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(2001) 01 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : CSA No. 16 Of 1999

Kanta Devi APPELLANT

Vs

Parkasho Devi and Another RESPONDENT

Date of Decision : 25-01-2001

Acts Referred:
Jammu and Kashmir Civil Procedure Code, 1977 — Section 100

Citation : (2001) JKLR 561 : (2001) KashLJ 224

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : R.P.Jamwal, Manohar Singh, Advocates appearing for the Parties

Judgement

1. The question that arises in this second civil appeal is as to whether a nominee excludes the real legal heirs of the deceased from entitlement of

release of an asset. Both the courts, below have decreed the suit of respondentplaintiff, Parkasho Devi who is the sister of the deceased Guru Dass

and who had been nominated as a Nominee with respect to a Saving Bank Account of Rs. 58,0007 deposited by the deceased with respondent

no. 2.

2. Guru Dass having expired on 26.11.1997 plaintiff Parkasho Devi a suit before the Munsiff R.S. Pura for release of the amount. The suit was

contested by the appellant as well as respondent no. 2 and on the pleadings of the parties trial court framed following issues :

Whether the suit is not maintainable as the matter pertains to debt and succession certificate with respect to the same has already been issued by

the learned District Judge, Jammu OPD, 12. Whether the nomination of the plaintiff made by the deceased depositor Gurdas Lal is not proper and

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valid under law. OPD1.

Whether the plaintiff is entitled to relief on the basis of nomination made by the deceased depositor Gurdas Lal, OPP. Relief.

3. The trial court decided all the issues, including the issue no.4 which related to the entitlement of the plaintiff to release of money, in favour of the

plaintiff and against the defendant appellant. Judgement and decree by the trial court was passed on 1.6.1998. Aggrieved of this judgement and

decree an appeal was filed before the first appellate court, who confirmed the judgement and hereon and dismissed the appeal vide judgement and

decree dated 10.4.1999.

4. This appeal is posted for hearing today. Nobody appears for respondent no. 1 although Mr. Parveen Kumar Advocate has already appeared

before the registry for her. I have, therefore heard the arguments of Mr. Manohar Singh and Mr. Jamwal. I have also gone through the judgement

of the first appellate court.

5. Learned District Judge seems to have been impressed by the power of a civil court to determine the rights and liabilities of the parties over and

above the succession certificate issued by a competent court. In this behalf, I would like to reproduce following para of the judgement of the

appellate court :

What is indisputably gatherable from the aforesaid provision is that the Civil court is sufficiently clothed and vested with power to determine the

question of right between the parties with regard to the debts of the deceased irrespective of the fact that succession certificate has been already

issued in respect of such debt. This issue has also been rightly held decided by the trial court against the defendant and in favour of the plaintiff"".

6. On the principle of law with respect to the power of the civil court, I have no reservation, but as far entitlement is concerned this has to be

adjudged on the recognised principle of law. Before the trial court the suit was one which was filed by a nominee and the suit was contested by the

appellant wife, who in law was the sole legal heir of the deceased. Thus, while making up its mind as to who out of the two parties was entitled to

the amount, the trial court had to search for the law governing the subject. The latest judgement of the Supreme Court on the subject is handed

down in case titled VishinN. Khanchandanai and Another vs. Vidya Laxman and

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Another reported in AIR 2000 SC 2747. This case also related

to a National Saving Certificate while a nominee was pitched in a contest with the legal heirs. The court authoritatively held that a nominee does not

have any right for release of the money as against the legal heirs. In this behalf para 13 of the judgement reads as under :

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 expansion making the payment of the amount of the national savings certificates to the nominee of the 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

deceasedholder. In other words, the law laid down by this court in Sarbati Devi's case, AIR 1984 SC 346, holds field and is equally applicable to

the nominee becoming entitled to the payment of the amount on account of national savings certificates received by him under Section 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

subsections (2) of Section 8 of the Act"".

7. Their lordships have rolled upon as many as 14 judgements, which right from the year 1956 have been delivered on the subject by different

courts including the Supreme Court. The most important of these judgement is one delivered in Sarbati Devi vs. Smt. Usha Devi, AIR 1984 SC

346.

8. Thus, the finding of the 1st Appellate Court as also the trial court has been oblivious of the legal entitlement of the debt in so far as the contest

between the nominee and legal heir. That obliviance has occasioned a miscarriage of justice and the judgement of both the courts below are against

the recognised law of procedure.

9. The object of the Banking Rules is to enable the Bank to make payment to the nominee in case the real heirs do not come forward but once the

legal heirs come before the court their claim cannot be knocked only because the

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deceased had nominated a person other than the legal heirs.

10. That being the position of law, I allow this appeal and dismiss the suit filed by the respondent no. 1 before the trial court. The net result will be

that the amount of the saving bank deposit will be disbursed in accordance with the succession certificate issued by the competent authority.

11. No order as to costs.

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