KERALA HIGH COURT

Sarojini Amma

Vs.

Neelakanta Pillai

A.S. No. 5 of 1956, Attingal, in O.S. No. 136 of 1954

(M.S. Menon, T.K. Joseph and P. Govinda Menon, JJ.)

10.10.1960

JUDGMENT

M. S. Menon, J.

1. This is an appeal from the decision of the Subordinate Judge of Attingal in O.S. No. 136 of 1954. The appellants were the plaintiffs in that suit.

2. They are the widow and son of one Vasudevan Pillai who had taken out a policy from the 3rd respondent (3rd defendant), the Bombay Life Assurance Company Limited, Bombay. The 1st respondent (1st defendant) as the father of the said Vasudevan Pillai and the 2nd respondent (2nd defendant) is his mother.

3. The policy issued by the 3rd respondent is Ext. 1 dated 21-11-1950. There is a column in the policy headed "To whom the sum assured is payable." The entry in that column is "To the assured if alive at maturity, otherwise to his father S. Neelakanda Pillai the nominee". On the strength of this entry the 1st respondent contended that he was entitled to the entire amount due under the policy, and that the plaintiffs were not entitled to any share in that amount. The court below accepted the contention and dismissed the suit.

4. According to the appellants, the nomination will not affect the devolution of the amount on the death of the assured intestate and they and the 2nd defendant are entitled to share the amount equally under Sections 11 and 12 of the Travancore Nayar Act, II of 1100. It is common ground that if the nomination by itself did tot give the 1st respondent a right to appropriate the amount for himself on the death of the assured, the amount will have to be divided equally between the mother, the widow and the son of the deceased as claimed by the appellants. It is also agreed that the effect of the nomination will depend solely on the true scope and meaning of Section 39 of the Insurance Act 1938.

5. Sub-Section (1) of Section 39 (omitting the proviso thereto which is not material) reads as follows :

"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;" and Sub-Section (6) of that section :

"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."

The question for determination is whether these provisions give the nominee a mere right to collect the amount or whether it confers on him a right to appropriate it as well. In other words, does a nomination only clothe the nominee with authority to receive the policy money from the Insurance Company and give a good discharge or does it also make him the owner of the money on the death of the assured without any liability to make it over to his legal representatives ?

6. In *Ramballav Dhandliania v. Gangadhar Nathmall*[1], the nomination was in the following terms :

"I nominate my wife and my son-in-law, the survivor or survivors, as the persons to receive the moneys under the above policy in the event of my prior death." The court said :

"A nominee in respect of a policy of insurance under these terms does not become the owner of the money payable to him under the policy. Such nomination only indicates the person who should receive the money should the owner die. A receiver of moneys is not the owner of the moneys. He has only the right to collect the moneys."

"In my view Sub-Section (6) of Section 39, Insurance Act does no more than make the nominee a receiver to receive the moneys from the insurance policy without deciding the question of title. The language used in Sub-Section (6) of Section 39, Insurance Act does not say that the amount secured by the policy shall belong to such nominee, but uses the words 'shall be payable' to such nominee." We are in agreement with this view.

7. AIR 1956 Calcutta 275 was followed in *Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd. Salem*[2], In that case Govinda Menon, J., said :

"So far as nomination is concerned, we do not see any appreciable difference between the English and American law on the one hand, and what obtains in our country. According to the English, law the payee or the nominee is nothing more than an agent to receive the money, which money remains as the property of the assured and at his disposal during his life time and on his death forms part of the estate. The result is that the payee or the nominee takes no beneficial interest in it." A nomination by itself, as we understand it, confers no right on the nominee during the lifetime of the assured and only gives a bare right to collect the| policy money on his death.

1 AIR 1956 Cal 275

[2] AIR 1957 Mad 115

8. Both the above decisions also dealt with; the Married Women's Property Act, 1874. We are not concerned with that Act and any discussion of that Act or Sub-Section (7) of Section 39 of the Insurance Act, 1938, in which reference to that Act is made is unnecessary for the decision of the appeal before us.

9. In In re, Baron Kensington; *Earl of Longford v. Baron Kensington*[3], a policy of insurance was taken out by one Sanderson on his own life for behoof of his wife's sister, Miss Stiles, and the policy provided that Miss Stiles, her executors, administrators, and assigns, should be entitled to receive the policy moneys on his death. Sanderson who survived Miss Stiles retained the policy, and paid the premiums till his death; and the question for decision was whether the legal personal representatives of Miss Stiles were trustees for the policy moneys or the legal personal representatives of Sanderson. Joyce, J., quoted the following statement of Lord Romilly in *Garrick v. Tayler*[4], affirmed to *Garrick v. Tayler*[5],

> "If a purchase be made by one in the name of another, the presumption is that the latter is a trustee for the person who pays the money, unless the parties stand in the relation of parent and child."

And said :

> "Now, in the present case a policy was taken out by Mr. Sanderson a great many years ago and the name of Miss Stiles appears in the policy as the person to whom the money is to be paid. The policy was never handed to her, and she is now dead, and the premiums were always paid, and were paid for many years after her death, by Sanderson. That really is a case of a man taking. the policy out in the name of another, that other person being a sister of his wife, and therefore, not standing in any relation to him, 'that would' meet the presumption', as Lord Eldon expressed it. It comes really to this a purchase by one in the name of another with no other circumstances at all proved. Therefore, in my opinion, although the legal personal representative of the may in this case would be the person entitled to receive the money at law and to give a receipt for it, in equity the money belongs to the legal personal representatives of Mr. Sanderson, who took out the policy."

10. There is no contention in this case - either before the lower court or before us - based on the relationship between the 1st respondent and the deceased Vasudevan Pillai or the possession of the policy by him. In these circumstances it is un-necessary to consider the impact of those factors, if any, on this case.

11. In the light of what is stated above the appeal has to be allowed, and we do so. The appellants will receive their costs from the 1st respondent here and in the court below.

Appeal allowed.

[3](1902) 1 Ch D 203

[4](1860) 29 Beav 79 at p. 83

[5](1861) 31 LJ Ch 68