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Court : Allahabad

Decided On : Jan-26-1937

Reported in : AIR1937All562

Appellant : Mt. Amna Khatoon

Respondent : Abdul Karim

Judgement :

1. This is a decree-holder's appeal arising out of an execution proceeding. One Abdul Rahim had been employed on the B.B. & C.I. Ry. Co. and died leaving a widow, Mt. Amna Khatoon, his mother, Mt. Khooban, his brother, the present respondent Abdul Karim, and some minor children by his first wife. He had been a subscriber to the Railway Provident Fund and had first made a declaration nominating his wife and minor children as the persons entitled to receive the provident fund after his death but later cancelled that nomination and filed a fresh declaration nominating his mother, Mt. Khooban, as the sole nominee to receive the provident fund after his death. Shortly after his death his mother made a will in favour of the respondent Abdul Karim bequeathing the entire amount to him and then died a few months after. Abdul Karim having obtained a probate of the will from the Court of the District Judge realized the provident fund from the railway authorities. Thereupon the widow, Mt. Amna Khatoon, brought a suit to recover her dower debt against the heirs of the deceased and impleaded Abdul Karim also. She obtained a decree for Rs. 1,000 in 1931 and executed it against Abdul Karim personally on the ground that he had withdrawn the whole of the provident

fund which was part of the assets of the deceased and had appropriated it. The respondent accounted for a part of the amount realized by him and the trial Court held that he was liable personally to the extent of the balance, namely Rs. 718-13.0. Abdul Karim went up in appeal and the lower appellate Court has held that Abdul Karim was entitled to the whole amount and the decree-holder could not attaoh it as a creditor of the deceased Abdul Rahim.

2. The learned Judge has relied on two cases which, however, are distinguishable. In the case, Piare Lal v. Ganapat A.I.R. 1930 Lah. 437 the depositor had after the declaration added 'and I make this my will so far as regards such deposit.' The learned Judge of the Lahore High Court held that it was probably a declaration that the nominee was the sole legatee in respect of the fund. There is no such will suggested in the present case. In Hurmat Bibi v. Kaz Banu A.I.R. 1932 Sind 115 a suit had been brought by an heir claiming an injunction to restrain the nominee from recovering the provident fund from the North Western Railway. The learned Judge held that under Section 5, Provident Funds Act, the nominee had the absolute right to receive the amount and the injunction could not be granted. The question in the present case is not whether the nominee, Mt. Khooban, had not an absolute right to receive the money from the B.B. & C.I. Ry. Co. The question really is whether the money had become vested in her after the death of Abdul Rahim and before her own death so that she could dispose of it by will. In some cases it has been laid down that the provisions of Section 5, Provident Funds Act, are in themselves not sufficient to create a title in favour of the nominee: see Aimai v. Awabai Dhanjishaw Jamsetji A.I.R. 1924 Sind 57 and Hardail Devi Ditta v. Janki Das A.I.R. 1928 Lah. 773. The Provident Funds Act which has admittedly been applied to the B.B. & C.I. Ry. Co. defines what is meant by a dependent which includes a mother as well as wife and brother and also a child. Under Section 3(1) such a compulsory deposit is not capable of being assigned or charged and is not liable to attachment under any decree or order of any civil, revenue or criminal Court in respect of any debt or liability incurrred by the subscriber or depositor. Under Sub-section (2) any sum standing to the credit of such a subscriber at the time of his decease and payable under the rules of the fund to any dependent of the subscriber or to such person as may be authorized to receive payment on his behalf, shall...vest in the dependant, and shall...be free from any debt or other

liability incurred by the deceased or incurred by the dependant before the death of the subscriber. Section 4 then makes provisions regarding certain payments. Section 5 lays down that:

subject to the provisions of this Act...or any disposition, whether testamentary or otherwise, by a subscriber...any nomination, duly made in accordance with the rules of the fund, which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber shall be deemed to confer such right absolutely, until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber.

3. It accordingly follows that Section 5 refers merely to the persons who are nominated to receive the provident fund from the authority in question and the right to receive such fund on the death of the subscriber is absolute and cannot be questioned by such authority. But this nomination is itself subject to any disposition, testamentary or otherwise, which might have been made by the subscriber. It follows accordingly that the mere fact that a certain person has been declared to be the nominee under Section 5 for the purpose of receiving the provident fund is not necessarily the sole person entitled to appropriate the amount as the owner, legatee or heir. The question of the distribution of the amount after it has been drawn by the nominee as among those who may be entitled to it either under the personal law or by testamentary disposition is not covered by this section. Under Section 3, although the deposit is not capable of being assigned or attached so that the depositor, when the deposit matures can take it without any hindrance, it vests at the time of his death in the dependant of the subscriber to whom under the rules of the fund the money is payable and it vests in him free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor. It is therefore necessary to see who are the dependants or persons authorized by law to receive payment on their behalf to whom the provident fund has been made payable under the rules of the fund and in whom therefore the fund would vest, although it can be received by the nominee declared to be so under Section 5 of the Act.

4. In the Provident Fund Rules which have been framed by the Local Government for the Government servants of these provinces there is a special provision in Rule 31(1) that if a nomination has been duly made by the subscriber in favour of a member or members of his family, the amount standing to his credit to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination. We therefore think that where such a rule exists there would be no difficulty in holding that the nominee or nominees are also persons to whom the money becomes payable under Section 3(2) and therefore vests in them. Unfortunately in this case a copy of the Provident Fund Rules of the B.B. & C.I. Ry. Co. was not laid before the Courts below and the case has been decided without reference to any specific provisions in the rules though there may be such rules regarding this. We think that this appeal cannot be satisfactorily disposed of without ascertaining whether there are specific rules framed by the B.B. & C.I. Ry. Co. regulating the distribution of the provident fund after the death of the subscriber. We accordingly allow this case to stand out for six weeks to enable the counsel for the parties to procure a printed copy of the Provident Fund Rules of the B.B. & C.I. Ry. Co. which were in force in 1930.

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