
(2001) 09 MAD CK 0132
In the Madras High Court
Case No : S.A. No. 588 of 1991

Varadakkal

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5, 5(1B), 6, 7, 8(2)
Insurance Act, 1938 — Section 39

Citation : (2002) 92 FLR 1192 : (2002) 1 LLJ 1018 : (2002) 1 MLJ 279

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : K.M. Santhanagopalan, for the Appellant; S.T.S. Moorthi, for the Respondent

Final Decision : Dismissed

Judgement

S. Jagadeesan, J.—The plaintiff in O.S.No. 1351 of 1984 on the file of the District Munsif, Coimbatore, is the appellant. The suit has been filed for recovery of a sum of Rs. 10,264.35 with future interest on the ground that her husband one Palanisamy Konar died on September 10, 1976, who was working in Varadaraja Mills. During his employment he made contribution towards Employees' Provident Fund and he had nominated one Palaniammal, his concubine, as the successor for the benefit. However, immediately after the death of the said Palanisamy Konar, the appellant, through her counsel, issued notice under Ex. A-10, claiming the death benefit of her husband.

2. The appellant also filed O.P.No. 159 of 1977 on the file of the Sub Court, Coimbatore, claiming Succession Certificate for 1/3rd share, giving out the 2/3rd share to the sons of her husband through his concubine. As the respondents did not pay the amount the suit was filed.

3. In the written statement, the first respondent has stated that the amount had been disbursed to the said Palaniammal, the nominee of her husband on July 12,

1977. Since the amount had already been disbursed to the said Palaniammal, the nominee, it is open to the appellant to recover her 1/3rd share from her.

4. The Trial Court, after considering the oral as well as the documentary evidence, had decreed the suit by its judgment and decree dated March 17, 1989 on the ground that the plea of the respondents herein with regard to the disbursement of the amount to the nominee Palaniammal was not established by producing any receipt. Even otherwise, the amount has been paid to the said nominee after the claim made by the appellant herein through the notice Ex. A-10, dated September 16, 1976.

5. Aggrieved by the same, the respondents herein filed an appeal in A.S. No. 65 of 1990 on the file of the Sub Court, Coimbatore. The learned sub-ordinate Judge who heard the appeal has allowed the same on the ground that the amount has been disbursed to the nominee. The appellant ought to have impleaded the said nominee in this proceeding to get her share. Without doing so, it is not open to the appellant to claim her share from the respondents. The relief sought for by the appellant cannot be granted on the ground that the respondents cannot be compelled to make double payment and consequently allowed the appeal. As: against the same, the present second appeal has been filed.

6. Mr. K.M. Santhanagopalan, the learned counsel for the appellant vehemently contended that the nomination made by the husband of the appellant is void since under the scheme of the Employees' Provident Funds Act, the nomination can be made only in favour of one or more persons belonging to his family. It is very clear from paragraph 61(3) of the Scheme under the Employees' Provident Funds Act that any nomination made by such member in favour of a person not belonging to his family shall be invalid. On the basis of this provision it was contended that the nomination made by the husband of the appellant in favour of the said Palaniammal is invalid and consequently the payment said to have been made by the respondents on the basis of such invalid nomination cannot be a valid discharge of the respondents' liability. Hence, the respondents are legally bound to discharge the claim of the appellant. Apart from this, it was also contended by the learned counsel for the appellant that the respondents having been parties to the O.P. regarding the Succession Certificate, they failed to put forth any plea in those proceedings regarding the disbursement of the amount to the said Palaniammal, the nominee. In the absence of any such plea in the earlier proceeding and in the absence of any receipt, evidencing such disbursement to the nominee, it is not open to the respondents to put forth such plea in this proceeding. The Trial Court had rightly found that the respondents are liable to discharge the claim of the appellant. Hence, the judgment and decree of the lower appellate Court are liable to be set aside.

7. I carefully considered the above contention of the learned counsel for the appellant. The undisputed facts are, the appellant is the widow of the Palanisamy Konar. One Palaniammal was nominated by the said Palanisamy Konar as a person to receive the provident fund, in case of his death. The said Palaniammal

had two sons through the said Palanisamy Konar who died in an accident on September 10, 1976. The appellant issued notice to the first respondent herein under Ex. A-10 on September 16, 1976, that except herself no other person is entitled to claim the death benefits of her husband. The said notice was received by the first respondent on September 17, 1976. Ex. A-3 is the acknowledgment.

8. Since the respondents insisted for the production of the Succession Certificate, the appellant filed O.P. No. 159 of 1977 on the file of Sub Court, Coimbatore impleading the respondents herein as well as the nominee Palaniammal and her two minor sons. The learned Subordinate Judge by his order Ex. A-1 dated November 10, 1982 granted the certificate in favour of the appellant in respect of 1/3rd share, as claimed by the appellant herein. Thereafter, the present suit was filed against the respondents herein alone, claiming 1/3rd share from out of the provident fund.

9. The defence put forth by the first respondent is that the amount had already been paid to the nominee as early as July 12, 1977 and as such it is open to the appellant to claim her share from the said nominee.

10. As already pointed out, the contention of the counsel for the appellant are:

(i) In O.P. No. 199 of 1977 where the appellant claimed the Succession Certificate, the respondents did not plead the disbursement of the said amount to the nominee. Hence, it is not open to them now to raise such plea.

(ii) When at the earliest point of time, the plea of disbursement had not been raised, the burden is on the respondents to establish the same. In the absence of any receipt, such a plea of disbursement raised by the respondents cannot be accepted.

(iii) Even assuming such disbursement had been made to the nominee, the same is illegal, since the nomination itself is void.

(iv) When such disbursement is illegal or unlawful, the appellant cannot be asked to run after the person who received the benefit by such illegal disbursement on behalf of the first respondent and as such the first respondent is liable to legally reimburse the claim of the appellant and they may recover the same from the nominee.

(v) Even if the disbursement has been made to the nominee, the nominee can be a receiver on behalf of the legal representatives of the deceased, since the amount being the estate of the deceased and on this ground also the respondent is liable to pay the amount to the appellant and recover the same from the nominee.

11. So far as the last two contentions are concerned, it can be taken up jointly. So far as the validity of the nomination is concerned, no plea has been raised in the plaint and no issue had been framed before the Courts below. But, however, the learned counsel for the appellant advanced the said argument on the basis of

Paragraph 61(3) under the Employees' Provident Fund Scheme. Paragraph 61 of the said Scheme deals with the nomination. Sub-clause (3) of Paragraph 61 is as follows:

"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."

On this provision it was contended by the learned counsel for the appellant that the nomination can be made only in respect of a person belonging to the family and any nomination in favour of a person not belonging to his family shall be invalid.

12. In my opinion, this contention cannot be accepted, since it requires some evidence with regard to the legality of the relationship between Palanisamy Konar and Palaniammal, the nominee. The appellant herself had impleaded the said Palaniammal and her sons in the Succession Certificate proceedings O.P. No. 159 of 1977 and conceded 2/3rd share for the sons of the said Palaniammal through Palanisamy Konar.

13. It is also admitted that in the nomination Palanisamy Konar had mentioned the said Palaniammal, the nominee as his wife. When that be the case, it will be very difficult either for the employer or for the authorities of the Provident Fund Commission to make an enquiry with regard to the genuineness of such statement and take a decision as to accept such nomination or not. The employer as well as the officials have to go by the statement made by the employee.

14. When it is an admitted case of the appellant that Palaniammal lived with her husband Palanisamy Konar and got two sons through her, in the absence of the said Palaniammal the question of her relationship with Palanisamy Konar cannot be decided.

15. In this proceeding the appellant did not produce the copy of the petition in O.P.No. 159 of 1977 where the appellant might have made certain averment with regard to the relationship between her husband and the said Palaniammal. Equally, the appellant failed to produce the counter, if any, filed by the said Palaniammal relating to the relationship between herself and the husband of the appellant.

16. In the absence of those materials, it may not be possible for this Court to entertain the new plea raised by the learned counsel for the appellant which also requires some evidence. Hence, the illegality of the nomination cannot be gone into.

17. So far as the question of the nominee is only the holder of the estate of the deceased for the benefit of the legal representatives is concerned, the learned counsel for the appellant relied upon the judgment of the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, : where the learned Judges have

held as follows:

"We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law.... The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all "plus and minus points". We find it difficult to treat a nominee as being equivalent to a heir or legatee having regard to the clear provisions of Section 38 of the Act.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.

We approve the views expressed by the. other High Courts on the meaning of Section 39 of the Act and hold 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 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 assured in accordance with the law of succession governing them."

18. The Apex Court had an occasion to deal with the nomination made by the member of the co operative society and it is clear that the Apex Court held a member can nominate any person to succeed to his interest in the event of his death and such nomination shall be given effect by the Committee in the event of his death. However, the nominee will hold the amount on behalf of the legal representatives of the deceased and cannot claim any individual right.

19. Following the said judgment a Division Bench of this Court in Narammal (died) and Anr. v. Kanthamani 1992 (2) MLJ 538 has held as follows:

"In this context, it is relevant to recall to our mind the view expressed by the Supreme Court in Sarbati Devi v. Usha Devi (supra), about the scope of nomination. The Supreme Court has categorically held that the nomination only indicates the hand which is authorised to receive the amount. The same view was expressed by SATHIADEV, J. (as he then was) even before the judgment of the Supreme Court. Therefore, we are inclined to agree with the view taken by the Division Bench of the Andhra Pradesh High Court for additional reasons given by us based on Section 5(1-B) of the Act read with item I of Schedule II. In other words, we read down paragraphs 61 and 70 of the Scheme to be in conformity with item 10 of Schedule II, read with Section 5 of the Act, and by so reading, the nominee gets only a right to receive the amount to distribute the same to the heirs of the deceased, in accordance with the law of succession governing them. In the view we have expressed above, the plaintiff is entitled to a half share in Schedule 4 properties as well. To that extent, the plaintiff is entitled to a decree.

This is a case directly under the Provident Fund Act. The Division Bench relied

upon another Division Bench judgment of the Andhra Pradesh High Court in Shaik Dawood and Others Vs. Mahamood Begum and Others, :

20. In a latest judgment Shri Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani (2001) 1 L.W. 380, the Supreme Court had an occasion to deal with the "nominee" under the National Savings Certificate. The learned Judges of the Supreme Court have dealt with almost all the earlier judgments and held as follows:

"In the light of what has been noticed hereinabove, it is apparent that though language and phraseology of Section 6 of the Act is different than the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the National Savings Certificate, to the nominee of holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi case, (supra), holds field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him u/s 6 read with Section 7 of 1 the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of Sub-section (2) of Section 8 of the Act."

In view of the principles laid down by various Courts, there is no dispute that the nominee can receive the benefits only on behalf of the legal representatives of the deceased.

21. Unfortunately, the appellant who can enforce her right against the nominee who received the benefits already, did not implead the nominee in this suit. In almost all the cases referred to above, the parties are the claimants under the deceased whose rights are disputed. Only on this ground, the lower appellate Court has held that the suit is bad for non-joinder of the nominee Palaniammal.

22. Only to overcome this objection, the learned counsel for the appellant contended that the appellant has filed the suit, claiming her 1/3rd share as per the Succession Certificate granted by the Sub Court, Coimbatore. As there was no dispute with regard to her 1/3rd share, the said Palaniammal is not a necessary party. The respondents having failed to plead any disbursement at the earliest point of time, it is not open to them to plead the same in the suit.

23. So far as the maintainability of the suit without Palaniammal is concerned, this Court can accept the contention of the learned counsel for the appellant, as there is no dispute with regard to the share of the appellant. But whether her presence is necessary to settle the claim is totally a different question which is essential for the disposal of the suit. While considering this question, one has to take note of the fact that in the written statement there is a specific plea on

behalf of the respondent that the amount had been disbursed to the nominee on July 12, 1977. When such plea has been put forth in the written statement, the appellant has totally failed to file any rejoinder, disputing the claim of the respondents regarding the disbursement of the amount to the nominee or raising any mala fides on the part of the respondents in disbursing the amount to the nominee.

24. Of course in one angle if we look at the matter, the learned counsel for the appellant may be right while he contended that the respondents have failed to put forth any plea of disbursement at the earliest point of time and in the absence of any receipt for such disbursement their plea cannot be accepted.

25. But in order to accept this contention, it is necessary that the appellant ought to have specifically denied the plea of disbursement made by the respondent. When such denial is not there, there is nothing wrong on the part of the lower Appellate Court to come to the conclusion that the amount had been disbursed to the nominee. When such plea had been raised by the respondents in the written statement, it is the duty of the appellant to implead the nominee as a party to the proceeding to give a quietus. Otherwise, she has to proceed against the nominee for recovery of her share. Before the lower Court, the counsel for the appellant ought to have taken steps to implead the nominee in the suit immediately after the filing of the written statement by the respondents herein pleading the disbursement. When deliberately such steps had been avoided on behalf of the appellant, now this Court is very reluctant to go into the question whether the respondents had proved the disbursement of the amount to the nominee. This Court is taking such view especially on the basis of the conduct of the appellant in not denying the averment made in the written statement about the disbursement of the amount to the nominee. When the counsel for the appellant advances argument on the basis of the conduct of the respondent alone, this Court is entitled to take note of the conduct of the appellant also while deciding the matter and granting the relief.

26. Even apart from this, on the principles laid down by the Supreme Court as well as this Court in the judgment referred to above, it is very clear that the nominee is entitled to receive the amount; but only on behalf of the legal representatives of title deceased. There is no bar for the disbursement of the amount to the nominee. In fact, as held by the Supreme Court the nominee is to receive the amount and discharge any liability of the deceased and disburse the remaining amount among the legal heirs of the deceased. When that be the case, the disbursement of the amount by the first respondent to the nominee cannot be said to be illegal in the absence of any prohibitory order from the Court.

27. The appellant having issued the notice in September, 1976 had filed O.P.No. 159 of 1977 on August 26, 1977, it is not the case of the appellant that the amount had been disbursed by the first respondent to the nominee Palaniammal only after the receipt of the notice in the said O.P. In such circumstances, the

disbursement of the amount to the nominee has to be justified. When the disbursement of the amount can be justified, it is for the appellant to make a claim for her share only from the nominee to whom the amount had been disbursed. Consequently, the nominee is a necessary party to the proceedings as rightly held by the lower appellate Court.

28. Hence no interference is called and accordingly the second appeal is dismissed. No costs.