
(1914) 05 CAL CK 0074
In the Calcutta High Court

Srimati Ishani Dasi and Others

APPELLANT

Vs

Gopal Chandra Dey and Others

RESPONDENT

Date of Decision : 20-05-1914

Acts Referred:

Married Womens Property Act, 1874 — Section 2, 6

Citation : AIR 1915 Cal 9 : 25 Ind. Cas. 236

Hon'ble Judges : Richardson, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—The only question raised by these five rules is whether a sum of Rs. 2,000, payable by the Oriental Government Security Life Assurance Company, Limited, under or by virtue of a policy of assurance on the life of one Radha Kishore De numbered 24003 is - available for the payment of the debts of Radha Kishore De. Radha Kishore De was a Hindu. He died in the month of January 1913. The opposite parties to these rules are his heirs.

2. Radha Kishore in his life-time effected the policy in question on his own life for the benefit of his wife and children. The policy purports to be issued under the provisions of the Married Women's Property Act, 1874. The question for our determination is, does Section 6 of the Married Women's Property Act, 1874, apply to a policy of assurance effected by a Hindu on his own life for the benefit of his wife and children? In the present case the assured has not purported to create any trust in respect of the money payable under the policy. Unless, therefore, Section 6 of the Act applies, the contract of assurance being with Radha Kishore, the right to call for payment, is vested in his representatives and forms a portion of his estate: *Cleaver, v. Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147 : 61 L.J.Q.B. 128 : 66 L.T. 220 : 40 W.R. 230 : 56 J.P. 180. Different views have been taken in the High Courts in India as to whether Section 6 of the Act authorises a married Hindu man to effect a policy of assurance in accordance with the provisions of the section.

3. The High Court at Bombay in the case of *Shankar v. Umabai* 19 Ind. Cas.

736 : 37 B. 471 : 15 Bom. L.R. 320 take the broad view that the Act of 1874 does not apply to Hindus and, therefore, that a policy effected by a Hindu for the benefit of his wife and children is not governed by the provisions of Section 6.

4. On the other hand the High Court at Madras in the case of Pokkunri Balamba v. Kakaraparti Krishnayya 20 Ind. Cas. 934 : 25 M.L.J. 65 : (1913) M.W.N. 697 : 14 M.L.T. 363 have held that the provisions of Section 6 of the Act apply to a policy effected by a Hindu on his own life for the benefit of his wife and children.

5. Now Section 2 of the Act provides that Nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions." And Section 6 of the Act is in these terms: A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his Creditors, or form part of his estate." A policy effected under the terms of the section by a married man coming within the terms of the section for the benefit of "his wife or his wife and children or any of them, if they come within the terms of the section, is a complete settlement as from the date of the policy on the wife and children.

6. Thus although there is no obligation on the husband to pay the premiums becoming due on the policy, the husband could not surrender the policy to the office and receive the surrender value thereof.

7. Now a wife of a Hindu married man seems to me obviously to be a married woman who or whose husband professes the Hindu religion. And in that view, in my opinion, Section 2 of the Act prohibits a Hindu married man from effecting a policy u/s 6 for the benefit of his wife. I am unable to adopt the view that seems to have been expressed by Tyabji, J., that the policy would be a valid settlement on the children in case of a policy effected by a Hindu, although the wife is excluded by the terms of Section 2 of the Act.

8. That view would involve reading into Section 6 after the words for the benefit of his wife or his wife and children or any of them" the words in case of a Hindu and for the benefit of his children or any of them." But taking as I do the view that Section 6 does not authorise a Hindu married man to effect a policy under the terms of, the section for the benefit of his wife, it seems clear that Section 6 does not apply to Hindus and that section stands on the same footing as the other sections of the Act. The view that the Act of 1874 does not apply to Hindus has been laid down more than once in judicial decisions in this country.

9. I agree with the view expressed by Scott, C.J., in the case of Shankar v. Umabai 19 Ind. Cas. 736 : 37 B. 471 : 15 Bom. L.R. 320 . These five Rules ought, therefore, to be made absolute with costs. We assess the costs in each

case at one gold mohur. Let the records be sent down at once.

Richardson, J.

10. I have come upon consideration to the same conclusion.

11. Section 2 of the Married Women's Property Act (III of 1874) contains the following saving clause:

Nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, and Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

12. Section 6 so far as it need be quoted provides that a policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate."

13. The question is whether this section applies to a policy taken out by a Hindu husband for the benefit of his wife and children.

14. It is argued that the section refers in terms to a married man" and not to a married woman" which is the expression used in the saving clause in Section 2. This is a narrow foundation for the inference that the intention of the Legislature was to exclude Section 6 from the scope of the saving clause and make it generally applicable to all married women whatever might be their religion. The section speaks not only of a married man" but of his wife, and a wife is a married woman." But then it is said, the saving clause at any rate does not extend to children and it would be attributing caprice to the Legislature to suppose that Section 6 is applicable to the children, but not to the wife of a Hindu husband. It is urged that even at the cost of doing some violence to the language a construction which has this capricious result must be rejected.

15. The argument, of course, cuts both ways and the better opinion seems to be that when the wife or the husband was a Hindu at the date of the marriage, Section 6 applies neither to the wife nor to her children.

16. No doubt the peculiar form given to the saving clause creates a difficulty. Nothing in the Act is to apply to a married woman who or whose husband, at the time of the marriage professed one or other of the religions specified. The saving clause in Section 331 of the Indian Succession Act is in regard to its actual terms more widely expressed: "The provisions of this Act shall not apply to int state or testamentary succession to the property of any Hindu, Muhammadan or Budhist" the term Hindu including, as is now recognized jains and Sikhs. It may be that title of Act III of 1874--The Married Women's Property Act--has something to do

with the way in which the saving clause is drawn But apart from that the Act must be read with reference to the object which it had in view and it must be read as a whole. It must also be read with Section 4 of the Indian Succession Act. That section is the principal enactment to which the provisions of the Married Women's Property Act are supplementary and subsidiary.

17. Section 4 of the Indian Succession Act runs thus : "No person shall, by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried."

18. Now as appears from the preamble the purpose of the Married Women's Property Act was two-fold. It aimed, firstly, at extending the protection afforded to women by Section 4 of the Succession Act and secondly, to put it briefly, at extending in certain ways the liability of married women for their debts incurred before or after marriage. The extension of their liabilities was a necessary or reasonable complement to their enlarged rights of property. The first of these two objects which the Legislature had in view was earned out in Parts II and III of the Act, headed respectively " Married Women's Wages and Earning" and "insurances by Wives and Husbands." Part II consists of one Section 4, which in effect extends the protection of Section 4 of the Succession. Act which applied only to marriages contracted on or after the 1st January 1866 to the wages and earnings of women" married before the 1st January 1866 Part III comprises Sections 5 and 6 which make provisions for insurances on lives by persons married before or after the same date The second object is carried out by Part IV containing Sections 7 and 8 and Married by and against Married Women" and by Part V containing Section 9 and headed "Husband's Liability for Wife's Debts."

19. This is the whole of the Act, with the exception of certain paragraphs in Section 2 to which I have not yet referred. Section 1 gives the short title and Section 3, a commencement clause, has been repealed.

20. Of the operative sections from 4 to 9 it is admitted that no section with the exception of Section 6 can possibly apply to a married woman who at the date of her marriage professed the Hindu or any of the other religions specified in the saving clause. Section 6 is in Part III and as already indicated, the only other section in that Part is Section 5 which relates to policies of insurance effected by married women. That section clearly and admittedly does not apply to a policy taken out by a Hindu wife. It seems very unlikely, therefore, that Section 6 should apply to Hindu wives or Hindu marriages or families. The scheme as a whole (including Section 4 of the Succession Act) appears to be applicable only to marriages between persons governed by the Succession Act. At almost every step the Legislature is thinking of disabilities and inabilities. imposed by English Law at the time on married women subject to that law,--disabilities and inabilities unknown to married women subject to the principal systems of family law prevalent in India. Such women may have their own disabilities and inabilities, but they were never subject to the rules peculiar to the English Law

on this topic.

21. But the argument can be carried further. As the Succession Act was passed its Section 4 was apparently of universal application. It was not subject to that part of Section 331, quoted above, regarding the non-applicability of the Act to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist. As the Act stood, Section 4 applied to all married persons whatever might be their religion. The only restriction was one of time. As already mentioned, it did not "apply to any marriage contracted before" the 1st January 1866. This restriction is also contained in Section 331 and the form in which it is expressed should be noticed.

22. Now Section 2 of the Married Women's Property Act (the extent and application of section) contains not only the saving clause which has caused the difficulty, but certain other clauses or paragraphs. The last paragraph enacts positively that "the fourth Section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage, the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion." This provision, important though it at first sight appears, is not mentioned in the somewhat elaborate preamble. The reason why it was not mentioned is probably that Section 4 was never intended to apply to Hindu, Muhammadan and Buddhist marriages and had never been treated in practice as applicable to such marriages. It is the only section in a long Act which purports to affect Hindus, Muhammadans and Buddhists. If this result was due to some accidental error or omission in the framing of the saving clauses in Section 331, it was very natural that the matter should be put right in the Married Women's Property Act. However that may be, if Section 4 of the Succession Act had continued to be applicable to all married women, there might have been some ground for supposing that one or other of the sections of the Married Women's Property Act would or might have a similar extended application. But when we find Hindu, Muhammadan and Buddhist marriages expressly excluded from the operation of the principal enactment, it is unlikely that any of the supplementary and complementary provisions of the Married Women's Property Act should apply to such marriages. The suggestion that the benefit of Section 6 of the latter Act was conferred by way of compensation for exclusion from Section 4 of the former Act is hardly tenable. Reading Section 6 with all the other provisions it seems to me clear at least that it does not apply to married women of the specified denominations.

23. As to the power given by Section 2 to the Governor-General in Council to exempt the members of any race, or tribe from the operation of all or any of the provisions of the Married Women's Property Act, it has been suggested that the existence of that power enables the Governor-General in Council, if necessary to take Hindus, Muhammadans and Buddhist out of the operation of section; 6 and therefore, an indication that prima facie they come within the section. It is obvious, however, that this provision, like the corresponding provision in Section

332 of the Succession Act, was never intended to apply to members of the Hindu, Muhammadan and Buddhist communities. In both Acts these communities are specially dealt with by special saving clauses and the Governor-General in Council has in regard to them no power either of exemption or inclusion. The terms "race," "sect" and "tribe" are used with reference to communities which cannot be described as Hindu, Muhammadan or Buddhist, such as communities of Indian Christians, the Jewish community in Aden, hill tribes and others. No argument either way can, therefore, be drawn from the existence of this power of exemption. The extent to which Hindus, Muhammadans and Buddhists are affected or excluded depends on the special clauses relating to them and not on the power given to the Governor-General in Council in regard to other communities.

24. If it be taken as established that Section 6 of the Married Women's Property Act does not apply to wives who come within the words of the saving clause, it would be an anomalous state of things if the sections were found to apply to the children of such wives. If the words of the Act are so plain that no other construction is reasonably possible, the anomaly must be accepted and effect must be given to the language which the Legislature has chosen to apply. But if that language is of doubtful import, the most reasonable construction of which it is fairly capable ought to be adopted. No doubt, children are not mentioned in the saving clause, but in the case of the exempted religions both parents are excluded from the operation of the principal enactment. With the possible exception of Section 6 neither parent is affected by anything in the Married Women's Property Act and Section 6 does not apply to the mother. Regard being had to the whole scope of the legislation, it is evident that the Legislature were dealing with the legal aspects of marriages of a particular kind, namely, marriages between persons subject to the Succession Act. The reference to children in section. 6 is quite incidental and, in my opinion, the only children contemplated by Section 6 are children born of marriages of the kind to which the rest of the Act relates. This conclusion is strengthened by the difficulties which would attend the application of the section to the children of Hindu, Buddhist or Muhammadan marriages. Take the case of the married daughter. She is a married woman and would come within the words of the saving clause. Take the case of a policy effected by a Hindu for the benefit of children unborn at the date of the policy.

25. The result, in my opinion, is that Section 6 does not apply to the policy before us and the money due upon it forms part of the estate of the assured *Oriental Government Security Life Assurance Co. v. Vantedu Ammiraju* 10 Ind. Cas. 263 : 35 M. 162 : (1911) 2 M.W.N. 276 : 9 M.L.T. 451, *Shankar v. Umabai* 19 Ind. Cas. 736 : 37 B. 471 : 15 Bom. L.R. 320 . I concur in the order proposed.