CALCUTTA HIGH COURT

Usha

Vs.

Smriti

Appeal No. 221 of 1984

(Monoj Kumar Mukherjee and Satya Brata Mitra, JJ.)

28.08.1987

JUDGEMENT

Monoj Kumar Mukherjee, J.

1.Smt. Smriti Basu (nee Mazumdar), who happens to be the only issue of one Samarendra Nath Mazumdar (since deceased) by his first wife, filed a suit, out of which the instant appeal arises, against her step mother, step brother and two step sisters claiming partition of the properties left behind by her father which include a two storied house and the moneys paid under his life insurance policy and from his provident fund account. In contesting the claim of the plaintiff the defendants did not dispute that she had 1/5th share in the properties left behind by her father but contended that in view of Section 23 of the Hindu Succession Act, 1956 (hereinafter referred to as the "Succession Act") the house was impartible. It was further contended by them that the moneys payable and since paid under the life insurance policy and from the provident fund account of the deceased exclusively belonged to Smt. Usha Mazumdar (defendant 1), the second wife of the deceased, and Sri Surojit Mazumdar (defendant 4), the son of the deceased, as they were the respective nominees. The trial Court negatived all the contentions raised by the defendants and decreed the suit in a preliminary form. Hence this appeal at their instance.

2. Mr. Pal, learned Advocate appearing on behalf of the defendants, fairly conceded that the finding of the Court below that the plaintiff had a claim, proportionate to her share, to the money received under the life insurance policy of her father could not be assailed in view of the Supreme Court judgment in the case of *Sarbati Devi v. Usha Devi, reported in*[1] He however submitted that the other two findings of the trial Court, namely, that the house was partible and that the plaintiff-respondent was also entitled to receive her share in the provident fund money of the deceased were not legally sustainable.

3. It is not in dispute that the house in question is exclusively used for residential purposes; and that its two rooms in the ground floor are in occupation of a tenant and the rest is in occupation of the defendants. In view of these facts the trial Court held that the restriction on the right of a married female to claim partition as engrafted in Section 23 of the Succession Act would not apply. Mr. Pal, however, submitted that the restriction imposed under Section 23 of the

Succession Act would be applicable even if a dwelling

[1] AIR 1984 SC 346

house was partially tenanted. According to Mr. Pal the word "wholly" appearing in Section 23 should not be given its plain and literal meaning but should be interpreted in a manner consistent with the purpose and object of the Act itself. When so interpreted it would mean so much of the dwelling house as was "wholly" occupied by the members of the family and consequently the plaintiff herein could legitimately claim partition only of that portion of the dwelling house which was in occupation of the tenant, argued Mr. Pal. In this connection he referred to a judgment of the Gujarat High Court in the case of *Vidyaben v. J.N. Bhatt reported in*[2] In combating the above contention of Mr. Pal Mr. Roy Chowdhury, learned Advocate appearing for the respondent, submitted that the word "wholly" appearing in Section 23 should be given its natural meaning more particularly when the Section was a clog on the right of an individual to succeed to an estate and that when such a meaning was given there was no escape from the conclusion that the suit house was partible as it was not fully occupied by the members of the deceased's family.

4. To appreciate the respective contentions of the parties it will be profitable at this stage to extract Section 23 of the Succession Act, so far as it is relevant for our present purposes :

> "Where a Hindu intestate has left surviving him or her both male and female heirs specified in Class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein;....."

Undoubtedly the plaintiff-respondent is one of the heirs specified in Class I of the Schedule under the Act and, as has already been noticed, the house in question is admittedly a dwelling house.

5. It is a well-settled principle of law that there is no need to call into aid any of the rules of construction when meaning of the words in a statute is plain and unambiguous, but where the meaning is not explicit the word must be construed keeping in view the context and setting in which it is used and the purpose the relevant legislation seeks to achieve. The natural and plain meaning of the word "wholly" is entirely, completely, fully, totally and in every respect. On a plain meaning of the word "wholly" therefore there is no escape from the conclusion that to put a fetter to the right of a female heir to claim partition under Section 23 of the Succession Act, the dwelling house must be entirely, completely, totally and fully occupied by the members of the family.

6. To bring home his contention that plain meaning should not be always given to words used in a statute and rationale behind its enactment should be considered, Mr. Pal first drew our attention to the decision of the Supreme Court in the case of *Poppatlal Shah v. State of Madras reported in*[3] wherein it was observed that it was a settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute were to be taken together and each word, phrase or sentence was to be considered in the light of the general purpose and object of the Act itself. While on this point Mr. Pal drew

[2] AIR 1974 Guj23
[3] AIR 1953 SC 274
our attention to another decision of the Supreme Court in the case of *Kanta Goel v. B.P. Pathak, reported in*[4] wherein, while interpreting Section 14A(1) of the Delhi Rent Control Act, 1958 the Supreme Court observed as under :

> "The legislative project and purpose turn not on niceties of little verbalism but on the actualities of rugged realism, and so, the construction of Section 14A(1) must be illumined by the goal, though guided by the word. We have, therefore, no hesitation in holding that Section 14A(1) is available as a ground, if the premises are owned by him as inherited from his propositus in whose name the property stood. 'In his name' and 'let out by him', read in the spirit of the provision and without violence to the words of the Section, clearly convey the idea that the premises must be owned by him directly and the lease must be under him directly which is the case where he, as heir, steps into his father's shoes who owned the building in his own name and let it out himself."

7. Even if we proceed to consider the meaning of the word "wholly" in the light of the purpose and object for which Section 23 has been engrafted in the Statute we reach the same conclusion. The object behind incorporating Section 23 in the Succession Act is not far to seek. In enacting the Section the Parliament must have thought that the dwelling house of a Hindu joint family should be regarded as an impartible asset as ordained by the ancient Hindu doctrines and precepts and as such should be allowed to be preserved by the family until the male heirs opted for dividing the same and to that extent the legislature intended to recognize and preserve the old tradition and sentiment of creation and protection of Hindu joint families. If a female member was given a share and was allowed to have such a house partitioned it was very likely that she would dispose of her share to some outsider and thereby would be a party to disintegration and fragmentation of the family dwelling house which the legislature did not want. At the same time the legislature must have thought that if the male members themselves decided to divide their respective shares in the dwelling house then and in that case, the female members should be entitled to claim partition because such disintegration and fragmentation were being brought about by the male members themselves. The principle will be equally applicable if the house is partly tenanted. By tenanting a portion of the house the members of the family part with the possession of the house to certain extent and thereby the whole purpose of keeing the dwelling house as the exclusive domain of the male heirs is similarly lost. In any view of the matter therefore the restriction on the right of female heirs to claim partition in respect of the entire dwelling house of her predecessor-in- interest will not operate when it is partly occupied by the, members of the family.

8. Undoubtedly, the decision in the case of Vidyaben (AIR 1974 Gujarat 23) (supra) supports the contention of Mr. Pal. In that case the first floor of the suit property, which was a dwelling house, was occupied by the members of the family while the ground floor was let out to tenants. On those facts and relying upon Section 23 of the Succession Act, the learned single Judge passed a decree for partition as prayed for by a female heir in respect of the ground floor but did not pass a decree in respect of the portion occupied by the male members of the family as they did not ask for any partition. Drawing inspiration from the above judgment, Mr. Pal argued that the word "wholly" meant so much of the portion of the dwelling house which was wholly occupied by the

members of the family.

[4] AIR 1977 SC 1599

We regret our inability to concur with the above judgment and for that matter with the submission of Mr. Pal having regard to the fact that the learned Judge did not consider that the restriction to the right of female heir to ask for partition of the family dwelling house operates (i) if the dwelling house is wholly occupied by the members of the family of male or female intestate, and (ii) till the male heirs choose to divide their shares in it. The word "then" appearing in Section 23 makes it ineluctably clear that the restrictive part of the Section comes into operation only if the first requirement is fulfilled, namely, the dwelling house is wholly occupied by the members of the family. For the foregoing discussions the findings of the learned trial Court that the house in question is partible and the plaintiff is entitled to a partition in respect of her 1/5th share therein must be upheld.

9. That brings us to the question whether the plaintiff is also entitled to equable distribution of the money which was standing to the credit of her father in his account under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("Provident Fund Act" for short) and since received by the defendant-appellant No. 4 as nominee in respect thereof. Mr. Pal submitted that the principle laid down by the Supreme Court in the case of Sarbati Devi (AIR 1984 SC 346) (supra), 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 life insurance policy on the death of the assured, was not applicable to nominations made under the Provident Fund Act as would be evidently clear from the various provisions of the Act and the Scheme framed thereunder; and according to Mr. Pal, the nominee under the latter becomes entitled to the money also. He relied upon a Division Bench judgment of this Court in the case of *Keshablal v. Iva Rani Rudra, reported in*[5] in support of this contention. Mr. Roy Chowdhury on the other hand submitted that the principle laid down in the case of Sarbati Devi (supra) was equally applicable to the nomination made under the Provident Fund Act, particularly because it was a beneficial piece of legislation and the benefits accruing therefrom should be made available to all the heirs of the deceased. In support of his contention Mr. Roy Chowdhury relied upon a decision of the Andhra Pradesh High Court in the case of *Shaik Dawood v. Mahmooda Begum, reported in*[6]

10. To consider and appreciate the rival contentions of the parties in their proper perspective it will be necessary to read the provisions of Section 39 of the Insurance Act juxtaposing the relevant provisions of the Provident Fund Act and the scheme framed thereunder. Section 39 of the Insurance Act reads as under :

> "39. Nomination by policy-holder -
> (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death :
> Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.
> (2) Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy

[5] AIR 1947 Cal176
[6] AIR 1985 And Prad 321

communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement, or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bonafide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or a cancellation or change, thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination :

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this Section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied :

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946 in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this Section the said Section 6 shall be deemed not to apply or not to have applied to the policy."

In the case of Sarbati Devi (AIR 1984 SC 346) (supra) the Supreme Court considered the above clauses in details to decide the only question which was raised therein, namely, whether a nominee under the above Section got an absolute right to the amount due under a life insurance policy on the death of the assured. On such consideration and looking into decisions of different High Courts on the point the Supreme Court observed that the language of Section 39 of the Insurance Act was not capable of altering the course of succession and ultimately decided the question with these words :

".....The reasons given by the Delhi High Court are unconvincing. We, therefore hold that the judgments of the Delhi High Court in Fauja Singh's case AIR 1978 Delhi 276 and in Mrs. Uma Sehgal's case AIR 1982 Delhi 36 do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

As regards the relevant provisions of the Provident Fund Act and the Scheme made thereunder, our attention was first drawn to Section 10 of the Act, which relates to protection against attachment. Sub-Section (1) thereof provides, *inter alia*, that the amount standing to the credit of any member in the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member; and Sub-Section (2) reads as under :

"(2) Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorized by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee."

Chapter VIII of the Employees' Provident Fund Scheme, 1952 ('Scheme' for short), framed under the Provident Fund Act, relates to nominations, payments and withdrawal from the fund; and para 61 thereof, which speaks about nomination, reads *inter alia*, as under :

"61. Nomination - (1) Each member shall make in his declaration in Form 2, a nomination conferring the right to receive the amount that may stand to his credit in the Fund in the event of his death before the amount standing to his credit has become payable, or where the amount has become payable before payment has been made.

(2) A member may in his nomination distribute the amount that may stand to his credit in the Fund amongst his nominees at his own discretion.

(3) If a member has a family at the time of making a nomination, the nomination shall be in favor of one or more persons belonging to his family. Any nomination made by such member in favor of a person not belonging to his family shall be invalid.

(4) If at the time of making a nomination the member has no family, the nomination may be in favor of any person or persons but if the member subsequently acquires a family, such nomination shall forthwith be deemed to be invalid and the member shall make a fresh nomination in favor of one or more persons belonging to his family.

(4-A)..__

(5) A nomination made under sub-para (1) may at any time be modified by a member after giving a written notice of his intention of doing so in Form 8 annexed hereto. If the nominee predeceases the member, the interest of the nominee shall revert to the member who may make a fresh nomination in respect of such interest.

(6)_....."

11. The other para of the said chapter which has a bearing on the question involved herein is para 70, which is extracted below :

"70. Accumulations of a deceased member - To whom payable. - On the death of a member before the amount standing to his credit has become payable or where the a mount has become payable before payment has been made -

(i) if a nomination made by the member in accordance with para 61 subsists, the amount standing to his credit in the Fund or that part thereof to which the nomination relates, shall become payable to his nominee or nominees in accordance with such nomination; or

(ii) if no nomination subsists or if the nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall become payable to the members of his family in equal shares :

Provided that no share shall be payable to -

(a) sons who have attained majority;

(b) sons of a deceased son who have attained majority;

(c) married daughters whose husbands are alive;

(d) married daughters of a deceased son whose husbands are alive;

if there is any member of the family other than those specified in Clauses (a), (b), (c) and (d) :

Provided further that the widow or widows, and the child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the member and had not attained the age of majority at the time of the member's death.

(iii) in any case, to which the provisions of Clauses (i) and (ii) do not apply the whole amount shall be payable to the person legally entitled to it."

12. Relying upon the provisions of the Provident Fund Act and the Scheme quoted and discussed hereinbefore Mr. Pal submitted that there could not any manner of doubt that the rights of a nominee under the Provident Fund Act differed substantially from those of a nominee under the Insurance Act. According to Mr. Pal, whereas under the Insurance Act the nominee only had a right to receive the money but no right to the money *qua* nominee, the nominee under the Provident Fund Act had not only the right to receive the money but also a right to the money. Mr. Roy Chowdhury on the other hand submitted that the word "vest" appearing in Section 10(2) of the Provident Fund Act was advisedly used only to protect the provident fund money from debts and other liabilities incurred by the nominee and not for giving him any right in respect of the money. Mr. Roy Chowdhury also drew our attention to Section 5 (1-B) of the Provident Fund

Act and submitted that thereunder the Central Government was empowered to frame scheme to provide for all or any of the matters specified in Sch. II of the Act and entry 10 of the said schedule which was relevant for the present purposes related to "the nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination."; and consequently, Mr. Roy Chowdhury argued, that Chapter VIII of the Scheme could not and did not bestow any right upon the nominee except the right to receive the amount standing to the credit of the deceased member.

13. Having given our anxious consideration to the various provisions of the Provident Fund Act and the Scheme we are of the opinion that the status of a nominee under the Provident Fund Act is completely different from his counterpart under the Insurance Act. The most and striking difference about the status of the nominee under the two Acts is clearly discernible from Section 10(2) of the Provident Fund Act quoted earlier which expressly provides that the amount standing to the credit of a member of the Fund at the time of his death shall vest in the nominee and it shall be free from any debt or liability incurred by the deceased or the nominee before the death of the member. From Section 10(2) it is abundantly clear that immediately upon the death of the member the provident fund money becomes part of the asset of the nominee whereas under the Insurance Act after the death of the assured the money continues to be his asset; and the money which was standing to the credit of the member becomes free even from the debt or liability incurred by the nominee before the death of the member. Only because the money vested in and thereby became the property of the nominee after the death of the member such a provision was required to be incorporated as, otherwise, being estate of the nominee, it was liable to be attached for debts or liabilities incurred by him prior to the death of the member. That the nominee under the Provident Fund Act, unlike the nominee under the Insurance Act, gets a right to the money also has been made clear by the provisions of paras 61 and 70 of the Scheme quoted earlier.

14. It is of course true that para 70 is prefixed with the heading "Accumulation of a deceased member to whom payable;" (emphasis supplied) and relying upon the same the Andhra Pradesh High Court held, in the case of Shaik Dawood (AIR 1985 Andhra Pradesh 321) (supra), that the principle laid down by the Supreme Court in the case of Sarbati Devi (AIR 1984 SC 346) (supra) would be equally applicable under the Provident fund Act but we regret our inability to agree with the views so expressed for reasons to follows. Headings or titles prefixed to a Section cannot restrict the meaning of the Section itself if its language is clear and as our discussion will presently show, the language of para 70 is manifest. But before however we proceed to analyse para 70 let us examine para 61 of the Scheme. Under this para if a member, who had no family of his own, makes an outsider his nominee, such nomination will automatically fail if he subsequently ac quires a family and he will have to make a fresh nomination in favor of one or more persons belonging to his family. It will be pertinent to point out that under Section 39 of the Insurance Act there is no such mandate; and under Section 38 thereof a life insurance policy can even be assigned or transferred. Para 61(2) envisages that a member may in his nomination distribute (emphasis supplied) the amount that may stand to his credit in the funds amongst his nominees in his own discretion and sub-para (5) thereof says that if one of the nominees predeceases the member the interest (emphasis supplied) of that nominee shall revert to the member who may make a fresh nomination in respect of such interest. The word "distribute" means divide, apportion, allot, dispense and therefore when the member has been empowered "to distribute the amount amongst his nominees at his discretion" it certainly means that thereby he would be giving the amount to them. A concept of distribution as envisaged in para 61(2) of the

Scheme cannot by any stretch of imagination mean that the member was distributing the right to receive the money amongst his nominees. That by such distribution the nominee acquires ownership to the money has again been made explicitly clear by the word "interest" appearing in sub-para (5). The word "interest" obviously means the right to the money that accrued in favor of the nominee consequent upon its distribution by the member. It is of course true that the member may modify his nomination even during his lifetime and thereby extinguish a nominee's interest but then ultimately the nominee, whoever he may be, acquires an interest in the money.

15. Coming now to para 70 of the Scheme, we get that sub-para (ii) thereof expressly says that the money shall become payable to the members of the family, in cases provided therein, in "equal shares" and proviso thereto expressly lays down that no share shall be payable to the sons of the deceased member who have attained majority or daughters who have their husbands living. The major sons and married daughters whose husbands are alive have been expressly excluded from receiving any share obviously because they are expected to be capable of maintaining themselves. If really para 70 only referred to right of the nominees mentioned therein to receive the money, and not to have any beneficial interest in the money, there was no necessity of expressly providing therein that it should not be paid to the persons who are capable of maintaining themselves nor it would have provided that the money would be payable in equal shares. In other words, if really the para intended to mean that the nominees were to receive the money only and not to have any beneficial interest therein the minors would not have been preferred to collect the same instead of majors who would be in a better position to receive the money and to pay the same to the beneficiaries. On the contrary, para 70 has taken care of the minor heirs of the deceased member by providing that the money should be paid to and received by them so that being unable to maintain themselves, they can gainfully utilize the money. Lastly para 70 (iii) provides that in case the provisions of the paragraph are not applicable the entire amount shall be paid to persons legally entitled (emphasis supplied) to it. Entitlement to a property obviously means a right to the property and consequently the fact that the money would be payable to such person means that he will be entitled to appropriate the money. For the foregoing discussions we therefore find no hesitation in concluding that the nominee under the Provident Fund Act, unlike the nominee under the Insurance Act, has not only the right to receive the money but also a beneficial interest therein.

16. The contention of Mr. Roy Chowdhury that under item 10 of Sch. II of the Provident Fund Act, the Central Government could not make any provision for bestowal of any right to the money under the Scheme cannot be entertained having regard to the fact that the said item speaks of nomination of a person to receive the amount; and the word "receive" does not militate against the concept of acceptance of money as owner in respect thereof.

17. The case of Kesablal (AIR 1947 Calcutta 176) (supra) relied upon by Mr. Pal was sought to be distinguished by Mr. Roy Chowdhury on the ground that it related to a different Act and it had no manner of application to the facts of the instant case. Undoubtedly that case related to the provisions of the Provident Fund Act, 1925, but then, since the provisions thereof are similar to the provisions of the Act with which we are now concerned, the principle enunciated therein is equally applicable here. The main question that fell for consideration in that case was whether by virtue of nomination made by her husband in her favor, Iva Rani (the respondent therein) became absolutely entitled to the amount standing to his credit' in the provident fund after his death. Under the rules framed under the Provident Fund Act, 1925 payment was to be made to the

members of the subscriber's family, whether they had been nominated or not, in preference to the claims of nominees who were not members of the family. It was obligatory, under those rules, on the part of the subscriber, who had a family of his own, to nominate one or more members of his family and on his death, if he had left a family behind, even if there was a nomination in favor of a person who was not a member of the family, his provident fund money must nevertheless be paid to the members of his family. As has already been noticed the Provident Fund Act and the Scheme with which we are concerned also lay down the same principles with the only distinction that if the nominee acquired a family the nomination in favor of an outsider would automatically lapse. Relying upon the above Rules and the language of Section 3(2) of the Provident Fund Act, 1925 which read –

> "3(2) Any sum standing to the credit of any subscriber to, or depositor in, any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor, or to such person as may be authorized by law to receive payment on his behalf, shall, subject to any deduction authorized by this Act and, save where the dependant is the widow or child of the subscriber or depositor, subject also to the rights of an assignee under an assignment made before the commencement of this Act, vest in the dependant, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependent before the death of the subscriber or depositor."

the Division Bench held that the provident fund money vested in Iva Rani because, besides being the person authorized to receive the money under the rules was also a dependant of the subscriber. The Bench then took up for consideration the question whether such vesting in the dependant conferred on her an absolute title in respect of the money which so vested. The Court answered the question in the affirmative on the ground that the sum so "vested" in the dependant was 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 may be recalled that Section 10(2) of the Provident Fund Act, 1952 also runs in the same line. On the conclusions as above, it must therefore be held that the amount which stood to the credit of the deceased Samarendra Nath Mazumdar in his provident fund and was received by the defendant No. 4 as his nominee, exclusively belonged to the latter and the plaintiff respondent has no title to the same.

18. In the result the appeal succeeds in part. The decree of the trial Court is modified with his declaration that the plaintiff-respondent is not entitled to any share in the amount which was standing to the credit of the deceased Samarendra Nath Mazumdar in his provident fund. The rest of the decree as passed by the trial Court will stand. There will be however no order as to costs.

Satya Brata Mitra, J.

19. I agree

Appeal partly allowed.