SUPPLEMENTARY BENEFIT

Resources—Beneficial ownership of property which is the subject of an imperfect deed of gift.

The claimant had been in receipt of supplementary benefit for many years until it was stopped from 6 April 1984 because the adjudication officer determined that the claimant's wife owned a reckonable capital asset worth more than £3,000. At some time prior to 1979 4 houses were purchased as an entirety and vested in the claimant's wife as sole legal owner. In or about 1979, by means of

a 'home-made' deed of gift she gave 2 of those houses to her son to convert into one, whilst she and the claimant used the other 2 as their home. The District Valuer's valuation of the property given to the son, upon which the adjudication officer's decision was based, was founded on the property being sold with vacant possession. On appeal the tribunal upheld the adjudication officer's decision. The claimant appealed to a Social Security Commissioner.

Held that:

1. the tribunal misdirected itself in a matter of general law by failing to take account of circumstances which invoked one of the exceptions to the general rule that a person—A has no redress if he spends money on improving a property owned by someone else—B. Where the legal owner B has led A to believe that A has been given or will be given the property B will be compelled by the Court to perfect the gift by conveying the property. If there is no sufficient suggestion of a gift, but B has "stood by" while A has prejudiced himself B may be compelled to convey the property on being paid its unimproved value (paragraph 7);

2. there is a legal presumption (the 'presumption of advancement') that a gift is intended when property is transferred by a parent to his child (that presumption did not need to be relied upon in this case because the ineffective deed of gift sufficiently spoke as suggesting an attempted gift) (paragraph 7);

3. the "beneficial owner" of properties subject to an imperfect gift which will be perfected by a court of equity constitutes a resource of that owner, and the legal owner is a 'bare trustee' of the legal estate and has no resource in that property (paragraph 7).

The appeal was allowed.

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1. This is a claimant's appeal against the unanimous decision dated 4 October 1984 of a social security appeal tribunal ("the tribunal") brought by leave of the tribunal's chairman. By their decision the tribunal upheld the decision dated 2 May 1984 of an adjudication officer in the terms "The appellant is not entitled to supplementary benefit whilst his wife is the owner of "no. 36 [T----]". (Resources Regulations 5 and 6)". It is contended by the claimant that the tribunal's decision was given in error of law, and the adjudication officer now concerned accepts that contention was well founded; and I agree.

2. The appeal is allowed. I set aside the tribunal's decision as given in error of law in the respects undermentioned and direct that the claimant's appeal from the adjudication officer's decision be re-heard by a differently constituted appeal tribunal. I regard the sole point which was argued before the tribunal and upon which that decision turned as having been determined by the tribunal in manifest error of law, due to their having misdirected themselves in a matter of general law necessarily involved in their determination of the issue directly arising under social security law which was before them, and I would have liked to be in a position to give myself the decision which the tribunal should have given, and so to avoid the necessity of a tribunal re-hearing. However, I have ultimately concluded that it is not expedient that I should take that course, because whilst (so far as the information before me goes) there was no other impediment to a determination awarding benefit, the information before me is not so complete as to make that clear beyond doubt, or to enable me to determine the quantum of any award.

3. It is common ground that the claimant had prior to a stop upon his benefit imposed as from 6 April 1984 been in receipt of supplementary benefit for many years, the assessment unit latterly comprising only himself and his wife. The stop was imposed following a fresh appraisal of his entitlement in the context of the reckonable capital resources of the assessment unit, following a home visit made in March 1984. Doubt had arisen

as to the position in that respect of what I will for the moment describe neutrally as an identifiable part of certain entire premises of which the home of the assessment unit formed part, and the legal ownership of which entirety was vested in the claimant's wife. The adjudication officer's decision reflected a conclusion on his part that the portion of such premises which did not comprise the home and was separately identified as "no.36 T----" was a reckonable capital asset of the assessment unit and had a value in excess of the £3,000 then constituting the upper limit of capital resources consistent with eligibility for supplementary allowance. On the facts as found by the tribunal that conclusion was in my judgment clearly erroneous in law. It was erroneous primarily because upon a true appraisal of the relevant law the property so taken into account (which I will for convenience henceforth refer to as "no. 36") was not a reckonable capital resource of the assessment unit at all; and in any event the decision founded also upon a District Valuer's valuation of no. 36 if sold with vacant possession, in circumstances in which there was, to put it no higher, significant doubt as to whether the legal owner (the wife) was entitled to vacant possession.

4. The tribunal's decision was in error of law in a number of separate respects. For a start, it fell into the same error as had the adjudication officer in regarding no. 36 as a reckonable capital resource of the assessment unit at all; secondly, it repeated his error of accepting that no. 36 had a value in excess of £3,000 without taking into account, as he also had not taken into account, that the only valuation in evidence before them was on the basis of a sale with vacant possession, and that the foundation for that basis was not effectively laid by the evidence before them as to the availability of vacant possession; and thirdly they expressed reasons for their decision from which it is impossible to ascertain upon what grounds they rejected evidence before them, and contentions on the claimant's behalf advanced in reliance thereon, afforded by letters from the claimant's solicitors on the case file. I also mention—but only to indicate that it has not escaped me—that, in addition, the tribunal's reasons, if read literally, do not amount to reasons for decision at all—they constitute a statement of law. They are expressed as "the tribunal held that under the Resources Regulations, claimant is not entitled to supplementary benefit where his resources or that of his partner exceed £3,000".

There is accordingly not the slightest doubt that I must set aside the tribunal's decision as given in error of law. The remainder of my present decision is expressed with a view to assisting the tribunal re-hearing the case. I must, however, stress that whilst the facts as found by the tribunal do not appear to have been in dispute, and it is likely that the new tribunal will receive evidence to the like effect, all questions of fact will be again at large for their determination.

5. Ignoring some inadvertent "false leads" which had been provided initially by the claimant's solicitors, as also some misunderstandings at earlier stages of the case deriving from what was understood to be the position as explained by the claimant, the facts as they stood before the tribunal can be summarised as follows:—

(1) At some time prior to 1979 there was purchased as an entirety and vested in the claimant's wife as sole legal owner the property collectively known as "nos. 36 and 38 T----" and "nos. 5 and 7 R----". Those properties collectively stood on land sloping steeply downwards to a river. "nos. 36 and 38 T----" had a road frontage and a frontage towards the river, but at a higher level than "nos. 5 and 7 R----" which were situated vertically below "nos. 36 and 38 T----". The position was further complicated

because whilst "no. 5 R----" was completely underneath no. 36, "no. 7 R----" occupied part only of the area at the same level as "no. 5 R----"—the rest of that area constituting cellar accommodation constituting a further part of "no. 38 T----". There were thus adjoining at the lower level the whole of "nos. 5 and 7 R----" together with the lower level of "no. 38 T----" and at the upper level the whole of no. 36 and the main part of "no. 38 T----".

(2) At all material times the claimant and his wife lived in "no. 38 T----".

(3) In or about 1979, at a time when such property needed considerable expenditure in order to make it habitable, it was decided to give to the son of the claimant what originally constituted no. 36 and "no. 5 R----" and also to incorporate "no. 7 R----" into "no. 38 T----". In the former respect, the idea was that the son should then proceed at his own expense with the requisite works to render habitable the property the subject of the gift—and that was in the event carried out by him. No steps were, however, taken at that stage to obtain professional assistance in transferring the legal ownership of that property to the son. Instead a "home-made" deed of gift was effected. That deed is no longer extant, because it was discarded following the subsequent effectuation of a transfer of the legal ownership to the son in accordance with a professionally prepared instrument. The latter instrument was executed and is dated 14 June 1984. The solicitors who acted in that transaction have confirmed the earlier existence of the "home-made" deed of gift and indicated that its terms were not such as to have effectively transferred the legal ownership of the property which, as above indicated, it was intended to give to the son. They have, however, also confirmed its tenor as constituting a sufficient memorandum as to what it was intended to achieve, namely a gift to the son of the part of the entirety represented by no. 36 and "no. 5 R----".

6. In the circumstances I have above indicated there is no question but that the claimant's wife remained the legal owner of no. 36, together with "no. 5 R----", at the date of the adjudication officer's decision; or that such property did not comprise the home, or any part of the home of the assessment unit constituted by the claimant and his wife at that date. And one can quite see how, on that account, the position appeared to the adjudication officer to be that no. 36 and "no. 5 R----"—themselves by then an amalgamated single unit—constituted a capital resource of the claimant's wife, and thus of the assessment unit. On the facts as I have above indicated that was not, however, a conclusion supportable upon a proper contemplation of relevant and well-settled law.

7. The "home-made" 1979 deed of gift, having been framed ineffectually to achieve its no doubt intended purpose of transferring the legal ownership, left the legal position which lawyers describe as an "uncompleted gift". And, in accordance with a broad general principle the intended recipient of a gift of property has no legal recourse to have an ineffective transfer of ownership "perfected" in his favour, for he is what lawyers term "a volunteer" in the matter—as distinct from a person who has given valuable consideration in a transaction which, if it has miscarried, the assistance of the courts may be obtained to "perfect". That broad general principle is however the subject of a number of exceptions under which an intended recipient of a gift which has not been perfected may nevertheless have the assistance of the court to have it perfected. And

amongst those exceptions is one here directly in point. If by reason of the signing of the legal owner of an informal memorandum in his favour or by the active or passive encouragement of the legal owner a belief is induced in a person either that he already owns a sufficient interest in a property to justify his expenditure of his own monies upon its improvement, or even that he will obtain such an interest, and that person acts upon such belief to his otherwise detriment by spending his own monies accordingly, then even if the circumstances do not suggest a gift the legal owner may be compelled to convey the land on being paid its unimproved value (see *Duke of Beaufort v Patrick* (1853) 17 Beav 60; whilst in circumstances in which there is sufficient suggestion of a gift the court will compel the legal owner to perfect the gift by conveying the property: see *Dillwyn v Llewelyn* (1862) 4 De G. F. & J. 517. Moreover, there is a further legal presumption—known as the "presumption of advancement"—that in transactions involving a transfer of property by a parent to his or her child a gift is intended. That presumption, however, did not need to be relied upon in the present case where the ineffective deed of gift sufficiently spoke as suggesting an attempted gift. There being unchallenged evidence both of the intended but imperfected gift and of the expenditure by the son in reliance upon his beliefs as to his interest in the property, it is in my judgment beyond doubt that at the date of the adjudication officer's decision no. 36 and "no. 5 R----" constituted property which, whilst still then vested in the claimant's wife as legal owner, the claimant was entitled to require to be transferred to him; and was entitled also to intervention by the court to compel such transfer if refused upon demand. And in those circumstances he fell under the general law to be regarded as its "beneficial owner" to the exclusion of any beneficial interest of the claimant's wife in it—she was in the contemplation of the general law a "bare trustee" of the legal estate in it for the son.

8. The tribunal found as facts that the claimant's wife had purchased 4 properties including no. 36 T---- (and so found in circumstances in which that finding clearly contemplates no. 36T as representing an amalgamation of the antecedently separate no. 36 and "no. 5 R----"); found also that in 1979 she had purported to give such property to the son but that there was at that time no formal deed of assignment effective to transfer the legal estate in it to him; found further that such a transfer was not completed until 14 June 1984; and also—and materially—found that the property had been improved by the son at his expense. Their ultimate finding was "so that after the 6.4.84"—that being the first date from which the disallowance of benefit took effect—"the claimant's wife had capital resources in excess of £3,000. District Valuer's valuation". In arriving at such conclusion—and ignoring for the purposes of my exposition the further matter as to the basis of valuation on which the valuation also relied upon had been made—the tribunal appear to have completely overlooked the lucid written contentions by the claimant's solicitors, which included the contention:— "we would submit that as [the claimant and his wife] had stood back and watched [the son] renovating the property then they would be disbarred from disposing of it elsewhere. Equitable principles always prevail and the Court would consider it inequitable for [the son] to be deprived of what he had been given. On that basis whilst the legal title had not been formally conveyed to [the son] No. 36 was certainly not disposable property of [the claimant and his wife]." It is, I suppose, academically possible that they did not believe what they were so told; but, to put it no higher, if that was the position they clearly needed to have so indicated.

9. I direct that the tribunal re-hearing this appeal be furnished with a copy of my present decision as some assistance to them in pitfalls to be avoided. They are to make findings of fact in all the respects material to

a proper foundation for their decision. And they are to state reasons for decision which will enable the respective parties to ascertain why, as the case may be, their contentions have or have not prevailed. I again stress that all issues of fact will be again at large before the tribunal; and they should bear closely in mind that if it is sought to invoke before them the legal principles to which I have above referred they will need to make "step by step" findings in all material respects thereunder in order to support, if that be the direction of their intended decision, a decision founded thereon. It would in my view be of material assistance to the tribunal if the adjudication officer was represented before them by a lawyer well versed in property law and the circumstances in which equity provides for the perfection of imperfect gifts.

10. I would not wish to part with the case without characterising it as representing a further example of the very substantial difficulties which must face an adjudication officer without ready access to suitably qualified professional advice when called upon to evaluate the resources of an assessment unit in circumstances raising questions in the field of property law.

11. My decision is as indicated in paragraph 2 above.

(Signed) I. Edwards-Jones
Commissioner