

IN THE SUPREME COURT OF JUDICATURE  
IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM BRENTFORD COUNTY COURT  
(Mr Recorder White)

CCRTF 98/1122/2

Royal Courts of Justice  
The Strand  
London WC2

Tuesday 20th July, 1999

B e f o r e:

LORD JUSTICE SCHIEMANN  
MR JUSTICE LINDSAY

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SUMIR SINGH DHINGRA

Respondent

- v -

SURJIT SINGH DHINGRA

Appellant

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(Computer Aided Transcript of the Palantype Notes of  
Smith Bernal Reporting Limited, 180 Fleet Street,  
London EC4A 2HG  
Tel: 0171 421 4040  
Official Shorthand Writers to the Court)

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THE APPELLANT appeared on his own behalf

MR D REES (Instructed by Messrs Darlington C Parkinson, London W3 9EH) appeared on behalf of  
the Respondent

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J U D G M E N T  
(As approved by the Court)

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Tuesday 20th July, 1999

## JUDGMENT

LORD JUSTICE SCHIEMANN: I will ask Mr Justice Lindsay to give the first judgment.

MR JUSTICE LINDSAY: This is the appeal of Mr Surjit Singh Dhingra against the order of Mr Recorder White sitting at Brentford County Court on 20th July 1998. By the learned Recorder's order it was declared that a National Savings Bond and some Portman Building Society accounts were held by Mr Surjit Singh Dhingra (who was the defendant below) either as trustee for the claimant, his only son, Sumir Singh Dhingra, in some of the instances, or by the father and son together as trustee for the son in another case. There were consequential orders for the transfer of proceeds to the son; for an account of dealings; for payment to the son of whatever amount should be found due on the taking of that account; and for costs. The father was ordered to pay the son's costs of both the son's claim and the father's counterclaim. I have not in fact seen the father's counterclaim; that was dismissed.

The father applied to the learned Recorder for a stay, but that was refused. But, later on, the Court of Appeal required the monies which were the subject matter of the action to be held by the claimant's solicitors in an interest bearing account to await the outcome of his appeal, and that is where they remain.

It will be noticed that both the father and the son are "Mr SS Dhingra". It is convenient, to avoid confusion, if I speak of them simply as the father and the son.

The son is now 23 years of age. His mother, the claimant's wife, unhappily died in January 1987. In consequence of that death, an insurance policy matured and some £33,000-odd became payable to the father. At that time the father already had an account with the Portman Building Society and on 13th February 1987 he opened a new account with that building society. The application form for the

opening of that account, unhappily, is no longer available. But there were statements of account produced by the building society which are headed "Trustee for SS Dhingra". Moreover, the son found a statement dated 31st March 1989 relating to that account, prepared by the building society, and that also indicates "Trustee for SS Dhingra". The learned Recorder held that the account which was opened by the father had been marked by the building society as being held by the father as "Trustee for SS Dhingra", and, in all the surrounding circumstances that were brought to his attention, the learned Recorder held that that meant that the account was held by the father as trustee for the son, who was then aged 11.

That first Portman Building Society account remained unchanged until 8th November 1991. The money was then moved by the father to a second Portman account, and, again, that second account was held by the learned judge to have been headed by the building society "Trustee for SS Dhingra"; and again there are building society statements of account headed "Trustee for SS Dhingra". The second account was then moved to a third account, also held by the learned judge to have been headed "Trustee for SS Dhingra". That was in August 1992 and, again, there are available building society statements of account headed "Trustee for SS Dhingra". There was then a move to a fourth account in February 1993. By then the balance was down to £19,000-odd, and this time and for the first time the account appears to have been headed simply "SS Dhingra". There were several subsequent movements, including the purchase of a National Savings Bond in the name of both the father and the son.

The learned Recorder had before him such accounting records as are nowadays still available and he heard the oral evidence of both the father and the son. He made findings as to certain payments in and out of the accounts. He held that on the balance of probabilities the form which the father had completed on the opening of the very first relevant account (the form itself was no longer available, as I have mentioned) was the same, as a blank form, as those which were later completed by the father

and which were available. They had on them a space for completing the name of a trustee or a beneficiary, and that was where, in the learned judge's holding, the words "Trustee for SS Dhingra" would have been entered. The father accepted that the forms as such had remained the same throughout the whole history of the matter. The learned judge saw no other reasonable explanation of how the statements of account and the contemporary statement of 31st March 1989 should have been marked "Trustee for SS Dhingra" if the form had not been completed in the way that he held that it had been.

The father had said it was a complete mystery how the trusteeship had come to be noted. The father also claimed that the passbooks for the closed accounts had been thrown away, not by him but by the building society, which might be thought to be a remarkable piece of evidence.

The learned judge held that the three certainties necessary for the setting up of a trust were present. He held that there was nothing to suggest that the father had reserved any benefit for himself, that the beneficiary in all the circumstances was plainly intended to be the son and that the National Savings Bond had been purchased out of the account at the Portman which, according to the learned judge's holding, was a trust account. Therefore it was, without more, itself held in trust for the son. That was a conclusion which the father had unsuccessfully sought to resist. The judge ordered the taking of the account which I have mentioned, in order to find out what dealing had been conducted with trust monies over the years. It may be added, on the facts, that the father had given written evidence that had included that the name of the son had been added later, that is to say after the original opening of the Portman Building Society account. However, he later claimed in oral evidence that that was a mistaken reference and that it was only the National Savings Bond that he was talking about when he spoke of the name of the son being added. There was plainly some room for a conclusion that the father's evidence had been unsatisfactory in those areas.

Before I turn in more detail to the grounds on which the father relies before this court today, it would

be well to remind myself of some unquestionable propositions of law. Mr Dhingra, the appellant, has mentioned Snells Equity 29th ed. which, of course, is a very standard work. There are five brief propositions that one ought to have in mind as stemming from that work. First of all, as far as concerns personalty, which is what we are here concerned with, a declaration of trust may be by word of mouth or even inferred from conduct, (Snells Equity page 123); secondly, no particular form of words is necessary, (Snells Equity page 124); thirdly, where the property in relation to which the trust is declared is already in the name of the declarer of the trust, the trust is, as it is put, "Completely constituted the moment that the trust is declared", (Snells Equity page 121); fourthly, once the trust is completely constituted it can be enforced by a beneficiary even if he or she is a mere volunteer (Snells Equity page 120). The notion that equity will not assist a volunteer therefore has no application in this case because this is a case where a trust was declared and therefore was completely constituted from its first moment of existence; fifthly and lastly, in general a completely constituted trust cannot be revoked by the settlor unless the settlor has reserved a power of revocation in the settlement itself, (Snells Equity page 127). Those are elementary propositions which need to be borne in mind as the story unfolds.

The appellant, the father, has appeared before us in person, as indeed he had below. He is a retired civil servant. He holds an MA and LLM (London) and his knowledge of the law is not immaterial, as I shall come on to. He has not only addressed us orally, but, before that, he prepared a skeleton argument. I do not understand his oral argument to be as full as the skeleton. I think I will give him the benefit of treating the skeleton as the full argument which he would wish to have considered. He raises a number of points. The first two can be taken together under the heading of "intention and creation of trust". In effect he urges (and it is a point he has orally emphasised) that there was no sufficient evidence before the learned Recorder to justify the holding that there had here been an intention on the father's part to declare a trust in favour of the son. However, against that, there are a number of features.

There was a holding that the first relevant Portman account was marked by that building society as "Trustee for SS Dhingra" and it cannot be said that there was no adequate material for such a conclusion. There was, for what it was worth, a holding also that the father already had an existing account with the Portman Building Society that was not so marked; which, of course, invites the thought: if he had merely intended to pay money in for his own entire benefit, why should he not have used that pre-existing account?

There was a holding that the second and third accounts were also headed "Trustee for SS Dhingra", there, again, there was some material for such a conclusion. The learned Recorder commented, correctly, that one cannot alone hold in trust for oneself, so if the account was, as he held, marked "Trustee for SS Dhingra" it cannot have been the father declaring in his own favour, but could only, in context, have been the father declaring himself to be trustee for the son. There was some evidence in support of a holding as to the father wishing at that time to put money beyond the reach of his daughter, with whom he had fallen out. The learned judge also held that the son's welfare was at the time at the very forefront of his mind. The father accepted in oral evidence that when he received the £33,000-odd he felt the need to make provision for the son, for a sense of security. His son, he said, was his paramount consideration at the time. All that is, at any rate, not inconsistent with the creation of a trust in the son's favour.

The learned Recorder held (and here, in particular, the father's education and legal learning unfortunately worked against him) that if the building society had consistently been in error in marking the accounts "Trustee for SS Dhingra", the father would surely, as a man so qualified, have done something about it; presumably he would have sought to have that description erased from the record of the building society. Yet nothing of the kind was done. The father had plainly received the statement of 31st March 1989; that was found to be the case; the son had found the document amongst his father's papers. The father accepted that that document had been received by him. It is in the nature of

things likely that that was not the only paper sent by the building society to the father over a period of years because the father would, of course, have needed to fill out tax returns and so on. Moreover, the father accepted that he was more than familiar with the whole concept of trusts.

Although, of course, what was precisely in the father's mind on 13th February 1987 could not have been directly proved, there was (as I, for my part, would think) ample material for the learned Recorder to infer that there had, on the father's part, at that time been an intention to declare a trust of the account in favour of the son. It will be remembered that inference from conduct can suffice, as the reference to Snells Equity indicated. That is all I say on the intent and the creation of a trust.

The third point that the skeleton argument gives rise to depends on the case called Warriner v Rogers (1873) LR Eq Cas 340. That was a case before Vice-Chancellor Bacon. I am not sure how far the father would wish to have this point dealt with, it is certainly in his skeleton, although he has not mentioned it orally. The passage from the skeleton which the father emphasises is this:

"In order to give validity to a declaration of trust of property, it is necessary that the donor or grantor should have absolutely parted with his interest in the property and have effectually put such interest beyond his own reach."

Taken very literally, without a fuller understanding of the context, that would seem to deny efficacy to a declaration of trust, because where there is a declaration of trust the legal estate remains in the settlor. But that would be totally to misunderstand the drift of the case Warriner v Rogers. In that case the learned Vice-Chancellor cited with approval the well-known case of Milroy v Lord, which makes it quite plain that a declaration of trust in which the legal estate remains in the declarer but the beneficial interest passes by way of the declaration to another is a perfectly sound way of creating a trust. I do not think I need to go further into the detail, especially since the father has not actually referred to Warriner v Rogers before us. But there is nothing in that point that assists the father in this case.

Nor can the fact that the National Savings Bond was in the name of the father and son greatly assist the father because if, as the learned Recorder held, the Savings Bond was bought with trust money held in trust for the son, then plainly the father could not divest the son of the benefit of that by the simple device of putting the bond in joint names rather than, for example, in the son's own name. It has to be remembered also that the son at the time was a minor.

The next point is headed "Revocation". I have already noted the passage in Snells Equity that in general the settlor cannot revoke a completely constituted trust unless a power so to do is reserved. There are exceptions available in the case of fraud, mistake or misapprehension but the burden in all such cases is on the settlor (Snells Equity page 128) save where there is undue influence exerted. But, of course, here one can hardly have a case where an infant son could be said to be exerting undue influence on an adult father. So nothing there assists the father either.

Next Mr Dhingra has a heading called "Object", meaning the object of the trust. At page 9C of the judgment the learned Recorder says:

"Thirdly, the objects or persons intended to have the benefit of the trust must be certain. Clearly, one name will have been put down there as the beneficiary, and that is the Plaintiff. [In other words, the son.] So there was, in my judgment, absolute certainty here."

Given his findings that the account had been opened marked "Trustee for SS Dhingra", and that that necessarily referred to trusteeship of which the son was beneficiary, that sentence beginning "Thirdly" is, as it seems to me, completely unshakeable.

Next in the skeleton there is reference to "balance of probabilities". The learned Recorder did indeed use that phrase. In a civil case such as this it was, of course, the correct test for him to have in mind and



it cannot be complained of. It leads to a complaint by the father that the judge ignored the documents in the case. On the contrary, as it seems to me, he paid attention to such limited documents as there were and, in particular, to the document of 31st March 1989, referable to the first account and showing "Trustee for SS Dhingra", and also to the later accounts that were produced by the building society and headed "Trustee for SS Dhingra". The father does not identify any particular document which he says has been ignored save a document which he produced showing outgoings that he has paid on his son's behalf. But that, of course, does not deny the existence of the trust, which is the matter with which we are concerned.

Save for a point as to costs (as to which it would be appropriate to hear father and son later rather than now) I have now dealt with all the points that were raised in the skeleton argument, and also the points that were raised orally. It is, of course, a sad and unfortunate case. It is never pleasant when a father and son are driven to such lengths as hostile litigation, as this case indicates. Whether there is room for some magnanimity on the son's part when the question of how far, if at all, the account is to be pursued and then whether payment under the account is required are not matters for us. But, simply limiting myself at this stage, leaving aside costs, to the question of whether the appeal should be allowed or dismissed, for my part, I would dismiss the appeal.

LORD JUSTICE SCHIEMANN: I agree with the judgment that has been delivered and that this appeal should be dismissed for the reasons there given.

ORDER: Appeal dismissed with costs. Detailed assessment of the Respondent's costs.

(Order not part of approved judgment)

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