
(1940) 01 CAL CK 0019
In the Calcutta High Court

Nidhusudan Mukherjee and Others

APPELLANT

Vs

Smt. Bibhabati Debi and Others

RESPONDENT

Date of Decision : 19-01-1940

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488

Citation : AIR 1940 Cal 395

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—This case raises questions of considerable difficulty with regard to the construction of the Provident Funds Act (Act 19 of 1925) and of the General Provident Fund (Bengal Services) Rules. The facts are as follows : Dr. Madhusudan Mukherjee was a member of the Bengal Medical service and he died intestate on 5th March 1936. According to the written statement of the Accountant-General of Bengal who has been made a party defendant to this suit, at the date of the doctor's death he had standing to his credit in the Government Provident Fund a sum of Rupees 22,760-13-0 which had become at the date of the Accountant-General's written statement which was filed on 13th February 1939 Rs. 24,433-13-0. The plaintiffs are the three adult sons of the deceased doctor and they claim a declaration that they are solely entitled to receive the entire amount standing to the doctor's credit in the Government Provident Fund (Bengal Services).

2. Three of the defendants are the three daughters of Dr. Madhusudan Mukherjee, all of whom are married and have attained the age of majority. Defendants 1 and 3 have not contested the suit and a document has been proved by the plaintiffs executed by defendants 1 and 3 on 24th November 1938 whereby these defendants relinquished, determined and surrendered in favour of the plaintiffs all their right, title and interest, claim and demand, to and in the sum standing to the credit of Dr. Madhusudan Mukherjee in the Government Provident Fund. It was suggested that defendant 2 had also relinquished her

claim at the time that the plaintiffs applied for a succession certificate to enable them to withdraw the money. The plaintiffs, however, do not now rely on any relinquishment or disclaimer made by defendant 2, and the question which I have to decide is whether on the true construction of the statute and of the rules the plaintiffs are solely entitled to the sum or whether defendant 2 is entitled to participate with them. The question is difficult because the Act and the rules appear to me to be discrepant in several important particulars, and the situation is complicated because it is admitted that Dr. Mukherjee, during the lifetime of his wife, Sm. Nirupama Devi, validly nominated her as the beneficiary of his provident fund. Sm. Nirupama Devi predeceased her husband, and although it is stated that he went through the form of nominating himself, it is agreed that a nomination of that nature is ineffective.

3. I will first deal with the situation as it would stand, if it were not complicated by the nomination as beneficiary of the mother of the plaintiffs and defendants other than the Accountant-General. Under the rules "family" is defined to mean in the case of a male subscriber the wife or wives and children of a subscriber and certain other persons. Under Rule 31 on the death of a subscriber, who leaves a family, before the amount standing to his credit has become payable, if no nomination in favour of a member or members of the family of the subscriber subsists, the whole amount standing to his credit in the fund becomes payable to the members of his family in equal shares. It is clear, therefore, that if the married daughters can be said to be members of the family they are entitled to share equally with their brothers. The plaintiffs contend that, where the terms "child" or "children" are used in the rules or in the Provident Funds Act, a minor child or minor children are intended, and that they cannot be applied to cover the sons and daughters of a subscriber, who have attained the age of majority.

4. Now with regard to the rules that submission is clearly untenable because by a proviso to Rule 31 it is provided that no share shall be payable to (1) sons who have attained legal majority; (2) sons of the deceased son who have attained legal majority; (3) married daughters whose husbands are alive; (4) married daughters of a deceased son whose husbands are alive, if there is any member of the family other than those specified in Clause (1), (2), (3) and (4). Clause (3) comprises the married daughters whose husbands are alive, and Clause (1) comprises the sons who have attained legal majority. Both these clauses are treated as members of the family, and it cannot be suggested that they can be members of the family upon any other basis than that of being the "children" of a subscriber. When we come to the statute the position is not quite so easy. The statute does not treat the kinsfolk of a subscriber under the head of "family," but under the head of "dependant." By Section 2(c) "dependant" is defined as

any of the following relatives of a deceased subscriber to, or a depositor in, a provident fund, namely a wife, husband, parent, child, minor brother, unmarried sister and a deceased son's widow and child and where no parent of the subscriber or depositor is alive, a paternal grandparent.

5. By Section 4 when a sum standing to the credit of any depositor or subscriber has become payable, the official whose duty it is to make the payment shall pay the sum or balance, as the case may be, to the subscriber or depositor, or if he is dead, shall (a) if the sum or balance, or any part thereof vests in a dependant under the provisions of Section 3, pay the same to the dependant or to such person as may be authorized by law to receive payment on his behalf. u/s 3, Sub-section (2) any sum standing to the credit of any subscriber or depositor at the time of his decease and payable under the rules of the fund to any dependant of the subscriber or depositor or to such person as may be authorized by law to receive payment on his behalf, shall vest in the dependant and shall be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor.

6. Prima facie, therefore, the first question to be decided is whether the female dependants are "dependants" within the meaning of Section 2(c) of the Act. It is agreed that they can only fall within the sub. section if they answer to the description of "child." The plaintiffs contend that by "child" minor child is meant. Mr. N.N. Bose for the plaintiffs has referred me to a decision of NasimAli J. in Hemanta Kumar Banerjee Vs. Monorama Debi, . There a father sought to vary an order for maintenance made u/s 488, Criminal P.C., on the ground that the child (a son) was seventeen years old and competent to earn his own livelihood. Nasim Ali J. pointed out that there was no statutory definition of "child" in the Code, and said that he was inclined to hold that a child is a person who is incompetent to enter into any contract or enforce any claim under the law, or in other words a minor according to his personal law. It was also contended that the child was not unable to maintain itself within the meaning of the Section. On the evidence the Court rejected that contention. The point that was before the Court was whether some one under the age of majority had ceased to be a child, not whether some one who had attained the age of majority can properly; be described as a child. I am by no means prepared to say that Section 488, Criminal P.C., would not apply to a case where, on account of an adult child's inability to support itself owing to bodily or mental defects, the father's obligation to maintain it still existed.

7. In my opinion the sense in which the term "child" is used in a statute must depend on general considerations as to the subject-matter of the statute and its other provisions. When I turn to Section 2(c) of the Act I find that a "child" is one of a class described as "relatives." That is an indication that what the definition is dealing with is kinship rather than age. There is a direct authority for the defendant's contention that the definition covers an adult child. I have been referred to Mahomed Naim v. Mt. Munim-un-Nissa AIR (1936) Oudh. 32 where at p. 638 King C.J. observed as follows:

It is argued that the word "child" means only a minor child, but I do not think that the word should be thus narrowly construed. In the list of persons who are declared to be dependants the word "child" is immediately followed by "minor

brother." If therefore it had been intended that the word "child" was to be restricted only to a minor child presumably the Legislature would have used the expression minor child.

8. It is clear that the definition does not make dependency conditional on a special need of support because among the dependants are both a husband and a parent, who may be persons perfectly able to maintain themselves. I see no reason to confine the term "child" to sons and daughters below the age of majority. That being so I consider that the married daughters of Dr. Mnkherjee, of whom defendant 2 is one, answer the description of "child," and are (therefore dependants as defined in Section 2 of [the Act. That would dispose of the question were it not for the nomination in favour of the subscriber's predeceased wife. With regard to nomination, under Rule 8 it is obligatory on a subscriber who, at the time of joining the fund, has a family or subsequently acquires one to make a nomination of a member of his family 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 becomes payable. Dr. Mukherjee's wife was a member of his family within the meaning of the rules. Under Rule 31 when a subscriber leaves a "family, if a nomination made by him in favour of the member or members of his family subsists, the amount standing to his credit in the fund shall be payable to his nominee or nominees in the proportion specified in the nomination. The Rule then goes on to deal with the situation which arises when no nomination subsists.

9. On the rules, I should have said that on the death of Dr. Mukherjee's wife the nomination in her favour ceased to subsist. As against that, the Act provides by Section 5 that 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 the sum on the death of a subscriber or depositor, shall be deemed to confer such right absolutely until such nomination is varied by another nomination made in like manner, or is expressly cancelled by the subscriber or depositor by notice given in such a manner and to such authority as is prescribed by those Rules. The phraseology of this Section has been considered in *Mon Singh v. Mothi Bai* AIR (1936) Mad. 477, where it was held that these words conferred an absolute vested interest upon the nominee, which meant that in the case of the nominee's death before the fund became payable, the nominee's rights passed to his heirs to the exclusion of the heirs of the subscriber.

10. It is accordingly argued that the sons of Dr. Mukherjee are entitled to the whole sum as representing the estate of their deceased mother in whom it had vested. I think the answer to that is, that the Act itself provides that the rights of nominees, which includes the rights of the nominee's representatives, are expressly postponed to the rights of dependants. This is clear from Section 4 of the Act which provides that the amount standing to a subscriber's credit should be paid to his dependants in the first instance, or to his nominee, and only permits his nominee to receive any sum or balance which is not payable under

Clause A, that is to a dependant. I do not decide what the position would be if the Rules stood by themselves, since Appendix D provides that any sum payable under Rule 31 to a member of the family of a subscriber vests in such member under Sub-section (2) of Section 3, Provident Funds Act, but I have come to the conclusion that the Act must over-ride the Rules if it is inconsistent with them and it expressly makes the claims of the nominee conditional upon the absence of dependants as defined by the Act. The result is that defendant 2 must succeed to this extent, that she is entitled to participate to the extent of one-sixth in the distribution of the fund. I should say that the Accountant-General of Bengal raised certain technical defences, but he, did not press these as he desired to have the decision of the Court upon the main issue. The Accountant-General may have his costs out of the fund. The plaintiffs must pay the costs of defendant 2. Certified for two counsel.