

(2005) 08 KAR CK 0034

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7969 of 2003

Shakuntala Bai and Another

APPELLANT

Vs

Sailatha Anand

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Insurance Act, 1938 — Section 39
Succession Act, 1925 — Section 372, 373 (4)

Citation : (2006) 1 CivCC 33 : (2005) ILR (Kar) 4550 : (2005) 6 KarLJ 367 :
(2005) 4 KCCR 335 SN

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Sri Krishna S. Dixit, for the Appellant;

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—In the present appeal the respondent has been served and has remained un-represented. Heard the Counsel for the appellant.

2. The facts of the case are:-

The appellants had filed a petition u/s 372 of the Indian Succession Act, 1925 ("the Act" for short) for grant of succession certificate in respect of the benefits arising under life insurance policies which had been taken out by the son of the appellants, upon his death in a motor accident. This was warranted on account of the respondent having resisted their claim for the benefits of the appellants on the footing that she was nominated under the said policies and therefore she was entitled to the same. The petition was contested by the respondent though she did not lead any evidence in support of her case. The Trial Court has rejected the petition on the sole ground that since the respondent is shown as a nominee under the respective insurance policies, the appellants did not have a cause of action. The appeal is filed in this background.

3. Sri Krishna S. Dixit, Counsel for the appellant would submit that the Trial

Court has erred on more than one count. Firstly, the nomination under the insurance policies was not the only relevant factor in considering the grant or otherwise of a succession certificate in respect of the insurance policies. In terms of Section 373(4) of the Act, the Court ought to have examined the extent of interest and the fitness of the applicant to receive the certificate and the interest in the estate of the deceased. The Trial Court has restricted its consideration only to the nomination made under the policy. He would next contend that in terms of Section 39 of the Insurance Act, 1938 (Act No. IV of 1938), a nominee of a life insurance policy does not get absolute right to the amount due and this has been settled by the Apex Court in the judgment of Smt. Sarbati Devi and Anr. v. Smt. Usha Devi wherein it is held at para 12 that a mere nomination made u/s 39 of the Insurance Act, 1938 does not have the effect of conferring on the nominee a 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. This judgment has been followed in a number of cases over the years and it would be unnecessary to burden the brief with reference to those cases. And, in this light, the Counsel would submit that the appeal would have to be allowed and the matter remitted for further adjudication by the Trial Court as to the interest of the appellants and the respondent vis-a-vis the benefits arising under the insurance policies which the Trial Court has failed to enquire into.

4. I find force in the contention of the Counsel for the appellant and the appeal would have to be allowed on both the counts as urged by the Counsel.

5. Accordingly, the following judgment:-

The appeal is allowed. The impugned order of the Trial Court refusing the grant of succession certificate is set aside and the matter is remitted to the Trial Court to adjudicate upon the interest of the parties in so far as the insurance policies taken by the deceased son of the appellants and the extent of interest of the appellants and the benefits arising thereunder, as opposed to the respondent notwithstanding the nomination of the respondent under the said policies.