

(1949) 08 MAD CK 0017
In the Madras High Court

Nishtala Subrahmanya Somayajulu

APPELLANT

Vs

Kannepalli Lakshmi Somi Devi

RESPONDENT

Date of Decision : 11-08-1949

Acts Referred:

Citation : (1949) 2 MLJ 635

Hon'ble Judges : Balakrishna Ayyar, J;Balakrishna Aiyar, J

Bench : Division Bench

Judgement

Balakrishna Ayyar, J.—The appellant is the brother of the respondent. Both of them are the children of one Anandaraya Sastri, who was a

Sub-Inspector of Police and a subscriber to the General Provident Fund. He nominated his wife, Satyavathamma, to receive the amount standing

to his credit in the provident fund in the event of his dying before the money was paid over to him; but Satyavathamma predeceased him. She died

in August, 1938, while Anandaraya Sastri survived till 8th March, 1946. The appellant applied for a succession certificate in the Court of the

District Judge of Vizagapatam. The respondent who is his sister opposed the application claiming that she was entitled to the money. The learned

Judge dismissed the application of the appellant and directed that a succession certificate should be issued in favour of the respondent. Hence this

appeal.

2. Note 2 to Rule 17 of the rules regulating the General Provident Fund as they stood in 1926 provided,

when a person named in a Form of Declaration dies before the subscriber, the Declaration shall, in the absence of a direction to the contrary in the

Form of Declaration, become null and void in respect of that person....

It was therefore argued that as Satyavathamma predeceased the subscriber, the nomination in her favour became null and void, that

Satyavathamma got no benefit under the nomination form, and that therefore the respondent, who is her daughter cannot get the money which the

subscriber had deposited in the provident fund. This argument overlooks the fact that in 1935 the provident fund rules were revised and the

previous rules expressly superseded. In the rules framed in 1935 no clause corresponding to the Note just quoted is to be found. That apart,

Section 5 of the Provident Funds Act as it stood at the time that Anandaraya Sastri died contained, this provision,

... 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 or 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....

The nomination made in favour of Satyavathamma was not revoked at any time, and the result is that under that section she became absolutely

entitled to the money deposited in the fund. The respondent who is her daughter would therefore be entitled to this money.

3. This question was considered in *Mon Singh v. Mothi Bai* (1935) 71 M.L.J. 790 : ILR 59 Mad. 855, where it was ruled that,

the right to receive the money which was conferred by the provident fund rules meant a vested right in the money which passed to the heir of the

nominee at his death.

This decision was followed in *Sitaramaswamy Patnaik v. Venkata Rao Patnaik* (1944) 1 M.L.J. 198. That was a case where a person employed

in a railway company had a deposit standing to his credit in the provident fund. He had nominated his first wife as the person entitled to the amount

after his death. The woman predeceased him, and he subsequently did not vary the nomination. It was held that the amount in deposit vested in the

nominee absolutely. An attempt was made in that case to make a distinction

between nomination in favour of a dependent and nomination in favour of a person who was not a dependent; but it was held that there was no substance in such a distinction.

4. It was argued that on the death of the nominee it must be deemed that the nomination had been revoked; but no authority for such a view can be

found either in the Act or the rules. On the other hand, the language of the section which has just been referred to is very clear that notwithstanding

the death of the nominee the right would vest in him absolutely. The amendment made in 1946 to the Provident Funds Act does not affect the

present case, since it is not retrospective in its operation. The proviso to Sub-section 3 of Section 5 of the amended Act makes it clear that the

amendment "

shall not affect any case in which before the said date any sum has been paid or has under the rules become payable in pursuance of any nomination

duly made in accordance with those rules.

The amendment came into force on 18th April, 1946, and Anandavaraya Sastri died on 8th March, 1946.

5. It was finally argued that the respondent was not entitled to a succession certificate in her favour, as she was only a respondent and had made

no independent application in her own behalf; but in view of the fact that in her counter which is a verified statement she has included a prayer that

a certificate might be issued in her favour and that all the parties were before the Court,-this objection becomes an extremely technical one. There

is nothing to be gained by setting aside the order of the learned District Judge and directing the respondent to file a fresh application; the result is

bound to be the same. In the circumstances there is no need to interfere with the order of the learned District Judge.

6. The appeal is therefore dismissed with costs.