(2009) 10 OHC CK 0079

In the Orissa High Court

Shri Chakraram Samal and Another APPELLANT

Vs

Radhamani Palaka and Others RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:
Insurance Act, 1938 — Section 39

Citation : (2011) ACJ 770 : AIR 2010 Ori 73 : (2010) 1 OLR 338

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The appellants as plaintiffs filed T.S. No. 32 of 2002 before the Civil Judge (Senior Division), Rayagada, inter alia, praying for a declaration that the plaintiffs are entitled under the will to receive the service benefits of late Raghunath Samal, i.e. C.P.F. accumulations, gratuity and other benefits payable by the F.C.I, and the Life Insurance Corporation. The suit has been decreed in part by the learned trial court ordering that the plaintiff-appellants are entitled to the properties bequeathed under the will dated 11.6.2001, Ext. 2, except the testator''s insurance claim to which the Defendant No. 2-Smt. Sasirekha Samal is entitled as nominee. This appeal has been preferred against the part of the suit claimed, which has been dismissed.

2. The respondent No. 2-defendant No. 2 is stated to be dead by the learned Counsel for the appellants and her name has been deleted from the cause title page of the appeal memo pursuant to the order dated 25.2.2009. A cross appeal was preferred by the said deceased-respondent No. 2. After her death, she having not been substituted by her legal heirs, the said cross appeal has abated.

3. The suit was filed by the appellants for declaration that they are entitled to the service benefits as well as the amount under the L.I.C. Policy of the deceased Raghunath, who was the brother of the plaintiffs. In the said L.I.C. Policy, the respondent No. 2, being the wife of the said deceased Raghunath, was named as

"Nominee". It was the case of the plaintiffs that the plaintiffs succeeded to the estate of late Raghunath by virtue of a will executed by him. The will has been accepted by the court below as genuine, which do not require a probate. It was also the case of the plaintiffs that there was a divorce decree between Raghunath and the respondent No. 2 prior to filing of the suit. However, the court below while finding that the decree of divorce is a valid decree as well as the will executed by late Raghunath in favour of the plaintiffs vide Ext. 3 is a valid and binding document, recorded a finding that the nominee often taken precedence over a successor. Admittedly, the appellants are the successors to the interest in the estate of the deceased Raghunath. It is a settled position of law that a nominee holds the property of the person concerned in trust on behalf of the true owners and the nominee can have no right over the said property unless he or she is the successor to the said property under law. The Supreme Court in the case of Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, while considering the question whether a nominee of a life insurance policy u/s 39 of the Insurance Act, 1938 (Act No. IV of 1938) on the assured dying intestate, would become entitled to the beneficial interest in the amount received under the policy, to the exclusion of the heirs of the assured, referring to various earlier decisions and analysing Section 39 of the Insurance Act, laid down that a mere nomination made u/s 39 of the Act 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 authorized 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.

4. In the instant case, in view of the finding that there was a divorce decree between the deceased respondent No. 2 and late Raghunath, she could not be held to be a successor having interest over the money available under L.I.C. Policy of late Raghunath. This Court, therefore, finds that the court below was in error in holding that the plaintiffs are not entitled to the amount under the L.I.C. Policy and dismissing the suit in respect of the said amount. The appeal is, therefore, allowed and the judgment of the trial court is modified to the extent that the suit is decreed in whole and the plaintiffs are also entitled to the amount under the L.I.C. Policy of late Raghunath along with the other service benefits as already decreed. The respondent No. 6, who was the defendant No. 6 in the court below, shall disburse the amount under the L.I.C. Policy of late Raghunath to the plaintiffs.

