

1948 *Present* : Jayatileke, S.P.J. and Windham J.

FRANCINA *et al.*, Appellants, and GUNAWARDENE, Respondent.

*S. C. 439—D.C. Matara, 17,296.*

*Estate Duty—Property gifted subject to life interest—Death of donor—Application by administrator to sell the property—Not under his control—Ordinance 8 of 1919, section 19.*

One J gifted a certain land subject to his life interest. On his death his administrator applied to Court for permission to sell this land for the purpose of getting funds to pay the testamentary expenses and stamp duty. The application was allowed and the land was sold by public auction and bought by the plaintiff.

*Held*, that title to the land was in the donees and that the Court had no jurisdiction to order the sale of the land. No title therefore passed to the plaintiff at the sale.

*Held, further*, that the land did not come under the control of the administrator within the meaning of section 19 (1) of the Estate Duty Ordinance 8 of 1919 and that duty was not payable by him. The proper course for the recovery of estate duty would have been for the Commissioner of Stamps to take steps under section 32.

**A** PPEAL from a judgment of the District Judge, Matara.

*E. B. Wikramanayake*, for the defendants, appellants.

*N. E. Weerasooriya, K.C.*, with *W. D. Gunasekeru*, for the plaintiff, respondent.

*Cur. adv. vult.*

August 5, 1948. JAYETILEKE S.P.J.—

This is an action for a declaration of title to the land described in the schedule to the plaint. It is common ground that the land belonged to one Jayasinghe who died on August 8, 1929, leaving an estate over Rs. 2,500 in value, which was administered in testamentary action

No. 3,554 of the District Court of Matara. The plaintiff alleged that, in the said action, the said land was sold at the instance of the official administrator, by public auction, with the authority of the Court, for the purpose of getting funds to pay the testamentary expenses and stamp duty, and, at such sale, he purchased it for Rs. 450 and obtained a conveyance in his favour bearing No. 450 dated August 23, 1944, attested by E. S. Fonseka, Notary Public (P6). The [defendants alleged that Jayasinghe gifted the said land to the 6th defendant, subject to his life interest, by deed No. 7,621 dated August 4, 1929, attested by N. J. S. Gunawardena, Notary Public (6D1), and that the administrator of Jayasinghe's estate had no power to sell it. They alleged further that the 6th defendant transferred it by deed No. 965 dated June 20, 1942, attested by E. Dissanayake, Notary Public (6D2), to the 2nd, 3rd, 4th and 5th defendants and that the latter had a good and valid title to it.

The main question for the decision of the Court was whether the order for the sale of the property in the testamentary action was made without jurisdiction. This question had to be decided under the repealed Estate Duty Ordinance, No. 8 of 1919 (*see* S79 of the Estate Duty Ordinance, Chapter 187). The defendants did not contest that the property passed on the death of the deceased for the purpose of estate duty, but they said that it passed to the 6th defendant and not to the administrator. S18 of the Ordinance draws a distinction between property passing on the death of a person to his executor, and property passing to any other person. The only interest the deceased had in the property in question was a life interest which ceased on his death, and there was, therefore, nothing which could pass to the administrator. The proceedings show that, on the death of the deceased, the 6th defendant entered into possession of the land, and remained in possession till he transferred it in 1942 by 6D2. S19 (1) provides that the executor shall pay the estate duty on all property coming to him, or being under his control, and that he may pay the estate duty in respect of any property not coming to him, or being under his control, if the persons accountable for the duty in respect thereof request him to make such payment. S19 (2) provides that the estate duty, so far as not paid by the executor, shall be paid by the person to whom any property passes for any beneficial interest in possession, and also to the extent of any property actually received by him. It is clear from these provisions that the estate duty in respect of the property in question was payable by the 6th defendant. But the journal entries in the testamentary action show that the greater part, if not the whole of it, was, in fact, paid by the administrator. It was not suggested that such payment was made at the request of the 6th defendant. The administrator seems to have made the payment because he thought that 6D1 was not the act and deed of the deceased. He took no steps to have the deed set aside, or to have the 6th defendant ejected from the land. The question whether 6D1 was the act and deed of the deceased was raised by the plaintiff at the inquiry in the Court below and decided by the District Judge against him. The correctness of that finding was not questioned at the argument before us. On these facts it is not possible to say that the said land came under the "control" of the administrator within the meaning of S19 (1). The proper course for the recovery of the estate duty in respect of the land in question

would have been for the Commissioner of Stamps to make an application to the District Court under S32 for a citation on the 6th defendant to show cause why execution should not issue against him. No such application was made by the Commissioner. I am of opinion that the District Judge had no jurisdiction to order the said land to be sold and that P6 did not convey any title to the plaintiff. The facts of this case are somewhat similar to those in *Samarasinghe v. Secretary, District Court, Matara*<sup>1</sup>. In that case one Joonoos gifted a tea estate belonging to him to four of his children a few months before his death. The administrator of his estate applied to the Court and obtained writ to sell the share of the 2nd respondent, who was one of the donees, to recover her share of the estate duty. At the sale the 4th respondent purchased the said share. The appellant, who had a mortgage of the 2nd respondent's share, contested the validity of the sale on the ground that the Court had no jurisdiction to order the sale. It was held that the order for sale was unlawful and therefore without jurisdiction. I would set aside the judgment appealed against and dismiss the plaintiff's action with costs in both Courts.

WINDHAM J.—I agree.

*Appeal allowed.*

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