



Online

ACTIVITY 66

T Choithram International SA v. Pagarani (allow 30 minutes)

Please find the article by C. Rickett, 'Completely Constituting an *Inter Vivos* Trust: Property Rules' [2001] Conv 515 on Westlaw and answer the following questions:

- 1 It was held that Mr Pagarani had created a valid trust.
 - (a) **What property was involved and what is the usual way of transferring these items of property to trustees?**
 - (b) **What steps did Mr Pagarani take to constitute the trust?**
- 2 **Explain why the Privy Council held that Mr Pagarani had created a valid trust.**
- 3 **Critically assess the decision.**

COMMENT

The answers to the questions are as follows:

- 1 (a) Mr Pagarani purported to transfer 'all his wealth' to the Choithram International Foundation. He owned shareholdings in various companies. Legal title to shares passes when the trustees are registered at the company although equity regards the transfer as complete when the settlor has handed over the stock transfer forms and share certificates to the trustees.
 - (b) Mr Pagarani did not complete or hand over any stock transfer forms or share certificates. He just made an oral statement that he was giving all his wealth to the Foundation. Mr Pagarani was one of the trustees of the Foundation. The judge at first instance held that the trust was incompletely constituted.
- 2 The Privy Council interpreted Mr Pagarani's words of gift as meaning he wanted a transfer to the Foundation to hold on the trusts declared in the trust deed which Mr Pagarani had just executed. The Foundation had no separate existence; it just comprised a body of trustees and so this was the natural inference.

Mr Pagarani (as one of the trustees of the foundation) had effectively declared himself a trustee of the property (declarations of trust over personalty can be oral). The fact that the shares were vested in him was sufficient to constitute the trust. He was under a duty to transfer them into the names of all the trustees. His conscience was affected as soon as he declared the gift and he could not subsequently resile from it.

3 The decision appears to conflict with the rules in *Milroy v. Lord* namely that there are three ways of benefiting another comprising:

- outright gift
- declaration of self as trustee, and
- transfer to trustees to hold on trust for another.

Where one mode is intended but fails, the court should not substitute another mode.

In *Choithram*, the Privy Council held that the settlor had effectively declared himself a trustee. Rickett doubts whether that was a legitimate interpretation of the words the settlor used; his words were more consistent with the last method of transfer to trustees. Thus, he argues, the decision conflicted with the rule that if an intended trust fails, the court must not give effect to it by treating what has happened as a successful declaration of self as trustee.

Rickett argues that the trust must have been a constructive trust because the formalities for the creation of an express trust had not been satisfied. This theory is borne out by the Privy Council's references to the fact that it would have been unconscionable for the settlor to have resiled from the trust.

The notion that the settlor's conscience is affected as soon as he declares the trust and he cannot subsequently resile from it is a new one. The case could have worrying results where a settlor, who is a trustee of a family trust, utters ill considered words giving further property to the trustees. The settlor is bound immediately and cannot change his mind.

By completing this activity you have used ICT skills together with analysis and synthesis and critical judgement and evaluation.