Amar Das vs Dadu Dayalu Mahasabha And Ors. on 6 January, 1953

Equivalent citations: AIR1953ALL721, AIR 1953 ALLAHABAD 721

ORDER

Brij Mohan Lall, J.

1. Swami Amar Das has made an application under Section 276, Succession Act (39 of 1925) for probate in respect of the will of late Mahant Mohan Das Swami.

2. One of the items bequeathed by means of this will in favour of the applicant is a life assurance policy of the deceased for a sum of Rs. 2,000/-. The deceased had under Section 39(1), Insurance Act (4 of 1938), named the petitioner as the nominee in respect of the said insurance policy. The petitioner contends that by reason of the aforesaid nomination he can, under Section 39(6), Insurance Act, claim the amount due under the policy from the Insurance Company, and can ignore the bequest contained in the will. He maintains that he need not pay court-fees in respect of this item.

3. The Junior Secretary, Board of Revenue, has raised an objection to the effect that court-fee must be paid in respect of this sum of Rs. 2,000/- also.

Section 19-I(i), Court-fees Act lays down:

> "that no order entitling the petitioner to the grant of probate.....shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the Form set forth in the third schedule and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation."

The Form set forth in the third schedule requires the petitioner to disclose-

> "all the property and credits of which the above named deceased died possessed or was entitled to at the time cf his death and which have come, or are likely to come to has hands."

It is, therefore, to be seen whether this insurance policy was a part of the assets of the testator at the time of his death or not. If it was, court-fee has to be paid thereon. If it was not, no court-fee need be paid in respect of it.

4. It is true that a nominee can claim payment from the Insurance Company, but power has been reserved by Section 39(2), Insurance Act in favour of the insured to cancel the nomination. This power can be exercised by him at any time before the policy matures for payment. The insured could create another nominee either in supersession of the present petitioner or in addition to him. It is, thus, obvious that the testator could exercise all rights of ownership in respect of this policy. If he had survived the maturity of the policy, he would have received the money himself notwithstanding the nomination in favour of the petitioner. It is further provided by the said Sub-section (2) that the power of cancelling the nomination could be exercised by a will. But the testator, in this case, confirmed the nomination by the will instead of cancelling it. The nomination created in the petitioner's favour a contingent interest only, but the applicant's title to the money was perfected by reason of the bequest contained in the will. It is, therefore, obvious that if the petitioner can claim the amount payable under the policy, it is by virtue, of the will and not otherwise.

5. Reference was made during the course of the argument to cases of nominees under the Provident Funds Act. But this analogy is not of much use. Under Section 3(2), Provident Funds Act (19 of 1925) the fund vests, subject to certain limitations, in the nominee, if he happens to be a "dependent" of the deceased subscriber within the meaning of Section 2(c) of the Act. In the Insurance Act, however, there is no provision which vests the money payable under the policy in the nominee at any stage. Moreover, once a nominee is named under the Provident Funds Act no cancellation or alteration thereof is permitted, except in the manner prescribed by the rules, A right to cancel the nomination or to alter it by will has been expressly taken away by Section 5(1) of the said Act

6. But even under the Provident Funds Act it was held in -- 'N.M. Robinson v. H.H. Robinson', AIR 1930 Oudh 145 (FB) (A) and -- 'In Re Mrs. Daisy Kemp', AIR 1939 Sind 52 (B), that the amount of the provident fund remained a part of the subscriber's assets and did not become the property of the nominee.

7. A reference was made by the learned counsel for the petitioner to the case of --'M. Mon Singh v. Mothi Bai', AIR 1936 Mad 477 (C). In that case the subscriber of a provident fund named a nominee in respect of the said fund. The nominee died in the subscriber's lifetime and the latter did not alter the nomination. After his death the nominee's widow applied for succession certificate. It was held that her husband (nominee) had a "vested interest". This case can be no authority in respect of an insurance matter, because a case like the present is expressly provided by the statute under Section 39(5), Insurance Act, where it is laid down that in such a case the amount will go to the legal representatives of the policy-holder and not to the legal representatives of the nominee. This also illustrates the difference between the status of a nominee under the Provident Funds Act and that of one under Insurance Act. I am not called upon in this case to express any opinion as to what would be the rights of a nominee under the Provident Funds Act. But I have no doubt that a nominee in respect of a policy of insurance does not become the owner of the money payable under the policy merely by reason of the nomination. The policy-holder continues to be the owner up to the end of his life and has full power of disposal over it. I am, therefore, of the opinion that the money payable under the policy should be treated as a part of the testator's assets.

8. The learned counsel for the petitioner has brought it to my notice that his client has had correspondence with the Insurance Company and that the amount payable under the policy in the different circumstances enumerated bellows are as follows:

1. A sum of Rs. 1410/10/-, if immediate' cash payment is demanded;

2. a sum of Rs. 1733/-, if the policy is converted into a paid up policy and the. payment is demanded on 13-3-1954;

and

3. a sum of Rs. 2,000/- less premia for two years at the rate of Rs. 108/8/- per year, if payment is demanded on 13-3-1954. This means a net payment of Rs. 1783/- to legatee.

In the circumstances, I am of the opinion that the value of the policy shall be treated for the purposes of court-fee as Rs. 1783/-.

9. I am, therefore, of the opinion that the objection raised by the Junior Secretary) Board of Revenue, should be upheld in part. The petitioner shall deposit the additional court-fee within three days.