In Re: Sm. Ashalata Dassi

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Court : Kolkata

Decided On : Aug-10-1939

Reported in : AIR1940Cal217

Appellant : In Re: Sm. Ashalata Dassi

Judgement :

Ameer Ali, J.

1. On 12th March 1930, Haricharan Ghose took out an insurance policy with the Sun Life Insurance Co. of Canada. Ashalata the respondent is his widow. Shortly put (reading from para. (3) of the petition) the nature of the policy is as follows: (a) Rs. 5000 payable to the assured if alive on 1st January 1950. (b) Sections 5000 payable to his wife if assured dead before that date, (c) If wife dead before the assured and the assured dead before 1st January 1950, then to the estate of the assured. The assured is alleged to have executed a will on 28th October 1938 in which from the copy supplied to me, he purports to dispose of 'his life insurance monies' as part of his estate. The will is propounded in the District Court by the person named as executor, one Panchanan Ghose a relative and is contested by Ashalata. Panchanan has been appointed administrator pendente lite. The widow applied for the appointment of a special trustee under Section 6, Married Women's Property Act and a special trustee was appointed on 23rd May 1939, by Sen, J. The trustee in question is one Satish. This application is by Panchanan to set aside the order made by Sen, J. I made a preliminary order whereby I took the

liberty of implementing the order made by Sen, J. by directing the special trustee to give security before receiving the money. It was then decided that the issue of law should be tried before me, i.e., the question whether assuming the will to be genuine the particular provisions in this policy fall within Section 6, Married Women's Property Act, and a valid trust was created. That is an issue on which I now give my opinion.

2. Mr. Ghose appearing for Panchanan, that is to say, for the executor, assuming the will ultimately to be established, divided his arguments into two portions. His main contention is that this is not a policy expressed on the face of it to be for the benefit of the wife. Alternatively if it is so to be regarded, in this case the provisions in the policy are of the nature of testamentary dispositions, that the will is a subsequently testamentary disposition and therefore is deemed to revoke the former disposition. He bases both arguments, largely upon the decision of the Madras High Court in Lalithambal Ammal v. Guardian of India Insurance Co. Ltd. (1937) 24 A.I.R. Mad. 645. Before I come to the cases I propose to express certain general views. The two principal questions involved in this matter are firstly whether any endowment policy can be a policy within the meaning of Section 6, Married Women's Property Act and secondly, if so whether by reason of the particular provisions in this policy, the operation of Section 6 is excluded.

3. The first comment to be made is that all life policies by their very nature operate upon contingency. In endowment policies, two contingencies are involved, life of the assured at a certain point of time, or death before that time. Mr. Ghose's argument did not I think go so far as to contend that an endowment policy is not a policy on life. An endowment policy is wholly a contract of life insurance; a double contract of life insurance the event in one case being death and the event in the other case being life. See the remarks in Gould v. Curtis (1913) 3 K.B. 84, at pp. 95 and 97. However, an endowment policy with the wife nominated to receive the amount payable in the event of death of the assured before a certain date is precisely to be regarded in law, I hold that it is a policy on the life of the husband for the benefit of the wife.

4. The other general matter calling for comment before dealing with the case is Mr. Ghose's argument based on the words 'on the face of it,' which appear in our Act and in the earlier English Acts prior to 1882. I think they were omitted from the later English Acts as being superfluous. Mr. Ghose interprets them as meaning 'unconditionally' absolutely or something of that kind. To my mind they mean nothing more than 'expressly expressed' the antithesis being to implied trust or a secret trust. Coming to the oases, I have to differ from the decision of the Madras High Court in Lalithambal Ammal v. Guardian of India Insurance Co. Ltd. (1937) 24 A.I.R. Mad. 645. The policy in question was a whole life policy and the persons to whom it was expressed to be payable were the 'assured or his wife.' The wife survived. The point in that case was that immediately after insuring himself the husband assigned the policy for consideration to a third party. The dispute therefore was between the third party and the widow setting up a trust under Section 6, Married Women's Property Act. Now with very great respect I think that the English cases do not support the proposition which is implied in the learned Judge's judgment. Indeed, I venture to doubt whether that proposition can at all be maintained. In that decision the following propositions appear to be involved. Firstly, that because there is a contingency, the interest taken by the beneficiary must be a 'contingent interest.' In my opinion, that is by no means always the case. An interest taking effect upon a contingency, may nevertheless be a 'vested interest.' In point of fact in that case the interest of the widow was I think vested.

5. The second proposition seems to be this that a contingent interest means no interest, or constitutes what Mr. Ghose called in argument a 'contingent trust.' In other words the creator of the trust has not divested himself of the beneficial ownership. In the case of life insurance the property is still vested beneficially in the assured. (See col. 1, p. 646 and col. 1 p. 647.) The first passage is this:

The trust never arose but if such a trust arose, it arose only upon the happening of an event which would give rise to a trust namely, the death of the assured and until his death there was no trust in being.

6. This was the argument of counsel, as we see from the following passage (p. 697, I) by the Court:

It follows therefore that during his lifetime he was not fettered by any trust as the trust would only arise upon his death.

7. I do not consider that the English cases relied upon support such a proposition. Nor do I think that such a proposition is supportable in legal theory. In my view, the question for decision is whether there was a trust created at the time when this disposition was made; either there was or there was not. The question whether the interest of the woman or anybody else is vested or contingent has nothing to do with that. It may be one or the other. The law apparently is that where the wife simply is named she takes a vested interest. I am using the words in its proper technical sense. In such a case if she dies before the husband it passes to her heirs and not to his estate. The authority for that is the case in Cousins v. Sun Life Insurance Society (1933) 1 Ch. D. 126. In the judgment of Romer L.J., appears the passage upon which the Madras High Court has relied. In my opinion what Romer L.J., was pointing out and the only thing that he was pointing out was that the assured by appropriate words could prevent the wife obtaining a vested interest so that instead of it going to her heirs it would on his death revert to his estate. In a case before me there is such a provision, whereby the wife is prevented from taking vested interest, but it has no effect upon the question whether there was or was not a trust. In this case the question of vesting is immaterial; because she herself is alive.

8. The case cited by Mr. Ghose in Dinbai Hormasji v. Bamansha Jamasji (1934) 21 A.I.R. Bom. 296, has the merit of simplicity. The Judges say that an endowment policy taken out by the husband cannot be expressed for the benefit of the wife because it is obviously for the benefit of the husband, a view which has been rejected many years ago in England. The Act does not say wholly for the benefit of the wife or solely for the benefit of the wife or anything of the kind. The later Madras decisions which have been cited to me take the view which I have just expressed. See Rajuchetty v. Rajuchetty (1937) 24 A.I.R. Mad. 370, Bengal Insurance and Real Property Ltd. v. Vellayammal : AIR1937 Mad571 , Kannayalal v. Subbaraya Chetty (1938) 25 A.I.R. Mad. 867 and Krishnan Chettiar v. Valayee Ammal (1938) 25 A.I.R. Mad. 604 the last case being one where nomination was precisely in the form of the Bombay case Dinbai Hormasji v. Bamansha Jamasji

(1934) 21 A.I.R. Bom. 296 namely 'self or wife.' The ease in In re Fleetwood's Policy (1926) 1 Ch. D. 48 is merely a further illustration of the general principle. I think that concludes all the cases cited before me. I have no hesitation in ruling, firstly that an endowment policy on the life of the husband, provided the wife is nominated to receive in the event of the husband's death, falls within Section 6, Married Women's Property Act, secondly that the fact that the wife's interest is rendered contingent by special provision in the nomination does not prevent or affect the creation of a valid trust. The question therefore is decided against the applicant and in favour of the trustee appointed by Sen, J.

9. I will dispense with security by the special trustee provided that the special trustee and the lady will attend before the Registrar at a time fixed and receive the cheque from the attorney or from the Insurance Company and give a joint receipt in the presence of the Registrar. The cheque will be drawn in favour of the trustee. The Registrar may act on counsel's endorsement. The application dismissed. The applicant will pay the costs of this application including those of the Insurance Company. Any claim to be indemnified out of the estate will be dealt with by the probate Court.