
(1991) 10 MAD CK 0087
In the Madras High Court
Case No : A.A.O. No. 43 of 1985

Ramasundaram and Others APPELLANT
Vs
Rakkammal and Others RESPONDENT

Date of Decision : 07-10-1991

Acts Referred:

Provident Fund Rules — Rule 42(3)

Citation : (1993) 2 LLJ 182 : (1993) 2 LLJ 129 : (1992) 2 LW 138 : (1992) 2 MLJ 149

Hon'ble Judges : Swamidurai, J

Bench : Single Bench

Advocate : Y.K. Rajagopal, for the Appellant; A. Mohanram, for the Respondent

Judgement

1. The Petitioners in O.P. No. 164 of 1983 on the file learned Subordinate Judge, Tiruchirapalli are the appellants. They filed the petition before the lower court under Sec. 372 of the Indian Succession Act for issue of succession certificate on the death of their father, Pichai who was employed as a scavenger in the Bharat Heavy Electricals Limited, Tiruverumbur and who died on June 9, 1983 leaving the petitioners as his only legal heir. The succession certificate was sought for by the petitioners for receiving the family benefit funds due from the above said firm. That application was resisted by the respondents. But according to the petitioners, they are the concubine and illegitimate children of the deceased born through the first respondent. The contention of the respondents is that the first respondent is the wife of the deceased Pichai and that the respondents 2 to 4 are the minor children to Pichai through the first respondent. Further it is the case of the respondents that the deceased Pichai nominated the first respondent as the nominee for receiving the amounts due to him after retirement.

2. The parties went on trial and the trial court, after considering the oral and documentary evidence, dismissed the petition on the ground that the first respondent being the nominee appointed by the deceased Pichai, she alone is entitled to receive the amount due to the deceased employee and that the

petition for issue of Succession Certificate is not maintainable. The petitioners have filed the present appeal as against the order of the lower court.

3. Learned senior Advocate Mr. R. Alagar appearing for the appellants contended that mere nomination of late Pichai in favour of the first respondent does not give a right to get the entire amount and appropriate the same since as per the Hindu Succession Act, the respondents are not at all the legal representatives of late Pichai. In the course of argument, learned counsel appearing for the appellant has not pressed this aspect of the case to say that the respondents are not the legal representative of the deceased Pichai since that is a question of fact learned counsel for the appellants argued with regard to the second aspect of the case, namely, that mere nomination in favour of the first respondent would give right in favour of the respondents only to succeed to the estate of the deceased.

4. There is no dispute with regard to the fact that the petitioners/appellants are the children of late Pichai born through his first wife Rani. Learned counsel for the appellants relied upon the decision reported in *M.V. Krishnamoorthy and Another Vs. Smt. Anandalakshmi and Others*, . Learned single Judge of this Court, while deciding the case arising under the Life Insurance Corporation Provident Fund Acts and Rules has held that the main purpose of nomination is intended to benefit the custodians-trustees of the Provident Fund to know how or to whom they should hand over the amounts and held not make themselves answerable to a multiplicity of claims from different persons claiming to succeed to the interests of the deceased member. It is further observed by the learned Judge (Sathiadev, J.), that the use of the word "nomination" which means only appointment to receive the amount, cannot be so 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 nomination may have trust. If the intendment is to make the nominee 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 in spite of it, he bequeaths the amount only to the nominee to make 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 in the nominee to take the amount for himself. Learned Judge reported in *M. Malati and Others Vs. M. Dharma Rao and Another*, . The Judgment referred to above in *M. Malati and Others Vs. M. Dharma Rao and Another*, was relied upon by the lower court and the same has been referred to by the learned single Judge of this Court in the decision referred to above. Learned counsel of the appellants Mr. R. Alagar, Senior Advocate relied upon another judgment reported in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, . That was a case arising under the Insurance Act. Their Lordships of the Supreme Court held in that case that mere nomination made under Sec. 39 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 claimed by the heirs of the assured in accordance with the law of succession governing them. In another decision reported in *Pichammal and Others Vs. The General Manager Claim Settlement Branch, Integral Coach Factory and Others*, , cited by the learned counsel for the appellant, learned Judge of this court has held that the legal heirs alone of the deceased are entitled to Provident Fund amount, Group Insurance amount, Gratuity amount, Death Relief Fund amount and that the nominee has to share the amount along with the legal heirs. That case was covered under Employees Provident Funds and Miscellaneous Provisions Act (XIX of 1952). In another case relied upon by the learned counsel for the appellants reported in *Meenambal v. Sornathammal* 1990 I.L.W. 302, this Court (Srinivasan, J.) held that the claim by the widow of a deceased Government servant as the only person exclusively entitled to the entirety of the amount as the nominee under the Rules governing Tamil Nadu Government Servant's Family Benefit Fund, as against the mother, is not sustainable. Learned Judge held that the family benefit amount payable on the death of a Government servant will go to all the legal heirs on the deceased irrespective of the nomination made by him.

5. Learned counsel for the respondents in contra to the judgments referred to by the learned counsel for the appellants, referred to the judgment reported in *M. Mon Singh v. Mothi Bai* ILR 1936 Mad. 855. There, a Division Bench of this Court held that under Sec. 5 of the Provident Funds Act the absolute right in receiving 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 and that the respondent was therefore entitled to the amount in question. This judgment was rendered under the Provident Funds Act (XIX of 1925).

6. The judgments relied upon by the learned counsel for the appellants Mr. R. Alagar, Senior Advocate are in support of the latest view of the Supreme Court that the legal heirs of the deceased are entitled to get the money of the deceased inspite of the nomination. Learned counsel for the respondents submitted that the Provident Fund Rules of the Bharat Heavy Electrical Limited are the rules governing the distribution of the Provident Fund in the case of death of an employee. Rule 42 of the said Rules reads as follows :

"42. Nominations : 1. Each member shall make in his declaration in the prescribed form, 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.

5. A nomination made under sub-rule (1) may at any time be modified by a member after giving a written notice of his intention of doing so in the prescribed form. If the nominee predeceases the member, the interest of nominee shall revert to the member who may make 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 Secretary."

Rule 42(3) of the said rules, reads that 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. Therefore, the intendment of nominations is in favour of members belonging to his family only. From a reading of Rule 42 of the Rules, it can be inferred that the intention of nomination by a deceased employee is not in favour of the nominee only but to benefit the entire members of his family. This view has been reiterated in the decisions referred to above which I respectfully agree. The trial court dismissed the application on the ground that the nomination would take away the right of other members of the family, namely, legal heirs of the deceased employer to claim the benefits due to him after his death of superannuation. I am unable to subscribe my views to that of the trial court. Therefore, I am of the view that in spite of the nomination, the petitioners are entitled to share the amount along with the nominee.

7. Therefore, the order of the lower Court is set aside and the appeal is allowed. No costs, The trial court is directed to issue succession certificate in favour of the appellants for their share in the entire amount.