

(2019) 07 PAT CK 0285

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18538 Of 2011

Nirmala Kumari

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Administrators General Act, 1963 — Section 29
Hindu Succession Act, 1956 — Section 6, 7, 8, 8(2)
Insurance Act, 1938 — Section 39, 39(6)
Code Of Civil Procedure, 1908 — Section 44, 44(2), 60, 60(1)

Citation : (2019) 07 PAT CK 0285

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Anil Kumar, Ashok Kumar Dubey, Kumar Priya Ranjan, Niraj Kumar, Girish Nandan Abhishek, Dilip Kumar

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed by the petitioner herein for quashing the order dated 09.09.2011 passed by the Administrator General of Bihar, Patna in L.A. Case No. 221 of 2010 whereby and whereunder a certificate has been issued under Section 29 of the Administrators General Act, 1963, in favour of respondent no.4 and it has been further prayed that the Respondents be directed to release a sum of Rs.1,54,925 deposited in the account of the late husband of the petitioner in Punjab National Bank, in Sub-Branch Hilsa, Nalanda.

2. The brief facts of the case, according to the petitioner, is that she is the widow of late Satyedra Prasad and her late husband had opened a saving account in Punjab National Bank, Hilsa Branch, Nalanda wherein the petitioner was made nominee by her husband. The husband of the petitioner is said to have died on 04.09.2010 whereafter the petitioner submitted an application before the Branch Manager, to transfer the amount present in the Bank account in her name. However, the same was not done in view of letter dated 30.10.2010 issued by the Administrator General, Bihar, Patna stating therein that till disposal of L.A.

Case No. 221 of 2010, the amount present in the aforesaid account be not disbursed to anyone. On enquiry, the petitioner came to know that one Sumiya Devi (respondent no.4) had filed a L.A. Case No. 221 of 2010 for grant of succession certificate in her favour showing that she is the first wife of late Satyendra Prasad whereupon the petitioner had filed a petition in the said case on 25.11.2010 stating therein that she is the only legally wedded wife of the deceased and she is also a nominee in the Bank account of the deceased, hence the amount kept in the Bank account should be disbursed to her.

3. The Administrator General of Bihar, Patna by the impugned order dated 09.09.2011 has considered the deposition of seven witnesses, examined by the respondent no.4 herein as also has considered the various documents filed by the respondent no.4 showing that she is the only legally wedded wife of late Satyendra Prasad and has further considered the deposition of seven witnesses produced by the petitioner herein, apart from the documents produced on her behalf and has thereafter come to the conclusion that the marriage of the petitioner herein with late Satyendra Prasad is not legal in the eye of law and the respondent no.4 herein is the only legally wedded wife in the eyes of law according to the Hindu Marriage Act, 1955, hence the respondent no.4 is the only Class-I heir as per Section 8 of the Hindu Succession Act, 1956. The Administrator General, Bihar, Patna has further clarified in the order dated 09.09.2011 that the Banking Law is not concerned with the question of succession. Lastly by the impugned order dated 09.09.2011, the Administrator General, Bihar, Patna has directed for issuance of certificate under Section 29 of the Administrators Act, 1963.

4. The learned counsel for the petitioner has submitted that since the petitioner has been made a nominee in the aforesaid Bank account, by her deceased husband, she is entitled to the amount deposited in the aforesaid account of her deceased husband.

5. Per contra, the learned counsel for the respondent no.4 has submitted that there is no infirmity in the impugned order dated 09.09.2011 passed by the Administrator General, Bihar, Patna and admittedly the respondent no.4 is the only legally wedded wife of late Satyendra Prasad.

6. The learned counsel for the respondent Punjab National Bank has submitted that it is well settled law that "nomination only indicates the hand which is authorized to receive the amount and the nominee does not become owner of the amount in question since on death of the account holder, the amount lying in his account becomes part of the estate which is governed by the law of succession applicable to him." In this connection, the learned counsel for the respondent Punjab National Bank has relied upon a judgment reported in (2010)10 SCC 671 [Ram Chander Talwar & Anr. vs. Devender Kumar Talwar & Ors.], paragraph-5 whereof is reproduced herein below:-

"5. Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after

his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed."

7. The learned counsel for the respondent Punjab National Bank has further relied upon a judgment, reported in (2000)6 SCC 724 [Vishin N. Khanchandani & Anr. vs. Vidya Lachmandas Khanchandani & Anr.], paragraphs 9 and 13 whereof are reproduced herein below:-

9. Various High Courts in India in different cases, namely, Ramballav Dhandhanian v. Gangadhar Nathmall [AIR 1956 Cal 275 : 97 Cal LJ 119] , LIC of India v. United Bank of India Ltd. [AIR 1970 Cal 513] , D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corpn. Ltd. [AIR 1957 Mad 115 : ILR 1957 Mad 326 : (1956) 2 MLJ 476] , Sarojini Amma v. Neelakanta Pillai [AIR 1961 Ker 126 : 1960 Ker LT 1319 : (1961) 31 Comp Cas 86 (FB)] , Atmaram Mohanlal Panchal v. Gunvantiben [AIR 1977 Guj 134 : 18 Guj LR 668 : 1977 ACJ 449] , Malli Dei v. Kanchan Prava Dei [AIR 1973 Ori 83] and Lakshmi Amma v. Saguna Bhagath [ILR 1973 Kant 827] have taken a view that the nominee under Section 39 of the Insurance Act is nothing more than an agent to receive the money due under the life insurance policy. The money as such received remains the property of the assured during his lifetime and on his death, forms part of his estate subject to the law of succession applicable to him. The Allahabad High Court in Kesari Devi v. Dharma Devi [AIR 1962 All 355 : 1962 All LJ 265] and the Delhi High Court in S. Fauza Singh v. Kuldip Singh [AIR 1978 Del 276] and Uma Sehgal v. Dwarka Dass Sehgal [AIR 1982 Del 36 : (1981) 20 DLT 165 : ILR (1981) 2 Del 315] had, however, taken a different view. While dealing with the view taken by the Allahabad and the Delhi High Courts, this Court in Sarbati Devi case [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] has held: (SCC pp. 429-31, paras 6-8)

"6. As observed in the Full Bench decision of the Allahabad High Court in Raja Ram v. Mata Prasad [AIR 1972 All 167 : 1971 All LJ 1359 : 43 Comp Cas 53 (FB)] which has interpreted Section 39 of the Act correctly, the judgment of that High Court in Kesari Devi case [AIR 1962 All 355 : 1962 All LJ 265] related to a different set of facts. In Kesari Devi case [AIR 1962 All 355 : 1962 All LJ 265] the dispute arose regarding the person who was entitled to the succession certificate in respect of the amount payable under a life insurance policy which had been taken out by the assured between the widow of the assured and the widow of the nominee under Section 39 of the Act. On going through the judgment in Kesari Devi case [AIR 1962 All 355 : 1962 All LJ 265] we feel that the Court in that case paid little heed to the earlier judicial precedents of its own

Court. The decision of the Full Bench in Raja Ram case [AIR 1972 All 167 : 1971 All LJ 1359 : 43 Comp Cas 53 (FB)] set at rest all doubts which might have been created by Kesari Devi case [AIR 1962 All 355 : 1962 All LJ 265] about the true import of Section 39 of the Act insofar as the High Court of Allahabad was concerned.

7. In Fauza Singh case [AIR 1978 Del 276] there is reference only to three cases- LIC of India v. United Bank of India [AIR 1970 Cal 513] , Matin v. Mohd. Matin [AIR 1922 Lah 145 : 69 IC 788] and Kesari Devi case [AIR 1962 All 355 : 1962 All LJ 265] . The Court expressed its dissent from the Calcutta decision on the ground that that decision had not considered sub-section (6) of Section 39 of the Act. The Lahore case was one decided before the Act came into force. The distinguishing features of Kesari Devi case [AIR 1962 All 355 : 1962 All LJ 265] are already mentioned. Otherwise there is not much discussion in this case about the effect of Section 39 of the Act.

8. We have carefully gone through the judgment of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : (1981) 20 DLT 165 : ILR (1981) 2 Del 315] . In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. 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 second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1) (kb) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment-debtor shall be exempt from attachment by his creditors. 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 an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in Karuppa Gounder v. Palaniammal [AIR 1963 Mad 245 : (1963) 1 MLJ 86 : ILR 1963 Mad 434] (AIR at para 13) and in B.M. Mundkur v. LIC of India [AIR 1977 Mad 72 : 47 Comp Cas 19 : (1977) 1 MLJ 59] . The relevant part of the decision of the Delhi High Court

in Uma Sehgal case [AIR 1982 Del 36 : (1981) 20 DLT 165 : ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11)

'10. In Karuppa Gounder v. Palaniammal [AIR 1963 Mad 245 : (1963) 1 MLJ 86 : ILR 1963 Mad 434] K had nominated his wife in the insurance policy. K died. It was held that in virtue of the nomination, the mother of K was not entitled to any portion of the insurance amount.

11. I am in respectful agreement with these views, because they accord with the law and reason. They are supported by Section 44(2) of the Act. It provides that the commission payable to an insurance agent shall after his death, continue to be payable to his heirs, but if the agent had nominated any person the commission shall be paid to the person so nominated. It cannot be contended that the nominee under Section 44 will receive the money not as owner but as an agent on behalf of someone else, vide B.M. Mundkur v. LIC [AIR 1977 Mad 72 : 47 Comp Cas 19 : (1977) 1 MLJ 59] . Thus, the nominee excludes the legal heirs.' "

13. In the light of what has been noticed hereinabove, it is apparent that though the language and phraseology of Section 6 of the Act is different from the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the National Savings Certificates, to the nominee of the holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi case [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] holds the field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.

8. I have heard the learned counsel for the parties and perused the materials on record, which makes it apparent that the impugned order dated 09.09.2011 passed by the Administrator General of Bihar, Patna is well reasoned, just and legal order and the petitioner herein has failed to show any infirmity therein so as to warrant any interference. The said order dated 09.09.2011 is based on cogent evidence led by the parties, which amply demonstrates that the respondent no.4 herein is the only legally wedded wife of late Satyendra Prasad, hence this Court finds that the Administrator General, Bihar, Patna has rightly ordered for issuance of certificate to the respondent no.4 herein, as prayed for, under Section 29 of the Administrator General Act, 1963.

9. Now coming to the only issue raised by the petitioner herein to the effect that

since late Satyendra Prasad had made the petitioner nominee in his Bank account, she should get the amount deposited in the Bank account of late Satyendra Prasad, this Court finds that there is no merit in the said issue raised by the petitioner herein inasmuch as the Hon'ble Apex Court has clearly held that after a person dies, the amount payable to him becomes part of the estate of the deceased which is governed by the law of succession, applicable to such person and a nominee cannot become owner of money lying in the Bank account of a deceased, hence, this Court finds that the petitioner has got no right to receive the money lying in the account of late Satyendra Prasad.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same is dismissed.