

ORISSA HIGH COURT

Malli Dei

Vs

Kanchan Prava Dei

Civil Revn. No. 264 of 1971

(G.K. Misra, C.J.)

27.06.1972

ORDER

G.K. Misra, C.J.

1. The material facts may be stated in short. One Sarada Charan Pradhan was serving as an assistant in the planning and Coordination Department (planning branch) in the Orissa Secretariat. He died on 13-3-1968 leaving behind his mother (plaintiff 1), a son (plaintiff 2), his widow (defendant 1) and two other minor sons who are not parties to the suit. After death of Sarada, the petitioners filed T. S. No. 139/70 in the Court of the Subordinate Judge, Cuttack, for declaration of title to a sum of Rs. Five thousand secured by the insurance policy on the life of the deceased. The petitioners filed an application for issue of an ad interim injunction against the defendant to restrain her from withdrawing the amount payable under policy No. 10755464 on the life of the deceased. The learned Subordinate Judge dismissed this application and his order was confirmed by the learned Additional District Judge by his order dated 30th June, 1971, whereby he directed that the suit should be heard within a month. It is against this confirming order of the Additional District Judge that this Civil Revision has been filed.

2. Mr. Mohapatra, for the petitioners, places reliance on Section 39(6) of the Insurance Act, 1938 (hereinafter to be referred to as 'the Act'), in support of his contention that a nominee does not acquire an interest in the policy. In other words, a nomination merely confers a right on the nominee to receive the amount under the policy after death of the insured. He is merely a trustee on behalf of all the heirs including himself. In my opinion the contention is unassailable and is fully supported by a Full Bench decision of the Allahabad High Court, reported in (*Raja Ram v. Mata Prasad*¹). wherein, the previous law was reviewed. Section 39 (6) of the Act runs thus :

"(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 suit vivor or survivors."

The emphasis is on the expression 'payable'. Under a nomination the amount is payable to the

nominee. The section does not say that the nominee acquires title to the amount to the exclusion of all other heirs.

3. Under Section 8 of the Hindu Succession Act, 1956 the mother, widow and sons of the deceased are simultaneous heirs in class I. The plaintiffs, the defendant and the two minor sons who are not parties to the suit are, therefore, entitled to the amount payable under the policy. The plaintiffs shall be entitled to $\frac{2}{5}$ ths share thereof.

4. The other question for consideration is whether the prayer for interim injunction should be allowed. In my view the Courts below were right in refusing the prayer for injunction, which was against the nominee of the insured, and was to stultify the provisions of Section 39 of the Act, inasmuch as under the nomination the amount was payable to the nominee. No injunction should ordinarily be granted by a Court where it defeats any statutory provision. The prayer for injunction was, therefore, misconceived and was rightly disallowed,

5. The next question for consideration is how to safeguard the interest of the plaintiffs in their $\frac{2}{5}$ ths share in the amount payable under the policy. The best course would have been for the plaintiffs to make a prayer before the trial Court to call upon the defendant to give an undertaking to pay $\frac{2}{5}$ ths of the amount payable if the suit is decreed. It is not necessary to further the litigation on this account. I. therefore, direct the trial Court to call upon the defendant to furnish security to its satisfaction to the tune of $\frac{2}{5}$ ths of the amount payable under the policy.

6. The learned trial Court is directed to dispose of the suit within three months from today with intimation to this Court.

7. In the result, the Civil Revision is dismissed, subject to the direction that the defendant would be called upon to furnish security to the satisfaction of the trial Court as indicated above, after which she would be allowed to receive the amount. There would be no order as to costs.
Order accordingly.

Cases Referred.

¹ AIR 1972 All 167