

(1998) 09 DEL CK 0078

In the Delhi High Court

Case No : Probate No. 12 of 1996

Mrs. Leelawati Singh and Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Banking Regulation Act, 1949 — Section 45ZA
Succession Act, 1925 — Section 276

Citation : (1998) 4 CLT 165 : (1998) 75 DLT 694

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Anil Kher, for the Appellant; Arun Jaitley and R. Venkataraman, Senior Advs. for Respondent No. 2, Debashekhar and Pramod B. Agarwala and Praveena, for the Respondent

Judgement

K. Ramamoorthy, J.—Shri Harikishan Singh, who had left behind substantial items of money and an immovable property, had left behind his widow, Mrs. Leelawati Singh, and three sons, namely, Shri Ashok Singh, Shri Vijay Kumar Singh and Shri Vivek Kumar Singh. He died on the 25th of January, 1996. His widow, Mrs. Leelawati Singh is the first petitioner. Shri Ashok Singh, the eldest son is the second petitioner. Shri Vijay Kumar Singh the second son is the second respondent. Shri Vivek Kumar Singh, the third son is the third respondent.

2. The petitioner had prayed for the grant of Letters of Administration in respect of the estate of late Shri Harikishan Singh. The second petitioner supports the petition. The third petitioner; Vijay Kumar Singh, opposes the application for grant of Letters of Administration.

3. In Annexure "B" to the petition the details about the immovable and movable assets left behind by the deceased Harikishan Singh, which are given as under :

INVENTORY OF THE ESTATE OF

LATE SH. HARIKISHAN SINGH S/o LATE SH. NAND SINGH

DESCRIPTION VALUE/AMOUNT(Rs)

IMMOVABLE ASSETS

House No. CB-2B Munirka Residential Scheme, New Delhi. MOVABLE ASSETS
16,50,000.00

(A) Balance with Banks

(I) Multi deposit with Citi Bank, New Delhi. Deposit Receipt No. 028156-5002-00
due on 19.2.96 32,36,252.75

(II) State Bank of India, Main Branch, Parliament Street, New Delhi.

(a) Saving Bank A/c No. 284/48114 1,45,330.00

(b) Public Provident A/c Pass Book No. 18419 A/c 42103 4,27,735.00

(c) Special Term Deposit Receipt No. SD/A24/802806 dated 29.6.95 due on
29.5.97, under Capital Gain Scheme. 8,00,000.00

(B) Investments in Bonds, Units Shares & Other Securities

(a) Reserve Bank of India Relief Bonds(15 Nos.) as per details given below:
59,00,000.00 plus interest undetermined at present

BOND NO. AMT/Rs. ISSUE DATE MATURITY DATE

(a) 9% Relief Bonds 1987

DH 8043 2,00,000 23.6.92 23.6.97

DH 7099 1,50,000 4.12.91 4.12.96

DH 5845 2,50,000 8.05.91 8.05.96

DH 2050 3,00,000 10.11.94 10.11.99

DH 2054 6,00,000 4.7.95 4.7.2008

DH 2055 6,00,000 4.7.95 4.7.2000

DH 3493 2,00,000 4.7.95 4.7.20CO

DH 3492 2,00,000 4.7.95 4.7.2000

DH 3491 2,00,000 4.7.95 4.7.2000

DH 2053 6,00,000 4.7.95 4.7.2000

DH 3582 7,00,000 13.7.95 13.7.2000

(b) 10% Relief Bonds 1993

DH 773 1,25,000 8.6.93 8.6.98

DH 527 1,00,000 29.6.94 29.6.99

DH 396 2,00,000 5.4.94 5.4.99

(c) 10% Relief Bonds 1995

DH 2 14,75,000 5.10.95 5.10.2000

(b) INVESTMENTS in units of UTI

Scheme 1964 6150 Units @ Rs. 10/-at

face value:

61.500.00

CERTIFICATE No.

No. OF UNITS

306846

2,860

0542967

80

0542968

580

0542966

180

0253255

400

0253256

1,150

1336755

900

(c) INVESTMENTS in Unit Trust of India Unit Growth Scheme ? 2000; 250 units at face value of Rs. 10/ - each 2,50,000

CERTIFICATE No. No. OF UNITS

006558200

42033750

(d) Can Bank Mutual Fund Can Star Shares 5,000 Nos. @ Rs. 10/ - each (face value) 50,000.00

CERTIFICATE No. No. OF UNITS

1659556 to 230 500

1658181 to 190 1,000

1658211 to 225 1,500

1658191 to 210 2,000

(e) SBI Mutual Fund (Magnum Scheme 1990) 200 Shares @ Rs. 100/ - each (face value) 20,000.00

Certificate No. 523548

(f) Foresight Systems Ltd. 550 Equity Shares of Rs. 100/ - each (face value) ? unquoted 55,000.00

(g) Maruti ? 800 Car No. DNH 6494

4. The liabilities mentioned in the petition are as under:

Sh. Hari Krishan Singh had died leaving the following liabilities/expenses unprovided:

(a) Amounts collected on behalf of following against sale of agricultural lands in village SHAMDARA - KICHAHA (Nainital) in June, 1985 but not paid to them:

(I) Sh. Ashok Kumar Singh Rs. 6,51,000.00

(II) Sh. Vijay Kumar Singh Rs. 6,48,000.00

(III) Sh. Vivek Kumar Singh Rs. 6,48,000.00

TOTAL : Rs. 19,47,000.00

(b) Hospitalization Treatment and Cremation Expenses (approx)" Rs. 50,000.00

5. The third respondent had given the details about the movable assets and the names of nominees. They are as follows:

SUMMARY OF BONDS/SECURITIES NOMINATION WISE NOMINEE: VIVEK SINGH

(I) RBI Bonds (interest bearing, at original value) Rs. 19,25,000

(II) RBI Bonds (cumulative) Rs. 13,97,700

(III) RBI Bond Interest (on point I above) Rs. 5,73,376

(IV) Can bank Mutual Fund -- Canstar Rs. 50,000

(V) Units from UTI(face value) Rs. 64,000

Rs. 40,10,076

NOMINEE: VIJAY SINGH

(I) RBI Bonds (interest bearing, at original value) Rs. 2,00,000

(II) RBI Bonds (cumulative) Rs. 9,31,800

(III) RBI Bond Interest (on point I above) Rs. 81,150

Rs. 12,12,950

NOMINEE: ASHOK SINGH

(I) RBI Bonds (interest bearing, at original value) Rs. 2,00,000

(II) RBI Bonds (cumulative) Rs. 9,31,800

(III) RBI Bond Interest (on point I above) Rs. 81,150

Rs. 12,12,950

NOMINEES : ASHOK, VIJAY & VIVEK SINGH JOINTLY

(I) RBI Bonds (interest bearing, at original value) : Rs. 14,75,000

(II) RBI Bond Interest (on point I above) : Rs. 7,02,264 Rs. 21,77,264

ON NOMINEE:

(I) FD under Capital Gain Scheme at State Bank of India. : Rs. 10,13,440

LIST OF ASSETS IN WHICH NOMINATIONS WERE MADE

(I) Reserve Bank of India Bonds:

S. No. Bond No. Value (Rs.) Date of Purchase Nominee

1. DH 5845 2,50,000 8.5.91 Vivek Kumar Singh
2. DH 7099 1,50,000 4.12.91 Vivek Kumar Singh
3. DH 8043 2,00,000 23.6.92 Vivek Kumar Singh
4. DH 773 1,25,000 8.6.93 Vivek Kumar Singh
5. DH 396 2,00,000 5.4.94 Vivek Kumar Singh
6. DH 527 1,00,000 29.6.94 Vivek Kumar Singh
7. DH 2050 3,00,000 24.11.94 Vivek Kumar Singh
8. DH 2055 6,00,000 4.7.95 Vivek Kumar Singh
9. DH 3493 2,00,000 4.7.95" Vivek Kumar Singh
10. DH 2053 6,00,000 4.7.95 Vi jay Kumar Singh
11. DH 3492 2,00,000 4.7.95 Vijay Kumar Singh
12. DH 2054 6,00,000 4.7.95 Ashok Kumar Singh
13. DH 3491 2,00,000 4.7.95 Ashok Kumar Singh

14. DH 3582 7,00,000 13.7.95 Vivek Kumar Singh

15. DH 2 14,75,000 5.10.95 Jointly to Ashok, Vijay and Vivek Kumar Singh

(II) Citibank 30,25,000

Vivek Kumar Singh

(III) PPF in SBI 4,27,735

Vivek Kumar Singh

(IV) UTI" 64(3290) 70,952

Vivek Kumar Singh

6. The deceased, Harikishan Singh had a deposit of Rs. 32,36,252.75 under the Multi Deposit Scheme with Citi Bank, New Delhi bearing Deposit Receipt No. 028156-5002-00 which was due for payment on the 19th of February, 1996. There the nominee was the third respondent. The third respondent had drawn the money and he had appropriated the amount to himself on the basis that after the death of the father, Harikishan Singh he became entitled to the money absolutely.

7. The petitioners sought for a direction to the third respondent to deposit the sum of Rs. 32,36,252.75 drawn by him from the Citi Bank. That was opposed by the third respondent on the ground mentioned above. The main point to be considered before the grant of Letters of Administration is: What is the effect of the nominations made by the deceased, Harikishan Singh, in various transactions and whether the nominee or nominees could claim absolute interest in the money payable in those transactions?

8. Mr. Pramod B. Agarwala, the learned Counsel for the third respondent submitted that having regard to the provisions of the Banking Regulations Act, 1949, the effect of nomination is that the nominee becomes the absolute owner and it would amount to a testamentary disposition and the third respondent is fully justified in drawing the sum of Rs. 32,36,252.75. The third respondent also submitted that the petitioners are in possession of the enjoyment of the house property and, Therefore, pending the consideration of the question, the petitioners cannot claim any right in the amount drawn by the third respondent. The relevant provision is Section 45ZA of the Banking Regulation Act, 1949, and the same is as under:

"Nomination for payment of depositors' money.--(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together, may nominate, in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in

force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person" to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

9. The learned Counsel for the third respondent Mr. Pramod B. Agarwala, referred to the above nomination rules under the Banking Regulations Act, 1949. The said nomination rules came into effect on the 29th of March, 1985.

10. Mr. Arun Jaitley, Senior Advocate for the second respondent referred to Rule 2 of the Banking Companies (Nomination Rules), 1985, which reads as under:

Nomination in respect of deposits.--(1) The nomination to be made by the depositor, or, as the case may be, all the depositors together in respect of a deposit held by a banking company to the credit of one or more individual shall be in Form DA 1.

(2) The said nomination may be made only in respect of a deposit which is held in the individual capacity of the depositor and not in any representative capacity as the holder of an office or otherwise.

(3) Where the nominee is a minor, the depositor or, as the case may be, all the depositors together, may, while making the nomination, appoint another individual not being a minor, to receive the amount of the deposit or behalf of the nominee in the event of the death of the depositor or, as the case may be, all the depositors during the minority of the nominee.

(4) In the case of a deposit made in the name of a minor, the nomination shall be made by a person lawfully entitled to act on behalf of the minor.

(5) The cancellation of the said nomination to be made by the depositor or, as the case may be, all the depositors together, shall be in Form DA 2.

(6) A variation of the said nomination to be made by the depositor or, as the

case may be, all the depositors together, shall be in Form DA 3.

(7) The said nomination shall be made in favor of only one individual.

(8) (a) A nomination, cancellation of nomination or variation of nomination may be made as aforesaid at any time during which the deposit is held by a banking company to the credit of the depositor or depositors, as the case may be.

(b) In the case of a deposit held to the credit of more than one depositor, the cancellation or variation of a nomination shall not be valid unless it is made by all the depositors surviving at the time of the cancellation or variation of the nomination.

(c) The banking company shall acknowledge in writing, to the concerned depositor or depositors, the filing of the relevant duly completed Form of nomination or cancellation of nomination or variation of nomination, as the case may be, in respect of a deposit.

(10) The relevant duly completed Form of nomination or cancellation of nomination or variation of nomination filed with the banking company shall be registered in the books of the banking company.

(11) A nomination or cancellation of nomination or variation of nomination shall not cease to be in force merely by reason of the renewal of the deposit."

11. Form DA 1 prescribed the form under which the nomination could be made. Form D-2 prescribes the form with reference to cancellation of the nomination.

12. The legal effect of nomination is no longer *res integra*. The High Courts in India and the Supreme Court had considered the legal effect of nomination.

13. Mr. Pramod B. Agarwala, the learned Counsel for the third respondent submitted that the Court dealing with Grant of Letters of Administration, has no jurisdiction to go into the question of title and, Therefore, the only remedy of the petitioners is to institute a civil suit to establish their rights.

14. The legal effect of nomination was considered as early as in 1924 in "*Aimai v. Awabai Dhanjishaw Jamsetii and Ors.*", AIR 1924 Sind 57. The facts, as noticed by the Court are:

"that a certain sum of money paid by the Port Trust to one Aimai was held by her on behalf of the persons entitled to the estate of her deceased father. One Dhanjishaw Master, a Parsi, was originally a temporary employee of the Karachi Port Trust. He joined in 1896, but was confirmed in 1903 and allowed to join the Provident Fund kept up for the benefit of their employees by that body with retrospective effect. The Port Trust has, under the Statute No. 6, of 1886, power to frame rules as to a Provident Fund and has done so. A copy of the rules duly passed and sanctioned is filed in the case. To these rules the provisions of the Provident Fund Act of 1897, as amended by the Act of 1903 apply. At this time Master was a widower with one daughter Aimai. The rules require that a

subscriber to the Provident Fund should nominate some person to whom the amount at his credit in the fund should be paid after his death, should he die before drawing out the whole of the amount at his credit. Master, Therefore, nominated Aimai.

Afterwards, he married and his second wife and several children survived him. He died intestate (though possessed of considerable other property) in 1919. The second wife is the plaintiff in this action,

The widow took out Letters of Administration to the estate. The Provident Fund, however, as it was bound to do under the rules, paid out the amount at the credit of Master in the fund to the nominee Aimai. The widow and administrator Awabai claimed that this sum of over Rs. 19,000/- belonged to the estate of the deceased, and that she was entitled to recover it from Aimai as being administrator."

Thereafter, the Court posed the following questions:

"Did he, in any way, divest himself of it during his life-time or by an instrument to come into effect after his death? And, secondly: is there any provision of the law which prescribes a special method of devolution or distribution in the case of Provident Fund amounts? It is axiomatic that no person or body can, at his will introduce any peculiar rule of inheritance or distribution."

The Court proceeded to consider the points and while doing so, the Court observed:

"To take the second point first, that is, let us assume that the amount at the credit of Master in the fund, or at any rate the right to recover that amount from the fund, formed part of the estate of Master during his life-time. Has he done anything to divest himself of his right thereto? All he did was to direct that in case of his death the sum should be paid to Aimai. This is in itself a mere mandate the validity of which expires with the death of the mandator. It is true the validity is extended by Statute beyond such death but such statutory extension does not by itself produce any change in the nature of the mandate. The question as to what the recipient is to do with the fund when she has obtained it is still for decision. The nomination paper is not a Will. In no case could a Parsi execute a Will in that form. But even in the case of those persons who can make a valid informal Will the nomination paper could not be considered as a Will and nothing more; if it were so considered the whole object of the nomination would be frustrated. The object of the nomination system is to designate some person to whom the Provident Fund may pay over the amount due to the subscriber, and obtain a valid quittance. If the nominee were merely the legatee under the nomination paper considered as a Will then in so much as a Will can be revoked by a later Will even if not communicated to the fund or by some former instrument of revocation or in some cases by marriage of the testator the fund could never be certain whether the person nominated was the person entitled to receive payment, that is, if the nominee is to be regarded as

legatee only. True it is that the fund is made safe in respect of the payment made to the nominee, but I am not now considering that, I am merely ascertaining what the legal effect on Master's rights to this fund was by his executing this nomination, paper, and it is certain that the nomination paper cannot operate as a Will."

The Court further observed:

"I should hesitate, unless the words of the Statute and of the rules framed there under were explicit, to suppose that the perpetration of such unnatural injustice was rendered obligatory on a subscriber to a Provident Fund. Nor can I conceive why the Provident Fund should wish to introduce so strange a law of inheritance. I do not find in the Statutes anything which renders it obligatory for me to take this view. The object of Section 4, as amended by Act IV of 1903, is to render the fund incapable of attachment in the hands of the nominee for debts due by the subscriber. It is true that the Legislature uses the word "vest" but that word does not necessarily connote title. A person, in whom the property of another vests, has the same rights of dominion over the property as the owner would have had, no more and no less. But no one has the right to deal with his property so as to defeat the legal claims of others."

Therefore, nominee does not get any right or title by virtue of nomination alone.

15. In *Kalisadhan Mitra and Another Vs. Prafulla Chandra Mittra*, , the Calcutta High Court had to consider the effect of declaration made by an employee of the Eastern Bengal State Railway in disposing of the amount standing to his credit in the Railway Provident Fund on his death. The declaration made by the employee is in the following terms"

"I hereby declare the following to be the name and address of the person who in the event of my death, will be entitled to receive payment of my deposit in the Railway Provident Fund and I make this my Will so far as "regards such deposit.

Opposite a note:

Whether the above (the nominee) is next of kin or obtains the deposit by bequest of depositor.

The declaration is duly attested by two witnesses.

In the revised form of declaration now in use the wording has been changed slightly, and the declaration ends with the words:

I hereby appoint..... to be the executor of this my Will so far as regards such deposit."

The question was: Whether it was a mere nomination or a testamentary instrument? The Calcutta High Court came to the conclusion that the declaration was in testamentary nature.

16. The effect of nomination was again considered by the High Court of Sind in

Noor Mahomed v. Mt Sardar Khatun and Ors., AIR 1949 Sind 38. The facts" of that case are:

"One Moulabus son of Mato, an employee of the North Western Railway, died in 1940, leaving property which included a sum of Rs. 5,000/- standing to his credit in the Railway Fund. He left him surviving two widows (plaintiff and defendant 1), two daughters (defendants 2 and 3), a mother (defendant 4), and two sisters (defendants 5 and 6) as his heirs. The appellant, who was defendant 7 in the suit is a sister's son of Moulabus. He was the only near male relation of Moulabus, and Moulabus had nominated him as his nominee to receive the Provident Fund. After the death of Moulabus, the appellant claimed the sum as his property, while the heirs of Moulabus claimed that they were entitled to it under the Mohammedan Law. In consequence, this suit was filed by Mt. Sardarkhatun, one of the widows, for partition of the properties left by Moulabus, including the Rs. 5,000/- in the Provident Fund. The appellant was also interested as defendants 8 to 13, in some immovable property left by Moulabus sought to be partitioned. One of the reliefs sought was an injunction against the appellant, restraining him from recovering the Rs. 5,000/- from the Railway, and Issue No. 2 framed in the suit was:

"Does the amount of Rs. 5,000/- mentioned in schedule C filed with the plaint form part of the property of the deceased?"

The appellant based his claim to the Provident Fund on the nomination, and the question depended entirely upon the right conferred upon the appellant as a nominee, by Section 5, Provident Funds Act of 1925. The learned First Class Sub-Judge found that there was a conflict between the decisions cited before him, namely, Ahmed Mehdi, 59 Bom. 475 : AIR 1935 Bom. 234, M. Mon Singh v. Mothi Bai, 59 Mad. 855 : AIR 1936 Mad. 477; and In the In Re: Goods of Stanley Austin Cardigan Martin, , on the one hand, and Hayatuddin v. Mt. Rahiman and Anr., AIR 1935 Sind 73 : 159 IC 427, on the other, and considering himself bound by the Sind decision decided against the appellant. As a result he passed a decree granting a perpetual injunction against the appellant restraining him from recovering the amount from the Railway, and also ordered the Official Commissioner, appointed, to effect the partition, to recover the amount, and divide it among the heirs. It is only these orders that the appellant now seeks to attack in this appeal, claiming that under the Provident Funds Act the sum in the Provident Fund had not only to be paid to him, but became his property on the death of Moulabus by reason of the nomination, and that the heirs of Moulabus were, Therefore, not entitled to it."

The Court followed the earlier decision in Aimai v. Awabai Dhanjishaw Jamsetii and Ors., AIR 1924 Sind 57.

17. The Lahore High Court in Hardial Devi Ditta v. Janki Das and Anr., AIR 1928 Lah 773, held that:

"Nomination would not amount to a Will or a gift or trust in favor of the nominee.

The nominee would only get the right to receive the amount and he holds the amount for the benefit of the heirs."

18. The Madras High Court in *D. Mohanavelu Mudaliar and Another Vs. Indian Insurance and Banking Corporation Ltd., Salem and Another*, considered the scope of Section 39 of the Insurance Act, 1938. In paragraph 7 of the judgment Govinda Menon, J. on behalf of the Bench observed:

"So far as nomination is concerned we do not see any appreciable difference between the English and American Laws on the one hand, and what obtains in our country. According to the English Law the payee or the nominee is nothing more than an agent to receive the money, which money remains as the property of the assured and at his disposal during his life time and on his death forms part of the estate. The result is that the payee or the nominee takes no beneficial interest in it."

19. The Madras High Court had again an occasion to consider the point in *Seethalakshmi Ammal v. Controller of Estate Duty, Madras, 1966 ITR 317*. The Court observed:

"The accountable person was but a nominee in respect of the policies except two which were of course assigned in her favour. The nomination in each of these cases was no doubt *ex facie* the policy but it was specifically mentioned that the nomination was under the Insurance Act. It follows that the nomination did not vest in her any right to the insurance money. All that it enabled her was to receive the money and the nomination must be taken to be only for that purpose. By such nomination she by no means became a donee or nominee within the meaning of Section 14 of the Estate Duty Act."

20. The Kerala High Court, had to deal with the point in *Narayanan Pai Vs. Aesha, .* The judgment is a very short one and, Therefore, it can be extracted. The same reads as under :

"The short question to be considered is whether the Provident Fund amount of an employee in the Central Bank of India is the absolute property of his wife, who is the nominee under the Provident Fund Rules of the Bank, on the death of the subscriber, so that the amount is no liable for attachment for a debt due by the subscriber. The learned Munsif of Cochin has taken the view that it was not attachable and the creditor has come up in revision.

(2) Rule 23 of the Employees' Provident Fund Rules of the Bank, marked as Ex. D-3, provides that each member may nominate in writing any person to whom the amount standing to the credit of such member shall be paid, in the event of his death while in the service of the Bank or before his claim on the Fund shall have been discharged, and may from time to time change such nomination in writing. Under the provision the subscriber nominated his wife, who is the respondent before me.

(3) In the recent Full Bench decision in *Sarojini Amma Vs. Neelakanta Pillai*, this

Court has held that a nominee in respect of a policy of insurance does not become the owner of the money payable to him under the policy, he being only a receiver of the money and not the owner thereof, and he has Therefore only the right to collect it. The decision has also laid down that a nomination by itself conferred no right on the nominee during the life-time of the assured and it gave only a bare right to collect the money on the death of the assured. Sub-section (I) of Section 39 of the Insurance Act has been considered in the decision; and interpreting that section the Full Bench has given the aforesaid ruling. In considering the case their Lordships have referred to the case in Ramballav Dhandhanias Vs. Gangadhar Nathmal, . Rule 23 and the nomination in the present case are in effect similar to Section 39(1) of the Insurance Act and the nomination referred to in the Ramballav Dhandhanias Vs. Gangadhar Nathmal, . Therefore, that decision must apply to the present case as well."

21. The Gujarat High Court adjudicated on this point in *Atmaram Mohanlal Panehal v. Gunvantiben @ Geetaben Surendrakumar Atmaram Panchal and Ors.* AIR 1977 Guj 134. The case arose under Insurance Act, 1938. The Court observed:

"Here again, there is dear indication that the nominee does not acquire any title to the money, because if he did, his heirs and not the heirs of the deceased policy holder should have been entitled to the money when the policy matures."

We may also observe that a Full Bench of the Allahabad High Court in *Raja Ram v. Mata Prasad* AIR 1972 All 157 (FB) has in terms taken the view that the benefit secured by the policy formed part of the estate of the deceased policy-holder and that the nominee acquires no interest in the estate in the life-time of the policy: holder as is evident from the following passage from paragraph 15 of the judgment:

"15. The result of our survey of the material provisions is :

1. The policy-holder continues to hold interest in the policy till the moment of his death.
2. The nominee u/s 39 acquires interest in the policy in the lifetime of the policy-holder.

As it is part of his estate, his credit can realise their loans from the money paid to the nominee. He will be the legal representative of the deceased policy-holder."

The Court further observed :

"It follows that while an assignee is not merely entitled to receive but has a right to the policy money itself, a nominee is no more than a person who is competent to receive the money if the assured did not survive maturity of a policy and has no right to the money....."

We may observe that there is no doubt as regards the legal position that in view of the policy of insurance and the legal effect of Section 39 of the Insurance Act

only the person named in the policy as a nominee has a right to receive and collect the moneys. He merely collects it on behalf of the original claimants. If there is a Will, the legatees under the Will would get it. If the policy holder has died intestate, his legal heirs would get it. In the present case, in view of the dispute between the legal heirs on one hand and the nominee on the other the amount collected by the nominee from the Life Insurance Corporation has been deposited in the Court."

The Court observed that it was taking the view that had been taken by the High Courts of Calcutta, Madras and Kerala, while deciding to issue certificate of fitness to appeal to Supreme Court of India.

22. In *Mamta Sen Vs. Life Insurance Corporation of India*, , the Calcutta High Court observed that the nominee u/s 39 of the Insurance Act, 1938 is given a statutory right to receive payment and that is not a right of a person acquiring title to the money but a right flowing from his status as a nominee.

23. The Andhara Pradesh High Court considered the matter in *Shaik Dawood and Ors. v. Mahmooda Begum and Ors.* The Court summarised its conclusion in the following terms:

"(1) The nominee of a provident fund has only the exclusive right to receive the fund. His rights are the same as that of a nominee u/s 39 of the Insurance Act.

(2) The provident fund remains the property of the deceased subscriber and is available for distribution amongst his heirs in accordance with their personal law. The Supreme Court decision in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, govern nominations made, in respect of provident funds as well.

(3) *Koruprolu Talupulu Vs. Dasetti Narasamma and Others*, and *Lalitha's case* (1975 (2) APLJ (HC) 168) (supra) do not state the law correctly.)"

24. In *Smt. Om Wati v. Delhi Transport Corporation, New Delhi and Ors.*, 1988 LAB.I.C. 500, this Court held:

"Right to receive amount does not confer absolute right on nominee to receive amount to the exclusion of other heirs."

This Court followed the dictum laid down by the Supreme Court in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, .

25. In *Saraswati Devi Vs. Life Insurance Corporation of India*, , this Court reviewing the case law on the point, held :

"The legal scope in regard to nominations and the assignment is the same under the English and Indian Laws and in this respect one may only draw attention to *Preston and Colinvax* (1950 Edn.), the *Law of Insurance* (Sweet and Maxwell) and the *Law of Life Insurance* (Butterworth's 4th Edn.). As far as Indian Law is concerned one need not go beyond Section 39 of the Indian Insurance Act and perhaps to its Section 38 as well. In England as in India, in addition to

assignments and creation of trusts one finds in the case of insurances on the assured's own life, for the assured to nominate someone. All that Sub-section (6) of Section 39, Insurance Act does is to confer on the nominee the right to receive the insurance money as between such nominee and the Insurance Company. As per the proviso to Section 39, the policy holder may elect to come either under nomination under Sub-section (6) of Section 39 or under trust under Sub-section (7) of that section. But then, I need not dwell on Sub-section (7) because it is no body's case that the present is not a case of nomination implicate within the meaning of Sub-section (6) of Section 39.

And, what is the effect of such nomination?

Before I venture to answer the question posed above, a word or two more need to be said. It is not a case, and I say so as since it was not even remotely suggested, of the plaintiff being a "beneficiary". Here is a case where the plaintiff has been named as a "nominee" u/s 39 of the Act. What then are her rights? The law seems to be clear and it is that a nomination by itself confers no right on the nominee during the life-time of the assured and gives only a bare right to collect the policy money on his death. A nominee is not to be confused with an assignee. While an assignee is not merely entitled to receive but has a right to the policy money itself, a nominee is competent only to receive the money if the assured did not survive maturity of a policy and has no right to the money. As observed by the Supreme Court in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, :

"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 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."

Since Sub-section (6) of Section 39 underlines the obligation of the insurer to pay to the nominee and, if the nominee is "the hand which is authorised to receive the amount". I see no reason for holding that without impleading the legal heirs, such a hand cannot extend itself to claim the amount "payable".

26. The Supreme Court in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, held :

"A mere nomination made u/s 39 of the Insurance Act, 1938 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 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 law of succession governing mem."

27. Mr. Pramod B. Agarwala, the learned Counsel for the third respondent submitted that the probate Court has no jurisdiction to go into the question of title. He referred to the following judgments:

1. Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others, .
2. Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, .
3. Thomas P. Jacob Vs. M.G. Varghese and Others,
4. Kamalamma v. Somese Kharappa AIR 1963 Mys 136
5. Rama Chakravarty Vs. Manager, Punjab National Bank and others, .

28. Before dealing with the authorities cited by the learned Counsel for the third respondent the submission made by Mr. Pramod B. Agarwala could be easily disposed of on the facts and circumstances of this case. The third respondent does not claim any independent title to the monies. His only case is that the nominee would get absolute interest in respect of the monies due and payable under various transactions entered into with the institutions by his late father. When that is the position, the argument that Probate Court has no jurisdiction to go into the question of title is not at all sustainable. If a person claims independent right or title to the properties of the deceased, then it will not be within the province of the Probate Court to adjudicate on title. And here the title of late Harikishan Singh to the monies is admitted.

29. In Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others, , the facts before the Supreme Court are :

"One Jagdishwar Prasad Singh who was the son of Sripat Narain Singh by his first wife died on the 18th August, 1934 leaving a minor daughter Srimati Kamta Devi. His wife had predeceased him but Jagdishwar Prasad Singh did not marry a second wife. It is alleged that Jagdishwar Prasad Singh had on the 18th December, 1930 made his last Will and testament. This Will purports to have been attested by two witnesses, namely, one Sahdeo Singh, an Advocate, practicing at Ghazipur, and one Rameshwar Lal Singh deceased, who was an Honorary Magistrate of Ghazipur. By this Will the testator appointed one of his step-brothers, namely, Ishwardeo Narain Singh, as the executor. By the Will he directed that the entire fixed rate tenancy in village that the entire fixed rate tenancy in village Billahri should be sold and the sale proceeds utilised towards the expenses relating to the marriage of his daughter and that until the property was sold the income thereof should be accumulated and should be utilised towards expenses relating to the maintenance and marriage of the daughter. He further directed that after his death a grove should be planted in certain lands situated in Village Kundesar and a temple should be constructed in the grove and an idol of Sri Thakurji should be installed therein and all the Zamindari rights together with the grove and the "katcha" properties and the Zamindari share in certain villages mentioned therein should be dedicated to Thakurji and the

income there from should be utilised towards the expenses relating to the Rag, Bhog, Puja and construction and repairs of the Thakur Bari, etc. He appointed his step-brother Ishwardeo Narain Singh as the trustee and manager of the Thakur Bari and the property dedicated to Thakurji.

On the 29th October, 1934 Ishwardeo Narain Singh presented a petition to the District Judge, Ghazipur for the grant of probate to him. At the foot of that petition, Rameshwar Lal, one of the attesting witnesses, declared that he was present and saw the testator affix his signature thereto. The estate was valued at Rs. 3,000/-. An objection was put in on behalf of Srimati Kamta Devi, the daughter of the testator. At the trial, amongst others, evidence was given by the attesting witness Sahdeo Singh as to the due execution of the Will and the testamentary capacity of the testator. The other attesting witness Rameshwar Lal was also called as a witness. After examination-in-chief his cross-examination was complete that witness died and consequently his evidence could not be used as evidence in the case. The Trial Court was satisfied that the Will had been duly executed and that the testator had a sound disposing mind. He, however, found that the disposition contained in the will in favor of Thakurji was void for uncertainty and relying on a decision in *Phundan Lal v. Arya Prithi Nidhi Sabha*, 33 All 793, the learned District Judge held that the Will was not expressive of any definite intention and was, Therefore, not a will as defined in Section 2(h) of the Indian Succession Act. In view of this finding the learned District Judge rejected the application for probate.

An appeal was taken to the High Court. The High Court held that the due execution of the Will had not been proved. The High Court also held the view that the Will was void for uncertainty and on both of these grounds the High Court affirmed the judgment of the Trial Court and dismissed the appeal. The petitioner applied to the High Court for leave to appeal to the Privy Council but such application was dismissed. The petitioner thereafter applied to the Privy Council and obtained special leave to appeal. The appeal has now come up for hearing."

The Supreme Court held:

"The Court of Probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. It is surprising how this elementary principle of law was overlooked by both the Courts below. However, as learned Counsel appearing for the respondents has not sought to support this ground nothing further need be said on that."

Therefore, the ratio laid down by the Supreme Court would not at all apply to the facts of this case.

30. Mr. Pramod B. Agarwala, the learned Counsel for the third respondent

referred to the judgment of the Supreme Court in Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, . The facts leading up to the orders passed by the Supreme Court on the 1st of November, 1991, as noticed by the Supreme Court, are:

"Shri Chiranjilal Shrilal Goenka was involved in several suits and one of which is pending appeal at his behest. He died on November 25, 1985 leaving behind last will dated October 29, 1982 said to have been executed in which he appointed his younger daughter Mrs. Sushila N. Rungta as sole executrix of his Will. Radhey Shyam claims to be the adopted son of Shri C.S. Goenka. Radhey Shyam is the natural son of Shri Mangal Chand Kedia and Mrs. Sita another daughter of Shri C.S. Goenka. The applicant, executrix; Radhey Shyam and his wife filed substitution applications under Order 22, Rule 3, CPC setting up rival claims. When the dispute arose as to who would represent the estate of Shri C.S. Goenka, by order dated October 7, 1991 this Court brought all the three on record as legal representatives. By further order dated November 1, 1991 this Court passed the following order:

"By consent of parties Justice V.S. Deshpande, retired Chief Justice of the Bombay High Court is appointed as Arbitrator to settle the dispute as to who would be the legal heirs to the estate of late Chiranjilal Shrilal Goenka."

The Arbitrator entered upon reference. Proceedings before the Bombay High Court for the issuance of the probate were also pending. The learned Judge of the Bombay High Court expressed a doubt whether the Arbitrator has jurisdiction to decide probate matters. An application was filed before the Supreme Court seeking clarification. The main prayer in the application before the Supreme Court was:

"(a) that this Hon"ble Court may be pleased to allow the applicant to proceed with the Probate Suit No. 65 of 1987 pending before the Hon"ble High Court of Bombay in accordance with law; and

(b) to pass such order and other orders as this Hon"ble Court may deem fit and proper in the circumstances."

31. The argument before the Supreme Court on behalf of the applicant seeking clarification was that it was only the Probate Court which would have exclusive jurisdiction to grant probate and such a matter cannot be referred to arbitration. The Supreme Court observed:

"In Ishwardeo Narain Singh v. Smt. Kamta Devi, this Court held that the Court of Probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. Therefore the only issue in a probate proceedings relates to the genuineness and due

execution of the Will and the Court itself is under duty to determine it and preserve the original Will in its custody. The Succession Act is a self-contained Code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the Probate Court. This is clearly manifested in the bascule of the provisions of the Act. The probate proceedings shall be conducted by the probate Court in the manner prescribed in the Act and in no other ways. The grant of Probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the Will. Thus it does no more than establish the factum of the Will and the legal character of the executor. Probate Court does not decide any question of title or of the existence of the property itself."

Ultimately, the Supreme Court directed the High Court of Bombay to proceed with the probate case and directed the Arbitrator not to decide the issues framed before him. I fail to see how this case would be of any assistance to the third respondent.

32. The learned Counsel referred to the judgment of the Kerala High Court in *Thomas P. Jacob Vs. M.G. Varghese and Others*, . The question before the Kerala High Court was whether a person who was claiming title by adverse position could enter caveat in the probate proceedings and whether he could be a person having an interest in the estate of the deceased and he would be entitled to notice u/s 283(1)(c) of the Indian Succession Act, 1925. While deciding the point, the Kerala High Court observed:

"It is settled law that in proceedings for probate or Letters of Administration; the Court does not enter on the question of title to the property which the testator by his Will proposed to leave. The only function of the Court is to determine whether the Will had been genuinely made by the testator out of his free volition; whether it had been properly executed and attested in accordance with the law and whether the testator had the capacity to execute it."

In proceedings for probate or Letters of Administration, the Court does not enter on the question of title to the property. The Kerala High Court stated the principles;

"It is settled law that in proceedings for probate or Letters of Administration, the Court does not enter on the question of title to the property which the testator by his Will proposed to leave. The only function of the Court is to determine whether the Will had been genuinely made by the testator out of his free volition; whether it had been properly executed and attested in accordance with the law and whether the testator had the capacity to execute it. As stated by the Supreme Court in *Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others*, :

"..... The Court of probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a

particular bequest is good or bad is not within the purview of the Probate Court....."

In *Birj Nath De v. Chander Mohan Banerji*, (1897) 19 AH. 458, it was stated:

"..... It has been contended.. that where an application for probate of a Will is contested and it is alleged that the property dealt with by the Will was not the testator's or was not property over which the testator had a power of testamentary disposal, it is the duty of the Court to try an issue raising this question. All we can say is that it would be exceedingly inconvenient if Courts in this country had to try such issues. A Court could never be quite sure that it had got the proper parties before it. It would be difficult always to be sure that there was no collusion in the case. It is much safer in the interests of the public that issues as to the title to property should be decided when the issues are raised in a regular suit, and not on an application for a grant of probate."

Shearer, J. held in *Kashi Nath v. Dulhin Gulzari* AIR 1941 Patna 475:

"In an application for probate of a Will or for the grant of Letters of Administration with a copy of the Will annexed the sole question that arises is whether or not the Will is a true one. It is not open to the Probate Court to decide whether or not the property with which a testator has purported to deal, in fact, belonged to him....."

T.K. Joseph, J. in *John Simon v. George John*, AIR 1955 T C 177 observed:

"9. As regards the argument that the application is a transparent device to secure from the Probate Court a decision upon a disputed question of title to the properties, it is difficult to see how a decision in the Probate Court can at all operate to help the parties one way or the other in a contested title suit. The grant of probate or Letters of Administration is decisive only of the genuineness of the Will and the right of the person to whom the grant is made to represent the estate. It is impossible to say, Therefore, that the grant of probate or Letters of Administration with a copy of the Will annexed would be at all a bar to the determination of any question of title or to a suit for construction of the Will. The fact that third parties may have acquired rights in the properties can be no ground for refusing probate or letters of administration as the one cannot prejudice or be prejudiced by the other."

See also *Ochavaram Nanabhai v. Dolatram Jamietram*, (1904) 28 Bom 644; *Behary Lull Sandyal v. Juggo Mohun Gossain*, (1879) 4 Cal 15; and *Dhane Ali Mia and Others Vs. Sobhan Ali and Others*, .

These decisions show that like in the case of a purchaser, or an assignee, a creditor too has the locus standi to oppose the grant or to apply for revocation of the probate on the ground of fraud because his interests are adversely affected, when contrary to his expectation, the property which appeared to be in the possession of the heir-at-law is withdrawn by a Will. That is a principle of equity going to the aid of a bonafide purchaser, assignee, creditor and the like to

protect him against fraud. Equity in this regard protects those who claim under the Will, and not those who claim outside or independently of the Will or adversely to the testator. What is protected is an interest or an estate. derived by reason of devolution, or by reason of transfer from the testator or his heirs. This principle has no application to the person whose only claim is based on possession which he can defend against all but the true owner, and even against the true owner by reason of prescription. The law protects his right to remain in possession until duly evicted by process of law. He is unconcerned with the devolution of the property of the deceased. His right is not derived from the testator or his successors, but acquired by reason of adverse possession. It does not matter to him whether the property devolves on A or B so long as he has a right to defend his possession on the strength of prescription. The decision of the Probate Court being irrelevant to the title to the property, but only to the right to represent the estate of the deceased, a trespasser or a person entitled to possession by prescription has no interest in the final outcome of the proceedings in such a Court. A claim based on title or possession must be determined in a proper suit. "It is much safer in the interests of the public that issues as to the title of property should be decided when the issues are raised in a regular suit and not on an application for a grant of probate" (1897) 19 All 458. Matters of possession or title are not in issues in the proceedings of the Probate Court. The caveator who claims no interest in the property otherwise than by reason of his alleged title by prescription has no right to be heard by the probate Court. Accordingly his caveat was rightly discharged."

33. Here again, the principles laid down by the Kerala High Court would not be of any help to the third respondent.

34. Mr. Pramod B. Agarwala, the learned Counsel for the third respondent referred to the judgment of the Mysore High Court in *Kamamma v. Somasekhara* AIR 1963 Mys 136. The facts in that case are as follows:

"The present appeal is directed against the judgment of the learned District Judge in O.S. No. 23 of 1954 by which he granted a decree for probate in favor of the respondent.

The suit was originally instituted by one Basavalingappa on 20.8.1953 praying for the issue of a probate in his favor on the ground that one Channamma had executed a Will on 20.9.1950 appointing him as an executor thereunder. Before notice of this petition could be served on the respondent Komamma who is admittedly the daughter of the pre-deceased son of Chennamma, Basavalingappa himself died on 6.12.1953 and his grandson Somasekhara filed an application for being substituted as the legal representative of the deceased. That application was granted. After service of notice in due course, Komamma filed her statement of objection and she contended that the petitioner Somasekhara by himself had no right to continue the proceedings as there were other legal representatives of deceased Basavalingappa, the original petitioner, that the alleged Will had been taken from Channamma when

she was not in a disposing state of mind, and that the testatrix had no right to execute the Will as she had no title to the properties included therein,.

On the evidence placed before him, the learned District Judge came to the conclusion that Somasekharappa was the legal representative and could continue the petition, that the Will had been executed by Channamma when she was in sound and disposing state of mind and that Somasekharappa was entitled to a decree for probate in his favour. The learned judge also considered the question raised by the present appellant as regards the dispute for payment of Rs. 250/- which under the will Komalamma was to be paid by the executor. He came to the conclusion that plaintiff had not paid Rs. 250/-and accordingly made the payment of Rs. 250/- to the appellant a condition precedent to the issue of a probate in his favour. Redirected the parties to bear their own costs.

It is against his order that Komalamma has preferred this appeal."

The Court pointed out the distinction between an administrator and an executor. The Court observed:

"It is pertinent to observe that the distinction between an administrator and an executor is that the former derives his authority under the Will while the latter gets that authority to represent the estate under the orders of the Court. The representative capacity of the executor or of the administrator is quite evident in that whether he has any personal interest or not as a legatee under the Will he is certainly entrusted with the management of the estate for the Will. Their Lordships Therefore came to the conclusion that a person who becomes an heir to the legatee will be a legal representative and would be competent to continue a proceeding started by an executor."

The Court granted Letters of Administration modifying the grant of probate by the lower Court. The ratio in this case also does not help the third respondent.

35. Mr. Pramod B. Agarwala, the learned Counsel for the third respondent referred to the judgment of the Calcutta High Court in *Rama Chakravarty v. Punjab National Bank and Ors.* AIR 1991 Cal 1211. In the case before the Calcutta High Court a nominee in respect of a safety locker in the Punjab National Bank wanted production of a succession certificate to enable her to operate the safety locker. The petitioner moved the Calcutta High Court by a writ petition for a direction to the Bank to permit her to operate the safety locker. The Court disposed of the matter by observing :

"A succession certificate does not decide or confer any title but merely clothes the holder of the certificate with the authority to realise the debts and securities belonging to the deceased and to give valid discharge. A nomination u/s 452E also can only vest the nominee with the authority to open the Locker hired by the nominator and to receive and remove the contents. Sub-section (4) enjoins the Bank to prepare an inventory of the contents of the Locker and Sub-section (3) categorically provides that "on the removal of the contents of any Locker by any

nominee the liability of the banking company in relation to the contents of the Locker shall stand discharged." With these provisions staring at the face, and the Bank not disputing the validity or otherwise of the nomination had no business to ask the nominee to produce a succession certificate and thus it indulge in fruitless logomachy. More so when the materials on record go to show that the petitioner has clearly declared that her husband left no other heir and produce certified copy of the judgment to show that the civil suit filed against the petitioner has been dismissed. If any other person has or have any claim in respect of the contents of the Locker, he would have to sort it out with the petitioner. But the Bank is not required to behave like a busy-body and develop a headache over the matter. The Bank and the legal advisers ought to have realised that the Bank is expected to adopt an attitude of co-operation, and not of a combatant, to the customers or their representatives."

This case also does not help the third respondent.

36. In the light of the categorical pronouncements by the Supreme Court about the nomination and in the light of the provisions of the Banking Regulations Act, 1949, which have been extracted above, I do not find any merit in the submission made by Mr. Pramod B. Agarwala, the learned Counsel for the third respondent. Therefore, I have no hesitation in coming to the conclusion that all the monies payable to the nominees in respect of the transactions by late Harikishan Singh would form part of his estate and would come to the common pool to be made available for distribution among his heirs under the provisions of the Hindu Succession Act, 1955. Accordingly, the application for grant of Letters of Administration is allowed to the above extent.

37. There shall be no orders as to costs.

38. In view of the disputes between the parties, instead of granting Letters of Administration to each of the nominees, to have fair and equal distribution and for the purpose of quick realisation of the assets and also the division of the house property, I am of the view that an administrator has to be appointed to collect all the monies and to make division of the the house property among the heirs, if possible, or sell the same among the heirs by auction to the highest bidder or sell the property in open market and distribute the proceeds among the heirs. I hereby appoint Mr. V. Prabhakar, Advocate, 35/21, 2nd Floor, West Patel Nagar, New Delhi-110008 as Administrator.

39. Mr. Pramod B. Agarwal, the Counsel for the third respondent had deposited all the original certificates available with the third respondent. The Administrator appointed shall approach the Banks or institutions which are holding the money and get the payments in the name of the Registrar of this Court and deposit the same in this Court. The Registrar of this Court, on receiving the amounts, shall keep the same in short term fixed deposits in the name of the Registrar of this Court until directions are issued by this Court in this behalf. The Banks and the other institutions which are holding the money shall render all assistance to the

Administrator in Realizing the monies and the Administrator shall be entitled to take the original receipts from this Court and produce before the Banks or the institution concerned for the purpose of Realizing the money.

40. The Administrator shall be paid a sum of Rs. 10,000/- towards initial remuneration by the petitioners in the first instance and after the distribution of assets final orders will be passed about the share of the remuneration by the heirs. The Administrator shall be entitled to apply for additional remuneration as and when the collections are made and ultimate division of the properties is made. The petitioners shall pay the Administrator the expenses required for collecting the , monies from the various institutions.

41. The probate case is ordered in above terms.

42. Post the matter for direction before the regular Bench on the 10th of February, 1999.