
(2001) 05 AHC CK 0140

In the Allahabad High Court

Case No : C.M.Review Application No. 34218 of 1996

Mst. Ahmadeen Begum and others

APPELLANT

Vs

Abdul Qayum Khan and others

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Government Savings Certificate Act, 1959 — Section 6, 7, 8
Insurance Act, 1938 — Section 39, 39(6)
Provident Funds Act, 1925 — Section 3, 4, 5, 5(1)

Citation : (2001) 3 AWC 1820 : (2001) 90 FLR 348 : (2001) LabIC 3906 :
(2001) 2 UPLBEC 1550

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : Sankatha Rai, S.N. Singh and R.N. Singh, for the Appellant; Vivek Prasad Misra, for the Respondent

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—This is an application for review of the judgment of Hon''ble D.C. Srivastava, J. The plaintiff Abdul Qayum Khan filed suit for declaration against the defendant Ashiq Husain, that he is the only son and heir of the deceased Jan Mohammad. The dispute related to entitlement to the provident fund of the deceased Jan Mohammad. The plaintiff claimed the sums on the basis of being son of the deceased while the defendant claimed to be real brother and also relied on a nomination made in his favour by the deceased. The question which arose for determination in the second appeal was. whether the nomination will prevail or the plaintiff being son had a right of declaration in respect of the said sums. It was held by this Court that relying upon decision of the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , that the nominee does not have a right to appropriate the moneys of the provident fund but the heirs have a right to the said fund.

2. In support of this review application, Sri Sankatha Rai counsel of the

applicants contends that this Court did not consider the effect of the provisions of Section 5 of the Provident Fund Act, 1925 and as such, the judgment of this Court is liable to be reviewed. He has relied upon various decisions that in case a statutory provision is over-looked in a judgment, it construes a valid ground of review. There can be no quarrel with this proposition and as such, it is not necessary to consider the cases cited by Sri Rai on this point. It is true that the provisions of Section 5(1) of the Provident Fund Act have not been considered in so many words by this Court in the judgment under review, as such the contention of Mr. Rai is being dealt with.

3. In support of his contention. Mr. Rai has relied on a Full Bench Decision of the Oudh Chief Court in Mohd. Naim and another v. Mt. Munimunnissa AIR 1936 Oudh 32. By a majority of two Judges, it was held that Section 5 of the Provident Fund Act conferred right upon the nominee to deal with the moneys due under the provident fund in his own way. It was held that the declaration under the Provident Fund Act made by the deceased operated as a Will and as such the personal law of the depositor would give way to the declaration made in the provident fund and the nominee was entitled to receive the money absolutely. Section 5(1) of the Provident Fund Act as it stood at the time when the matter was considered by the Full Bench may be quoted as below :

"Subject to the provisions of this Act, but otherwise notwithstanding anything contained in any law for the time being in force or any disposition whether testamentary or otherwise, by a subscriber to, or depositor in, a Government of Railway Provident Fund of the sum standing to his credit in the Fund, or of any part thereof, any nomination, duly made in accordance with the rules of the Fund, which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely, until such nomination is varied by another nomination made in the like manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules."

This Section has now been amended. Section 5(1) as it stands after the amendment may now be reproduced as under :

"5 (1) Notwithstanding anything contained in any law for the time being in force or in any deposition, whether testamentary or otherwise, by a subscriber to or depositor in a Government or Railway Provident Fund of the sum standing to his credit in the Fund, or of any part thereof, where any nomination, duly made in accordance with the rules of the Fund, purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor occurring before the sum has become payable or before the sum having become payable, has been paid, the said person shall, on the death as aforesaid of the subscriber or depositor, become, entitled to the exclusion of all other persons, to receive such sum or part thereof, as the case may be, unless-

(a) such nomination is at any time varied by another nomination made in like manner or expressly cancelled by notice given in the manner and to the authority prescribed by those rules, or

(b) such nomination at any time becomes invalid by reason of the happening of some contingency specified therein,--

and if the said person predeceases the subscriber or depositor, the nomination shall, so far as it relates to the right conferred upon the said person, become void and of no effect :

Provided that where provision has been duly made in the nomination in accordance with the rules of the Fund, conferring upon some other person such right in the stead of the person deceased, such right shall, upon the decease as aforesaid of the said person, pass to such other person."

Sri Sankatha Rai contended that on a proper interpretation of Section 5(1), the nominee would be deemed to have received the provident fund money as absolute owner. He gives two reasons in support of his contention. The first reason according to him, is that section opens with a non-obstante clause and, therefore, overrides the personal law of succession. The second reason given by him is that under the section, the nominee becomes entitled to receive the sum to the exclusion of all other persons. It is contended that the effect of the exclusion clause would be that the heirs of the deceased would have no right over the provident fund. In *M. Malati and Others Vs. M. Dharma Rao and Another*, , it was held that there is nothing in Sections 3, 4 and 5 of the Provident Fund Act to indicate that the nominee receives the amount for the benefit of depositor's heirs or dependants. The Orissa High Court after noticing the divergent opinion expressed upon the interpretation of Section 5 has taken the view that the nominee receives the amount as absolute owner.

4. On the other hand, Sri V. P. Mathur has relied upon the Supreme Court decision in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, and the decision of the Supreme Court in *Shri Vishin N. Khanchandani and another v. Vidya Lachmandas Khanchandani and another*. Supreme Today (Vol. 5). He also relies upon *Shaik Dawood and Others Vs. Mahamood Begum and Others*, and upon the judgment of this Court in *Smt. Sarju Devi v. Naresh Chandra Nigam and another*.

5. In *Sarbati Devi's* case (supra), the Supreme Court was dealing with the nomination u/s 39 of the Insurance Act, 1938. The Supreme Court held that on the death of the policy holder, the amount under the policy becomes part of the estate which is governed by the law of succession applicable to the deceased and that there was no warrant for the proposition that Section 39 operates as a third kind of succession. It was held that subsection (6) of Section 39 does not have the effect that the amount shall belong to the nominee.

6. In *Shaik Dawood and others* (supra), the Andhra Pradesh High Court interpreted the Employees' Provident Funds and Misc. Provisions Act (Act 19 of

1952) and it was held that the nominee of the provident fund has only the exclusive right to receive the fund. His rights are similar to that of a nominee u/s 39 of the Insurance Act and the provident fund remains the property of the deceased subscriber and was available for distribution amongst his heirs in accordance with their personal law. The Andhra Pradesh High Court dissented from the view taken in 1968 Ori 8. In this decision, the Andhra Pradesh High Court also considered Section 5 of the Provident Fund Act, 1925. In paragraph 13 of the judgment, the Andhra Pradesh High Court noticed the amendments made in Section 5 of the Provident Fund Act by which the word "absolute" occurring before the amendment was omitted. The view taken was that the nominee has after the amendment only the right to receive the amount which had become payable without any legislative expression that such nominee has any right to enjoy the money.

7. In *Shri Vishin N. Khanchandani and another (supra)*, the Apex Court has interpreted Sections 6, 7 and 8 of the Government Saving Certificates Act, 1959. Section 6 of that Act also contains a clause entitling the nominee to be paid the sum due on the saving certificate to the exclusion of all other persons. The said section also begins with a non-obstante clause. The Supreme Court in paragraph 11 of its judgment has observed as follows :

"It is contended on behalf of the appellants that the non-obstante clause in Section 6 excludes all other persons, including the legal heirs of the deceased holder, to claim any right over the sum paid on account of the national savings certificates, to the nominee. There is no doubt that by non-obstante clause the Legislature devices means give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intendment. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind."

The Supreme Court in the aforesaid decision noticed the difference employed in the language of Section 6 of the Government Saving Certificates Act, 1959 and Section 39 of the Insurance Act but held that the effect of both the provisions is the same. It was held that any amount paid to the nominee becomes the estate of the deceased and it devolves upon the persons who are in law entitled to succession.

8. In *Srnt. Sarju Devi (supra)*, the Court considered the provisions of Section 5 of the Provident Fund Act and held that the right entitles the nominee to receive the amount initially. It does not deprive the real heir of his right in the estate left by the deceased. Sri Rai has sought to distinguish this decision on the ground that it did not consider the clause relating to the exclusion of other persons from receiving the provident fund which was payable to the nominee.

9. The non-obstante clause contained in Section 5 merely gives over-riding effect to the provisions of that section over other enactments. The non-obstante clause does not enlarge the meaning of the expression "received" used in that provision. The Legislature has, by the amendment omitted, the expression "absolutely" which was occurring in the section before its amendment. The effect of exclusion of other persons from receiving the provident fund is to make the nominee alone eligible to receive the provident fund. The provision has been made for convenient payment with effective discharge of liability of the department making the payment without being faced with the problem of deciding competing claims. The nominee, however, does not receive the money as beneficial owner. The provisions of Section 6 of the Government Saving Certificates Act, 1959 are quite similar to the provisions of Section 5 of the Provident Fund Act, 1925. The decision of the Supreme Court in *Sri Vishin N. Khanchandani* (supra) will govern the interpretation of Section 5 of the Provident Fund Act.

10. In view of the above, it is held that Section 5 of the Act does not confer any beneficial interest upon the nominee. The nominee has no right to appropriate the provident fund on the death of the subscriber of the provident fund. The provident fund will form part of the estate of the deceased and will be available for distribution amongst his heirs.

11. In the result, there is no error in the Judgment of this Court sought to be reviewed.

12. The review application is accordingly dismissed.