

(1991) 02 GUJ CK 0017
In the Gujarat High Court
Case No : First Appeal No. 958 of 1980

Lalitaben Bhanabhai

APPELLANT

Vs

Lalitaben Bhanabhai and Others

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10(2)

Citation : (1991) 2 GLR 1182 : (1995) 3 LLJ 376

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : B.K. Damani, for the Appellant; S.V. Parmar Advocate for R-1 to R-3 and Nemo, for R-4 to R-6, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and decree dated. 27th September, 1979 passed by the City Civil Court, Ahmedabad, in Civil Suit No. 2289 of 1975, defendant No. 1 has filed this appeal.

2. Plaintiff No. 1 has filed this suit for herself and on behalf of her minor sons, plaintiffs Nos. 2 & 3, for partition of properties belonging to her husband Bhanabhai Malabhai against defendants Nos. 1 to 3 who are the daughters of Bhanabhai of his previous wife Kankuben. It is her say that she married the deceased on 20th May, 1971 at village Sanatal, District Ahmedabad, after the death of the first wife of the deceased Bhanabhai. The first wife of deceased Bhanabhai named Kankuben expired in 1970. Lalitaben, defendant No. 1, is a daughter of Kankuben. Defendant No. 2 Shantaben and defendant No. 3 Champaben are the other two daughters of Kankuben. Plaintiffs Nos. 2 and 3 are the minor sons born out of wedlock of plaintiff No. 1 with deceased Bhanabhai. The deceased Bhanabhai was serving in Calico Mills at Ahmedabad. He has expired on 2.2.1974, The deceased had not executed any Will. The succession certificate Ex.25 is obtained by defendant No. 1 Lalitaben by filing Civil Miscellaneous Application No. 280 of 1974 before the City Civil Court,

Ahmedabad. That application was filed for recovering following amounts:

(1)

Amount of provident fund with the Calico Mills, Ahmedabad.

... Rs. 15,000/-

(2)

Amount of gratuity with the Calico Mills, Ahmedabad.

... Rs. 8,000/-

(3)

Amount of deposit with the Calico Mills Co-operative Credit society

... Rs. 1,750/-

(4)

Amount of contribution with the Calico Co-operative Society.

... Rs. 2,000/-

No. 1 was lawfully married wife of the deceased Bhanabhai Malabhai and the respondents Nos. 2 & 3 are sons born to her during her lawful marriage with the deceased Bhanabhai. Each plaintiff had 1/6th share in the joint properties described in paragraph 4 of the plaint along with each defendant. It was further decreed that defendant No. 1 shall render the accounts of the amount recovered by her from various parties under the succession certificate obtained by her and that Rs. 2500/- collected by plaintiff No. 1 from Gokul Co-operative Housing Society was also joint family property which was required to be partitioned between the parties.

3. The learned Judge arrived at the conclusion that plaintiff No. 1 Laliben was lawfully married to deceased Bhanabhai Malabhai and that plaintiffs Nos.2 & 3 are the sons born to her during her lawful marriage with the deceased. For arriving at this conclusion the learned Judge has relied upon the oral evidence led by the plaintiffs. He has also relied upon the affidavit of plaintiff No. 1 which is at Ex.47. For getting the succession certificate Ex.25 defendant No. 1 had retted upon this affidavit wherein it specifically mentioned that the deceased Bhanabhai was the husband of Laliben and he was father of Lalitaben and that she had no objection if the succession certificate is given to her daughter Lalitaben who was staying with her.

4. At the time of hearing of this appeal the learned Advocate appearing on behalf of the appellant-defendant No. 1 has not pressed the contention that the plaintiff was not the lawfully married wife of the deceased Bhanabhai. He has not raised any contention with regard to the decree passed by the learned Judge for other properties of the deceased except for the amount of provident fund which is

recovered by the defendant No. 1 under the succession certificate.

5. In view of the oral and documentary evidence which is discussed by the learned Judge, the learned Judge has rightly arrived at the conclusion that plaintiff No. 1 had lawfully married deceased Bhanabhai and out of that wedlock plaintiffs Nos. 2 & 3 were born. He has, therefore, rightly arrived at the conclusion that the plaintiffs along with the defendants Nos. 1 to 3 are entitled to have a share in the properties left by the deceased. As the learned Advocate for the appellant has not pressed the contention, it is not necessary for me to discuss the evidence for arriving at the aforesaid conclusion.

6. However, the learned Advocate Mr. Damani contended that as per the nomination form filled in by the deceased Bhanabhai, Shantaben, Lalitaben and Champaben are entitled to have the provident fund amount of the deceased. For this purpose he has relied upon Ex.84 which is a xerox copy of Form No. 8 filled in by deceased Bhanabhai wherein it is stated that the nomination made by him in the name of Kankuben (deceased wife) was cancelled and the amount standing to his credit in the employees' provident fund be received by the persons named therein in the event of his death before that amount has become payable. No dispute is raised with regard to the amount of gratuity or the deposit amount which was lying in the name of the deceased in the Calico Mills Credit Co-operative Society as there is no nomination for the said amount in her name. Therefore, for the said properties the plaintiffs are entitled to have their share as specified in the decree. He submitted that in view of the nomination in favour of defendants Nos. 1 to 3 by the deceased for the provident fund amount, they are entitled to recover it exclusively and the plaintiffs are not entitled to have any share in the said amount. For this purpose he relied upon Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Clause 61 of the Employees' Provident Fund Scheme, 1952.

7. For appreciating the aforesaid contention of the learned Advocate Mr. Damani, it will be necessary to refer to Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as the "Act," and Clause 61 of the Employees' Provident Fund Scheme, 1952, hereinafter referred to as the "Scheme" which read as under:

"10(1) The amount standing to the credit of any member in the Fund or of any exempted employee in a Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member of the exempted employee, and neither the official assignee appointed under the Presidency-town Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such amount.

(2) Any amount standing to the credit of a member in the Fund or of an

exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the Rules of the Provident Fund shall, subject to any deduction authorised by the said Scheme or Rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

(3) The provisions of Sub-section (1) and Sub-section (2) shall, so far as may be, apply in relation to the family pension or any other amount payable under the Family Pension Scheme as they apply in relation to any amount payable out of the Fund.

61(1) Each member shall make in his declaration in Form 2, a nomination conferring the right to receive the amount that may stand to his credit in the Fund in the event of his death before the amount standing to his credit has become payable, or where the amount has become payable before payment has been made.

(2) A member may in his nomination distribute the amount that may stand to his credit in the Fund amongst his nominees at his own discretion.

(3) If a member has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. Any nomination made by such member in favour of a person not belonging to his family shall be invalid.

(4) If at the time of making a nomination the member has no family, the nomination may be in favour of any person or persons but if the member subsequently acquires a family, such nomination shall forthwith be deemed to be invalid and the member shall make a fresh nomination in favour of one or more persons belonging to his family.

(4-A) Where the nomination is wholly or partly in favour of a minor, the member may, for the purposes of this Scheme, appoint a major person of his family as defined in Clause (g) of Paragraph 2, to be the guardian of the minor nominee in the event of the member predeceasing the nominee and the guardian so appointed:

Provided that where there is no major person in the family, the member may, at his discretion, appoint any other person to be a guardian of the minor nominee.

(5) A nomination made under sub-paragraph (1) may at any time be modified by a member after giving a written notice of his intention of doing so in Form 8 annexed hereto. If a nominee predeceases the member, the interests of the nominee shall revert to the member who may make a fresh nomination in respect of such interest.

(6) A nomination or its modification shall take effect to the extent that it is valid on the date on which it is received by the Commissioner."

Under Sub-section (1) of Section 10 it is apparent that the amount of the provident fund standing to the credit of any member is not in any way capable of being assigned or charged. It is also not liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member. Even if the member becomes insolvent, the receiver is not entitled to claim or recover such amount. Under Sub-section (2) after the death of the member the provident fund amount vests in the nominee free from any debt or other liability incurred by the deceased or the nominee before the death of the member. Therefore, Section 10 of the Act gives protection to the provident fund amount. It prohibits assignment or charge over it even if the member to the provident fund scheme intends to assign or charge. It further gives immunity against attachment under any decree or order of any Court. It should be noted that if the member is alive, then he alone is entitled to recover the provident fund amount, but in case of his death, his nominee is entitled to receive it. Similar protection is given to the nominee, i.e., the provident fund amount is free from any debt or other liability incurred by the deceased or nominee before the death of the member.

8. However, the question which would require determination is whether the provident fund amount which is received by the nominee vests absolutely in the nominee or whether the vesting is for a limited purpose of collecting it for further distribution.

9. The learned Advocate for the appellant has heavily relied upon Sub-section (2) of Section 10 which provides that the amount standing to the credit of the member shall vest in the nominee.

10. In my view, it would be difficult to accept the said contention. Firstly, it should be noted that Sub-section (2) nowhere provides that the Provident Fund amount shall vest absolutely in the nominee. Under Sub-section (2) limited protection is given against the debt or other liability incurred by the deceased or the nominee before the death of the member and against the decree or order of any Court, but it does not provide that the Law of Inheritance would not be applicable to the Provident Fund amount received by the nominee.

10-A. Secondly, the word "vest" is ambiguous and may have different shades depending on the context in which it is used. What meaning should be given to the word "vest" is considered by the Supreme Court in the case of *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, . The Supreme Court has held that the term "vesting" has a variety of meanings which has to be gathered from the context in which it has been used. It may mean full ownership or only possession for a particular purpose of clothing the authority with power to deal with the property as the agent of another person or authority. After discussion the various authorities the Court has held as under:

(19) That the word "vest" is a word of variable import is shown by provision of Indian Statutes also. For example. Section 56 of the Provincial Insolvency Act (5

of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54(a) when they speak of a certain building on street or square or other land vesting in a Municipality or other local body or in a trust do not necessarily mean that ownership has passed to any of them."

For finding out the correct meaning of the word "vest used in Sub-section (2) of Section 10, it would be necessary to refer to the object and reasons of enacting the Act as per the preamble. It provides for the institution of Provident Fund (Family Pension Fund) for employees of factories and other establishments. Further, the heading prefixed to Section 10 is "protection against attachment". It clearly indicates that the only object of incorporating Section 10 is to protect the provident fund amount against attachment. Sub-section(1) specifically provides that the member of the Provident Fund Scheme is not entitled to assign or charge the said amount. The purpose is to see that after the retirement he gets the said amount and that he does not waste the said amount by assigning or by taking loan on the basis of the said amount. It further affords protection against the attachment under any decree or order of any Court in respect of any debt or liability incurred by the member. The protection which is afforded is even given to the extent that the Official Assignee appointed under the Presidency Towns Insolvency Act or any receiver appointed under the Provincial Insolvency Act shall not be entitled to have any claim on the provident fund amount. Similar protection is given to a nominee under Sub-section (2) of the Act. Therefore, the sole purpose of Section 10 seems to afford protection to the member of the Provident Fund Scheme against creation of any debt by the member so that after retirement he gets something to survive or in case of his death his heirs get something to live on. Therefore, the word "vest" is required to be given a limited meaning to the effect that as against attachment of the said amount for the debt

or other liability incurred by the deceased member or the nominee, it shall vest in the nominee. The heading prefixed to sections is useful in interpretation of the words in the section or sections if the words are ambiguous. This aspect is considered by the Supreme Court in the case of Bhinka and Others Vs. Charan Singh, , by observing as under:

"The heading reads thus:

"Ejectment of person occupying land without Title."

"Maxwell on Interpretation of Statutes, 10th Edn." gives the scope of the use of such a heading in the interpretation of a section thus, at p.50:

"The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words."

If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt".

By Sub-section (2) of Section 10 Law of Inheritance is not changed. The family member who is a nominee would not get the said amount exclusively debarring the other members to claim any right under the Law of Inheritance. Further, the Act nowhere contemplates to change the Law of Inheritance. It also specifically debar the member from assigning the provident fund amount or creating charge over it. It would, therefore, mean that the member is not entitled to give away the provident fund amount by way of gift. As per Clause 61 of the Scheme if a member is having family, then he is not entitled to nominate in favour of third person because Sub-clause (3) specifically provides that any nomination made by such member in favour of a person not belonging to his family shall be invalid.

11. Further, under the provisions of the Act, if the member is alive, he is entitled to get the provident fund amount and the nominee would not get anything. That means during the lifetime of the member, nominee does not acquire any right to receive the provident fund amount. If that is so on the death of the member, the amount payable under the provident fund normally would become part of his estate which would be governed by the Law of Succession applicable to him. Such succession may be testamentary or according to Law of Inheritance applicable to the member. Reading Sub-section (2) of Section 10 it would be apparent that the legislature never intended to change the Law of Succession applicable to the member. The sole purpose of Sub-section (2) and of using the word "vest" seems to afford protection against the creation of debt so that the said amount may not be taken away by the creditor of the member or his nominee. Therefore the proper meaning which could be given to the word "vest" used in Sub-section (2) of Section 10 would be that the provident fund amount vests in the nominee so that he can receive the said amount from the concerned authority and give a valid discharge and that the said amount would not be liable to be attached for the debt incurred by the member or the nominee. The

amount, however, can be claimed by the heirs of the member in accordance with the Law of Succession governing them.

12. While interpreting Section 39 of the Insurance Act, 1938 which provides for nomination of the person or persons to whom the money secured by the policy shall be paid in the event of his death the Supreme Court in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, , has held that the nominee would get the said amount for a limited purpose of giving due discharge to the insurer of his liability under the policy. The relevant discussion is as under:

"But the summary of the relevant pro-visions of Section 39 given above establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. If that is so, on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed by the Law of Succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a "statutory testament" in paragraph 16 of the decision of the Delhi High Court in *Uma Sehgal and Others Vs. Dwarka Dass Sehgal and Others*, . If Section 39 of the Act is contrasted with Section 39 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in Sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of Wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where Wills are registered."

After considering all conflicting decisions the Court held that a mere nomination made u/s 39 of the Insurance Act does not have the effect of conferring on the nominee any beneficial interest in the amount under the Life Insurance Policy on the death of the assured. The nomination only indicates the hand which is authorised 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.

13. In my view, the aforesaid reasoning of the Supreme Court by which Section 39 of the Insurance Act is interpreted would be wholly applicable for interpreting the provisions of Sub-section (2) of Section 10.

14. However, learned Advocate for the appellant has relied upon the decision in the case of *Usha v. Smriti* AIR 1988 Cal 115. In that case the Calcutta High Court

held that the most striking difference about the status of the nominee under the Provident Fund Act and the Scheme and under the Insurance Act is that u/s 10(2) of the Provident Fund Act the amount standing to the credit of the member of the Fund at the time of his death shall vest in the nominee and, therefore, it becomes part of the asset of the nominee whereas under the Insurance Act after the death of the assured the money continues to be his asset. The relevant discussion is as under:

"Having given our anxious consideration to the various provisions of the Provident Fund Act and the Scheme we are of the opinion that the status of a nominee under the Provident Fund Act is completely different from his counterpart under the Insurance Act. The most and striking difference about the status of the nominee under the two Acts is clearly discernible from Section 10(2) of the provident Fund Act quoted earlier which expressly provides that the amount standing to the credit of a member of the Fund at the time of his death shall vest in the nominee and it shall be free from any debt or liability incurred by the deceased or the nominee before the death of the member. From Section 10(2) it is abundantly clear that immediately upon the death of the member the provident fund money becomes part of the asset of the nominee whereas under the Insurance Act after the death of the assured the money continues to be his asset; and the money which was standing to the credit of the member becomes free even from the debt or liability incurred by the nominee before the death of the member. Only because the money vested in and thereby became the property of the nominee after the death of the member such a provision was required to be incorporated as, otherwise, being estate of the nominee, it was liable to be attached for debts or liabilities incurred by him prior to the death of the member. That the nominee under the Provident Fund Act, unlike the nominee under the Insurance Act, gets a right to the money also has been made clear by the provisions of paras 61 and 70 of the Scheme quoted earlier."

With respect it is difficult to accept the aforesaid reasoning because the Court has not considered the aspect that the word "vest" can have different meaning as per the context in which it is used. As stated above, as per the Scheme of Section 10 it is apparent that the member of the Provident Fund Scheme is not entitled to assign or create charge of the provident fund amount. This would also mean that the member is not entitled to gift away provident fund amount, nor is he entitled to take loan on the basis of the provident fund amount. Further, the Provident Fund Act nowhere deals with the change of mode of succession of the member of the Provident Fund Scheme. Therefore, normally by mere nomination the nominee would not be an absolute owner of the provident fund amount, nor the nomination can be said to be testamentary succession.

15. Learned Advocate Mr. Damani, however, further relied upon Clause 70 of the Employees' Provident Fund Scheme, 1952 and submitted that by the said Scheme a different mode of succession is provided because the proviso to the said clause specifically provides that the major sons and married daughters

whose husbands are alive are not entitled to have any share in the provident fund amount where there is no subsisting nomination or the nomination relates only to a part of the amount standing to his credit in the Fund. For appreciating this contention, it would be necessary to reproduce Clause 70 of the Scheme which reads as under:

"70. On the death of a member before the amount standing to his credit has become payable or where the amount has become payable before payment has been made-

(i) if a nomination made by the member in accordance with the paragraph 61 subsists, the amount standing to his credit in the Fund or that part thereof to which the nomination relates, shall become payable to his nominee or nominees in accordance with such nomination, or

(ii) if no nomination subsists or if the nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall become payable to the members of his family in equal shares:

Provided that no share shall be payable to:

(a) sons who have attained majority;

(b) sons of a deceased son who have attained majority;

(c) married daughters whose husbands are alive;

(d) married daughters of a deceased son whose husbands are alive;

if there is any member of the family other than specified in Clauses (a), (b), (c), (d):

Provided further that the widow or widows, and the child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the member and had not attained the age of majority at the time of the member's death.

(iii) in any case, to which the provisions of clauses (i) and (ii) do not apply the whole amount shall be payable to the person legally entitled to it.-

Explanation:- For the purpose of this paragraph a member's posthumous child, if born alive, shall be treated in the same way as surviving child born before the member's death."

Considering the aforesaid Clause 70 it is apparent that if there is a subsisting nomination as provided in Clause 61. the provident fund amount or the part of the amount to which nomination relates is payable to the nominee or nominees in accordance with the nomination. For the amount for which there is no nomination, it is required to be paid to the family members in equal shares. The proviso however, prescribes that to the sons who have attained majority or the

married daughters whose husbands are alive, no share in the provident fund amount would be payable. This proviso is incorporated with an object to see that the widow of the deceased member or his minor children get some amount for their survival and the concerned authority would pay the said amount to them instead of distributing it to all the family members. But that would not mean that if there is a dispute between the family members with regard to the partition of the estate of the deceased member. Law of Succession would not be applicable with regard to the provident fund amount. As stated above the Parliament never intended or attempted to change the Law of Succession applicable to the member of the Provident Fund Scheme. The sole purpose and intent of affording protection under, Section 10 of the Act and Clauses 61 and 70 of the Scheme is to see that the member of the Scheme or needy family members of the deceased member get the provident fund amount for their survival. Therefore it is provided that the nomination could only be in favour of the family members by the member of the Provident Fund Scheme; the member cannot nominate an outsider if he is having family, he can modify the nomination at any time; he cannot assign the provident fund amount or create charge over it and the provident fund amount is not liable to attachment under any decree or order of the Court. In the hands of the nominee also the said amount would be free from, any debt or other liability incurred by the deceased member or the nominee before the death of the member.

16. In view of the aforesaid discussion, in my view there is no substance in the contention raised by the learned Advocate for the appellant

17. In the result, the appeal is dismissed. But considering the question involved in the matter, there shall be no order as to costs of this appeal.