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Court : Karnataka

Decided On : Jul-14-1977

Reported in : [1979]49CompCas387(Kar)

Judge : K. Jagannatha Shetty, J.

Acts : Insurance Act, 1938 - Sections 39

Appeal No. : Regular Second Appeal No. 852 of 1972

Appellant : Saraswatibai

Respondent : Malati

Advocate for Def. : H.F.M. Reddy, Adv.

Advocate for Pet/Ap. : W.K. Joshi, Adv.

Judgement :

Jagannatha Shetty, J.

1. The sole question that arises for consideration in this second appeal relates to the right of the appellant under section 39 of the Insurance Act, 1938.

2. The facts which are necessary for the determination of the question are :

One Madhukar Kulkarni had taken a policy of assurance for Rs. 2,000 with the Life Insurance Corporation of India. He was a teacher and the premiums were paid out of his salary income. He had nominated his mother as a nominee under section 39. The policy was taken on 14th December, 1959, and the assures died on 31st October, 1966, leaving behind his wife (the plaintiff) and the mother (the defendant). In the normal course, each would have got one-held of the assured amount. But, the mouth being the nominee, claimed the entire amount on the sole ground that the nomination confers on her an absolute rights to the exclusion of the wife. So, the wife filed a suit for declaration and also for recovery of half the amount due under the policy of her husband.

3. On the consideration of the evidence, both the courts treated the sum due under the policy as a separate asset of the deceased as the premiums were paid out of his salary and not from the joint family fund. The courts have further held that section 39 confers on the nominee a bare right to collect the policy money on the death of the assured and to give good discharge to the insurance company and the nominee does not become the owner of the money payable under the policy.

4. The correctness of this view is assailed in the second appeal preferred by the defendant.

5. For immediate reference, the relevant portion of section 39 is set out below.

'39(1). The holder of a policy of life insurance on his own life may, when effecting the policy ore at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death :

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee ..... (6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors .....'

5. By reading sub-sections (1) and (6) of section 39, it is clear that the sum secured by the policy shall be payable in the event of the death of the assure to the surviving nominee. Upon such payment, the liability of the insurance company gets discharged. The payment, however, has no relevance to the title or ownership of that money. This has been the uniform view taken by the several High Court. In Ramballav Dhandhania v. Gangadhar Nathmall, : AIR1956Cal275 , P. S. Mukharji J. observed :

'All that sub-section (6) of section 39, Insurance Act, does is to confer on the nominee the right to receive the insurance money as between such nominee and the insurance company, but it does not provide for the title or ownership of that money in general.'

6. The above view has been followed by a Bench of the Madras High Court in D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd. [1957] 27 Comp Cas (Ins) 47. Govinda Menon J., as he then was, while summarising the law on the question, observed at page 53 thus :

'The result of the above discussion seems to me to be this: If the construction placed upon the declaration is that a trust has been created under the provisions of the Married Women's Property Act, the beneficiary would take the assured amount free of all the liabilities of the insured and if it construed as a mere nomination, the nominee would have no more right than to receive the amount subject to all the liabilities as if the disposition was by means of a testamentary instrument.'

7. A similar view has been taken in a Full Bench decision of the Kerala High Court in Sarojini Amma v. Neelakanta Pillai, : AIR1961Ker126 .

8. My attention was, however, invited to a later decision of the Madras High Court in Karuppa Gounder v. Palaniammal, : AIR1963Mad245 which, according to the counsel for the appellant, has taken a contrary view.

9. I do not think that the said decision could be of any assistance to the case on had. In that case, the previous decision of the same court reported as D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd. [1957] 27 Comp Cas (Ins) 47 (Mad) has not been referred to. Even section 39 of the Insurance Act was not noticed. The decision appears to have proceeded on the special facts of that case and not on the scope of sub-section (6) of section 39.

10. In my view, there is no scope for taking any contrary view. The plain meaning of sub-section (6) of section 39 is that the nominee had no other right except a bare right to collect the policy money without affecting the title to other claimants, if any.

11. In the result, the appeal fails and is dismissed.

12. Since the parties are closely related, there shall be no order as to costs in this court.