
(1940) 02 MAD CK 0019
In the Madras High Court

Subhadrammal

APPELLANT

Vs

Kannammal

RESPONDENT

Date of Decision : 21-02-1940

Acts Referred:

Divorce Act, 1869 — Section 22, 25

Citation : AIR 1940 Mad 590 : (1940) 51 LW 575 : (1940) 1 MLJ 715

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The subject-matter of this appeal is the sum standing to the credit of one D.G. Chetty in Provident Fund. D.G. Chetty was a

Government servant who died in the year 1937. In 1928, the present plaintiff, who is D.G. Chetty's widow, filed a suit against him for separate

maintenance and in May, 1929, was given a decree. In August 1929, D.G. Chetty made a fresh nomination under the rules of the Provident Fund

by which he appointed the first defendant, his mistress, as the person entitled to receive the amount of the fund in case of his death.

2. The question before us is whether the plaintiff or the first defendant is entitled to this money, or to put it in other words, whether the nomination

made by the subscriber in August, 1929, is a valid nomination under the rules or not. The learned Additional City Civil Judge has held that the

nomination is valid and comes within the scope of Note 1 to Rule 17. Rule 17 deals with the disposition of a provident fund upon the death of a

subscriber before retirement and mentions the various contingencies which will arise. Under Note 1, it says that:

A husband may make a written application for the exclusion of his wife from participation under Clause (b), if she has been judicially separated

from him....

3. The question before us can therefore once again be stated in this way : ""Is a Hindu wife who has obtained a decree for separate maintenance

judicially separated from her husband?"" If she is judicially separated from him, it is conceded that the nomination in this case is within the powers of

the depositor under the rule. If she has riot been, the effect of the Provident Fund Rules is to vest the whole of this fund in the plaintiff. The learned

Additional City Civil Judge holds that the words ""judicially separated"" in this note must be given an extended meaning. In para. 32 in setting out the

argument of the learned Advocate for the first defendant, he says that ""judicially separated"" has to be interpreted as ""meaning and including the

judicial recognition or adjudication of the right of a person to live separately from her spouse.

4. The learned City Civil Judge then goes on to point out various analogies between the position of a Hindu wife who has obtained a decree for

separate maintenance and a Christian wife who has obtained a decree for judicial separation in the technical sense. We are emphatically of opinion

that in arriving at the meaning of the words ""judicially separated"" we must take their technical meaning rather than a more popular and extended

meaning unless there are very good reasons shown to the contrary from an analysis of the Provident Fund Rules themselves. The expression

judicial separation"" and its cognate form ""judicially separated"" are not expressions to be found in ordinary language. They are expressions of the

law with a distinct and exact technical meaning. It is impossible in technical language to speak of a Hindu wife or husband as being judicially

separated from one another. No doubt, if the words were construed apart from their legal context, it might be possible to say that when a judge

holds that a wife was justified in living apart from her husband, she has been separated from her husband by judicial action. But, as we say, there

must be cogent reasons to compel us to adopt any such extended meaning for these words. When we examine the Provident Fund Rules as a

whole, we are led to the irresistible conclusion that their main purpose is to preserve the rights of the family of the subscriber to receive his

Provident Fund in the event of his untimely death. The word "family" is defined in the rules and of course includes the depositor's wife. We think

that there must be some strong reasons why a person who is still a member of the depositor's family should be excluded from the benefit of these rules. According to the interpretation which the learned Advocate for the respondent would have us adopt, the plaintiff, although she has herself suffered ill-treatment from her husband, has to be excluded from the benefit of these rules. We can see no reason why if the general purpose of the Provident Fund Rules is to ensure that a depositor's Fund shall go in the absence of other members of his "family" to his wife, the fact that a wife has been driven by her husband's conduct to live apart from him and to sue for the maintenance to which she is entitled as a wife, should prevent her from receiving the amount of his Provident Fund after his death. The provisions of the law with regard to judicial separation are contained in Sections 22 to 25 of the Divorce Act (IV of 1869). According to Section 22, a decree for judicial separation is to replace a decree which had theretofore been in force for a divorce a mensa et toro. According to, Section 24: In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

5. According to Section 25:

In every case of a judicial separation under this Act, the wife shall whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into or done, omitted or incurred by her during the separation.

6. u/s 23, a decree for judicial separation may be granted on the application of either the husband or the wife. As already mentioned, the learned

City Civil Judge has drawn several analogies between the position of a Hindu wife who obtains a decree for separate maintenance and a Christian

wife who obtains a decree for judicial separation under the Divorce Act. But this analysis of the sections of the Divorce Act shows that judicial

separation is a separation far wider than the relationship existing between a Hindu husband and wife in the situation of the depositor and the plaintiff

in this case. We think that the first note to Rule 17 of the Rules was inserted not

in order to give the depositor wider latitude in the disposition of his own property, but in order to exclude for the purposes of the Rules a wife who has been in the strict sense of that term "judicially separated" because such a wife, although not completely divorced from him and therefore not completely excluded from his family, is yet, partly excluded from his family, to the considerable extent shown by the various sections to which we have referred. A Christian wife judicially separated from her husband is therefore very near in status to a stranger, and we think the intention of the framers of the rules of the Provident Fund must have been to allow the depositor to ignore her as if she had been completely divorced from him. When we look at the rules from this point of view, that their main purpose is to preserve for the members-of the depositor's family the right to receive his Provident Fund, we can see no reason to think that the framers of the Rules would have intended to exclude a Hindu wife who had obtained a decree for separate maintenance. The status of such a Hindu wife is not, in any real sense, equivalent to the status of a wife judicially separated under the Divorce Act, and we can see no reason why a Hindu wife who has been placed in the unfortunate position of having to sue for separate maintenance owing to her husband's conduct should for any purpose be considered as outside the list of those who are entitled to benefit under the Rules.

7. We accordingly are of opinion that the decision of the learned Additional City Civil Judge is wrong, and that this appeal must be allowed and that the plaintiff's suit with respect to the Provident Fund must be decreed with costs throughout.

8. The learned Additional City Civil Judge has appended a note to para. 43 of his judgment to say that:

the decree in this suit shall not be treated as exonerating either the plaintiff or the first defendant or the second defendant from obtaining the necessary certificate under the Indian Succession Act or the Administrator-General's Act.

9. It was, in our opinion, quite unnecessary for this note to have been added to the judgment. The parties to a proceeding of this kind are under no liability to obtain any Succession Certificate; the amount vests in them upon the death of the depositor.