

FAZALBHOY CURRIMBHOY ETC.

v.

OFFICIAL TRUSTEE OF MAHARASHTRA & ORS., ETC.

December 12, 1978

[S. MURTAZA FAZAL ALI, JASWANT SINGH AND R. S. PATHAK JJ.]

Sir Currimbhoy Ebrahim Baronetcy Act, 1913—Act created a trust of the properties of the First Baronet—Fourth Baronet migrated to Pakistan and was declared an evacuee—State Legislature passed the Sir Currimbhoy Ebrahim Baronetcy (Repealing and Distribution of Trust Properties) Act, 1959—S. 7(4) of the Repealing Act—Scope of—Effect of repeal—Official Trustee—If required to transfer and vest in the Custodian the trust properties found to be evacuee property.

In 1911 King George V conferred the “dignity, status and degree” of a Baronet on Sir Currimbhoy Ebrahim of Bombay. To provide for the upkeep and dignity of the Baronetcy the Sir Currimbhoy Ebrahim Baronetcy Act, 1913 was passed by virtue of which considerable properties belonging to Sir Currimbhoy Ebrahim were settled upon the trust.

Section 8 of the Baronetcy Act provided that the residue of income from the properties settled under the trust was to be paid to the first Baronet and the heir male of his body, who would, for the time being succeed to the title of Baronet. Section 27 provided for the vesting of all properties and funds in the Trust “upon failure and in default of heirs male of the body of the last Baronet.” The First Baronet left behind a Will in respect of certain other properties. On the death of the First Baronet his eldest son assumed the title of Second Baronet and on the death of the Second Baronet his eldest son Hussainbhoy became the Third Baronet.

The Third Baronet migrated to Pakistan between the years 1947 and 1949. He was, therefore, declared an evacuee. Certain properties belonging to him were declared vested in the Custodian of Evacuee Property. Two other immovable properties as well as the right, title and interest of the Third Baronet in the Sir Currimbhoy Ebrahim Baronetcy Trust were declared as evacuee properties and vested in the Custodian of Evacuee Property. On the death of the Third Baronet in Pakistan in 1952 his eldest son Mohamedbhoy succeeded as the Fourth Baronet. At that time the Fourth Baronet was residing in India, but shortly thereafter he migrated to Pakistan. The Deputy Custodian of Evacuee Property made an order declaring the Fourth Baronet an evacuee and notified his beneficial interest in the Trust as evacuee property vesting in the Custodian of Evacuee Property.

The Fourth Baronet having migrated to Pakistan along with his son, the Bombay Legislature passed the Sir Currimbhoy Ebrahim Baronetcy (Repealing & Distribution of Trust Properties) Act, 1959. The Repealing Act *inter alia* revoked and extinguished the trusts, powers, provisions, declaration and purposes declared and expressed in the Sir Currimbhoy Ebrahim Baronetcy Act and vested the properties and funds in the Official Trustee for the purpose of

- A** distributing them amongst the persons rightfully entitled thereto, according to law.

The Official Trustee thereupon called upon the persons claiming interest in the trust properties to submit their claims.

- B** On the Official Trustee's application under s. 7(2) of the Repealing Act seeking orders and directions of the High Court as regards distribution of the trust properties amongst the several claimants, a single Judge of the High Court took the view that the Custodian was not entitled to the share of the Fourth Baronet in the Trust properties because the beneficial interest of the Fourth Baronet which had vested in the Custodian came to an end on the extinction of the Trust that the Repealing Act had the effect of giving rise to a resulting trust in favour of the settlor, the first Baronet; that the trust properties reverted to his estate on his death, that they must be deemed to pass by inheritance, according to the Muslim personal law, and that the residuary clause in the will executed by the First Baronet did not cover the trust properties.

- C**
- D** A Division Bench of the High Court on appeal held that on the terms of the Will a contrary intention had been manifested by the First Baronet that in the event of the failure of the Trust the trust properties shall, after his life time, be held for the benefit of the Baronet for the time being and therefore the Fourth Baronet was entitled to the trust properties absolutely in his own right. The claim of the Custodian of Evacuee Property to the corpus of the trust properties was rejected.

- E** HELD : 1. Upon the provisions of the Baronetcy Act and of the Will a direction by the First Baronet must necessarily be presumed that if the trust created by the Baronetcy Act failed or was revoked the trust properties and funds must go to the last Baronet. [710 G].

(a) Although the trust was created by statute, it was created at the instance of the First Baronet so as to keep the trust in perpetuity for the upkeep of the dignity and title of the Baronetcy at all times. A trust of this nature has been regarded as a private trust. [707 B].

- F**
- G** (b) Section 83 of the Indian Trusts Act provides that where a trust is incapable of being executed or where the trust is completely executed without exhausting the trust property, the trustee, *in the absence of a direction to the contrary*, must hold the trust property for the benefit of the author of the trust or his legal representatives. On the terms of this section, which incorporates in codified form the concept of what is known as a resulting trust, a resulting trust can arise only in the absence of a direction to the contrary. [707 E-F].

- H** (c) In the instant case the various clauses of the will show that substantially large sums of money were gifted by the First Baronet in equal shares to each of the sons except the eldest son. In all these clauses the eldest son Mohamedbhoy was not included because he would succeed as Baronet to the benefit of the trust constituted under the Act. There is no reason to suppose that the First Baronet intended to exclude Mohamedbhoy from the benefit of his bounty. According to the terms of the Act, the benefits of the trust created under the Baronetcy Act were to devolve on the male heirs of

the body of the First Baronet who took the name of Currimbhoy Ebrahim, and when executing the will, the First Baronet had that benefit in mind for Mohamedbhoy. The First Baronet had the line of Mohamedbhoy in mind for supplying future Baronets. Therefore the only conclusion that can be drawn is that the trust properties created under the Act were intended by the First Baronet to vest in Mohamedbhoy and his heirs. Although s. 27 comes into play only upon the failure and in default of heirs male of the body of the said Currimbhoy Embrahim, the intention of the First Baronet was that the trust properties and funds should be confined even ultimately to the line of Mohamedbhoy his eldest son. They would go to the heirs of the last Baronet and not be distributed among his own heirs. [709 B-710F].

2. While ordinarily the trust properties and funds would have devolved on the Fourth Baronet, the ultimate determination of the case must turn on the validity of the claim made by the Custodian of Evacuee Property under s. 7(4) of the Repealing Act. [710 H].

(a) The Repealing Act was passed by the State Legislature under Entry 41 of List III of the Seventh Schedule to the Constitution and received the assent of the President. In case of any repugnancy between the Repealing Act and the Administration of Evacuee Property Act, 1950 the former will prevail by reason of Art. 254(2) of the Constitution. Section 7(4) is not repugnant to any provision of the 1950 Act. It is in the nature of additional legislation on the subject. [714 B].

(b) Section 7(4) of the Repealing Act was passed because the Fourth Baronet had been declared an evacuee and his interest in the trust properties under the Baronetcy Act had been declared evacuee property under the 1950 Act. With the repeal of the Baronetcy Act and the revocation and extinction of the trust, that interest came to an end and the declaration ceased to have effect. The Legislature presumed that when the Official Trustee took proceedings for the distribution of the trust properties under s. 7 of the Repealing Act, the Fourth Baronet would be found entitled to the trust properties or part thereof. He had already been declared an evacuee and consistently with the earlier declaration vesting his interest in the trust properties as evacuee property in the Custodian, the Legislature intended that the trust properties falling in full ownership to the Fourth Baronet on repeal should likewise be vested in the Custodian. That could not be accomplished by a declaration under the Administration of Evacuee Property Act, 1950, in view of s. 7A thereof which prohibited such a declaration after May 7, 1954. The result could be accomplished under some other law and s. 7(4) of the Repealing Act was passed to make provision accordingly. The trust properties were evacuee property because they belonged to an evacuee [vide s. 2(f) Administration of Evacuee Property Act, [1950], and by the operative clause in s. 7(4) of the Repealing Act they were vested in the Custodian. The law relating to evacuee property was applied to the right, title and interest of the evacuee in the trust properties even as they applied to any other evacuee property under that law. The terms in which the law relating to evacuee properties has been applied to the trust properties fully confirms the conclusion that the trust properties falling to the Fourth Baronet were to be treated at par with evacuee property generally. [714 F-H].

(c) Section 7(4) of the Repealing Act requires three conditions to be satisfied. They are : (i) that a person is entitled to the trust properties or

- A** any part thereof; (ii) that such person has been or is declared as an evacuee within the meaning of the Administration of Evacuee Property Act, 1950, and (iii) that his right, title and interest in the trust properties has been or is declared to be evacuee property under the Administration of Evacuee Property Act, 1950. If these conditions are satisfied the official trustee is required to transfer and vest in the Custodian the trust properties or so much thereof as is found to be evacuee property and the law relating to evacuee property shall apply to such right, title and interest in the trust properties as they apply to any other evacuee property under that law. [711 G-H].
- B**

In the present case the first condition is satisfied because the Fourth Baronet had been found to be entitled to all the trust properties and funds settled and created under the Baronetcy Act. The second condition is satisfied because the Fourth Baronet was declared an evacuee. Similarly, the third condition is satisfied because the right, title and interest of the Fourth Baronet in the trust properties was declared to be evacuee property. All three conditions having been satisfied, s. 7(4) takes effect and the direction contained in it must be carried out. The Official Trustee is required to transfer and vest in the Custodian the trust properties count to be evacuee property. [712 B-D].

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3. There is no substance in the contention that on the death of the Third Baronet before the Repealing Act was passed, the trust properties devolved on the heirs of the Third Baronet i.e. his widow, son and two daughters. On the death of the Third Baronet the benefit of the trust created by the Baronetcy Act passed to the Fourth Baronet. [715 D].

- E** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 722, 1016 and 1221 of 1967.

Appeal from the Judgment and Decree dated 9-8-1966 of the Bombay High Court in Appeal Nos. 31 and 34 of 1963.

K. D. Mehta and D. N. Mishra for the Appellant In CA 722/67.

- F** *S. T. Desai, R. B. Datar and Girish Chandra* for RR 3 and 65 in CA 722/67.

I. N. Shroff and H. S. Parihar for R 48 in CA 722/67.

S. T. Desai, R. B. Datar for the Appellant and Respondent-40 in 1016/67.

- G** *I. N. Shroff and H. S. Parihar* for RR 27-28 in CA 1016/67 and also for the appellant in CA 1221/67.

S. T. Desai and Girish Chandra for Respondent No. 63 in CA 1221/67.

- H** The Judgment of the Court was delivered by

PATHAK, J. These appeals, on certificate granted by the High Court of Judicature at Bombay, are directed against the judgment and order

dated August 9, 1966 passed by the High Court in its appellate jurisdiction against orders and directions issued by a learned Single Judge of the High Court on a petition filed by the Official Trustee of Maharashtra in regard to the properties of the former Sir Currimbhoy Ebrahim Baronetcy Trust.

On July 21, 1911, His Majesty King George V issued Letters Patent conferring the "dignity, state and degree" of a Baronet of the United Kingdom of Great Britain and Ireland on Sir Currimbhoy Ebrahim of Bombay and the heirs male of his body lawfully begotten and to be begotten. In order to provide for the upkeep and dignity of the Baronetcy, the then Governor General of India in Council enacted the Sir Currimbhoy Ebrahim Baronetcy Act, 1913 (hereinafter referred to simply as "the Baronetcy Act") by virtue of which considerable properties belonging to Sir Currimbhoy Ebrahim were settled upon the trustee, and for the purposes, declared in the Act. The Trust was created by statute at the instance of Sir Currimbhoy Ebrahim. The Trustees who included the Baronet for the time being and three officials of the Government of Bombay designated by their office, were constituted as a Corporation with perpetual succession and a common seal for the purpose of executing the trusts, powers and purposes of the Act. By virtue of section 8 of the Baronetcy Act, the residue of the income from the properties settled under trust, after payment to the credit of a Sinking Fund and a Repairs Fund, and payment of rates, taxes and cost of ordinary repairs in respect of buildings comprising the trust properties was to be paid to the First Baronet and the heir male of his body who would for the time being have succeeded to the title of Baronet. The successive Baronets were also entitled in the circumstances mentioned in s. 10 to the use and benefit of additional hereditaments vesting in the Corporation. Section 27 provided for the vesting of the trust properties and funds "upon failure and in default of heirs male of the body of the last Baronet".

The First Baronet, Sir Currimbhoy Ebrahim, died on May 29, 1924 leaving behind a Will dated October 22, 1916 in respect of certain other properties. His oldest son, Mohamedbhoy, assumed the title and became the Second Baronet. Mohamedbhoy died on March 31, 1928. He was succeeded by his son, Hussainbhoy, who became the Third Baronet.

The third Baronet migrated to Pakistan some time between 1947 and September, 1949. On September 29, 1949 he was declared an evacuee under the Bombay Evacuees (Administration of Property) Act, 1949, and certain properties belonging to him were declared vested in the Custodian of Evacuee Property by an order of that date.

A On November 15, 1949, a notification was issued under sub-s.(1) of s.7 of the Administration of Evacuee Properties Ordinance, 1949 notifying two further immovable properties as well as the right, title and interest of the Third Baronet in the Sir Currimbhoy Ebrahim Baronetcy Trust as evacuee property vesting in the Custodian of Evacuee Property. An appeal by the Third Baronet against the orders dated September 29, 1949 and November 15, 1949 was dismissed by the Custodian of Evacuee Property on February 13, 1950.

B Two years later, on March 4, 1952, the Third Baronet died in Pakistan. He was succeeded by his son, Mohamedbhoy, as the Fourth Baronet. It seems that Mohamedbhoy was at the time residing in India, but shortly thereafter he left for Pakistan. On June 10, 1952, the Deputy Custodian of Evacuee Property made an order declaring the Fourth Baronet an evacuee under the Administration of Evacuee Property Act, 1950 and directing that his beneficial interest in the Sir Currimbhoy Ebrahim Baronetcy trust be notified as evacuee property. Therefore, on June 16, 1952, a notification was issued under sub-s.(3) of s.7 of the Administration of Evacuee Property Act, 1950 declaring that the beneficial interest of the Fourth Baronet in the Sir Currimbhoy Ebrahim Baronetcy Trust was evacuee property vesting in the Custodian of Evacuee Property.

C The Fourth Baronet preferred an appeal to the Custodian General of Evacuee Property, Delhi, but the appeal was dismissed on August 26, 1960 on the ground that it was barred by time.

D Meanwhile, the Fourth Baronet having migrated to Pakistan alongwith his son Zoolfikar Ali, the Bombay Legislature passed an Act titled the Sir Currimbhoy Ebrahim Baronetcy (Repealing & Distribution of Trust Properties) Act, 1959, which we shall refer to as "the Repealing Act)". The Act, as its name shows, repealed the Baronetcy Act and, *inter alia*, revoked and extinguished "the trusts, powers, provisions, declaration and purposes" declared and expressed in that Act. It provided for the vesting of the properties and funds in the Official Trustee, Bombay for the purpose of distributing them "amongst the persons rightfully entitled thereto according to law".

E Acting under the Repealing Act, the Official Trustee called upon persons claiming interest in the "trust properties", an expression which includes the properties and funds settled and created under the Baronetcy Act, to submit their claims. As he found that the claims were contested and was unable to say which of them were justified, he applied to the Bombay High Court under sub-s. (2) of s. 7 of the Repealing Act for orders and directions as regards the distribution of

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the trust properties amongst the several claimants. The properties were valued at Rs. 30 lakhs for the purposes of court fees.

The petition was entertained in the High Court under its general and inherent jurisdiction and was registered as Trust Petition No. 3 of 1962. It was disposed of by Tarkunde, J. on December 20, 1962. A contention raised by some of the claimants that the Repealing Act was *ultra vires* was rejected. As regards the claim of the Custodian of Evacuee Property, the learned Judge took the view that the beneficial interest of the Fourth Baronet, which had vested in the Custodian, came to an end on the extinction of the trust and the Custodian was not entitled to the share of the Fourth Baronet in the trust properties. He ordered, however, that so much of the net income of the trust properties accruing upto March 15, 1960, as had remained unpaid be transferred to the Custodian. He rejected the claim to maintenance made by the Third Baronet's widow, the Dowagar Lady Amine Currimbhoy Ebrahim. On the material before him the learned Single Judge held that the Repealing Act had the effect of giving rise to a resulting trust in favour of the Settlor, the First Baronet, that the trust properties reverted to his estate as on his death on May 29, 1924 and that they must be deemed to pass by inheritance according to the Muslim personal law as on an intestacy occurring on the death of the First Baronet. He observed that the residuary clause in the will dated October 22, 1916 executed by the First Baronet did not cover the trust properties. On those findings, he directed the Official Trustee to distribute the net trust properties amongst the several claimants according to the shares mentioned in an agreed statement subscribed to by the claimants.

Against the order of Tarkunde, J., two appeals were filed in the High Court. Appeal No.31 of 1963 was filed by the Dowagar Lady Amine Currimbhoy Ebrahim, the Fourth Baronet, Sir Currimbhoy Ebrahim, and his son, Zoolfikar Ali Currimbhoy Ebrahim, and Appeal No. 34 of 1963 was filed by the Custodian of Evacuee Property. The appeals were heard by a Division Bench of two learned Judges, Kotval, C.J. and Mody, J. The Division Bench rejected the challenge to the constitutional validity of the Repealing Act, but on the point whether a resulting trust had come into existence the learned Judges held that in view of the surrounding circumstances, particularly the terms of the will executed by the First Baronet on October 22, 1916, it must be taken that contrary intention had been manifested by the First Baronet that in the event of the failure of the trust, the trust properties should after his life time be held for the benefit of the Baronet for the time being. Accordingly, the learned

A Judges laid down that the Fourth Baronet was entitled to the trust properties absolutely in his own right. On the claim of the Dowager Lady Amine Currimbhoy Ebrahim, they pointed out that her son, the Fourth Baronet, had made a statement through counsel in court that he would pay the amount to her out of the corpus received by him. Appeal No.31 of 1963 was allowed in part. In regard to the appeal filed by the Custodian of Evacuee Property, the learned Judges rejected his claim to the corpus of the trust properties, holding him entitled to a sum of Rs. 1,334.06 only, representing the unpaid amount of the net income of the trust properties upto March 14, 1960. Appeal No.34 of 1963 was dismissed.

C Three appeals have been filed in this Court. Civil Appeal No.722 of 1967 has been filed by Sir Fazalbhoy Currimbhoy, Civil Appeal No. 1016 of 1967 has been filed by the Custodian of Evacuee Property and Civil Appeal No.1221 of 1967 has been filed by Munira Fazal Chinoy and Mumtaz Mohamed Rahimtoola, daughters of the Third Baronet.

D The case of Sir Fazalbhoy Currimbhoy, the appellant in Civil Appeal No.722 of 1967 is that the effect of the Repealing Act on the trusts created by the Baronetcy Act is to revoke and extinguish those trusts and to give rise to a resulting trust in favour of the estate of the First Baronet as on the date of his death, and that the estate would devolve as on an intestacy under the Muslim personal law.

E The case of Munira Fazal Chinoy and Mumtaz Mohamed Rahimtoola, the appellants in Civil Appeal No.1221 of 1967 is that no resulting trust comes into existence consequent on the repeal because a contrary intention must be presumed in the First Baronet that the trust properties should go to the Fourth Baronet. It is also contended by these appellants that alternatively the trust must be deemed to have extinguished on the death of the Third Baronet and that the trust properties devolved on them, their mother the Dowager Lady Amine Currimbhoy and the Fourth Baronet as the heirs of the Third Baronet.

F The case of the Custodian of Evacuee Property, the appellant in Civil Appeal No. 1016 of 1967 is that the trust properties would ordinarily have passed to the Fourth Baronet but because of sub-s.(4) of s.7 of the Repealing Act the Official Trustee is required to transfer and vest the trust properties in the Custodian.

G It is contended on behalf of Sir Fazalbhoy Currimbhoy that the trust having been created by the Baronetcy Trust Act, a legislative statute, it must be regarded as a statutory trust and, thereafter, when the Baronetcy Act was repealed and the trust was revoked and

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extinguished by the Repealing Act, another legislative enactment, the necessary and only result was that the trust properties reverted to the estate of the settler, the First Baronet. Now, no doubt the trust was created by statute. But it was created at the instance of the First Baronet. It had to be a trust in perpetuity in order that the upkeep of the dignity and title of the Baronetcy should always be ensured. A trust such as this has been regarded as a private trust⁽¹⁾. Indeed, throughout the trial before the learned Single Judge and during the hearing of the appeals before the Division Bench of the High Court the case proceeded on the footing that the trust created by the Baronetcy Act was governed by the law relating to a private trust. The parties proceeded as if the trust was a private trust created directly by the First Baronet himself, and it was assumed throughout that the repeal by the legislature was a repeal effected by him. We must, therefore, proceed in this case as if we are dealing with a private trust.

The contention on behalf of Sir Fazalbhoy Currimbhoy that a resulting trust follows the revocation and extinction of the trust created by the Baronetcy Act rests on the provisions of section 83 of the Indian Trusts Act. Section 83 provides :—

“83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.”

The section incorporates in codified form the concept of what is known as a resulting trust. On the terms of section 83, a resulting trust can arise only “in the absence of a direction to the contrary”. It is not disputed that if there is no direction to the contrary the trust properties must be held for the benefit of the estate of the First Baronet. Can an intention to the contrary be inferred? Scott on Trusts declares⁽²⁾ :—

“If an owner of property transfers it inter vivos upon a trust which fails either at the outset or subsequently, and he has not indicated what disposition should be made of the property in the event of the failure of the trust, the trustee cannot retain it but will be compelled in equity to

(1) 34 Halsbury's Laws of England, p. 432 para 768.

(2) Scott on Trusts, Vol. IV, Articles 411 & 412.

A restore it to the settlor. In such a case the trustee holds the property upon a resulting trust for the settlor. Since the trustee was not intended to have the beneficial interest, and since the beneficial interest was not otherwise disposed of, it reverts or results to the settlor. On the failure of the trust the court will put the parties in status quo by restoring the property to the settlor. But if the settlor properly manifested an intention that no resulting trust should arise in the event of the failure of the trust, it will not arise, but the property will be disposed of in accordance with his intention, whether that intention is expressed in specific language or not. No resulting trust arises if it appears by evidence properly admissible that in the event of the failure of the trust the property should be transferred by the trustee to a third person, or held upon a different trust, or that it should be retained by the trustee free of trust.”

D And further it is said:

“The resulting trust is rebutted when it is shown that the settlor intended that in the event of the failure of the trust the property should be held in trust for other purposes.”

E In *Cock v. Hutchinson*⁽¹⁾ Lord Longdale, M. R. observed :—

F “Upon this deed a question is made, whether there is or is not a resulting trust to the grantor as to the surplus, with respect to which there is no declaration of trust; and for the purpose of determining that question, it is necessary to look carefully to the language of the deed, and to the circumstances of the particular case. In general, where an estate or fund is given in trust for a particular purpose, the remainder, after that purpose is satisfied, will result to the grantor; but that resulting trust may be rebutted even by parol evidence, and certainly cannot take effect where a contrary intention to be collected from the whole instrument, is indicated by the grantor. The distinctions applicable to cases of this kind are pointed out in the case of *King v. Dinison* (1 V. & D. 260) by Lord Eldon, who adopts the principles laid down by Lord Hardwicks in *Hill v. The Bishop of London* (1 Atk. 618). The conclusion to which

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H Lord Hardwicks comes is, that the question whether there

(1) 48 English Reports 222 at p. 225

is or is not a resulting trust must depend upon the intention of the grantor.....”

Now, it appears clearly from clause 2 of the will dated October 22, 1916 executed by the First Baronet that a substantially large sum of Rs.47,50,000/- was gifted by the First Baronet in equal shares to each of his sons excepting the eldest son, Mohamedbhoy. The gift was made *inter vivos* in respect of the major sons and under the will in respect of the minor son, Ismail. Clause 18 of the will, which constitutes the general residuary clause, discloses that the residue of the property was bequeathed by the First Baronet to all his sons, except Mohamedbhoy. Mohamedbhoy was apparently not included in those dispositions because he would succeed as Baronet to the benefit of the trusts constituted under the Baronetcy Act. He was the eldest son, and there is no reason to suppose that the First Baronet intended to exclude Mohamedbhoy from the benefit of his bounty. The First Baronet planned to provide for all his sons. Had he intended to exclude Mohamedbhoy for any reason, he would not have provided by clause 15 of the will that each one of his sons, including Mohamedbhoy, would enjoy an equal share in the mercantile business in Bombay and Calcutta in India, Hongkong and Shanghai in China and at Kobe in Japan. The benefit of the trusts created under the Baronetcy Act, according to the terms of that enactment, were to devolve on the male heir of the body of the First Baronet who took the name “Currimbhoy Ebrahim”, and when executing the Will the First Baronet had that benefit in mind for Mohamedbhoy as is apparent from clause 21 of the will, wherein he declared :—

“Lastly it is my special desire that my son Mohamedbhoy on succeeding to the title of Baronet and every succeeding Baronet shall forthwith on such succession adopt the names of Currimbhoy Ebrahim and continue to do so as long as he holds the title.”

The First Baronet had the line of Mohamedbhoy in mind for supplying the line of future Baronets. He gave a special position to him, his eldest son. By clause 7 of the Will, he bequeathed to Mohamedbhoy all the addresses, testimonials and caskets presented to him, symbols of the high status and dignity of the family, to be retained and passed down as heirlooms. It is true that under section 4 of the Baronetcy Act the possibility could be envisaged that in the event of an existing descendant of Mohamedbhoy not using the name “Currimbhoy Ebrahim” the Baronetcy would pass to a descendant of

- A** the next son of the First Baronet. But that envisions a very remote possibility. It is difficult to presume in reason that any male heir in the line of Mohamedbhoy would refuse to use the name "Currimbhoy Ebrahim" and deprive himself of the very real and substantial benefits of the Baronetcy. Therefore, the only conclusion can be that the trust properties created under the Baronetcy Act were intended
- B** by the First Baronet to vest in Mohamedbhoy and his heirs. In that light, section 27 of the Baronetcy Act assumes material importance in relation to the controversies before us. Section 27 reads :—

- C** "Upon failure and in default of heirs male of the body of the said Sir Currimbhoy Ebrahim to whom the same title of Baronet may descend the said Corporation shall stand possessed of the said hereditaments and premises particularly described in the first Schedule hereunder written and of any other hereditaments of a freehold tenure and of the funds
- D** which may then be vested in them by virtue and operation of this Act upon trust for the heirs of the last Baronet absolutely and shall also stand possessed of the said hereditaments and premises particularly described in the Second Schedule hereunder written or such of them as may be still vested in the said Corporation and any other hereditaments of a leasehold tenure which may then be vested in the said Corporation by
- E** virtue of this Act upon trust for the heirs of the last Baronet for all the then residues of the terms granted by the lessees by which the same are demised."

- F** Although s. 27 can come into play only "upon failure and in default of heirs male of the body of the said Sir Currimbhoy Ebrahim"—and that condition is absent in the present case—the provision provides evidence, in the light of what has been said above, of the intention of the First Baronet that the trust properties and funds should be confined even ultimately to the line of Mohamedbhoy. They would go to the heirs of the last Baronet, and not be distributed among his own heirs.

- G** We are of opinion that upon the provisions of the Baronetcy Act and of the Will, a direction by the first Baronet must be necessarily presumed that if the trust created by the Baronetcy Act fails or is revoked, the trust properties and funds must go to the last Baronet. The Division Bench of the High Court has found that the Fourth Baronet is entitled to the trust properties and funds, and a resulting trust does not
- H** come into existence. For the reasons which have prevailed with us, we hold that such a conclusion should ordinarily follow. However, the ultimate determination must turn on the validity of the claim made by

the Custodian of Evacuee Property that by virtue of sub-s. (4) of s. 7 of the Repealing Act the trust properties and funds to which the Fourth Baronet would be entitled must vest in the Custodian.

In understanding the import of sub-s. (4) s. 7 of the Repealing Act it is imperative to note that it is a part of the scheme embodied in s. 7 providing for the distribution of trust properties by the Official Trustee to "the persons rightfully entitled thereto". It comes into play as a step in the proceedings taken for that purpose. It is considered for application when the Official Trustee under sub-s. (1) or the High Court under sub-s. (2) is determining who are the persons entitled to the trust properties on distribution. Sub-s. (1) declares that if the claims received by the Official Trustee are justified and uncontested he must distribute the trust properties in accordance with such claims. Sub-s. (2) provides that if the Official Trustee is of the opinion that the claims are not justified, or if they are contested, he may apply to the High Court for orders and directions as regards the distribution of the trust properties amongst the several claimants. Sub-s. (3) provides that on obtaining such orders and directions, he must distribute the trust properties amongst the persons rightfully entitled thereto in accordance with the final decree or order passed in that behalf. Sub-s. (4) declares :

"If any person entitled to the trust properties, or any part thereof, has been or is declared an evacuee within the meaning of the Administration of Evacuee Property Act, 1950, and if any right, title and interest of such person in the trust properties has been or is declared to be evacuee property under that Act, then the Official Trustee shall, subject to any order or direction which the High Court may make or give, transfer and vest in the Custodian the trust properties, or so much thereof as is found to be evacuee property, and the provisions of the law relating to evacuee property shall as far as may apply to such right, title and interest in the trust properties as they apply to any other evacuee property under that law".

An analysis of the provisions of this sub-section is necessary. It applies where :

- (a) a person is entitled to the trust properties or any part thereof;
- (b) such person has been or is declared as an evacuee within the meaning of the Administration of Evacuee Property Act, 1950 and

- A** (c) his right, title and interest in the trust properties has been or is declared to be evacuee property under the Administration of Evacuee Property Act, 1950.

- B** If the three conditions are satisfied, the Official Trustee is required to transfer and vest in the Custodian the trust properties, or so much thereof as is found to be evacuee property. And the law relating to evacuee property, the sub-section says, shall apply to such right, title and interest in the trust properties as they apply to any other evacuee property under that law. When the sub-section speaks of "any person entitled to the trust properties" it refers to the person found entitled to the trust properties by the Official Trustee under sub-s. (1) of s. 7 or by the High Court under sub-s. (2) of that section. In the present case, the Fourth Baronet has been found by us to be entitled to Repealing Act has been defined by cl. (d) of s. 2 of that Act to mean all the trust properties and funds settled and created under the Baronetcy Act. The second condition is also satisfied because the Fourth Baronet was declared an evacuee on June 10, 1952 under the Administration of Evacuee Property Act, 1950. The third condition is similarly fulfilled. The right, title and interest of the Fourth Baronet in the trust properties, that is to say, his beneficial interest therein, was declared to be evacuee property on June 16, 1952 under the Administration of Evacuee Property Act 1950. All three conditions being satisfied, sub-s. (4) takes effect and the direction contained in it must be carried out. The Official Trustee is required to transfer and vest in the Custodian the trust properties found to be evacuee property.

- F** Now, the expression "evacuee property" has not been defined in the Repealing Act and, therefore, it must take its meaning from the definition in the Administration of Evacuee Property Act, 1950. Clause (f) of s. 2 defines "evacuee property" to mean "any property of an evacuee". The definition does not require that for property to be evacuee property, there must be a declaration under the Administration of Evacuee Property Act that it is evacuee property. A perusal of the relevant provisions of the Administration of Evacuee Property Act, 1950 indicates that the Act contemplates the necessity of a declaration that property is an evacuee property in order that it should vest in the Custodian of Evacuee Property. Unless that declaration is made the evacuee property, even though it belongs to an evacuee, cannot vest in the Custodian. But there may be another law under which evacuee property may vest in the Custodian. sub-s. (4) constitutes that law. It provides for another kind of case where evacuee property may also vest in the Custodian. Sub-s. (4) of s. 7 of the Repealing Act, in essence, is a law in addition

to the Administration of Evacuee Property Act, 1950 for vesting evacuee property in the Custodian. The provision in sub-s. (1) that the Official Trustee shall transfer and vest in the Custodian the trust properties found to be evacuee property has the same statutory consequence is a declaration made under s. 7 of the Administration of Evacuee Property Act, 1950. In opposition to the claim of the Custodian, it was pointed out that a declaration that evacuee property is vested in the Custodian is barred after May 7, 1954 by s. 7A of the Administration of Evacuee Property Act, 1950. The provision in sub-s. (4) of s. 7, on which the Custodian relies, is not a declaration under that Act. As we have held the Fourth Baronet to be entitled to the trust properties, it must be taken that those properties, in virtue of the definition of "evacuee property mentioned above, have been found to be evacuee property. The words "found to be evacuee property" mean found to be evacuee property in proceedings under s. 7 of the Repealing Act. Therefore it is beyond dispute that the Official Trustee must, by virtue of sub s. (4), transfer and vest in the Custodian the trust properties. Sub-s. (4) of s. 7 further declares that the law relating to evacuee property shall apply to such right title and interest in the trust properties as they apply to any other evacuee property under the law. The words "such right, title and interest in the trust properties" mean the right, title and interest in the trust properties which we have found the evacuee entitled to in this proceeding under s. 7, and which now vest in the custodian. That is distinct from the right, title and interest of the Fourth Baronet in the trust properties which were declared to be evacuee property under the Administration of Evacuee Property Act, 1950.

It is urged on behalf of Sir Fazalbhoy Currimbhoy that if sub-s. (4) of s. 7 of the Repealing Act is construed as declaring the trust properties to be evacuee property to which the provisions of the law relating to evacuee property would apply, the sub-section must be regarded as *ultra vires* on the ground that the State Legislature is not possessed of legislative competence to declare any property as evacuee property. The submission is misconceived. Sub-s. (4) of s. 7 of the Repealing Act can be attributed to the legislative power of the State Legislature in respect of Entry 41 of List III of the Seventh Schedule to the Constitution of India, which speaks of :—

"41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property".

Reference may also be made to Entry 27 of List III of the Seventh Schedule, which speaks of :—

- A** "27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan."

The Repealing Act received the assent of the President. In case of any repugnancy between the Repealing Act and the Administration of Evacuee Property Act, 1950, the former will prevail by reason of Article 254(2) of the Constitution. On the view taken by us, however, the sub-section is not repugnant to any provision of the Administration of Evacuee Property Act for, as we have pointed out already, it is in the nature of additional legislation on the subject.

- B**
- C** It is also submitted on behalf of Sir Fazalbhoy Currimbhoy that as the definition of the expression "the law relating to evacuee property" in the Repealing Act has been defined by cl. (b) of s. 2 of that Act to include the Evacuee Interest (Separation) Act, 1951, the Legislature must be taken to have intended that a part of the trust properties would be distributed among the heirs of the First Baronet. It seems to us that by defining the words "the law relating to evacuee property" in cl. (b) of s. 2 of the Repealing Act to mean the Administration of Evacuee Property Act, 1950, the Evacuee Interest (Separation) Act, 1951, the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and any other law for the time being in force in relation to evacuees or evacuee property, the Legislature intended to give the same powers to the Custodian in dealing with the trust properties as he enjoys in respect of other evacuee property.
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- E**

The object in enacting sub-s. (4) of s. 7 of the Repealing Act is apparent. The Fourth Baronet had been declared an evacuee. His interest in the trust properties under the Baronetcy Act had been declared evacuee property under the Administration of Evacuee Property Act, 1950. With the repeal of the Baronetcy Act and the revocation and extinction of the trust, that interest came to an end and the declaration ceased to have effect. The Legislature presumed that when the Official Trustee took proceedings for the distribution of the trust properties under s. 7 of the Repealing Act, the Fourth Baronet would be found entitled to the trust properties or part thereof. He had already been declared an evacuee, and consistently with the earlier declaration vesting his interest in the trust properties as evacuee property in the Custodian—now lapsed in consequence of the Repealing Act—the Legislature intended that the trust properties falling in full ownership to the Fourth Baronet on repeal, should likewise be vested in the Custodian. That could not be accomplished by a declaration under the Administration of Evacuee Property Act, 1950, in view of s. 7A

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thereof which prohibited such a declaration after May 7, 1954. The result could be accomplished under some other law, and sub. s. (4) of s. 7 was included in the Repealing Act to make provision accordingly. The trust properties were evacuee property because they belonged to an evacuee, and by the operative clause in sub-s. (4) of s. 7, they were vested in the Custodian. The law relating to evacuee property was applied to the right, title and interest of the evacuee in the trust properties, even as they applied to any other evacuee property under that law. The terms in which the law relating to evacuee property has been applied to the trust properties fully confirms the conclusion that the trust properties falling to the Fourth Baronet were to be treated at par with evacuee property generally.

It has been urged on behalf of the appellants in Civil Appeal No. 1221 of 1967 that the trust failed on March 14 1952, on the death of the Third Baronet, even before the Repealing Act was passed, and that the trust properties devolve, therefore on the heirs of the Third Baronet, that is to say his widow, son and two daughters. The submission was made before a Division Bench of the Bombay High Court and was rejected. We are also of the view that there is no substance in this contention. On the death of the Third Baronet, the benefit of the trusts created by the Baronetcy Act passed to the Fourth Baronet.

Towards the conclusion of the hearing, it was contended by learned counsel for Sir Fazalbhoy Currimbhoy that by virtue of the Notifications bearing No. 12/2/65-E-PTY and No.12/3/65-E-PTY dated September 10, 1965 and September 11, 1965 respectively the trust properties which could be rightfully claimed by the Fourth Baronet would stand vested in the Custodian of Enemy property under the Defence of India Rules, 1962. For that reason, it is said, the Fourth Baronet cannot be held entitled to the trust properties, and therefore they would not vest in the Custodian of Evacuee Property. The record before us does not show that the Custodian of Enemy Property filed any claim before the Official Trustee under sub-s. (1) of s. 7 of the Repealing Act and, consequently, we consider it inappropriate to enter into this matter.

The Division Bench of the High Court has held that the Custodian of Evacuee Property is entitled to be paid a sum of Rs. 1,334.06 representing the unpaid amount of the net income of the trust properties upto March 14, 1960. This finding has not been challenged, and we affirm it.

- A** The Official Trustee has pointed out that various liabilities on account of Income-tax, Wealth tax, House tax and other taxes are outstanding in respect of the trust properties. He prays for directions that those tax liabilities be allowed to be cleared before the trust properties are transferred by him. He also points out that there are fees, charges, costs and other expenses to be paid off. We propose
- B** to remand the case to the High Court for making necessary orders in that regard after satisfying itself as to the existence and amount of these liabilities.

- C** In the result, Civil Appeal No. 722 of 1967 and Civil Appeal No. 1221 of 1967 are dismissed, and Civil Appeal No. 1016 of 1967 is allowed. There is no order as to costs of these appeals in this Court, except an order for costs in favour of the Official Trustee, who shall be entitled to recover his costs of these appeals from the trust funds in his hands. The judgment and order dated August 9, 1966 of the Division Bench of the Bombay High Court are set aside, except in so far as they contain the direction for payment of Rs. 1,334.06 to the Custodian of Evacuee Property and in so far as they direct, and make provision for, the payment of the costs of the Official Trustee and other parties and affirm the order for costs made by the learned Single Judge. The Official Trustee shall transfer to and vest, in the Custodian of Evacuee Property the accumulated trust properties and funds settled and created under the Sir Currimbhoy Ebrahim Baronetcy Act, 1913, subject, however to the aforesaid directions and orders and to the directions and orders by the Bombay High Court for prior payment of the liabilities, if any, on account of Income Tax, Wealth Tax, House tax and other taxes and other charges, expenses, fees and costs incurred by the official Trustee. The case is remanded to the Bombay High
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- F** Court for that purpose.

P.B.R.

C. A. Nos. 722 & 1221 of 1967 dismissed.
C. A. No. 1016 of 1967 allowed.