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**(2006) 07 J&K CK 0006**  
**In the Jammu And Kashmir High Court**

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|------------------------------|----|------------|
| Ghulam Nabi Naikoo           | Vs | APPELLANT  |
| Abdul Rehman Bhat and Others |    | RESPONDENT |

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**Date of Decision :** 12-07-2006

**Acts Referred:**

Insurance Act, 1938 — Section 39

**Citation :** AIR 2007 J&K 32

**Hon'ble Judges :** Mansoor Ahmad Mir, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Mansoor Ahmad Mir, J.—This appeal is directed against the judgment dated 21st May, 2003, hereinafter referred to as impugned judgment

passed by learned Principal District Judge, Anantnag, whereby and whereunder, two petitions titled as Abdul Rehman Bhat v. Mst. Saja and Ors.

dale of Institution 11th October, 2000 and Ghulam-Nabi Naikoo v. Mohammad Sidiq Naikoo, date of institution 31st October, 2000, for grant of

succession certificate came to be decided.

Factual Backdrop of the Case.

It appears that Mst. Fazi, w/o Ghulam Nabi Naikoo, appellant herein, died on 8-9-2000 at village Bhan, Tehsil Kulgam. Appellant Ghulam Nabi

Naikoo presented an application for issuance of succession certificate in favour of the petitioner and alleged adopted daughters, namely,

Rukhasana Anjum and Shazia Jan, before the Court, of Sub-Judge, Kulgam.

2. Abdul Rehman Bhat, respondent No. 1, also filed an application for issuance of succession certificate before the Court of Pr. District Judge,

Anantnag. Ghulam Nabi Naikoo moved an application before the learned Principal

District. Judge, Anantnag, for arraying him as party in the array of respondents in the petition titled as Abdul Rehman Bhat v. Mst. Saja, which came to be granted.

3. It appears that petition titled Ghulam Nabi Naikoo v. Mohammad Sidiq Naikoo was withdrawn from docket of the Court of Sub-Judge,

Kulgam, and came to be transferred to the Court of Principal District Judge. Anantnag. Abdul Rashid Bhat, Mst. Saja and Mst. Saida filed

application for impleading them as parties in the application titled as Ghulam Nabi Naikoo v. Mohammad Sidiq Naikoo, which came to be granted

vide order dated 7th September, 2001. Both the applications were consolidated vide order dated 9th July, 2001.

4. Parties led evidence. After hearing learned Counsel for the parties, the learned Principal District Judge. Anantnag vide impugned judgment held

that intricate questions of law are involved in the lis. which cannot be determined and adjudicated upon in summary proceedings but prima facie

held that Ghulam Nabi Naikoo is entitled to receive 50%, brothers 25% and sisters rest 25% out of the debts mentioned in the impugned judgment

and accordingly granted succession certificate.

5. The grievance of the appellant is that brother and sisters are not entitled to any portion of debt but appellant and two adopted daughters (as

alleged), namely. Rukhsana Anjum and Shazia Jan are entitled to and receive the entire amount of debts mentioned in the impugned judgment.

6. Learned Counsel for appellant argued that there is ample evidence on the file in order to hold prima facie that Rukhsana Anjum and Shazia Jan

are adopted daughters of the deceased Mst. Fazi and appellant. Thus, Ghulam Nabi Naikoo and adopted daughters are entitled to receive entire

amount. The sisters and brothers of deceased do not have any right and are not entitled to receive the debt. Further argued that deceased had

nominated her husband (appellant) as a nominee and is the only person who is entitled to receive the amount of gratuity and life insurance.

7. The following intricate questions of law and facts are involved in the lis:

Whether a custom of adopting two daughters is prevalent and recognized by Custom or by the judicial pronouncements?

Whether the custom of adopting two daughters is prevalent in the family of Ghulam Nabi Naikoo and Mst. Fazi (deceased)?

Whether a nominee can exclude other legal heirs from receiving their due share?

8. It is useful to reproduce Sub-clause (2)(3) and (4) of Section 7 of Succession Certificate Act, 1977. hereinafter referred to as Act, which reads

as under:

7. Procedure on application.- (1)

...

(2) When the Court decides the right thereto belongs to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for

determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the

best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Court that more than one of such applicants are interested in

the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness

in other respects of the applicants.

9. While going through this provision of law, one comes to an inescapable conclusion that if intricate question of law and fact cannot be gone

through and decided in the summary proceedings, but the Court can grant certificate to the person(s) having prima facie the best title thereto and

can also decide the extent of interest (share).

10. The question is whether custom of adopting two daughters is prevalent and recognized by the Custom or by the judicial pronouncements? Thus

the question on the face of it is intricate question of law and fact which is to be determined by the Civil Court.

11. If such custom would have been prevalent even then it is to be pleaded and proved before the Civil Court of competent jurisdiction that such a

custom governs the parties and is prevalent in their families. Thus this question can also not be determined in summary proceedings.

12. Apex Court has held in case titled Madhvi Amma Bhawani Amma and Others Vs. Kunjikutty Pillai Meenakshi Pillai and Others, that when any

issue requires elaborate discussion that cannot be determined in summary

proceedings but such intricate questions of law and fact are to be

decided by the Civil Court. It is profitable to reproduce Para 13 and 19 of the said judgment herein, which reads as under:

13. This sub-section reveals two things, first adjudication is in a summarily proceedings and secondly if the questions of law and fact are intricate or

difficult, it could still grant the said certificate based on his prima facie title. In other words the grant of certificate under it is only a determination of

prima facie title. This as a necessary corollary confirms that it is not a final decision between the parties. So it cannot be construed that mere grant

of such certificate or a decision in such proceedings would constitute to be a decision on an issue finally decided between the parties. If that be so

how could principle of res judicata be made applicable to a case in a subsequent suit? The effect of such certificate is also laid down in Section

381 which is quoted hereunder:

Section 381:

Effect of certificate : Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities

specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of

Section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of

such debts or securities to or with the person to whom the certificate was granted.

13. It is profitable to reproduce Section 25 of the Act, herein, which reads as under:

25. Effect of decisions under this Act, and liability of holder of certificate thereunder :- No decision under this Act upon any question of right

between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing

in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or

dividend on any security to account therefore to the person lawfully entitled thereto.

14. While going through this provision of law, it mandates that any decision given under this Act cannot be held to be a bar to the trial of the same

question in any suit or any such proceeding between the same parties and that decision shall not affect the liability of any person who may receive

the whole or part of any debt or interest or dividend on any security to account therefore to the person lawfully entitled thereto.

15. Apex Court in case titled in case titled Joginder Pal Vs. Indian Red Cross Society and Others, held that findings given on an application for

grant of succession certificate are not final and do not operate as res-judicata. It is profitable to reproduce relevant portion of para 15 and para 17

of the said judgment herein, which reads as under:

15 ...These Sections make it clear that the proceedings for grant of succession certificate are summary in nature and that no rights are finally

decided in such proceedings. Section 387 puts the matter beyond any doubt. It categorically provides that no decision under Part X upon any

question of right between the parties shall be held to bar the trial of the same question in any suit or any other proceeding between the same

parties. Thus Section 387 permits the filing of a suit or other proceeding even though a succession certificate might have been granted.

17. In view of the specific provisions of law it is not possible to accept Mr. Sohal's submissions. Section 387 specifically permits the 2nd

respondent to file a subsequent suit. Merely because issues were raised and/ or evidence was led, does not mean that the finding given thereunder

are final and operate as res judicata. Even in summary proceedings issue can be raised and/or evidence can be led. The proceedings remains

summary even though the Court may, in its discretion, permit leading of evidence and raising of issues. So in a subsequent suit the crucial issues

must be decided afresh untrammelled or uninfluenced by any finding made in the proceedings for grant of Succession Certificate.

16. In the given circumstances, the trial Court has rightly held that intricate questions of law and fact are involved which cannot be determined in

summary proceedings.

17. The third question is whether a nominee can exclude other legal heirs from receiving debts?

18. I am of the considered view that nominee is only a hand to receive the amount which is payable to all legal heirs. The nominee cannot exclude

the other legal heirs. It is for the Civil Court to determine who are the legal heirs

and who are entitled to.

19. Apex Court in case titled Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, held that nominee is only a hand to receive the amount and

cannot exclude the legal heirs. It is profitable to reproduce relevant portion of para 12 of the said judgment herein, which reads as under:

12 ...We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and held that a mere nomination made

u/s 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy

on the death of the as-sured. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer

gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law

of succession governing them.

20. Apex Court in case titled Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another, has also taken the

same view. It is profitable to reproduce para 13 of the said judgment herein, which reads as under:

13. In the light of what has been noticed hereinabove, it is apparent that though language and phraseology of Section 6 of the Act is different than

the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding

avoiding delay and expense in making the payment of the amount of the national saving certificates, to the nominee of holder, which has been

considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the

estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased-

holder. In other words, the law laid down by this Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , holds field and is equally

applicable to the nominee becoming entitled to the payment of the amount on account of national saving certificates received by him u/s 6 read with

Section 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of

Sub-section (2) of Section 8 of the Act.

21. This Court has also taken the same view in case titled Kanta Devi v. Parkasho Devi reported in 2001 (2) SLJ 529.

22. In the given circumstances, I am of the considered view that impugned judgment needs no interference. Accordingly, it is upheld and appeal is

dismissed. Any observation made shall not prejudice the rights of the parties in any way.

23. Accordingly appeal is dismissed. Send down the record along with the copy of this judgment.