

(1991) 12 MAD CK 0024
In the Madras High Court

Narammal (died) and Another	Vs	APPELLANT
Kanthamani and Others		RESPONDENT

Date of Decision : 31-12-1991

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10(2)
Insurance Act, 1938 — Section 44
Married Womens Property Act, 1874 — Section 6
Tamil Nadu Co-operative Societies Act, 1961 — Section 24

Citation : (1992) 2 LW 222 : (1992) 2 MLJ 539

Hon'ble Judges : Venkataswami, J

Bench : Division Bench

Judgement

Venkataswami, J.—The plaintiff in O.S. No. 50 of 1982, on the file of the court of Subordinate Judge, Coimbatore, has preferred this appeal.

2. Pending disposal of the appeal, the appellant/plaintiff died and the second respondent (son of the deceased appellant) in the appeal has filed

C.M.P. No. 10153 of 1991, claiming to be the sole legal representative of the deceased appellant, and praying for transposing him as the second

appellant in the above appeal. After hearing learned Counsel on both sides, we have ordered that petition. However, for the sake of convenience,

the appellant will be hereafter referred to as the plaintiff and the contesting first respondent as first defendant.

3. Before going into the facts, it will be useful to narrate the relationship between the parties. One Ranganathan was the son of the plaintiff (husband

of the first defendant). On the death of Ranganathan, the cause of action for the suit has arisen. The second defendant (now the second appellant in

this appeal) is the brother of the deceased Ranganathan. The third defendant is the brother-in-law of the deceased Ranganathan. The 4th defendant

is a tenant in respect of the second schedule property. The fifth defendant is a co-operative house benefit society. The sixth defendant is a chit

fund.

4. The plaintiff, claiming to be a Class I heir along with the first defendant, claimed that she is entitled to a share in the properties, both movable and

immovable, left by the deceased Ranganathan, along with the first defendant. There are eight schedules in the plaint. The first defendant has

mentioned in her additional written statement that the plaintiff collected the amount due under the insurance policy, and that was to be subjected to

partition and she (first defendant) must be given a half share. In addition to that, she has also pointed out that one Vicky motorcycle has been

retained by the plaintiff, that it must be valued and she must be given a half share in that. Further in the additional written statement, the first

defendant has pointed out that a fixed deposit amount in the name of deceased Ranganathan in the Central Bank of India was also available for

division.

5. Before the court below, the plaintiff examined herself as P.W. 1, and the first defendant examined herself as D.W.I. On the side of the plaintiff,

Exs.A-1 to A-4 were marked, and on the side of the defendants, Exs.B-1 to B-5 were marked. Third party documents were marked as Exs.X-1

to X-15.

6. On the basis of the pleadings, evidence and the arguments, the trial court granted a decree declaring one-fourth share in plaint schedules 1 and

3 in favour of the plaintiff and half share in the 7th schedule as well as in the L.I.C. premium and in the fixed deposit pointed out in the additional

written statement. In respect of other items, the suit was dismissed.

7. Aggrieved by the dismissal of the suit, the present appeal was filed by the plaintiff and the second appellant is now continuing the appeal.

8. Mr. E. Padmanabhan, learned Counsel appearing for the appellant, while narrating the facts, though commented about the dismissal of the suit in

respect of all items except Schedules 1, 3, 7 and two items mentioned in the additional written statement, concentrated and attacked the decree

only in respect of Schedules 2 and 4. In other words, we are called upon to

decide the correctness of the judgment and decree of the court below

in respect of Schedules 2 and 4. In these circumstances, we do not consider it necessary to set out elaborately the pleadings and the issue framed thereunder.

9. The second schedule relates to a house bearing Door No. 1-C, Lakshmipuram, Lal Bahadur Nagar, Uppilpalayam village, within Singanallur

Municipal limits, and fully described in the Second schedule. The fourth schedule relates to a sum of Rs. 27,910-24 p. representing provident fund

and group insurance and gratuity taken by the first defendant from Messrs. SITRA.

10. The main ground on which the claim of the plaintiff was negated in respect of items covered under Schedules 2 and 4 was that the deceased

Ranganathan nominated the first defendant to receive the benefits and, therefore, to that extent, the plaintiff must be deemed to have been

disinherited in respect of those items. The correctness of that conclusion is challenged before us.

11. In support of his contention that notwithstanding the nomination in favour of the first defendant, learned Counsel submits that the plaintiff is also

entitled as Class I heir to share the benefits along with the first defendant as the nomination or the statutes under which such nominations were

made do not alter the general law of succession.

12. So far as the house property covered by the second Schedule is concerned, Mr. E. Padmanabhan, learned Counsel invited our attention to

paragraph 11 of the written statement of the first defendant, to claim exclusive title in her favour, and submitted that such a claim cannot be

sustained in law in view of the ratio laid down by the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, . Paragraph 11 of the

written statement reads as follows:

The deceased Ranganathan in his application dated 1.12.1973 to the 5th defendant, viz., The Dhanalakshmipuram Rural Co-operative House

Benefit Society Limited Regulation No. K. 1584 had clearly mentioned that the property should go to this defendant after his life time. The Society

only accepts membership and such membership is transferable only with the permission of the society. A member can nominate any person to

succeed to his interest. On the death of a member the interest of the deceased

member under the society shall be dealt with in accordance with

Section 24 of Act 53 of 1961. Every member of the society may nominate any person to succeed to his share of interest in the society in the event

of his death and such nomination shall be given effect to by the committee in the event of his death. The nomination in this case has been done

specifically in accordance with the law and as per the procedure described under the said Act. The nomination has also been registered under the

rules of the society. The society shall transfer the interest of the deceased as per the bye-laws of the society. While so, the said nomination has to

be treated as a will and rights of this defendant have to be worked out accordingly. The plaintiff is not entitled to claim any share in schedule 2 of

the property. Moreover, a suit in respect of this property is barred by Act 53 of 1961. This Hon'ble Court, has, therefore, no jurisdiction to try the

suit. The claim for mesne profit is neither just nor proper. The plaintiff who claims to be in occupation of a portion is certainly not entitled to claim

mesne profits especially after having filed a speculative suit u/s 37(2) of the Court-Fees Act. The suit, is therefore, liable to be dismissed.

13. As regards the moneys representing provident fund, group Insurance and gratuity, as described in schedule 4 of the plaint, the argument of the

learned Counsel for the appellant was that applying the same ratio of the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, ,

the mother is entitled to share the moneys along with the first defendant notwithstanding the nomination in favour of the first defendant. In addition

to the judgment of the Supreme Court as mentioned above, Mr. E. Padmanabhan also placed reliance on a Division Bench judgment of the

Andhra Pradesh High Court, in Shaik Dawood and Others Vs. Mahamood Begum and Others, , and another judgment of this Court in

Meenambal v. Sornathammal (1990) 1 L.W. 302. He also submitted that the Division Bench judgment of the Calcutta High Court in Smt. Usha

Majumdar and Others Vs. Smt. Smriti Basu, , does not lay down the correct law. Learned Counsel also relied on a decision of this Court in M.V.

Krishnamoorthy and Another Vs. Smt. Anandalakshmi and Others, .

14. Mr. K. Govindarajan, learned Counsel appearing for the first defendant (1st respondent herein), contending contra, submitted that the ratio laid

down by the Supreme Court in the case reported in Smt. Sarbati Devi and

Another Vs. Smt. Usha Devi, , will have no application either to the second schedule house property or to Schedule 4 moneys. According to learned Counsel, the nomination prevails and disinherits the plaintiff from claiming any share in the properties described in these Schedules. In any event, according to the learned Counsel, in the light of specific provisions in the Employees Provident Funds Act and the Employees Provident Funds Scheme, in particular paragraphs 61 and 70 of the Scheme, there is no difficulty to come to a conclusion that there is an express provision providing a line of succession to the estate of the deceased different from the Hindu Succession Act and therefore, the ratio laid down by the Supreme Court will have no application. In support of his submission, he placed reliance on a Division Bench Judgment of the Calcutta High Court reported in Usha v. Smriti AIR 1988 Cat. 125, another judgment of the Punjab and Haryana High Court in Smt. Saroj Vs. Smt. Murti Devi and others, and yet another judgment in M. Malati and Others Vs. M. Dharma Rao and Another, .

15. Let us now consider the rival submissions.

16. Before proceeding further, it will be useful to set out the relevant provisions, for appreciating the contentions as well as the ratios laid down in the various judgments cited by the learned Counsel on both sides.

17. Section 24 of the Tamil Nadu Co-operative Societies Act, 1961 reads as follows:

24(1). Subject to the provisions of Section 34, on the death of a member of a registered society, the society shall transfer the share or interest of

the deceased member in the capital to the person nominated in accordance with the rules, or, if no person has been s6 nominated, to such person

as may appear to the committee to be the heir or legal representative of the deceased member;

Provided that such nominee, heir or legal representative, as the case may be, being eligible for admission, is admitted as a member of the society;

Provided further that nothing in this Sub-section shall prevent a minor or a person of unsound mind from acquitting by inheritance or otherwise the

share or interest of a deceased member in the capital of the society.

(2) Notwithstanding anything contained in Sub-section (1) and subject in such conditions as may be specified in the rules, a registered society may

of its own motion and shall, if so required by any such nominee, heir, or legal representative, as the same may be, pay to him the value of the share

or interest of the deceased member in the capital ascertained in accordance with the rules;

(3) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as

the case may be.

(4) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any

demand made upon the society by any other person.

18. As the Supreme Court considered the question under the Insurance Act, the relevant section, namely, Section 39 of the Insurance Act is set

out below:

39. Nomination by policy-holder. (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before

the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the

money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the

policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the

policy matures for payment be cancelled or changed by an endorsement, or a further endorsement or a will, as the case may be, but unless notice

in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made

bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof,

and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination;

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of assignment, in consideration of a loan granted

by that insurer on the security of the policy within its surrender value, or its reassignment on repayment on the loan shall not cancel a nomination,

but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more

nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-

holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured

by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874

applies or has at any time applied: Provided that where a nomination made whether before or after the commencement of the Insurance

(Amendment) Act, 1946, in favour of the person who has insured his life or of his wife and children or any of them is expressed, whether, or not

on the face of the policy, as being made under this section, the said Section 6 shall be deemed not to apply or not to have applied to the policy.

19. As we are concerned with the provisions of the Employees Provident Funds Act and the Scheme framed there under, the relevant provisions

of the said Act and Scheme are set out below:

5. Employee's Provident Fund Schemes: (1) The Central Provident may, by notification in the Official Gazette, frame a Scheme to be called the

Employees' Provident Fund Scheme for the establishment of Provident Funds under this Act for employees or for any class of employees and

specify the establishments or class of establishments to which the said Scheme shall apply and there shall be establishment, as soon as may be after

the framing of the Scheme, a Fund in accordance with the provisions of this Act

and the Scheme.

(1-A) omitted.

(1-B) subject to the provisions of this Act, a scheme framed under Sub-section (1) may provide for all or any of the matters specified in Schedule

II.

Item 10 of Schedule II, which is relevant for our purpose, reads as follows:

The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such

nomination.

Paragraphs 33, 61 and 70 of the Employees Provident Funds Scheme read as follows:

33. Declaration by persons already employed at the time of the institution of the Fund: Every person who is required or entitled to become a

member of the Fund shall be asked forth with by his employer to furnish and shall, on such demand, furnish to him, for communication to the

Commissioner, particulars concerning himself, and his nominee required for the Declaration Form in Form 2. Such employer shall enter the

particulars in the Declaration Form and obtain the signature or thumb-impression of the person concerned.

61. Nomination: (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 thereto. If the nominee predeceases the member, the interest 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. 70.

Accumulations of a deceased member-to whom payable: 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 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 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 those specified in Clauses (a), (b), (c) and (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 has 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 a surviving child

born before the mother's death.

20. The first defendant claimed exclusive right to the second schedule house property on the basis of the statement by the deceased in the loan

application, which, according to her, is a nomination in her favour. The plaintiff disputes there is any such nomination. We have already pointed out

that the trial court proceeded as if there was a valid nomination in favour of the first defendant in so far as the second schedule property is

concerned. We do not think that the lower court is correct in proceeding on the basis that there was a nomination in favour of the first defendant in

respect of the second schedule property. Assuming that there is a nomination, let us see that is the position in law. The question is, whether the

nomination enables the first defendant to take the second schedule house property absolutely or the plaintiff, as Class 1 heir, is entitled to claim a

share therein. In this context, the ratios laid down by this Court and the Supreme Court, on the scope of nomination will be useful to answer the

point.

21. Sathiadev, J., as he then was, in *M.V. Krishnamoorthy and Another Vs. Smt. Anandalakshmi and Others*, while considering a case arising out

of Life Insurance Corporation's Provident Fund, observed as follows:

Most of the decisions above referred to arise under the Provident Fund Act and even then subsequent to amendments it has been held that the

nominee does not acquire absolute interest in the funds. The provision for nomination is made for the benefit of discharging the liability of the

custodian of the fund, which aspect I have dealt with at length in the earlier part of this judgment, and unless a specific provision is made in the

relevant Act or even in the nomination a direction of bequeathing the amount is given to the effect that except the nominee, none of the legal heirs

would acquire rights and such direction is not varied later on, the right of a

nominee cannot be anything more than being the sole person entitled to drawout the amount and he would be doing so in the capacity of a trustee of the funds answerable to the claims of the lawful heirs of the deceased member. The use of the word "nomination" which means only appointments to receive the amount, cannot be construed as to confer any absolute right in the funds to the exclusion of the rights of the lawful heirs, because even a stranger may be nominated in whom the nominator may have trust. If the intendment is to make the nominee as the absolute owner there can be no difficulty in incorporating the necessary recitals to the effect that he has got, on the date of nomination, his legal heirs and inspite of it, he bequeaths the amount only to the nominee to take the funds to the exclusion of the other heirs. When such an unequivocal expression is not present in a nomination, it would not be proper to hold that such a nomination would result in absolute conferment of rights on the nominee to take the amount for himself.

22. While concurring with the above observations, Srinivasan, J. in the decision reported in Meenambal v. Sonathammal (1990) 1 L.W. 302, further observed as follows:

I am entirely in agreement with those observations of the learned Judge. In fact, the principle laid down by the learned Judge has been accepted by the Supreme Court in a case which arose under the Insurance Act in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, . While dealing with a nomination made u/s 39 of the Insurance Act, the Supreme Court held that the nomination 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. It is laid down that the amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them. Incidentally, the Supreme Court approved of the distinction made by Ismail, J. in M.B. Mundkur v. Life Insurance Corporation, between a nomination u/s 39 and a nomination u/s 44 of the Insurance Act. In fact, the Supreme Court has quoted a passage from the decision of Ismail, J., with approval. In view of the decision of the Supreme Court holding that a nomination does not give any

right to the nominee, to the beneficial interest in the amount paid to the nominee, it is not necessary to discuss that aspect of the matter any further. The effect of nomination has been conclusively decided by the judgment of the Supreme Court.

23. In the decision reported in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , the Supreme Court observed as follows:

We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law.... ...The High Court

equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all "plus and

minus points". We find it difficult to treat a nominee as being equivalent to a heir or legatee having regard to the clear provisions of Section 38 of

the Act.... 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.

24. Let us first take the issue relating to the second schedule house property. The only document on which heavy reliance was placed on behalf of

the first defendant which found favour with the trial court is Ex.B-1. Ex.B-1 is a copy of loan application dated 1.12.1973. Under Ex.B-1., it is

claimed that the deceased Ranganathan applied to the 5th respondent-society for a loan of Rs. 10,000 for constructing a house. Actually, the

signature of the deceased Ranganathan does not find a place anywhere in the copy marked as Ex.B-1. It is seen from Ex.B-1. that the site was

purchased for a sum of Rs. 2,000 under a registered document dated 29.1.1972 and the deceased was the sole owner and the loan applied was

for constructing a new house. In one of the columns in the application which requires information regarding the present ownership of the property

and the future right, the deceased has stated that the property at that time belonged to him, and in future to his wife. In Tamil, the exact words are:

Based on this alone and invoking Section 24 of the Tamil Nadu Co-operative Societies Act, a contention was advanced before the trial court to

the effect the above answer amounts to a "will" bequeathing schedule 2 house property in favour of the first defendant. This argument was

accepted by the court below and the plaintiffs suit was dismissed in respect of this item. First of all, it is not clear whether there is any nomination apart from the above statement in the loan application. The conclusion of the trial court that the above extracted statement of the deceased will amount to a "will" is totally unsustainable as the requirements of a valid will are not only not present, but also the necessary proof for establishing that, is totally absent. Presumably, to get over this, the counsel for the first defendant must have invoked Section 24 of the Tamil Nadu Co-operative Societies Act. We have already set out Section 24 of the said Act and a fair reading of the same definitely will not lead to a construction of that section that it altered the course of succession under personal law. Nomination, if any, u/s 24 of the said Act was to protect the interests of the Society against payments and transfers in terms of the nomination is clear from Sub-section (4) of Section 24 of the said Act. Likewise, Sub-section (2) of Section 24 also indicates that Section 24 was not intended to alter the course of succession under personal law.

25. In the aforesaid circumstances and also bearing in mind the principles of various courts set out above, if we approach the question, we do not find any difficulty in coming to a conclusion that the nomination, if any, by the deceased Ranganathan in respect of the second schedule house property in favour of the first defendant will not amount to a testament excluding the mother from claiming a share in the property. Therefore, we hold that the court below was not right in dismissing the suit in respect of the second schedule-house property. Consequently, we hold that the plaintiff is entitled to a half share in the second schedule house property.

26. The only other question that remains to be considered is, with reference to the Provident Fund and Group Insurance amounts as described in the Fourth Schedule. As it is, there are two conflicting views of the Andhra Pradesh High Court and the Calcutta High Court.

27. In Shaik Basheed v. Mahmooda Begum AIR 1986 A.P. 321, a Division Bench of the Andhra Pradesh High Court has taken a definitest and that the ratio laid down by the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , squarely applies to Provident Fund amounts. On the other hand, a Division Bench of the Calcutta High Court, in Smt. Usha Majumdar and Others Vs. Smt. Smriti Basu, , has taken a

view that a nominee under the Provident Fund Act is completely different from his counterpart under the Insurance Act and, therefore, a nominee alone is exclusively entitled to the amount to the exclusion of other heirs.

28. We have already extracted the relevant passage from the Supreme Court judgment in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, .

One more passage which is also relevant may now be noted. It occurs in paragraph 12 of the judgment. The relevant portion reads as follows:

We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that 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 assured in accordance with the law of succession governing them.

29. Inasmuch as the counsel appearing for the plaintiff (appellant) and the first defendant placed heavy reliance to substantiate their respective

stand on the Division Bench judgments of Andhra Pradesh High Court and Calcutta High Court respectively, let us look into those decisions and

find out the reasons which impelled the learned Judges to take their respective views which are diametrically opposite. Let us first take the Division

Bench judgment of the Shaik Dawood and Others Vs. Mahamood Begum and Others, , which is earlier in point of time. The learned Judges have

given the reasons in paragraph 12 of the judgment which reads as follows:

The more important question is, whether succession to this asset, stands to be governed by the Mohammedan Law of Inheritance, whether there

was a nomination or no nomination. The answer depends on the real intendment of the special provisions made in the Employees Provident Fund

Act, 1952 or the Employees Provident Fund Scheme, 1952; and the meaning to be given to the word "payable" which occurs balances, in the

Provident Fund, represent in the majority of cases, the life savings of an employee. If there is a valid nomination, it becomes payable in equal

shares, amongst the various members, who fall in the ambit of "family" as defined in the Scheme. Does the nominee in the one case of the member

of the family in the other case acquire an exclusive right to appropriate the

amount paid to him as an asset belonging to him? In our view, the word "payable" cannot be interpreted to mean that the payee gets an absolute right over such amounts to the exclusion of the other heirs to the estate of the deceased. To illustrate, "A" nominated his second wife and then he died, he left a provident fund asset of Rs. 1 lakh and some children by his two wives. Surely A's wife cannot claim to be entitled to the entire amount to the exclusion of A's children. The same principles ought to govern amounts paid to persons in a case of "no nomination". Such persons cannot be put on a higher footing than a "nominee". We are of the definite view that, in respect of provident fund amounts, the same principles as were laid down by the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , should be applied.

Thereafter, after pointing out the amendment made to the Provident Fund Act, 1925 in the year 1946 by deleting the word "absolutely" occurring in Section 5, and after noticing various conflicting decisions of other High Courts, ultimately, the learned Judges summed up their views as follows:

To sum up, our conclusions are:

(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, , governs nominations made, in respect of provident funds as well.

30. The Division Bench of the Calcutta High Court did not agree with the Andhra Pradesh High Court. In Smt. Usha Majumdar and Others Vs.

Smt. Smriti Basu, , the learned Judges were of the view that a nomination under the Provident Fund Act differed substantially from a nomination

under the Insurance Act. To sustain this view, reliance was placed on Section 10(2) of the Employee's Provident Funds and Miscellaneous

Provisions Act 1952. Section 10(2) of the said Act reads as follows:

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.

We find the views of the learned Judges in paragraphs 13 to 16 of the judgment which read as follows:

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 of 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 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.

It is of course true that para 70 is prefixed with the heading ""accumulation of a deceased member to whom payable"" (emphasis supplied) and

relying upon the same in the Shaik Dawood and Others Vs. Mahamood Begum and Others, , that the principle laid down by the Supreme Court in

the case of Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , would be equally applicable under the Provident Fund Act but we regret our

inability to agree with the views so expressed for reasons as follows: Headings or titles prefixed to a section cannot restrict the meaning of the

section itself if its language is clear and as our discussion will presently show, the language of para 70 is manifest. But before however we proceed

to analyse para 70 let us examine para 61 of the Scheme. Under this para if a member, who had no family of his own, makes an outsider his

nominee, such nomination will automatically fail if he substantially acquires a family and he will have to make a fresh nomination in favour of one or

more persons belonging to his family. It will be pertinent to point out that u/s 39 of the Insurance Act there is no such mandate; and u/s 38 there of

a life insurance policy cannot be assigned or transferred. Para 61(2) envisages that a member may in his nomination distribute (emphasis supplied),

the amount that may stand to his credit in the funds amongst his nominees in his own discretion and sub-para (5) thereof says that if one of the

nominees predeceases the member the interest (emphasis supplied) of that nominee shall revert to the member who may make a fresh nomination

in respect of such interest. The word "distribute" means divide, apportion, allot, dispense and therefore when the member has been empowered "to

distribute the amount amongst his nominees at his discretion" it certainly means that thereby he would be giving the amount to them. A concept of

distribution as envisaged in para 61(2) of the scheme cannot by any stretch of imagination mean that the member was distributing the right to

receive the money amongst his nominees. That by such distribution the nominee acquires ownership to the money has again been made explicitly

clear by the word "interest" appearing in sub-para (5). The word "interest" obviously means the right to the money that accrued in favour of the

nominee consequent upon its distribution by the member. It is of course true that the member may modify his nomination a nominee's interest but

then ultimately the nominee, whoever he may be, acquires an interest in the money.

Coming now to para 70 of the scheme we get that sub-para (ii) thereof expressly says that the money shall become payable to the members of the

family, in cases provided therein, in "equal shares" and proviso thereto expressly lays down that no share shall be payable to the sons of the

deceased members who have attained majority or daughters who have their husbands living. The major sons and married daughters whose

husbands are alive have been expressly excluded from receiving any share obviously because they are expected to be capable of maintaining

themselves. If really para 70 only referred to right of the nominees mentioned therein to receive the money, and not to have any beneficial interest in

the money, there was no necessity of expressly providing therein that it should not be paid to the persons who are capable of maintaining

themselves nor it would have provided that the money would be payable in equal shares. In other words, if really the para intended to mean that

the nominees were to receive the money only and not to have any beneficial interest therein the minors would not have been preferred to collect the

same instead of majors who would be in a better position to receive the money and to pay the same to the beneficiaries. On the contrary, para 70

has taken care of the minor heirs of the deceased member by providing that the money would be paid to and received by them so that being unable

to maintain themselves, they can gainfully utilise the money. Lastly para 70(iii) provides that in case the provisions of the paragraph are not

applicable the entire amount shall be paid to persons legally entitled (emphasis supplied) to it. Entitlement to a property obviously means a right to

the property and consequently the fact that the money would be payable to such person means that he will be entitled to appropriate the money.

For the foregoing discussions we therefore find no hesitation in concluding that the nominee under the Provident Fund Act, unlike the nominee

under the Insurance Act, has not only the right to receive the money but also a beneficial interest therein.

The contention of Mr. Roy Chowdhury that under item 10 of Schedule II of the Provident Fund Act, the Central Government could not make any

provision for bestowal of any right to the money under the Scheme cannot be entertained having regard to the fact that the said item speaks of

nomination of a person to receive the amount; and the word ""receive"" does not militate against the concept of acceptance of money as owner in

respect thereof."" [Paragraphs 13 to 16]

31. After carefully going through these two Division Bench judgments, and also the judgments of Sathiadev, J. (as he then was) and Srinivasan, J.

(referred to above), in the light of the views expressed by the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , with due

respect, we are unable to agree with the views expressed by the Division Bench of the Calcutta High Court in Smt. Usha Majumdar and Others

Vs. Smt. Smriti Basu, . Our reasons are these:

Section 5 of the Employees' Provident Fund Act enables the Central Government to frame a Scheme. Section 5(I-B) of the said Act specifically

states that a scheme framed under Sub-section (1) of Section 5 may provide for all or any of the matters specified in Schedule II. Coming to

Schedule II, item 10 which alone is necessary for our purpose, reads as follows:

The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.

(Emphasis supplied)

It is to be noted that Schedule II is part of the main Act. Therefore, when the substantive legislation enables the Central Government to frame a

Scheme in respect of matters of nomination, it must conform to Item 10 of Schedule II of the Act. If there is any conflict between the Scheme and

the Act, the Scheme must be read subject to the main provisions. Thus, on a reading of paragraphs 61 and 70 of the Scheme, (already extracted),

we feel that though it is possible to read paragraphs 61 and 70 and also Form-2, on which reliance was placed by the learned Counsel for the first

defendant, to mean that they provide a different line of succession, such meaning cannot be given if due regard is given to the main provision,

namely, item 10 of Schedule II under which alone the Central Government framed the Scheme regarding nomination of person to receive the

amount. Unless the main section clearly unequivocally prescribes a different line of succession, it cannot be presumed that a different line of

succession is prescribed by reading paragraphs 61 and 70 of the Scheme alone. No doubt, the Division Bench of the Calcutta High Court

(referred to supra) has referred to Section 10(2) of the Act which we have extracted above to support its view. Here again, we are unable to

subscribe to the view expressed by the Calcutta High Court, on the scope of Section 10(2) of the Act. There is nothing to suggest that a different

mode of succession is prescribed even u/s 10(2) of the Act. On the other hand, we are inclined to think that Section 10(2) of the Act was intended

to save the provident fund money from the clutches of debtors of the nominee so

as to enable him to distribute it to the heirs of the deceased, who are entitled to the money under the personal law.

32. In this context, it is relevant to recall to our mind the view expressed by the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha

Devi, , about the scope of nomination. The Supreme Court has categorically held that the nomination only indicates the hand which is authorised to

receive the amount. The same view was expressed by Sathiaddev, J. (as he then was) even before the judgment of the Supreme Court, and also by

Srinivasan, J. after the judgment of the Supreme Court. Therefore, we are inclined to agree with the view taken by the Division Bench of the

Andhra Pradesh High Court for additional reason given by us based on Section 5(1-B) of the Act read with item 10 of Schedule II. In other

words, we read down paragraphs 61 and 70 of the Scheme to be in conformity with item 10 of Schedule II, read with Section 5 of the Act, and

by so reading, the nominee gets only a right to receive the amount to distribute the same to the heirs of the deceased, in accordance with the law of

succession governing them. In the view we have expressed above, the plaintiff is entitled to a half share in schedule 4 monies as well. To that

extent, the plaintiff is entitled to a decree. Consequently, the judgment and decree of the trial court have to be modified.

33. In the result, the appeal is allowed only in respect of schedule 2 house property and schedule 4 moneys declaring plaintiff's half share in these

two schedules. However, there will be no order as to costs.