

(1941) 07 BOM CK 0014
In the Bombay High Court
Case No : O.C.J. Probate No. 194 of 1941
In Re: Framroz Dadabhoy Madon

Date of Decision : 11-07-1941

Acts Referred:

Citation : (1941) 43 BOMLR 943

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This petition is submitted to the Court to decide whether probate duty is payable in respect of a membership card of the Native Share & Stock Brokers' Association.

2. The nature of the right of a member in a card came to be considered by the Judicial Committee of the Privy Council in *The Official Assignee of Bombay Vs. K.R.P. Shroff*, . Their Lordships held that it was a personal right which did not pass to the Official Assignee on insolvency of the member. That was under the old rules of the Association.

3. The question of interest of the widow and children in such a card came to be considered by me in suit No. 386 of 1936. The matter went in appeal and the Appeal Court confirmed the decision in suit: *Tribhovandas Motilal Vs. Bhikhubhai Ravchand*, . In that suit it was held that the widow was entitled to the sale proceeds of the card held by her deceased husband in her own right and the sale proceeds did not form part of the estate of the deceased, whether he left a will disposing of the property or not. That conclusion was arrived at on the footing that the membership card was not property which passed on death, but that on construction of the rules the widow was given certain rights by the rules themselves.

4. Since then the Association has further altered the rules and the position today is more emphasized. Rule 12 provides as follows:

(a) the legal representatives of a deceased Member or the persons mentioned in Appendix C may, with the sanction of the Board, nominate one of themselves or

any other person otherwise eligible ... as a candidate for admission in the place of the deceased member.

The rule goes on to provide:

(b) In considering the application of a candidate the Board shall, be guided by the rules set out in Appendix C.

The wording is clearly permissive and this nomination, under Rule 16, has to be considered by a ballot. The result is that it is only a recommendation and does not create any right. Rule 36 makes the right of nomination personal and non-transferable. Rule 36(h) in terms states that on the death of a member his right of membership shall cease and vest in the Association. Rule 38 deals with the question of a membership card which under any rule for the time being in force is forfeited or is vested in the Association. In that rule it is provided that after paying the debts of the members, the balance of the sale proceeds shall be paid into the funds of the Association and shall be at the disposal of the Association.

5. As in this matter the Crown was interested, I directed a notice to be given to Crown and the learned Advocate General has put before the Court certain portions of Rule 36. The provisions are found in Sub-rules (i) and (j). Sub-rule (i) provides that when a member dies his debts and other obligations and claims of any member shall be paid and satisfied by his legal representatives before the transfer of his right of nomination. It is singular that the legal representatives are given no right of transfer except by this indirect reference in this sub-rule. Sub-rule (j) is very peculiar. It provides for a contingency of legal representatives of such a member being unable to satisfy the debts or claims of members. The rule provides that in such an event the right of membership shall be disposed of by the Board and the proceeds applied in the order mentioned in that sub-rule, viz., (1) payment of debts to members; (2) payment of debts or claims in respect of transactions effected subject to the rules of the Association and to the extent the same are admitted by the Board; and (3) payment of the balance, if any, to the legal representatives mentioned in Appendix C upon the execution by them of such release or indemnity as the Board may require. This is certainly difficult to be harmonised with Rules 36 (h) and 38. The only way in which it can be so done is to consider this as a provision made for a particular contingency and the last clause deals with the payment of the balance to the legal representative because the Association has taken a step on the footing that the deceased was a defaulter.

6. I am not concerned with any particular or peculiar aspect of the case here. I am only asked to decide whether the right of membership, unconnected with any particular circumstances, is property which passes on the death of a member to his heirs and in respect of which probate duty is payable. Having regard to the previous decisions and the clear and unambiguous words of Rules 36 (h) and 38 it seems to me that the right of membership is not property which passes on succession or can be dealt with by will as the property of the deceased. In my opinion this is a personal right which comes to an end on death of the holder and

is not property on which probate duty can be levied.