
(1932) 06 AHC CK 0030
In the Allahabad High Court

Gresham Life Insurance Society, Ltd.	Vs	APPELLANT
Collector of Etawah		RESPONDENT

Date of Decision : 16-06-1932

Acts Referred:

Citation : (1932) 06 AHC CK 0030

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mukerji, J.—This appeal raises a question which is of great importance to companies doing life insurance business. It appears that a gentleman named Raja Hukum Pratap Singh took out a Policy of insurance on 15th August 1917, which was payable either when the Raja attained the age of 40 or on his death. The Raja died on 17th May 1925. One day previous to his death he adopted a minor, who subsequently became Raja Maha Bindeswari Pratab Singh, and he also executed a Will in favour of the adopted son. The pro prietor of the estate being a minor, the Court of Wards took over superintendence and management of the estate. The Policy having become payable on the death of the assured, the Court of Wards called upon the appellant to pay the sum of Rs. 15,000 to the Court of Wards as represented by the Collector of Etawah. The Company asked for proof of title and stated that they were ready to pay the money as soon as they were satisfied as to the title of the claimant. Their letter will be found printed on page 51 of the record. It stated:

Kindly now submit us the probate of the will of the deceased as mentioned in the Court's decree, when we shall be pleased to give instruction for the final discharge.

2. The Court of Wards was advised by the Government Pleader of Etawah that there was no necessity for taking out a probate of the will, as it would be a costly affair and without any legal necessity. The Company having refused to pay

without what they called proof of title, the suit, out of which this appeal has arisen, was instituted. The suit was decreed by the Court below with costs and future interest. The decree however grants interest during the pendency of the suit.

3. In appeal it has been contended by the learned Counsel that under the terms of the Policy granted to the late Raja, the Company were entitled to insist on the production of either a Probate or Letters of Administration. It was also contended that under the law for the time being in force the appellant was entitled to insist on the production of either a Probate or Letters of Administration or at least a succession certificate, and therefore no decree should have been made against the Company without production of any one of these documents. It appears that after the decree was made by the Court below the company paid the decretal amount in court under protest and filed this appeal. Two questions arise for determination in this case: (1) whether, the contract of policy by which the assured agreed that "the money would be paid to either himself or to his assign or to his executor or administrator is a binding contract, and (2) whether if it is not, the defendant can insist on the production of either a Probate or Letters of Administration or a succession certificate ?

4. We shall take the second point first. As the suit is based on the ground that the young Raja Maha Bindeswari Pratap Singh succeeded to the property of his adoptive father by virtue of the ad option and also by virtue of the Will this is therefore a case where there is no allegation that the family was a joint one. It may be mentioned casually if the family be a joint one, the will would be invalid in law and the right to obtain the property would be by survivorship and not under the will. The claim being therefore by one who claims to be the heir of a deceased creditor, we have to see what rule of law applies. Section 214, Succession Act, 1925, lays down that no Court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased except on the production by the person so claiming of either a Probate or Letters of Administration, (ii).... (iii) a succession certificate granted under part 10 and having the debt specified there in etc.... This is a case in which the plaintiff claims by right of succession the effects of a deceased person and wants that the debt due to the deceased should be paid to the plaintiff. In the circumstances there is no escape from the provision of Section 214, Succession Act, and the plaintiff must supply either a Probate or Letters of Administration or a Succession Certificate.

5. In the case of a will executed by a person who is neither a Mahomedan nor a Hindu nor a Buddhist nor a Sikh nor a Jaina mentioned in Section 57 of the Act, it cannot be insisted that a pro bate shall be taken out (Section 213). But there is no prohibition against Letters of Administration being taken out in the case of the estate of a deceased Mahomedan, Buddhist, Sikh or Jaina, vide Section 218. Where the testator has not appointed an executor, as in this case (the will is printed on p. 31), Section 233, Succession Act, permits Letters of Administration

being granted to the plaintiff who claims as the sole legatee. In any case there is no bar whatsoever to the grant of a succession certificate u/s 370, Succession Act. A succession certificate is permissible to be issued in the case of even a particular debt. It is thus a comparatively less costly matter than taking out Letters of Administration to the entire estate.

6. On a consideration of the law on the subject we are therefore of opinion that the appellant can insist on the production by the claimant of either a Probate or Letters of Administration or a Succession Certificate in order to be satisfied that the person to whom he would pay the money was really the person entitled to it. It was argued by the learned Government Advocate that the production of any of these documents has become unnecessary by the fact that the plaintiff has established his title by the suit and the Company must pay to him. This, argument however is not sound. A decree between the parties does not bind people who are no parties to it, and therefore if there be any claim for the money by any other person, the decree would be no answer for the defendant to such a claim. It is only a Probate or Letters of Administration or a succession certificate which grants a complete immunity to the debtor who pays off his debt to the holder of any one of these documents. These are called judgments in rem and have force as against all possible claims. We hold therefore that the defendants were entitled to succeed.

7. On the first point we are of opinion that the defence is equally strong. There is nothing in law to prevent a company from entering into a contract with a proposer for life assurance that the company would pay the money only to him or his assign or to his executor or administrator. The law of succession varies in different parts of the country, and it cannot be expected of a company doing life insurance business to know the law obtaining in different parts of the country, nor can it be expected that it would undertake an investigation into the title of a claimant or of claimants in general and to decide for itself who is the person best entitled to the money. In the circumstances an agreement that the money under the policy would be paid only to the assured or to his assign or to his executor or administrator is a good contract which must bind not only the assured but also anybody claiming title under him. In this view also the defendant was entitled to insist on the production of any of the three documents mentioned above. It may be pointed out that even a successor to a property by right of survivorship may take out a succession certificate, see *Banwari Lal Vs. Maksudan Lal and Others*,

9. In the result, the appeal must succeed. The law does not contemplate the dismissal of a suit where a suit has already been instituted. All that it provides against is the passing of a decree without the production of any of the title deeds. In the circumstances, it would not be desirable to dismiss the suit altogether. We should grant the plaintiff-respondent some time in order to enable him to produce either a Probate or Letters of Administration or a succession certificate in which last case the debt in question may be specifically mentioned.

As regards interest and costs, we are of opinion that this litigation was entirely brought about without justification. The Company was throughout within its rights and therefore when a succession certificate or any of the other two kinds of documents is produced, the decree will be in favour of the respondent without any costs or interest and the respondent must pay the costs of the appellant in both the courts. We grant three months" time to the respondent to produce either a Probate or a Letter of Administration or a Succession Certificate.