account."

On 25th July, 1919, Mr. Chambers wrote a letter to the company in the following terms:—

DEAR SIRs,

With reference to the amounts at present standing to the credit of my wife and children in your books. Please make such additions thereto as may be required so that as from April 1st last the capital at their credit in the firm is as follow:—

Mrs. Chambers Rs.2,00,000 (rupees two lakhs), Phyllis Michell Rs.40,000 (rupees forty thousand), K. H. Chambers Rs.40,000 (rupees forty thousand), S. F. Chambers Rs.40,000 (rupees forty thousand), the additional sums now added please debit to my account.

Please note also that as and from the 1st April last these sums at their respective credits are to bear interest at 6 per cent. payable half yearly and when the Chrome Leather Company is converted (either with or without the business of Chambers & Co.) into a Limited Liability Company—Preference shares at 6 per cent. with interest payable half-yearly are to be issued for the sums at their credit as stated above or such larger or lesser sums as may then be at their credit should they so desire. You have hitherto paid interest at 8 per cent. on the Rs.45,000 which Mrs. Chambers has had with the firm also on the Rs.15,000 which Mrs. Michell had. These payments may be deducted from the interest due on the 1st October, 1919, on the increased capital bearing interest at 6 per cent.

You will also please credit my two sisters Emma Elizabeth Bolton and Helena Alice Worcester with Rs.15,000 each at the same interest and on the same terms as for my wife and children, and also Rs.7,500 (rupees seven thousand five hundred) to each of my brothers Arthur William Chambers and his eldest son Bob Chambers and Charles Henry Chambers and his eldest son Leslie Chambers on the same terms as above.

Kindly communicate with each as per signed draft enclosed making the necessary alterations with regard to the amounts.

Yours faithfully,

(Signed) G. A. CHAMBERS.

On 6th August, 1919, the company, in pursuance of the concluding sentence of the foregoing letter, wrote to Mrs. Chambers a letter the terms of which are agreed to have been as follows:—

" MRS. CHAMBERS.

MADAM,

In accordance with instructions received from Mr. Chambers we have this day placed the sum of Rs.1,55,000 to your credit thus making a total of Rs.2,00,000. This sum is entirely in the nature of a personal gift from Mr. Chambers to yourself, and will bear interest at the rate of 6 per cent. per annum, payable half-yearly, commencing from the 1st April last, viz., 1919. Our next payment to you will be on 1st October, when you will receive interest on the Rs.2,00,000 at 6 per cent. less payments already made to you on the Rs.45,000 at the rate of interest of 8 per cent.

We wish you to understand that so long as the Chrome Leather Company remain a private company you will not be entitled to withdraw more than 10 per cent. of the capital (namely Rs.2,00,000) per annum. In the event of this company (C.L.C.) being converted into a limited liability company, either with or without the business of Chambers & Co. you will be issued with 6 per cent. preference shares to the value of the amount standing at your credit at that date. These preference shares will be subject to the some restrictions, namely, you will not be permitted to place these shares on the market to a greater extent than 10 per cent. annually.

We trust this matter is perfectly clear.

Yours faithfully,

THE CHROME LEATHER COMPANY."

Similar letters were also sent to the children and other relations of Mr. Chambers who had credit accounts in the company's books.

On 1st October, 1919, Mr. Chambers caused a further sum of one lakh of rupees to be credited to Mrs. Chambers in a separate account in the company's books in terms of a letter to that effect which he addressed to the Company. Interest was credited to Mrs. Chambers on the various amounts at her credit and there was a separate interest account to which personal and other outgoings were debited.

On 3rd March, 1924, Mrs. Chambers wrote to the company requesting that any sum in excess of two lakhs of rupees standing at her credit should be re-transferred to the capital account of Mr. Chambers and this was done.

In the balance sheets of the company the sums at the credit of Mrs. Chambers were entered at first as "deposits" and subsequently as "unsecured loans."

On the death of Mrs. Chambers in 1924 she left a Will in which she referred to the two lakhs "deposited" on her behalf with the company as belonging to her. No interest was credited to her account after about November, 1924, when the National Bank of India Limited, to which the business was largely indebted, objected. In 1930 accounts were opened in the names of the beneficiaries under the Will of Mrs. Chambers, showing them as creditors in respect of shares in the amount which had stood to her credit at her death as apportioned by her Will. Letters waiving payment of interest were signed by the beneficiaries under the Will of Mrs. Chambers in 1931 in order to satisfy the company's auditors.

In December, 1932, Mr. Chambers caused the two lakhs which had been proportionately credited to the beneficiaries under the Will of Mrs. Chambers as well as all the other similar credits in favour of his children and relations to be re-transferred to his own capital account in the company's books, and all the credit accounts were cancelled and closed. Mr. Chambers appears to have taken this action in consequence of advice received by him from a lawyer brother in Canada to the effect that none of the parties to whom he had caused sums to be credited in the company's books had any legal claim thereto, in consequence of the absence of any consideration. On 12th November, 1932, he had written to the company's auditors a letter containing the following passage:—

"Certain transfers from my capital in our books were made of my own free will and I have no intention of cancelling same, but I have never received any 'loans', and there was never any consideration either given or accepted, and as regards payment of interest I am under no obligation to anyone."

On the appellant being apprised of what Mr. Chambers had done he at once protested against his action as an unwarranted repudiation of the liability he had undertaken to Mrs. Chambers. If Mr. Chambers had constituted himself a trustee, his action was plainly a fundamental breach of trust.

The present proceedings were initiated in 1939 by the appellant who, as the executor of the Will of his mother Mrs. Chambers, took out an originating summons in the High Court at Madras. The main question formulated for decision was whether on the facts and circumstances there was a valid and completed gift of the sum of two lakhs of rupees to Mrs. Chambers by Mr. Chambers or, in the alternative, a valid declaration of trust in respect of two lakhs in her favour.

Both the Courts in India held that the legal requirements of a gift had not been satisfied and the appellant has not pursued this point on appeal to His Majesty. Gentle, J., however, in the court of first instance, was of opinion that a valid trust in favour of Mrs. Chambers had been created and he so decided. On an Original Side Appeal the contrary was held by Sir Lionel Leach, C.J., and Horwill, J.

The only question argued before their Lordships was whether a trust in favour of Mrs. Chambers had been effectually constituted. On this question their Lordships heard a persuasive argument by Mr. Wynne Parry but in their opinion the contention is untenable in law. In India the law of trusts is codified in the Trusts Act (II of 1882) and when the provisions of that Act are consulted the appellant's case is found to break down at the very threshold. If there is one thing clear it is that there can be no trust unless its subject matter is clearly ascertainable. Section 8 of the statute declares that "the subject matter of a trust must be property transferable to the beneficiary." What then was the subject matter of this alleged trust? Mr. Justice Gentle seems to have been of opinion that it was a fund of two lakhs of rupees. But that was not so. No such sum was ever set aside and appropriated by Mr. Chambers as a fund transferable to Mrs. Chambers of which he was to be a trustee with all the consequential

obligations of such a position. At the most it was an attempt to give Mrs. Chambers an interest in the capital of his business to be measured on the basis of her having contributed two lakhs. The entire business, including the share in it which he had purported to credit to Mrs Chambers, remained entirely under the unfettered control of Mr. Chambers. There was never any trust estate which the Courts could administer.

Sensible of this difficulty, counsel for the appellant did not attempt to support the view of Gentle, J., as to the subject matter of the trust. He sought to define it as a sum of money to be paid out of the business (at an uncertain date) after the creditors were satisfied, to be measured by the proportion which two lakhs should bear to the total capital left. This, if anything, has a resemblance to partnership rather than trust. Such a subject matter in their Lordships' opinion does not answer the requirements of Indian trust law, and immediately raises other and inextricable difficulties both of form and of substance. Thus, so far as the surplus assets of the business, if any, should consist of immoveable property, the provisions prescribed by section 5 of the Act requiring a registered instrument in writing would require to have been observed and they have not been.

There being no ascertained and appropriated trust fund the case for the constitution of a trust necessarily fails. But there are other insurmountable obstacles in the appellant's way, which are fully discussed by the learned Chief Justice in the light of the authorities on the subject. The requisites for the constitution of a valid trust are prescribed by sections 5 and 6 of the Indian Trusts Act. These read as follows:—

“ 5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the Will of the author of the trust or of the trustee.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust (b) the purpose of the trust, (c) the beneficiary, and (d) the trust property, and (unless the trust is declared by Will, or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.”

There are difficulties, which it is unnecessary for their Lordships to discuss, as regards the interpretation and precise relation of these two sections, but it is plain that on any view there has not in the present case been compliance with the statute. There is no non-testamentary instrument in writing signed by the author of the trust or the trustee declaring the trust. The letter of 6th August, 1919, which Mr. Justice Gentle held to amount to a declaration of trust expressly states the contrary. The two lakhs placed to the credit of Mrs. Chambers are therein described as “entirely in the nature of a personal gift from Mr. Chambers” to her. Mr. Chambers never indicated with reasonable certainty by any words or acts an intention on his part thereby to create a trust. His acts were throughout inconsistent with any such intention. As to the trust property, it has already been pointed out by their Lordships that there was no such ascertainment and appropriation as the law requires.

Their Lordships in reaching their conclusion adverse to the appellant have proceeded upon the terms of the Indian Trusts Act, but the general principles of trust law applicable to the case, as the learned Chief Justice points out, are the same in India as in England, and the English authorities which he cites fully justify the view taken by him and his colleague.

In the present case there was nothing tantamount to a declaration of trust at all and there was never any absolute parting by Mr. Chambers with the alleged subject matter of the trust.

The appeal accordingly fails and their Lordships will humbly advise His Majesty that it be dismissed and that the judgment of the High Court of 20th August, 1940, be affirmed. The appellant will pay the respondents' costs of the appeal.



In the Privy Council

CHAMBERS

v.

CHAMBERS AND OTHERS

DELIVERED BY LORD MACMILLAN

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