

JOURNAL FOR LAW STUDENTS AND RESEARCHERS**EXTINCTION OF TRUSTS****Akanksh Deekonda¹****NLIU BHOPAL**

“Of all the exploits of equity the largest and the most important is the invention and development of the trust”- Maitland

INTRODUCTION

Chapter VIII of the Indian Trusts Act, 1882, is headed Extinction of Trust and deals with when a trust is extinguished, when it can be revoked, and a provides that the revocation of a trust by the author under a power to do so in till it is revoked the instrument of trust will not defeat what the Trustee has done under the trust till it is revoked.

A trust in favour of creditors can be revoked even if no power to do so in the instrument of trust by reason of the express provision of Section 78 (c) of the Indian Trusts Act, 1882. The special position of trusts in favour of creditor has been considered above

The provision that a trust can be revoked with the consent of beneficiaries provided that they are sui juris, has to be read along with the provisions of Section 56 of the Indian Trusts Act, 1882, under which beneficiaries who are sui juris can demand and obtain possession of the trust property. This right of the beneficiaries, if exercised, amounts in effect to a revocation of the trust.²

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² Section 56, Indian Trust Act,1882.

A partial extinction of a trust can take place in England when the trustee at the request of a beneficiary who is sui juris apportions to him the portion of the trust property in which he has an interest, the trust pertaining to that portion then comes to an end.

One of the consequences of the extinction of trusts may be the creation of a Resulting Trust. The question has been briefly discussed in statutory provisions on the subject have been noted in Chapter 3.8 above, and is fully discussed in this Chapter. Resulting Trusts also arise in situations wholly unconnected with trusts, as when a contract is for an illegal purpose and a bequest is for an unlawful purpose. Resulting Trusts of the latter category are considered in Chapter 14 along with other obligations in the nature of trusts.

STATUTORY PROVISIONS-INDIAN TRUSTS ACT, 1882

The Chapter contains only three Sections.

SECTION 77

Section 77 provides that a trust is extinguished when

its purpose is completely fulfilled; or

its purpose becomes unlawful;³

the fulfilment of the trust becomes impossible by reason of the destruction of the trust property or otherwise; or

the trust, being revocable, is expressly revoked

SECTION 78

A trust created by Will can be revoked at the pleasure of the testator and A trust otherwise can only be revoked:

by the consent of the beneficiaries provided that they are competent to contract;

a trust created by a non-testamentary instrument or word of mouth if a power of revocation has been expressly reserved to the author of the trust;

³ Section 4, Indian Trust Act,1882.

A trust created for the payment of debts of the author of the trust at the pleasure of the author provided that the trust has not been communicated to the creditors

SECTION 79

Section 79 makes it clear that no trust can be revoked by the author of the trust so as to defeat or prejudice what the trustee may have duly done in the execution of the trust.

RESULTING TRUSTS

The doctrine of resulting trusts was known in Indian law even before the Indian Trusts Act, 1882, was enacted.⁴

Section 83 covers situations where a trust is incapable of being carried out or is carried out, leaving a surplus⁵; in such cases, in the absence of a direction to the trustee holds the trust property or the surplus of the trust property in trust for the author of the trust or his legal representatives. The statutory illustrations to the section are instructive.

ILLUSTRATIONS

ILLUSTRATION (A)

Land is conveyed by A to B:

‘upon trust’, and no trust is specified

‘upon trust to be thereafter declared’, and no trust is declared;

upon trusts that are too vague to be executed;

upon trusts that become incapable of taking effect; or

in trust for C who renounces the trust

In each of these cases, B holds the land for the benefit of A

⁴ Canbank Finance Services Limited v. Custodian, (2004) 8 SCC 355

⁵ Ameeroonissa khanum v. Ashraffunnisa, 14 Moo IA 433 (1871).

ILLUSTRATION (B)

If a sum is transferred with a direction to pay interest on the sum C for life, and both the settlor and C die, the surplus held on trust for the legal representatives of the settlor

ILLUSTRATION (C)

Property is transferred on a trust for sale, and one moiety of the proceeds is to be held for a specified charity, and the other for the maintenance of the worship of an idol. The charitable purpose wholly fails, and the maintenance of the worship does not exhaust the other moiety. The trustee holds the first moiety and the part of the other moiety not applied, in trust for the author of the trust or his legal representative.

ILLUSTRATION (D)

Money is bequeathed to the trustee to enable him to buy land and to use the land for certain purposes. The purposes wholly or partially fail. The undisposed part of the money or land is held in trust for the legal representatives of the Testator.

Section 84 provides that if property is transferred for an illegal purpose, and either the purpose is not carried out or the transferor is not as guilty as the transferee or allowing the transferee to retain the property might defeat the provisions of any law, the transferee holds the property for the benefit of the transferor. This provision is not limited to trusts, and applies to all transfers of property including cases where a trust is imposed on the trustee.

Section 85 provides that if a bequest is made for an unlawful purpose, or the legatee agrees with the testator during his lifetime to apply the legacy for an unlawful purpose, the legatee holds the property in trust for the legal representatives of the testator.

The second paragraph of section 85 provides that if a will contains a bequest and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representatives. Section 88 is also relevant as is noted below. The provisions of sections 84, 85 and the other provisions are not strictly related to trusts but obligations in the nature of trusts and are considered in Chapter 13.

DECISIONS : EXTINCTION OF TRUSTS

There are few decisions on these provisions

If all the beneficiaries die, the trust necessarily comes to an end.⁶

If moneys have been deposited with a bank as a security deposit and the Bank goes into liquidation, questions have arisen as to whether the trust could be said to be extinguished. It has been held that a trust is only extinguished when the deposit money is returned which is when the trust is performed.⁷ When moneys were deposited with a Bank as security deposit for a tender by A for the credit of B, and B requested the Bank to return the money to A which had in the meanwhile gone into liquidation, it was held that the trust was extinguished when B requested the bank to return the money, and A was not entitled to preferential payments the Court does not appear to have considered the aspect that in such a case there would be a resulting trust in favour of A under section 83 of the Indian Trusts Act, 1882.⁸

When land was given for use as a public highway, and it ceased to be so used, the land reverted to the settlor.⁹ When moneys were collected by owners of salt pans to construct a road, but it was not possible to do so, the trust failed as its purpose became impossible to perform¹⁰. Similarly, when land was given to the District Board to construct a public road to connect a public garden with a public road, and the garden was sold, the purpose of the trust cannot be fulfilled as it has become impossible; the District Board holds the land for the settlor.¹¹

Once the purpose of the trust was fulfilled, the trustee stands automatically discharged; there is no question of the District Judge granting him a release as he remains liable to render accounts and deliver the trust property to the settlor or his heirs.¹²

Section 78 of the Indian Trusts Act, 1882, specifically provides that a trust may be revoked by the consent of all the beneficiaries provided that they are sui juris. The Courts have applied this provision.¹³ The same rule has been held in England to apply to Unit Trusts so that unit-holders may bring a scheme to an end.¹⁴ As unit trusts and mutual funds in India have also adopted the structure of creating a trust, the same rule should apply in India.

⁶ Ranjit Kumar Bose v. Shirish Chandra Bose, (1994) AIR 1 SC 1254.

⁷ Dineshaw & Co (Bankers) Ltd. V. Mst. Krishna Piary (1941) AIR Oudh 126.

⁸ Jugal Kishore Rup Chand v. Ambala Commercial Bank Ltd., AIR 1953 Punj 98

⁹ Nihal Chand v. Azmat Ali Khan, (1885) ILR 7 AU 362

¹⁰ Lakshmanan Chettiar, N. N. R. M. v. N. N. L. Ramaswany chettiar, AIR Mad 641 (1938)

¹¹ Gela Ram v. District Board, Muzaffargarh, AIR 1923 Lah 93

¹² Darshan Lal, S. v. Dalliwall, AIR 1952 All 825

¹³ Isaac Nissim Silas v. Official Trustee of Bengal, AIR 1957 Cal 118; Muzzakham Tha v. Mir Barkat ' Ali Khan, AIR 1989 AP 68.

¹⁴ In re A.E.G. Unit Trust (Managers) Ltd.'s Deed, [1957] Ch 415; [1957] 1 All ER 506

In India, a trust cannot be revoked or varied unless all the beneficiaries consent and they are all sui juris. In England, the (English) Variation of Trusts Act, 1958, a Court can even sanction a variation or termination of a trust even if some of the beneficiaries are minors or unborn persons provided that the Court regards the variation or revocation to be for their benefit.¹⁵

A settlor can revoke a trust if a power to do so has been expressly reserved in the trust deed. Where the trust deed did reserve the power, and in exercise of that power the original trust was revoked and fresh trusts created, the fresh trust could not be revoked as the power of revocation had not been reserved in the deed of revocation.¹⁶ In the absence of an express power to revoke, a trust cannot be revoked.¹⁷ When, on its true construction it was found that a settlement created a trust in respect of the income from certain stocks but an outright gift of the stocks themselves, the settlor could not revoke the transfer of the stocks.¹⁸

A charitable trust which is complete cannot be revoked.¹⁹

It has been held in England that a clause in a trust deed authorising the settlor to revoke a trust with the consent of the Court was not valid as a private person could not confer jurisdiction on a Court.²⁰

As has been noted, a trust to pay the debts of the settlor can only be revoked if it has not been communicated to the creditors.

EXTINCTION OF A CHARITABLE OR RELIGIOUS TRUST

The dedication of property to a charitable or religious trust is permanent. Where the dedication of property is to the service and worship of a family idol or a particular deity or to a public temple the dedication cannot be revoked+. Thus once a religious trust is Creation and Extinction of Trusts created, it is irreversible, irrevocable and it cannot be terminated. Where

¹⁵ See *In re Van Grusen's Will Trusts*, [1964] 1 WLR 449

¹⁶ *Central Bank Executor and Trustee Co. Ltd. v. Hormusji Nusserwanji Madraswalla*, AIR 1969 Bom 101: 70 Bom LR 568.

¹⁷ *Paul v. Paul*, (1882) 20 Ch D 742 CA; *In re Bowden*, [1936] Ch 71

¹⁸ *Standing v. Bowring*, (1885) 31 Ch D 282 CA

¹⁹ *Krishnasamy Pillai v. Kothandaram Nacken*, (1914) 27 Mad LJ 582

²⁰ *In re Hooker's Settlement*, [1955] Ch 55: [1966] 3 All ER 321

the trust has been effectually created even the fact that the trustees have failed to carry out the objects of the trust will not invalidate it. Thus it is clear that the provisions of Section 77 of the Indian Trust Act, 1882 do not apply to religious or charitable trusts.

ACCELERATION

Section 9 of the Indian Trusts Act, 1882, enables a beneficiary to renounce his interest under a trust; the Act, however, contains no provision providing for the acceleration of subsequent interests if the beneficiary who renounces his interest held an intermediate interest.²¹

Section 58 of the Act, however, permits a beneficiary to transfer his interest under a trust, and relying on that provision, the Supreme Court held that if a person with a life interest renounce her interest, the income to which she was entitled under the life interest is the income of the person entitled to it after her death; the decision, in effect, accelerated the subsequent interest.²²

It has been held also that in India the doctrine of acceleration, as developed in English law, is applicable as there is no provision in the Indian Trusts Act, 1882, which is inconsistent with the application of the doctrine; the subsequent interest would be accelerated if there was nothing in the trust deed which precluded the application of the doctrine, if the trust deed did contain a contrary intention, there would be a resulting trust in favour of the settlor or his heirs²³

English Courts have applied the doctrine of acceleration where there is a renunciation of an intermediate interest and there was nothing in the deed of trust to prevent acceleration²⁴ if on its true construction, the instrument of trust precludes acceleration, there is a resulting trust in favour of the settlor or his heirs.²⁵ If the deed of renunciation so specifies, the interest released must be held on a resulting trust and be added to residue of the estate of the testator²⁶

²¹ Illustration (a) to section 83 of the Indian Trusts Act, 1882, does provide for a resulting trust

²² Commissioner of Income-tax, Bombay v. Kasturba Walchand Trust, AIR 1967 SC 844: (1967) 2 SCR

²³ Devalakshmi Harisukh Vahalia v. Vishvantha P. Bhatt, AIR 1972 Bom 103: 73 Bom LR 594
Commissioner of Income-tax/Wealth-Tax v. Indumathi Kirloskar, 1988 176 ITR 422

²⁴ In re Hodge. [1943] Ch 300: [1943] 2 All ER 304; In re Davies, [1957] 1 WLR 922 [1957] 3 All ER 52

²⁵ In re Flower's Settlement Trusts, [1957] 1 WLR 401: [1957] 1 All ER 462 CA; In re Hatfield's Will Trusts, [1958] Ch 469.

²⁶ In re Guinness's Settlement, [1966] 1 WLR 1355: [1966] 2 All ER 497

If a father obtains a policy under the Married Women's Property Act, 1874 for his daughter, there is a trust in favour of the daughter if she releases her interest under the policy, the father, the settlor, is entitled to the policy.²⁷

DECISIONS: RESULTING TRUSTS

Section 83 will have no application if the instrument of trust indicates contrary intention²⁸

It has been held, relying on the Sir Currimbhoy Ebrahim Baronetcy Act 1913, and the Will of the first Baronet that there was no resulting trust in the case of the Baronetcy estate.²⁹ Similarly, on the construction of the deed creating a trust for the creditors of the settlor, it was held that there was no resulting trust in respect of the surplus left after all his debts were paid, as the trust deed contemplated the vesting of the trust property absolutely in the creditors in proportion to their claims against the settlor.³⁰

Where a company purchased annuities for an employee and his wife to be paid when the employee reached the age of 55, there would be a resulting trust if the employee died before reaching that age as the annuity was conditional on the employee reaching that age, and if he died earlier, the object of the trust failed.³¹

If all the beneficiaries were dead and part of the trust property remains, there is a resulting trust in favour of the heirs of the settlor as had also been provided in the trust deed.³²

Where a trust fails in part because it was in favour of a person then unborn, there is a resulting trust in favour of the settlor³³. This principle of the Indian Trusts Act, 1882, was

²⁷ Enayatullah Saheb, S.M. v. S.A.K. Jeelani Saheb, AIR 1942 Mad 136

²⁸ See Chapter 12.2 above where the provision is set out

²⁹ Fazalbhoy Currimbhoy v. Official Trustee of Maharashtra, AIR 1979 SC 687: (1979) 3 SCC 1891979 (2) SCR 699.

³⁰ Smith v. Cooke, [1891] AC 297

³¹ Indian Molasses Co. (Private) Ltd. v. Commissioner of Income-tax, West Bengal, AIR 1959 SC 1049: (1959) Supp (2) SCR 964: 1959 (37) ITR 66 (the actual question before the Court was whether the amounts expended by the company for the purchase of the annuity was a deductible expenditure in computing income tax).

³² Ranjit Kumar Ghosh v. Sirish Chandra Bose, AIR 1994 SC 1254.

³³ Dwarkadas Damodar v. Dwarkadas Shamji, (1915) 17 Bom LR 938: ILR 40 Bom 341

applied in areas where the Act was then not in force.³⁴ An endowment is invalid in law, the endowed properties revert to the settlor.³⁵

When a marriage settlement is made in contemplation of marriage but no marriage takes place (though the parties to the proposed marriage cohabit and there are children born of the cohabitation), the trust fails and there is a resulting trust in favour of the settlor.³⁶ Where property is bought in contemplation of marriage by a man in his own name but he had never mentioned the proposed marriage to the woman, there was neither a joint tenancy in the property nor a resulting trust, as there was no common purpose that had failed.³⁷

If a trust is made by a settlor for the prospective wives of his minor sons, and the sons were alive during a particular Tax Assessment Year, though unmarried it could not be said that there was a resulting trust in favour of the settlor so that the income from the trust should be taxed as the income of the settlor.³⁸

If there is a surplus of trust property left after the objects of the trust are fulfilled there is a resulting trust.³⁹

If a contributory company pension Trust fund fails in part because it offended against the rule against perpetuities, the amount contributed by the company must be returned to the company, and the amounts contributed by the employee members to them or their estates.⁴⁰

A testator made a bequest leaving all his property to his solicitor to be held and disposed of in accordance with written instructions to be given to him, after the death of the testator an unattested paper containing the instructions was found, it was held that as the testator had not conveyed the instructions during his life-time, there was no valid trust, and the solicitor held the property in a trust for the next of kin of the testator.⁴¹ If, in a similar situation, when the

³⁴ Gobind Singh v. Gopal Saran Singh, AIR 1924 Pat 343

³⁵ Nagu Reddiar v. Banu Reddiar, AIR 1978 SC 1174: (1978) 2 SCC 591:

The endowment failed as a trust for saying prayers at a samadhi of a private individual was not a valid charitable trust for religious purposes under Hindu Law.

³⁶ Essery v. Cowland, (1884) 26 Ch D 191.

³⁷ Burgess v. Rawnsley, [1975] Ch 429: [1975] 3 All ER 142 CA, Lord Denning, MR, dissenting.

³⁸ Gouthamchand L. v. Commissioner of Income-tax, 1989 176 ITR 442

³⁹ in re West, [1900] 1 Ch 84; In re Connell's Settlement, [1915] 1 Ch 867.

⁴⁰ Asr Jamaica Ltd. v. Joy Charlton, [1999] 1 WLR 1399 PC

⁴¹ In re Boyes, (1884) 26 Ch D 531

instructions of the testatrix could not be ascertained, the residuary legatee held the estate in trust for the next-of-kin of the testatrix.⁴²

When a number of persons contribute to a common object which is not a charitable object in law, and which fails, or if there is a surplus, there is a resulting trust in favour of the persons who contributed.

Where, however, the persons who contributed intended to part with their entire interest when they contributed, there is no resulting trust in their favour in respect of the unexpended amount which vested in the Crown as *bonavacantia*.

The existence of the cy pres doctrine in the case of charitable Trusts has enabled Courts, both in India and England, to adopt slightly different approach. If a specified charitable purpose cannot be carried out or if there is a surplus after it has been carried out, it will not, in the case of charitable trusts, necessarily result in a resulting trust in favour of the settlor. The rule evolved by the Courts is that if a general charitable intent on the part of the settlor can be inferred, the failure of the actual object specified in the trust deed will not result in a resulting trust as Courts will apply the trust property cy pres to an object or purpose similar to that specified by the settlor. The same result will follow in the case of surplus funds. If, however, it is clear from a construction of the deed of trust that the donor had made a charitable gift to a specific purpose, and that fails, it was a conditional gift, and the condition not being capable of being fulfilled, there was a resulting trust in favour of the settlor. That is also the law in England.

The question has to be determined on a true construction of the instrument of trust, and all the circumstances of the case. If the instrument of trust and all circumstances show a general charitable intent, the Court will apply the cy pres doctrine, so that if the specified purpose cannot be carried out, or if the trust is invalid or if there is a surplus, the trust funds will be applied for a purpose as close as may be to the original purpose, and there will be no resulting trust. If, on the other hand, there is no such general charitable intent, it is a case of a conditional gift, and if the gift fails, there is a resulting trust in favour of the settlor or his heirs. There may be cases where it is not practicable to return the gifts to the various individual donors, this situation is resolved in the United Kingdom by statutory provisions.⁴³

⁴² In *Te Hawley's Settlement*, [1934] Ch 384

⁴³ See Chapter 19.6 below, where the statutory provisions are briefly noted; they provide that in

It had been observed in some decisions that the cy pres doctrine only applies to Wills this, it is submitted, is not good law⁴⁴

Where a *waqf-nama* showed that the predominant part of the donation was for the descendants of the author, the amount not dedicated for a charitable purpose was not a valid wakf, and must be held on a resulting trust for the heirs of the author.⁴⁵

REVOCAION OF BEQUEST PREVENTED BY COERCION

We have come across no decision on this part of section 85 of the Indian Trusts Act, 1882. Even in England, there appears to be no decision holding that in such situations there would be a Resulting Trust in favour of the estate of the testator, though this would probably be so.⁴⁶ The question arose in a case where it was alleged that a person propounding a Will under which he received substantial benefits had prevented the testatrix, an 80 year old lady, by force and threats from executing another Will under which the propounder of the earlier Will received no benefits; the Court allowed the defendants to amend their defence to claim a declaration that the plaintiff held the property in trust for the other beneficiaries under the proposed Will; no decision was, however, given as the matter was compromised.⁴⁷

This part of Section 85 appears to fill a void in the statutory provisions contained in the Indian Succession Act, 1925. Wills, bequests, etc., obtained by fraud, coercion or undue influence are void under Section 61 of that Act, and in such a case there would be an intestacy in respect of the Will or part of the Will so induced.⁴⁸ The problem that would arise if the revocation of a bequest is prevented by coercion is not dealt with specifically in the Indian Succession Act and that void is filled by section 85.⁴⁹

such situations a general charitable intent is to be presumed, so that the amounts can be applied cy pres

⁴⁴ Sam Ray Sreemuthy v. Advocate-General of Bengal, AIR 1921 Cal 389; ILR 48 Cal 124; Audesh Singh v. Commissioner, Lucknow Division, AIR 1934 Oudh 329; Potti Sram v. Re Sa D. Go AIR 1960 AP 605

⁴⁵ State of UP v. Bansi Dhar, AIR 1974 SC 1084; 1974 SCC 446; (1974) 2 SCR 679; State of Uttar Pradesh v. Shyam Sundar Ram Charan, AIR 1961 All 418

⁴⁶ Abdul Rajak v. Bai Mumbai, (1911) 14 Bom LR 295.

⁴⁷ See Theobald on Wills, 16th Edn, page 41

⁴⁸ Bosv. Dog (1879) 5 PD 25.

⁴⁹ See section 30, Indian Succession Act, 1925

CONCLUSION

Creation and Extinction of Trusts is an absolutely essential imperative part of the law of trusts and has extreme importance and relevance. The various legal issues involved in the creation of extinction of trusts form the basics which provide the foundations of the law of trusts. This project has explored these issues in detail and has also performed a comprehensive study and analysis of the relevant case law and statutory provisions. The provisions relating to Creation and Extinction of Trusts in India are well developed and clear. There is not much ambiguity and the law also does not prescribe too many formalities. Thus the law with respect to creation and extinction of trusts is reflective of the legislative intent of keeping the law simple and clear so as to be easily understood and followed by the common man. Trusts are a very important part of life today and the Indian Trusts Act, 1882 does not make a person apprehensive about creating a trust or extinguishing owing to ambiguity and complexity. Thus these provisions are a step in the right direction. Complexities will no doubt arise but the law is equipped to deal with them

In the United States the ever-growing importance of the Law of Trusts has been realised and the National Conference of Commissioners on Uniform State Laws has drafted a Uniform Trust Code in order to provide the states with a comprehensive model for codifying their law of trusts. In India the law of trusts is codified and well developed. The Indian Trusts Act, 1882 is the major statute relating to trusts. Other statutes like the Indian Penal Code, 1860 deal with offences relating to trusts and punishment for offences. The Code of Civil Procedure, 1908 prescribes the procedure for actions relating to trusts and the Limitation Act, 1963 prescribes periods of limitation for recovery of property conveyed away by trustees in breach of trust. The law of trusts today is assuming a greater significance and importance.

Some of the common benefits that trust arrangements offer include.

- Providing personal and financial safeguards for family and other beneficiaries;
- Postponing or avoiding unnecessary taxes .
- Establishing a means of controlling or administering property; and
- Meeting other social or commercial goals.

Apart from providing these benefits trusts have weaved their way into new territory and are being applied in various new fields. Trusts are extremely versatile and adaptable.

Innovation with respect to trusts has come in two ways. First, the growth of trusts in international financial centres is now developing into a branch of trust law and practice of its own. The second source is the growth of the use of trusts for other commercial operations. Of these, securitisation is becoming a major example. Securitisation by the use of trusts is being taken up by several countries.

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