(1982) 01 CAL CK 0016

Calcutta High Court

Case No: Matter No. 1308 of 1979

Mahindra Nath Mukherjee		APPELLANT
	Vs	
Assistant Controller of Estate Duty		RESPONDENT

Date of Decision: Jan. 14, 1982

Acts Referred:

- Estate Duty Act, 1953 - Section 10, 12, 12(1), 27, 64(1)
- Trusts Act, 1882 - Section 5, 6, 77, 78

Citation: (1982) 11 TAXMAN 16

Hon'ble Judges: Suhas Chandra Sen, J; Sabyasachi Mukharji, J

Bench: Division Bench

Advocate: P.K. Pal and R.B. Banerjee, for the Appellant;S.K. Mitra and S.K. Chakraborty, for the Respondent

Judgement

Sabyasachi Mukharji, J.
In this reference u/s 64(1) of the E.D. Act, 1953, the following question has been referred to this court for an answer:

Whether, in the facts and circumstances of this case, and upon a proper construction of the trust deed dated 24th October, 1944, and the documents dated 25th June, 1954, 30th July, 1954, 10th September, 1956, and 22nd April, 1960, the Tribunal was right in holding that the estate of the deceased has rightly been assessed to estate duty u/s 12 read with section 27 of the Estate Duty Act, 1953 ?

During the estate duty assessment proceedings the Asst. Controller found that the deceased, Makhanlal Mukherjee, died interstate on 30th December, 1966, at the age of 77 years. The deceased was survived by six sons and one married daughter and one of them had been authorised to represent the other heirs in the estate duty proceedings. In the estate duty assessment various properties of the deceased were involved. We are concerned here with the properties covered by the original trust

deed. The deceased executed a deed of trust on 24th October, 1944, and settled some properties to the trust. As this is the main deed and the main question involved in this reference boils down to this, it would be necessary, in our opinion, to refer to the provisions of the said deed. The said deed indicated the object of the trust. The object of the trust, inter alia, is as follows:

I have created this trust in order to preserve the properties mentioned in the schedule below in a state free from encumbrances and defects and to make development and enhancement of the same, get my Adya Sradh Ceremony performed out of the income of the said properties after my death, to get performed my Annual Sradh Ceremony, to offer pindas at Gaya and to get performed Tarpan according to Shastras for the solace of the departed souls of my ancestors, to get performed Annual Sradh and to perform the ten sacred rites, making arrangement for education and the maintenance of my heirs. God forbid if ever I leave no progeny, then this trust property, shall be included within Durgamani Trust Estate.

2. Then the deed went on to state the trust property and the appointment of the trustees. The settlor or the deceased appointed himself as a trustee for life and it was provided that he shall continue to realise interest and dividend in respect of the trust properties. Thereafter, the deed provided, inter alia, as follows:

The trustees shall function according to the provisions of the deed and shall be vested with power accordingly. This trust estate is not and shall not be liable for any of the personal debt of myself or other trustees.

If any suit or cause has to be filed on behalf of the trust estate against anybody or if the same is done against the trust estate then any one of the trustees shall be competent to sign as a trustee on behalf of the trust estate on the plaint, written statement, petition or vakalatnama and all other papers relating to courts. If in future any deed or rectification deed is required to be executed in order to make the written object of this deed effective and strong, or any advice is received, then the same can be done by the appointed trustees or their representatives.

3. Then the deed also contains the following clause:

None shall be entitled to make any gift, sale, transfer, etc., of the trust property at any time nor the same can ever be sold for any debt of any of my legal heirs, nor the same can be utilised for any other reason save and except the written provisions mentioned in this deed. But the trustee or trustees, for the benefit of the trust estate, shall be entitled to transfer any portion of money of the trust estate or shall be entitled to purchase any immovable property for residential purpose or for letting out of the said money but they cannot cause any loss or damage.

4. The other provisions are really not very material for our present purpose. It appears that the settlor some time thereafter on 25th of June, 1954, executed

another deed. In the said deed the settlor recited as follows:

This deed of agreement is to the following effect. Prior to this I have executed Makhan Lall trust deed on the 24th October, 1944 (being 7th Kartik 1351 B.S.), of my own accord and in full possession of my senses and the same has been registered on the 24th October, 1944, at the Calcutta Registry Office and the same is effective and is well in force. By exercising the power conferred upon me in my said deed to make the written provision of the same enforceable and strong according to necessity or to rectify anything, I am adding the following paragraphs in the said trust deed and the same shall be effective along with the trust deed and shall be considered as a part of the trust deed.

5. Then the settlor provided by clause 5 of the second deed, inter alia, as follows:

My wife, Srimati Sefalika Debi, being a Hindu Pardanasin lady, shall be competent to give her power of attorney to my second son, Sri Manindranath Mukhopadhyay, or to other trustee of the then time, who or whoever shall act by virtue of the said power of attorney, all the said acts shall have to be deemed to have been done by the trustee, Srimati Sefalika Debi.

6. Thereafter there was another deed on the 10th of September, 1956. The said deed recited an agreement which is as follows:

This deed of agreement is to the following effect. On the 24th October, 1944, (corresponding to 7th Kartik, 1351 B.S.) I have executed Makhan Lall Trust Deed of my own accord and in full possession of senses and the same has been registered on the 24th October, 1944, in the Calcutta Registry Office and registered in Book No. IV, Vol. No. 34, pages 1 to 12 being No. 2395 for the same is well in force and effective. By virtue of the power conferred upon me in order to make the written provision of the said deed effective and enforceable if necessary or any error is required to be rectified, I am adding the following paragraphs in the said trust deed by virtue of the said power and the same shall become effective along with the said trust deed and shall be considered as a portion of the trust deed. Upon the necessity being felt for distribution and arrangement and having arrived at unanimous decision of all in all respects for future convenience of each other, I Sri Makhan Lall Mukhopadhyay the first party and my sons Sri Manindranath Mukhopadhyay, Sri Tapendra Nath Mukhopadhyay proposed to execute an agreement with the second party, Makhan Lall Trust Estate agreed to their said proposal and with the consent of both the parties this agreement is executed between the first party and the second party in the following terms.

7. Then the said deed, inter alia, provided as follows:

1. Sri Makhan Lall Mukhopadhyay of the first party is the sole owner of the audit firm named Messrs. M. Mukherjee & Co. situate at No. 24, Netaji Subhas Road, Calcutta, and during his lifetime, whatever surplus income there shall be, after

meeting the expenses for carrying on of the office of M. Mukherjee & Company and after meeting all other expenses shall be considered to be income of the second party, Makhan Lall Trust Estate since the time of execution of this agreement and the same will have to be deposited in the trust estate.

2. The goodwill of Mukherjee & Company and whatever movable properties and bank balance shall remain after the death of Sri Makhan Lall Mukherjee, the sole owner of M. Mukherjee & Company, shall devolve on the second party, Makhan Lall Trust Estate and same shall be deposited with the trust estate.

3. If due to old age or for any other reason, Sri Makhan Lall Mukho Padhyay, the sole owner of M. Mukherjee & Company retires from M. Mukherjee & Co. then from the date of his retirement he will be competent to receive Rs. 300 from the trust estate for his personal expenses as long as he will remain alive.

4. Sri Manindranath Mukhopadhyay, member of the first party promises and declares that whatever money he will earn from Anandamoyee Agency Ltd., Dilkhusa Tea Co. Ltd., Bijli Dooars Tea Co. Ltd. and Sydley Dooars Tea Co. Ltd. and Eastern Dooars Tea Co. Ltd. in respect of monthly salary, director''s fee, dividend, etc., all the same shall be considered to be the income of the Makhan Lall Trust Estate and he shall remain bound to, deposit all the said income with the Makhan Lall Trust Estate. In view of the said arrangement, if the source of income of Sri Manindranath Mukhopadhyay from Messrs. M. Mukherjee & Co. is totally ceased, he shall be entitled to receive Rs. 250 per month front Makhan Lall Trust Estate for his own and present expenses.

6. Be it further known that if after the execution of this trust deed any income tax or estate duty is levied on the second party, Makhan Lall Trust Estate, then the same shall have to be paid out of the deposited money of the second party Makhan Lall Trust Estate and if there is no other money in deposit the same shall have to be paid out of the sale proceeds of the said movable and immovable properties of the said trust estate. Be it further known that whatever money shall be required for carrying on any law suits or for payment of decretal amount; the same shall have to be paid in the aforesaid manner.

8. The accountable person contended before the Asst. Controller that the properties covered by the said trust deed did not come within the purview of section 12 and/or otherwise did not pass on the death of the deceased and estate duty was not imposable on these properties covered by the said trust deed. The Asst. Controller was, for the reasons recorded in his order, unable to accept the said contention and included the value of the said properties in the amount upon which estate duty was leviable. Being aggrieved by the said order of the Asst. Controller the accountable person went up in appeal before the Appellate Controller. In appeal before the Appellate Controller, the first point raised was that the Asst. Controller was not justified in including the assets of Makhan Lall Trust u/s 12 of the E.D. Act and he

referred to a certain decision of the Supreme Court and held that these properties were includible. The matter thereupon went up before the Tribunal. The Tribunal noted the contentions and took into consideration the various deeds and also noted the authorities that were cited before the Tribunal. Then the Tribunal observed, inter alia, as follows:

The question for consideration is that whether under the settlement made the settlor had reserved any interest in such property for life or any other period determinable by reference to death or the settlor had reserved to himself the right by exercise of any power to restore to himself or to reclaim the absolute interest in such property. A plain reading of the trust deed shows that Rs. 400 per month was to be paid to the settlor for the maintenance of his family and this amount was to be paid out of the trust property. There was also a clear provision for payments for the marriages of the daughters as well as their maintenance. The monthly amount for maintenance was increased to Rs. 600 in 1954 and there was also provision for payment of certain pin money to the wife of the settlor. The payment of pin money to the wife is a liability of the husband but this was fastened on the trust property. When the income from Mukherjee & Co. and other income of the sons were provided to be transferred to the trust estate it was also provided that in case of retirement the deceased was to get Rs. 300 per month out of the trust funds and similarly his sons were to get some specified amounts. The fact that ultimately the income of Mukherjee & Co. was not transferred to the trust and the question of payment of Rs. 300 per month to the deceased did not arise as he did not retire from the above firm would not be material for deciding the issue before us. By the last modification made in 1960 clear provisions were made for payments to wife, as to the sons, to the specified extent and all these amounts were charged on the trust property. In our opinion, this was a clear case where the settlor had reserved for himself and for the maintenance of his wife and sons as well as daughters certain specified incomes out of the trust fund and there were repeated mentions of the possession in relation to the death of the deceased and the possession which was to follow such death. In this case, there was a settlement by the deceased and there was reservation of interest to the settlor and he had also the right to amend the deed from time to time. This was not merely a theoretical right and the various amendments clearly show that the trust property was also extended and the liability of the trust for the payments for maintenance of the children of the deceased was also added from time to time. All this was done by the deceased as a result of the provision in the original deed that such amendments could be made from time to time. There is no dispute that there was a settlement by the deceased in the present case. It is also clear that there is only one settlement deed and there are not various deeds providing for a separate settlement for the benefit of the various dependants and relatives of the deceased. The original deed and all the amendments thereto have to be read together and the position as on the date of death has to be seen by looking to the finally amended deed and its working from its very inception.

Whereas the original deed provided for the payment of a fixed amount towards the maintenance and education of sons a few of them being minors at that time and also for the expenses of the daughters'' marriage out of the trust fund, and the religious ceremonies to be performed after the death were also to be paid out of the trust fund, this amount was later on increased and payments were also provided for the wife of the settlor. By a deed dated 10th September; 1956, the income of Mukherjee & Co. was to be put in the truatand iii case of retirement due to old age or for any other reasons the settlor was to get Rs. 300 per month from the date of his retirement until the time of his death. This was a very important reservation and the fact that it was contingent on his retirement is not material for the purpose of deciding whether there was a reservation or not. Thus looking to the deed as a whole there was a reservation of an interest in the settled property for the maintenance of the settlor as well as his relatives and thus it has to be held that the deceased settlor reserved an interest for himself within the meaning of section 12 of the Estate Duty Act.

9. In those circumstances, the question as indicated above has been referred to this court. Now the question that falls for consideration is whether by the deed dated the 24th October, 1944, which is the first deed by which the trust was created the settlor had reserved to himself any power of revocation of the said trust deed. That power, as we have referred to hereinbefore, is said to be contained in the deed itself. The relevant portion stated, inter alia, as follows:

...If in future any deed or rectification deed is required to be executed in order to make the written object of the deed effective and strong or any advice is received, then the same can be done by the appointed trustees or their representatives.

10. The first thing to be noted in this clause is that the power of making a subsequent deed to make the first deed effective and strong or a deed of rectification was given to the trustees or their representatives, and was not given to the settlor or his heirs. Therefore, on behalf of the accountable person, it was urged that the settlor did not reserve any right to revoke the trust. It was further contended that if by any subsequent deed executed by the settlor there has been revocation of any of the clauses of the original deed or there has been anything apart from making the original deed effective and strong then the same was without the authority of the settlor. In this connection reference was made to the provisions of the Trusts Act. Section 6 of the Indian Trusts Act, 1882, provides as follows:

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.

11. In this case, there was a creation of the trust with the certainty as contemplated by section 6. Indeed, it is not disputed by the Revenue that no trust was created as it could not be in the facts of the case. Section 77 of the Trusts Act provided how a trust could be extinguished and it stipulated that the trust was extinguished, (a) when its purpose was completely fulfilled, which is not the case here, (b) when its purpose became unlawful, which is also not the case here, (c) when the fulfilment of its purpose became impossible by destruction of the trust property or otherwise, which is also not the case here, or when the trust being revocable was expressly revoked. Therefore, we have to consider whether the trust in this case was revocable at all in terms of section 77, and if so, has it been revoked by the subsequent deed or could it be so done. Section 78 provided for a revocation of trust. The said section reads as follows:

78. A trust created by will may be revoked at the pleasure of the testator. A trust otherwise created can be revoked only:

(a) where all the beneficiaries are competent to contract--by their consent;

(b) where the trust has been declared by a non-testamentary instrument or by word of mouth--in exercise of a power of revocation expressly reserved to the author of the trust; or

(c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors--at the pleasure of the author of the trust.

12. Now clause (a) does not apply to this case. Clause (c) is not applicable to the facts of the case. The only clause upon which reliance was placed and could be placed was clause (b) where, in a non-testamentary document in writing, the power of revocation had been expressly reserved by the author of the trust. The first difficulty in accepting the contention that this was a revocable trust is that when the document was created the power was not reserved to the settlor. If any power of altering the terms of the trust was granted to the trustees or their representatives, that power again was not to revoke the trust but to make it effective and strong and to make it workable. The meaning of the expression "revocation" or "revocable" is well settled. Revocation means calling back of a thing granted or a renunciation or resentment of what was granted. See in this connection Stroud''s Judicial Dictionary, 4th Edn., p. 2391.

13. In that view of the matter, we are of the opinion that on a proper construction of the first deed of settlement dated 24th October, 1944, it cannot be said that the same was a revocable trust. In this connection reference may be made to section 12 of the E.D. Act, 1953. As a good deal of arguments have been advanced, it would be material to set out the relevant portion of section 12 of the E.D. Act, 1953, which reads as follows:

12. (1) Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor''s death:...

Provided further that a house or part thereof comprised in such settlement made in favour of the spouse, son, daughter, brother or sister, shall not be deemed to pass on the settlor''s death by reason only of the residence therein of the settlor except where a right of residence is reserved or secured directly or indirectly to the settlor under the settlement or under any collateral disposition.

Explanation. --A settlor reserving an interest in the settled property for the maintenance of himself and any of his relatives (as denned in section 27) shall be deemed to reserve an interest for himself within the meaning of this section.

14. In this connection reference may also be made to section 27 which deals with dispositions in favour of the relatives and our attention was drawn to sub-section (7) of section 27. We need not detain ourselves with the actual terms of the said provisions because, indisputably, as the terms of the different deeds will indicate, provisions had been made for persons who would come within the mischief of the expression "relative" as contained in sub-section (7) of section 27 of the said Act. The only question is whether by the deeds in question the settlor had reserved any interest in the property which could be said to have come either within the mischief of sub-section (1) of section 12 or it could be said to have come within the mischief of the Explanation to section 12. On the question whether a trust in question was revocable or not, our attention was drawn to the decision in the case of Krishnasami Pillai Vs. Kothandarama Naicken and Others, , where the Division Bench of the Madras High Court observed that a valid public trust once created was irrevocable by any subsequent act of the author of the trust. Though the facts of that case were different, it appears to us that this principle is well settled. If this is the principle then the subsequent documents which augment the trust properties and also which indicated some benefits being granted to the settlor by way of monthly allowance and also included monthly payments to sons and grandsons and the increased sum payable to the wife by the first settlement were beyond the power of the settlor in view of the limited reservations made in the first deed. As we have also indicated before, so far, (as to) construing the terms of the subsequent settlements and the extent to which they have gone, in the light of the power that the settlor had in the first settlement, we are of the opinion, that the subsequent settlements, purported to have been executed by the settlor, were of no effect and there was no such intention of the settlor reserved by the first document.

15. On behalf of the Revenue, it was suggested that this controversy was not within the amplitude of the question referred to this court. We are, however, unable to accept this contention because the question before us is whether, on the construction of the different deeds which were set out hereinbefore, section 12 read with section 27 can be said to be attracted. Therefore, in this case, a construction of the four deeds becomes necessary for the purpose of determining whether the terms of settlement in the subsequent deeds were within the power of the settlor to make in view of the provisions made in the first deed.

16. Our attention was also drawn to the observations of the Judicial Committee in the case of AIR 1938 73 (Privy Council) . After referring to the judgment of the High Court, their Lordships, at p. 76 of the report, had observed as follows:

Their Lordships agree with this statement, except that the evidence of divestiture may be contemporaneous, as in this case, and, in such a case, the subsequent acts and conduct of the donor are irrelevant and cannot reinvest him. Their Lordships agree with the High Court that the subordinate judge wrongly laid stress on the subsequent alleged neglect of their duties by members of the Committee. The appellants sought to maintain that the propositions were qualified in the present case by some customary law; but, if so, the appellants were bound to plead it and put it in issue, which has not been done. In the opinion of their Lordships, R-4 of the Rules and Regulations'', to which Mallah Singh was a party, taken along with sections 5 and 16 of the Act of 1860, was sufficient to vest the buildings of the school and the attached lands, as they then existed, in the committee. The subordinate judge himself has found that the committee appointed its office bearers ''and the management of the school was made over to them''. It must be remembered that the Trusts Act of 1882, does not apply to charitable endowments. Their Lordships are therefore of opinion, in agreement with the High Court, that the school buildings and attached lands were irrevocably dedicated by Mallah Singh at the time of the registration of the association and further that any subsequent alteration of these buildings or additions to them must be held to have accrued to the original dedication.

17. It is well settled, in our opinion, that the subsequent conduct cannot be relevant in construing the amplitude of the power contained in a particular document. We are of the opinion that when the first document is not clearly expressed by the language used, the conduct of the parties or the conduct of the person making the documents can be taken into consideration in construing the intention of the parties. We are not faced with a situation of this nature here. In this case we find that the language is clear as to the extent of the power and the limitation of the power. Reliance was also placed on a judgment of the Division Bench of the Madras High Court in the case of Thanthi Trust Vs. Income Tax Officer, , where it was observed that if the trust had been validly and really created any deviation by the founder of the trust or the trustees from the declared purpose would amount only

to a breach of trust and would not detract from the declaration of the trust and hence the subsequent conduct of the founder in dealing with the funds of the trust after its creation would not put an end to the trust itself. If a valid and complete dedication to a trust had taken place, there would be no power left to revoke and no assertion on his part or the subsequent conduct of himself or his descendants contrary to such dedication would have the effect of nullifying it. We are in respectful agreement with this view.

18. Our attention was also drawn to the observation of the Supreme Court in the case of Controller of Estate Duty Vs. R. Kanakasabai and Others, , where the deceased had executed separate deeds in favour of his sons, grandsons, daughter and wife, settling properties thereby severally in favour of the respective beneficiaries absolutely and with full power of alienation. The deed in favour of the sons and grandsons provided for payment of Rs. 1,000 per annum to the settlor, the deed in favour of the daughter provided for maintenance of the settlor and his wife during their lifetime and in the deed in favour of the wife the settlor expressed the hope that she will maintain him during his lifetime. No charge was, however, created in respect of the amounts made payable by the sons and grandsons or in respect of the daughter''s liability to maintain the settlor and his wife. The deceased died on February 5, 1959, and the question was. whether the whole or any part of the properties comprised in the deeds passed on the death of the deceased u/s 12, or section 10 of the E.D. Act, 1953. It was held that section 12 was wholly inapplicable to the facts of the case; no interest in the properties settled was reserved to the deceased during his lifetime or for any period after the properties were settled, nor was there any provision in the deeds enabling the deceased to reclaim the property or its possession under any circumstances. The other part of the observation of the Supreme Court is not very relevant in the instant case for our present purpose.

19. Our attention was also drawn to the decision in the case of Controller of Estate Duty Vs. Nirmal Kumar Roy, . On a construction of the deeds involved in that case the court came to the conclusion that there was no reservation of interest in favour of the settlor and it was further held that the Explanation to section 12, in order to come within the mischief of section 12(1), should mean that the reservation of interest of the settlor passed for the maintenance of the settlor and also of the relatives; reservation in favour of the relatives only would not bring such a reservation within the mischief of section 12(1) even if it is read with the deeming provision to the Explanation. In this view of the matter we are of the opinion that the property in question did not pass on the death of the deceased. It was further urged before us that the assessee had an obligation to maintain his daughters; he had also to maintain his children and provide for their education. The deceased, it was suggested, had by the deed of settlement, passed on that obligation to the trustees and, therefore, reserved unto himself interest in the trust properties. In support of this contention reliance was placed on certain observation of the Gujarat High Court

in the case of Kikabhai Samsuddin Vs. Collector of Estate Duty, Gujarat, Ahmedabad, . There the deceased had executed five gift deeds on September 25, 1951, and by each of the gift deeds, gifted different immovable properties mentioned therein to each of his 5 sons, three of whom were minors on that date. In each deed of gift certain conditions were laid down by the deceased by which two of the three minor sons were required to bear the maintenance expenses of their mother equally and the third minor son was required to bear the maintenance, education and marriage expenses of one of his sisters, while the two major sons were to bear the maintenance, education and marriage expenses of two other daughters of the deceased. In addition, the eldest son was also required to allow the deceased to continue to carry on his business in one of the buildings which he received under the gift deed in his favour. On the death of the deceased, the Assistant Controller included the value of all the properties included in the five gift deeds u/s 12 of the E.D. Act, 1953. On appeal, the Central Board held that, in addition to the applicability of section 12, section 10 was also applicable since the deceased continued to derive benefits directly attributable to the five gift deeds by reason of the fact that he was relieved of his liability to bear the maintenance and other expenses because of the conditions laid down in the gift deeds.'' On a reference, the High Court held that for the Explanation to section 12 to apply there must be a provision for the joint maintenance of the settlor himself and any of his relatives and not merely a provision for the maintenance of a relative alone, as, in that case, the deceased had not reserved any provision for his maintenance, the said Explanation was not applicable. The same principle would also apply in the instant case. It was also held that by making the provisions in each of the gift deeds for the maintenance of his wife as well as his daughters, the deceased was passing on his own obligation to the donees concerned and hence the deceased reserved to himself a benefit so far as the property gifted by him was concerned in each of the five cases inasmuch as he got rid of the obligation to provide maintenance for his wife and unmarried daughters. In this connection, the court observed at p. 248 (of 73 ITR) as follows:

It is, therefore, clear that'' by imposing conditions for the maintenance of his wife and unmarried daughters the donor had made provision for the maintenance of his relatives in each of the five gift deeds; but the question still remains whether the Explanation to section 12 would apply to such conditions. It is clear that there is no provision for the maintenance of the donor himself in this particular case and in each case there is only provision for the maintenance of one of the relatives, viz., either the daughter or the wife in each of the five gift deeds.

The words ''for the maintenance of himself and any of his relatives'' cannot be read to mean ''for the maintenance of himself or for the maintenance of any of his relatives'' because if there is provision for the maintenance of the donor himself, there is no necessity to invoke the Explanation to section 12 and the word ''and'' occurring in this phrase cannot be read to mean ''or'' because in that event there is no necessity for the legislature to provide ''for the maintenance of himself''. In the

context in which this phrase occurs in the Explanation to section 12, it is clear that what the legislature intended to provide for and has in fact provided for is a clause whereby the settlor provides for the maintenance of himself and any of his relatives, i.e., there must be provision for the joint maintenance of the settlor himself and any of his relatives and not merely a provision for the maintenance of a relative alone. Under these circumstances, the Explanation to section 12 will not apply in the instant case.

20. Then the court dealt with section 10 of the E.D. Act, 1953, but we are not concerned with that in this reference. This view was also reiterated by the Madras High Court in the case of Controller of Estate Duty Vs. K.A. Kader and Others, . There the Madras High Court held that the Explanation to section 12(1), reserving interest in the settled properties had not been linked with the life or death of the settlor. In the instant case also, the obligation of the trustee was transferred and he or the subsequent trustee was to provide for the maintenance and education of the sons and also for the maintenance of the unmarried daughters. That was not linked with the lifetime; that obligation continued until the obligation was discharged and that was the contingency contemplated by the deed of settlement. We are in respectful agreement with the observation of the Madras High Court appearing at pp. 295 and 296 of the report on this aspect of the matter because if any reservation of any interest in the property was made in the sense, by getting a benefit during the lifetime of the settlor, then the Explanation would be otiose and useless.

21. Our attention was also drawn to the observation of the Gujarat High Court in the case of Ravindra Gunvantlal Vs. Controller of Estate Duty, Gujarat, , where the facts were entirely different. In that case the settlor himself had reserved his right to determine the objects from time to time in the contingencies contemplated. In those circumstances, it was held to come within the mischief of sub-section (1) of section 12. The facts of that case were entirely different and we are of the opinion that no assistance can be had from the said decision in the instant case before us. In that view of the matter, we must hold that the properties covered by the first trust deed do not come within the mischief of section 12(1) of the E.D. Act and if that is so, the other properties were not includible for the purpose of the levy of estate duty. The question, therefore, must be answered in the negative and in favour of the accountable person. Parties to pay and bear their own costs.

Suhas Chandra Sen, J.

I agree.