

Shri Vishin N. Khanchandani & Anr vs Vidya Lachmandas Khanchandani & Anr on 16 August, 2000

Equivalent citations: AIR 2000 SUPREME COURT 2747, 2000 (6) SCC 724, 2000 AIR SCW 2932, (2002) 123 TAXMAN 227, (2000) 9 JT 321 (SC), 2000 (2) UJ (SC) 1309, (2000) 4 ALLMR 688 (SC), (2000) 3 KER LT 36, 2000 (8) SRJ 182, 2000 (3) LRI 612, 2000 KERLJ(TAX) 507, 2000 (5) COM LJ 67 SC, 2000 (4) ALL MR 688, 2000 (5) SCALE 592, (2001) 1 MAD LJ 1, (2000) 3 CIVILCOURTC 360, (2000) 2 HINDULR 225, (2000) 246 ITR 306, (2001) 1 MAD LW 380, (2001) 1 MAHLR 120, (2000) 2 ORISSA LR 528, (2000) 3 SCJ 120, (2000) 5 SUPREME 574, (2000) 4 RECCIVR 95, (2000) 5 SCALE 592, (2000) 4 ALL WC 2939, (2000) 4 CIVLJ 622, (2000) 102 COMCAS 340, (2001) 1 CURLJ(CCR) 81, (2000) 4 BOM CR 626

Bench: K.T. Thomas, R.P. Sethi

CASE NO.:

Special Leave Petition (civil) 12766 of 1999

PETITIONER:

SHRI VISHIN N. KHANCHANDANI & ANR.

Vs.

RESPONDENT:

VIDYA LACHMANDAS KHANCHANDANI & ANR.

DATE OF JUDGMENT: 16/08/2000

BENCH:

K.T. Thomas & R.P. Sethi.

JUDGMENT:

SETHI, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T...J Whether the nominee specified in the National Savings Certificate, on the death of its holder, becomes entitled to the sum due under the certificate to the

exclusion of all other persons?, or whether the amount of the certificate can be retained by him for the benefit of the legal heirs of the deceased- is the sole question required to be adjudicated by us in this appeal by special leave.

The present dispute is with respect to the savings certificates, the holder of which was Lachmandas Naraindas Khanchandani. Appellant No.1 is the brother, appellant No.2 the step brother, the respondent No.1 is the widow and respondent No.2 is the daughter of the deceased- holder. The deceased was serving in the Income Tax Department and has left behind debts consisting of National Savings Certificates, amounts in Compulsory Deposit Schemes, Post Office Cumulative Time Deposit Scheme and Pass Book Post Office Savings Bank. The respondent No.1 filed a petition under Section 370 of the Indian Succession Act, 1925 for the grant of succession certificate in respect of debts and securities left by the aforesaid deceased in the Court of Civil Judge, Senior Division, Thane. The appellants contested the claim with respect to such national savings certificates in which they had been mentioned as nominees of the deceased. The court of Civil Judge, Senior Division, Thane held that the respondents-plaintiffs were entitled to the grant of succession certificate in respect of the debts mentioned in Schedules A and B to the application excluding the National Savings Certificates enumerated at Sl.Nos.17 to 21 in Schedule A and Compulsory Deposit Scheme mentioned at Sl.Nos.1 to 4 in Schedule B. It was further held that the appellants herein were not entitled to the delivery from the respondents of the National Savings Certificates and Passbook Post Office Savings Bank in respect of which they had been nominated by the deceased. The Civil Judge while issuing the succession certificate in favour of the respondents-plaintiffs to the extent indicated hereinabove held them entitled to get the amount of the said debts with accrued interest thereon subject to their furnishing necessary court-fee stamp, Estate Duty Certificate and the security to the extent of the assets. Not satisfied with the orders of the Civil Judge, the respondents herein filed First Appeal No.849 of 1982 in the High Court of Bombay praying for setting aside that portion of the order of the Civil Judge by which their claim with regard to the National Savings Certificates, in respect of which the appellants were the nominees, had been disallowed. The High Court allowed the appeal and directed the issuance of succession certificate in favour of the respondents in respect of debts not only mentioned in Sl.Nos.1 to 16 in Annexure A and Sl.Nos.2,3,5 and 6 in Annexure B but also in respect of the debts mentioned at Sl.Nos.17 to 26 in Annexure A and Sl.Nos.1 and 4 in Annexure B. It was further directed that the respondents shall be entitled to equal share in the amounts which were due on securities listed in Annexures A and B to the application/plaint on payment of necessary court fees stamps and furnishing estate duty certificate. As there was no other claimant, the court held that there was no necessity to furnish any security.

Feeling aggrieved, the appellants- the nominees of the National Savings Certificates have filed this appeal contending that under Section 6 of the Government Savings Certificates Act, 1959, after the death of the holder they had become entitled to the payment of such Saving Certificates in which they were nominees, to the exclusion of all other persons including the respondents and entitled to utilise the aforesaid amounts in the manner they like. It is contended that by their nomination, the holder of the National Savings Certificates, namely, Shri Lachmandas Naraindas Khanchandani has diverted the normal course of succession. According to them Section 6 provides another mode of succession, to the exclusion of testamentary and non- testamentary successions. Alternatively, it was urged that nomination itself amounted to testamentary succession.

The Government Savings Certificate Act, 1959 (being Act No.46 of 1959) (hereinafter referred to as "the Act") was enacted to make certain provisions in respect of the Government Savings Certificates. The Act applies to such class of savings certificates as the Central Government may, by notification, in the official gazette, specify in that behalf. The Act was applied to the National Savings Certificates by notifications issued with respect to various issues of such certificates. It is not disputed that the National Savings Certificates in dispute are governed by the provisions of the Act.

To appreciate the rival contentions urged at the Bar, it is necessary to examine the provisions of the Act particularly Sections 6, 7 and 8 which provide as under:

"6. Nomination by holders of savings certificates.--

(1) Notwithstanding anything contained in any law for the time being in force, or in any disposing, testamentary or otherwise in respect of any savings certificate, where a nomination made in the prescribed manner purports to confer on any person the right to receive payment of the sum for the time being due on the savings certificate on the death of the holder thereof and before the maturity of the certificate, or before the certificate having reached maturity has been discharged, the nominee shall, on the death of the holder of the savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(2) Any nomination referred to in sub-section (1) shall become void if the nominee predeceases, or where there are two or more nominees all the nominees predecease, the holder of the savings certificate making the nomination.

(3) Where the nominee is a minor, it shall be lawful for the holder of the savings certificate making the nomination to appoint in the prescribed manner any person to receive the sum due thereon in the event of his death during the minority of the nominee.

(4) A transfer of a savings certificate is held by or on behalf of any person as a pledgee or by way of security for any purpose, such holding shall not have the effect of cancelling a nomination but the right of the nominee shall be subject to the right of the person so holding it.

7. Payment on death of holder: (1) if the holder of savings certificate dies and there is in force at the time of his death a nomination in favour of any person, payment of the sum due thereon shall be made to the nominee.

(2) Where the nominee is a minor, payment of the sum due thereon shall be made--

(a) in any case where a person has been appointed to receive it under sub-section (3) of Section 6, to that person, and

(b) where there is no such person, to any guardian of the property of the minor appointed by a competent court or where on such guardian has been so appointed, to either parent of the minor, or where neither parent is alive, to any other guardian of the minor.

(3) Where the sum due on a savings certificate is payable to two or more nominees, and either or any of them dies, the sum shall be paid to the surviving nominee or nominees.

(4) If a person dies and is at the time of his death the holder of a savings certificate and there is no nomination in force at the time of his death and probate of his will or letters of administration of his estate or a succession certificate granted under the Indian Succession Act, 1925, is not within three months of the death of the holder produced to the prescribed authority, then, if the sum due on the savings certificates does not exceed such limit as may be prescribed, the prescribed authority may pay the same to any person appearing to it to be entitled to receive the sum or to administer the estate of the deceased.

(5) Nothing contained in this section shall be deemed to require any person to receive payment of the sum due on a savings certificate before it has reached maturity or otherwise than in accordance with the terms of the savings certificate.

8. Payment to be a full discharge--(1) Any payment made in accordance with the foregoing provisions of this Act to a minor or to his parent or guardian or to a nominee or to any other person shall be a full discharge from all further liability in respect of the sum so paid.

(2) Nothing in sub-section (1) shall be deemed to preclude any executor or administrator or other representative of a deceased holder of a savings certificate from recovering from the person receiving the same under section 7 the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

(3) Any creditor or claimant against the estate of a holder of a savings certificate may recover his debt or claim out of the sum paid under this Act to any person and remaining in his hands unadministered in the same manner and to the same extent as if the latter had obtained letters of administration to the estate of the deceased."

Mr.Sanjay K. Kaul, Sr.Advocate appearing for the appellants submitted that Section 6 of the Act very unambiguously provides that notwithstanding anything contained in any law for the time being in force or in any disposition testamentary or otherwise in respect of any savings certificate where a nomination is made, the nominee shall, on the death of the holder of the savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all other persons. Referring to sub-section (3) of Section 6, the learned counsel submitted that in case where the nominee is a minor, the holder of the savings certificate has a right to make the nomination to appoint in the prescribed manner any person to receive the sum due thereon in the event of his death during the minority of the nominee. It is contended that if the intention was not to entitle the nominee to be paid and to retain the sum due on such national savings certificates, there was no necessity of making a provision as has been incorporated in sub-section (3) of Section 6. Section 7

"Position of third party. --The policy money payable on the death of the assured may be expressed to be payable to a third party and the third party is then prima facie merely the agent for the time being of the legal owner and has his authority to receive the policy money and to give a good discharge; but he generally has no right to sue the insurers in his own name. The question has been raised whether the third party's authority to receive the policy money is terminated by the death of the assured; it seems, however, that unless and until they are otherwise directed by the assured's personal representatives the insurers may pay the money to the third party and get a good discharge from him."

"As observed in the Full Bench decision of the Allahabad High Court in Raja Ram v. Mata Prasad [AIR 1972 All 167] which has interpreted Section 39 of the Act correctly, the judgment of that High Court in Kesari Devi case related to a different set of facts. In Kesari Devi case the dispute arose regarding the person who was entitled to the

succession certificate in respect of the amount payable under a life insurance policy which had been taken out by the assured between the widow of the assured and the widow of the nominee under Section 39 of the Act. On going through the judgment in Kesari Devi case we feel that the court in that case paid little heed to the earlier judicial precedents of its own court. The decision of the Full Bench in Raja Ram case set at rest all doubts which might have been created by Kesari Devi case about the true import of Section 39 of the Act in so far as the High Court of Allahabad was concerned.

In Fauza Singh case there is reference only to three cases - - Life Insurance Corporation of India v. United Bank of India, *Matin v. Mahomed Matin* [AIR 1922 Lah. 145] and Kesari Devi case. The Court expressed its dissent from the Calcutta decision on the ground that that decision had not considered sub-section (6) of Section 39 of the Act. The Lahore case was one decided before the Act came into force. The distinguishing features of Kesari Devi case are already mentioned. Otherwise there is not much discussion in this case about the effect of Section 39 of the Act.

We have carefully gone through the judgment of the Delhi High Court in Uma Sehgal case. In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(kb) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee as being equivalent to an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in *Karuppa Gounder v. Palaniammal* [AIR 1963 Mad 245 at para 13] and in *B.M. Mundkur v. Life Insurance*

The Court further held that Delhi High Court committed mistake in not properly appreciating the judgment in B.M. Mundkur v. Life Insurance Corporation of India [AIR 1977 Mad. 72]. The Court found that the reasons given by the Delhi High Court were not tenable. It was held that a mere nomination made under Section 39 of the Insurance Act did not have the effect of conferring on the nominee any beneficial interest in the amount payable under the insurance policy on the death of the assured. The nomination only indicated the hand which was authorised to receive the amount on the payment of which the insurer got a valid discharge of its liability under the policy. The policy holder continued to have interest in the policy during his lifetime and the nominee acquired no sort of interest in the policy during the lifetime of the policy holder. On the death of the policy holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him. Such succession may be testamentary or intestate. Section 39 did not operate as a third kind of succession which could be styled as a statutory testament. A nominee could not be treated as being equivalent to an heir or legatee. The amount of interest under the policy could, therefore, be claimed by the heirs of the assured in accordance with law of succession governing them. It is contended on behalf of the appellants that the non obstante clause in Section 6@@ JJJJJJJJJJJJJJJJJJJJ excludes all other persons, including the legal heirs of the@@ JJJJJJJJJJJJJJJJJJJJ deceased holder, to claim any right over the sum paid on account of the national savings certificates, to the nominee. There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind. The submission made on behalf of the appellants has no substance in view of sub-section (2) of Section 8 and the Statement of Objects and Reasons necessitating the passing of the Act. Sub-section (1) of Section 8 provides that if any payment is made in accordance with the provisions of the Act to a nominee, the same shall be a full discharge from all further liabilities in respect of the sum so paid. Section 7 of the Act provides that after the death of the holder of the

savings certificates payment of the sum shall be made to the nominee, if any, and sub-section (1) of Section 8 declares that such payment shall be a full discharge from all further liabilities in respect of the sum so paid. However, sub-section (2) of Section 8 specifies that the payment made to the nominee under sub-section (1) shall not preclude any executor or administrator or the legal representative of the deceased holder of a savings certificate from recovering from the person receiving the same under Section 7; the amount remaining in nominee's hand after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. In other words though the nominee of the national savings certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case, however, subject to the exception of deductions mentioned in the sub-section. In the Statement of Objects and Reasons of the Act it is stated: "The Post Office National Savings Certificate Ordinance, 1944 (42 of 1944), issued under Section 72 of the Ninth Schedule to the Government of India Act, 1935, as originally enacted and continued in force by virtue of the provisions of the India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. 6, Ch. 33) regulates the sale and discharge of National Savings Certificates issued through the Post Office. Suggestions have been made from time to time that as the production of legal proof of succession involves considerable delay and expense, the holders of savings certificates may be allowed the right to nominate one or more persons to receive the amounts due in respect of such certificates in the event of their death without the production of succession certificate or other proof of title. In seeking to amend that Ordinance for the above purpose, opportunity is taken to replace it by an Act of Parliament." (emphasis supplied) In the light of what has been noticed hereinabove, it is apparent that though language and phraseology of Section 6 of the Act is different than the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the national savings certificates, to the nominee of holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions or becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi's case holds field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of national savings certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.

Under the circumstances this appeal is allowed with a direction that the succession certificates shall be issued in favour of the respondents in respect of debts detailed in Annexures A and B to the application filed in the Court of Civil Judge, Senior Division, Thane subject to their payment of necessary court fees and estate duty certificate. The respondents would, however, not be entitled to directly receive the amounts payable on account of debts payable under National Savings Certificates at Sl.Nos.17 to 26 in Annexure A and Sl.Nos.1 to 4 in Annexure B. The appellants are held entitled to receive the sum due on the aforesaid national savings certificates in which they are the nominees upon furnishing

the undertaking in terms of sub-section (2) of Section 8 of the Act in the court of Civil Judge, Senior Division, Thane. The amount received by the appellants on account of the national savings certificates in which they are nominees shall be payable to the respondents after deduction of the amounts of debts or other demands lawfully paid or discharged, if any. Costs made easy.