

Channegowda Vs. Mallinath

Channegowda Vs. Mallinath

SooperKanoon Citation : sooperkanoon.com/370490

Court : Karnataka

Decided On : Mar-14-1967

Reported in : [1970]40CompCas489(Kar); (1967)1MysLJ657

Judge : A.R. Somnath Iyer, J.

Acts : Mysore Govt. Insurance Department Rules - Rule 22; ;[Insurance Act, 1938](#)
- Sections 39

Appellant : Channegowda

Respondent : Mallinath

Advocate for Def. : S.R. Rajasekhara Murthy, Advs.

Advocate for Pet/Ap. : D. Puttaswamy, Adv.

Judgement :

Somnath Iyer, J.

1. The plaintiff and the defendant made competing claims to the sum of Rs. 1,319 due under an insurance policy issued to a certain Rudramma by the Mysore Government, Insurance Department. Rudramma died on February 27, 1955. During her lifetime she had made a nomination in favour of her son-in-law who is the defendant.

2. On June 21, 1948, she addressed a letter to the insurer to the effect that the nomination in favour of her son-in-law had been cancelled and that the insured should direct the son-in-law who was detaining the insurance policy with him to deliver it to her. Exhibit D-6 was the reply sent by the insurer to Rudamma by which she was informed that cancellation of the nomination in favour of the son-in-law had been recorded in the books of the insurer and that Rudamma might take necessary action to recover the policy from her son-in-law and produce it for endorsement of cancellation. She was also informed that the nomination in favour of her co-wife's son's son could be got duly registered.

3. Meanwhile by exhibit P-5 the insurance department had sent a nomination form to Rudamma so that she could make a proper nomination in favour of her co-wife's grandson.

4. That nomination paper was sent duly filled up by Rudamma and it was in that situation that Rudamma died. The plaintiff then brought a suit for a declaration that he was entitled to the insurance amount and that suit was dismissed by the court of first instance but was decreed by the lower appellate court.

5. Mr. Puttaswamy appearing for the defendant contends that there was no valid cancellation of the nomination in favour of the defendant. In support of his submission, he depended on section 39 of the Insurance Act of 1938 (Central Act 4 of 1938), which is similar to rule 22 of the Mysore Government Insurance Department Rules which was applicable to the insurance policy with which I am concerned. It was urged by Mr. Puttaswamy that no nomination shall be effectual unless it is made by an endorsement on the policy which is communicated to the insurer and registered by him and that there can be no effectual cancellation except by a similar endorsement on the insurance policy. I was, therefore, asked to say that, since the cancellation of the nomination in favour of the defendant was not endorsed upon the insurance policy, it was ineffectual.

6. There can be no doubt that the cancellation of the nomination was duly recorded in the books of the insurer as shown by exhibit D-1. I am not impressed by the argument that the document was not proved since evidence was given about it by a representative of the insurer. The argument that it was not endorsed

upon the insurance policy is not available to the defendant since the defendant unlawfully retained the insurance policy with him even after he was informed about the cancellation in his favour and directed to return it. A person who so unlawfully retains the insurance made on the insurance policy which he would not return to Rudramma for any such record. It is clear that the provisions of rule 22 of the Mysore Government Insurance Department Rules which are similar to section 39 of the Insurance Act in regard to the recording of the cancellation on the insurance policy are merely directory and not imperative.

7. Mr. Puttaswamy contended that the nomination in favour of the plaintiff was also not recorded on the insurance policy or in the books of the insurer. For the same reason for which I have repelled the argument about the submission that the nomination in favour of the plaintiff should have been endorsed on the insurance policy which, in the circumstances, was impossible. In regard to the submission that there was no record of that nomination in the books of the insurer, it is enough to say that that argument is not available to the defendant. I, therefore, dismiss this appeal with costs.

8. Appeal Dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com