A

SMT. SARABATI DEVI & ANR.

v.

SMT. USHA DEVI

December 6, 1983

B

[E. S. VENKATARAMIAH AND R. B. MISRA, JJ.]

Insurance Act, 1938 (Act IV of 1938), Section 39—Assured of a life insurance policy dies intestate leaving behind him his mother, his widow, and a son, but for the purpose of Section 39 has nominated his widow alone—Whether the nominee of a life insurance policy, on the assured dying intestate would become entitled to the beneficial interest in the amount received under the policy to the exclusion of the heirs of the assured.

C

The appellants being mother and son of one Jagmohan Swarup who was governed by the Hindu Succession Act, 1956 and who died intestate on June 15, 1967 filed Civil Suit No. 122 of 1970 on the file of the first Additional Civil Judge, Dehradun for a declaration to the effect that they were together entitled to 2/3rd share of the amount due and payable under the insurance policies though the deceased assured has nominated the respondent his widow as the person to whom the amounts were payable. The respondent contested the suit claiming that she has the absolute right to the amounts to the exclusion of her son and her mother-in-law. The suit was dismissed. The First Appeal before the Dt. Judge, Dehradun and the Second Appeal before the High Court were dismissed. Hence the appeal after obtaining special leave of the Court.

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Allowing the appeal, the Court,

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HELD : 1.1 A mere nomination made under Section 39 of the Insurance Act, 1938 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 accused. 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.

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[1009G, 1004 B-D]

1.2 An analysis of the provisions of Section 39 of the Act clearly established that the policy holder continues to hold interest in the policy during his life time and the nominee acquires no sort of interest in the policy during the life time of the holder. If that is so, on the death of the policyholder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him, Such succession may be testomentary or intestate. The tenuous character of the right of a nominee becomes more pronounced when one contrasts the provisions of Section 39 with that of

H

Section 38. Section 39 of the Act was not intended to act as a third mode of succession provided by the stature and incorrectly styled as "statutory testament" by the Delhi High Court. [998 C-E] A

1.3 The language of Section 39 of the Act is neither capable of altering the course of succession under law nor can be said to have equated a nominee to an heir or legatee. [999F]

S. Fauza Singh v. *Kuldip Singh & Ors.* AIR 1978 Delhi 276; *Mrs. Uma Sehgal & Anr.* v. *Dwarka Dass Sehgal and Ors.* AIR 1982 Delhi 36; *overuled.* B

Rama Bhallav Dhandhania v. *Gangadhar Nathmall* AIR 1966 Cal. 275; *D. Mohananardu Mudaliar and Anr.* v. *Indian Insurance and Banking Corporation Ltd., Salem and Anr.* AIR 1957 Madras 115; *Sarojini Amma* v. *Neelakanta Pillai* AIR 1961 Kerala 126, *Life Insurance Corporation of India* v. *United Bank of India Ltd. & Anr.* AIR 1970 Cal. 413; *Raja Ram* v. *Mata Prasad and Anr.* AIR 1972 All. 167; *Mallidei and Anr.* v. *Kanchan Prana Dei* AIR 1973 Orissa 83; *Lakshmi Amma and Anr.* v. *Saguna Bhagathi & Ors.* ILR 1973 Karnataka 827; *Atmaram Mohanlal Panchal* v. *Gunavantiben and Ors.* AIR 1977 Gujarat 134 approved. C

Karuppa Gounder & Ors. v. *Palaniammal & Ors.* AIR 1963 Madras 245; *B. M. Mundkur* v. *Life Insurance Corporation of India and Ors.* AIR 1977 Mad. 72, discussed and distinguished. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 96 of 1972.

From the Judgment and Order dated 23rd December, 1971 of the High Court of Judicature at Allahabad in Second Appeal No. 3082 of 1971. E

Yogeshwar Prasad, Mrs. Rani Chhabra and *S. K. Bagga* for the Appellants. F

B. R. Agarwala, R. H. Pancholi and *Ms. Vijayalakshmi Menon* for the Respondent.

The Judgment of the Court was delivered by G

VENKATARAMIAH, J. The short question which arises for consideration in this appeal by special leave is whether a nominee of a life insurance policy under section 39 of the Insurance Act, 1938 (Act No. IV of 1938) (hereinafter referred to as 'the Act') on the assured dying intestate would become entitled to the beneficial interest in the amount received under the policy to the exclusion of the heirs of the assured. H

The facts leading to this appeal are these: One Jag Mohan Swarup who was governed by the Hindu Succession Act, 1956 died intestate on June 15, 1967 leaving behind him his son, Alok Kumar (plaintiff No. 2), his widow Usha Devi (defendant) and his mother Sarbati Devi (plaintiff No. 1) as his heirs. He had during his lifetime taken out two insurance policies for Rs. 10,000 each and had nominated under section 39 of the Act his wife Usha Devi as the person to whom the amount was payable after his death. On the basis of the said nomination, she claimed absolute right to the amounts payable under the two policies to the exclusion of her son and her mother-in-law. Thereupon Sarabati Devi and Alok Kumar (minor) represented by his next friend Atma Ram who was the father of Jag Mohan Swarup filed a suit in Civil Suit No. 122 of 1970 on the file of the Ist Additional Civil Judge, Dehradun for a declaration to the effect that they were together entitled to 2/3rd share of the amount due and payable under the insurance policies referred to above. Usha Devi, the defendant resisted the suit. Her contention was that on the death of the assured, she as his nominee became absolutely entitled to the amounts due under the insurance policies by virtue of section 39 of the Act The trial court dismissed the suit. The first appeal filed by the plaintiffs against the decree of the trial court was dismissed by the Dist-ict Judge, Dehradun. The second appeal filed by them against the judgment of the District Judge before the High Court of Allahabad was dismissed *in limine* under Rule 11, Order 41 of the Civil Procedure Code. The plaintiffs have filed this appeal after obtaining special leave under Article 136 of the Constitution.

The only question which requires to be decided in this case is whether a nominee under section 39 of the Act gets an absolute right to the amount due under a life insurance policy on the death of the assured. Section 39 of the Act reads :

> "39. Domination 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 :
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> Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescri-

bed 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 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 bona fide 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 the 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."

At the out set it should be mentioned that except the decision of the Allahabad High Court in *Kesari Devi* v. *Dharma Devi*(1) on which reliance was placed by the High Court in dismissing the appeal before it and the two decisions of the Delhi High Court in *S. Fauza Singh* v. *Kuldip Singh & Ors.*(2) and *Mrs. Uma Sehgal & Anr.* v. *Dwarka Dass Sehgal & Ors* (3) in all other decisions cited before us the view taken is that the nominee under section 39 of the Act is nothing more than an agent to receive the money due under a life insurance policy in the circumstances similar to those in the present case and that the money remains the property of the assured during his lifetime and on his death forms part of his estate subject to the law of succession applicable to him. The cases which have taken the above view are *Ramballav DhanJhania* v. *Gangadhar Nathmall.*(4) *Life Insurance Corporation of India* v. *United Bank of India Ltd.* &

(1) A.I.R. 1962 Allahabad 355.
(2) A.I.R. 1978 Delhi 276.
(3) A.I.R. 1982 Delhi 36.
(4) A.I.R. 1956 Cal. 275.

Anr.,(1) *D. Mohanaeelu Muldaliar & Anr.* v. *Indian Insurance and Banking Corporation Ltd. Salem & Anr.*,(2) *Sarojini Amma* v. *Neelakanta Pillai*,(3) *Atmaram Mohanlal Panchal* v. *Gunavantiben & Ors.*,(4) *Malli Dei & Anr.* v. *Kanchan Prava Dei* and *Lakshmi Amma*(5) *Anr.* v. *Sagnna Bhagath & Ors.*,(6) Since there is a conflict of judicial opinion on the question involved in this case it is necessary to examine the above cases at some length. The law in force in England on the above question is summarised in Halsbury's Laws of England (Fourth Edition), Vol. 25, Para 579 thus :

> "579. 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."

We shall now proceed to analyse the provisions of section 39 of the Act. The said section provides that a 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. If the nominee is a minor, the policy holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and

(1) A.I.R. 1970 Cal. 513.
(2) A.I.R. 1957 Mad. 115.
(3) A.I.R. 1961 Kerala 126.
(4) A.I.R. 1977 Gujarat 134.
(5) A.I.R. 1973 (Orissa 83.
(6) I.L.R. 1973 Karnataka 827.

not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he makes the payment bon fide to the nominee already registered with him, the insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of section 39 of the Act here. But the summary of the relevant provisions of section 39 given above establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. If that is so, on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament' in paragraph 16 of the decision of the Delhi High Court in *Mrs. Uma Sehgal's case* (supra). If section 39 of the Act is contrasted with section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenous character of the right of a nominee would become more pronounced. It is difficult to hold that section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where wills are registered.

As observed in the Full Bench decision of the Allahabad High Court in *Raja Ram* v. *Mata Prasad & Anr.*(1) which has interpreted

(1) A.I.R. 1972 All 167.

section 39 of the Act correctly, the judgment of that High Court in *Kesari Devi's* case (supra) related to a different set of facts. In *Kesari Devi's* case (supra) 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's* case (supra) 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's* case (supra) set at rest all doubts which might have been created by *Kesari Devi's* case (supra) about the true import of section 39 of the Act in so far as the High Court of Allahabad was concerned.

In *Fauja Singh's* case (supra) there is reference only two three cases—*Life Insurance Corporation of India* v. *United Bank of India Ltd.* (supra), *Matin* v. *Mahomed Matin* and *Kesari Devi's*(1) case (supra). The Court expressed its dissent from the Calcutta decision on the ground 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's* case (supra) 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 *Mrs. Uma Sehgal's* (case) supra. In this case of 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

(1) A.I.R. 1922 Lah 145.

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 attachable 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 & Ors.* v. *Palaniammal & Ors.*(1) and in *B.M. Mundkur* v. *Life Insurance Corporation of India & Ors.*(2) The relevant part of the decision of the Delhi High Court in *Mrs. Uma Sehgal's* case (supra) reads thus :

> 10. "In Karuppa Gounder v. Palaniammal, AIR 1963 Mad. 245 (para 13), K had nominated his wife in the insurance policy. K died. It was held that in virtue of the nomination, the mother of K was not entitled to any portion of the insurance amount.
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> 11. I am in respectful agreement with these views, because they accord with the law and reason. They are supported by S. 44 (2) of the Act. It provides that the commission payable to an insurance agent shall after his death, continue to be payable to his heirs, but if the agent has nominated any person the commission shall be paid to the person so nominated. It cannot be contended that the nominee u/s 44 will receive the money not as owner but as an agent on behalf of someone else vide B.M. Mundkur v. Life Insurance Corporation, AIR 1977 Mad. 72. Thus, the nominee excludes the legal heirs."

(1) A.I.R. 1963 Madras 245.
(2) A.I.R. 1977 Madras 72.

Two mistakes committed by the Delhi High Court in the above passage are these. In *Karuppa Gounder's* case (supra), the question was whether the amount payable under the insurance policy in question was joint family property or separate property of the assured. In that connection, the High Court of Madras observed thus :

> "But where a coparcener has effected insurance upon his own life, though he might have received the premia from out of the funds which he might have received from the joint family, it does not follow that the joint family insured the life of the member or paid the premia in relation thereto. It is undeniable that a member of a coparcenary may with the moneys which he might receive from the coparcenary effect an insurance upon his own life for the benefit of the members of his immediate family. His intention to do so and to keep the property as his separate property would be manifested if he makes a nomination in favour of his wife or children as the case may be. It would therefore appear that no general proposition can be advanced in the matter of the insurance policy of a member of a coparcenary and that each case must be dealt with in accordance with the circumstances surrounding it."

It is obvious from the above passage that the above case has no bearing on the meaning of section 39 of the Act. The fact of nomination was treated in that case as a piece of evidence in support of the finding that the policy was not a joint family asset but the separate property of the coparcener concerned. No right based on the ground that one party was entitled to succeed to the estate of the deceased in preference to the other or along with the other under the provisions of the Hindu Succession Act was asserted in that case. The next error committed by the Delhi High Court is in drawing an annalogy between section 39 and section 44(2) of the Act thinking that the Madras High Court had done so in *B. M. Mundkur's* case (supra). In *B.M. Mundkur's* case (supra), the High Court of Madras instead of drawing an analogy between section 39 and section 44(2) of the Act actually contrasts them as can be seen from the following passage :

"There are vital differences between the nomination contemplated under Section 39 of the Act and the nomination contemplated under the proviso to Section 44(2) of the Act. In the first place, the sum assured, with which alone Sec. 39 was concerned, was to be paid in the event of the death of the assured under the terms of the contract entered into between the insurer and the assured and consequently it was the contractual right which remained vested in the insured with reference to which the nomination happened to be made. It should be pointed out that the nomination as well as the liability on the part of the insurer to pay the sum assured become effective simultaneously, namely, at the moment of the death of the assured. So long as he was alive, the money was not payable to him, in the case of a whole life policy, and equally, having regard to the language of Section 39(1) of the Act, the nominee's right to receive the money arose only on the death of the assured, Section 39 itself did not deal with the title to the money assured, which was to be paid by the insurer to the nominee who was bound to give discharge to the insurer. It was in this context that the Court took the view that the title remained with the estate of the deceased, and therefore, with the heirs of the deceased, that the nomination did not in any way affect the title and that it merely clothed the nominee with the right to receive the amount from the insurer.

12. On the other hand, the provisions and purport of Section 44 of the Act are different. In the first place under Section 44(1) it was a statutory right conferred on the agent to receive the commission on the renewal premium notwithstanding the termination of the agreement between the agent and the insurer, which provided for the payment of such commission on the renewal premium. The statute also prescribed the qualification which rendered the agent eligible to receive commission on such renewal premium. Section 44(1) provides for the payment of the commission to the agent during his lifetime only and does not contemplate the contingency of his death and the commission being paid to anybody even after his death. It is S. 44(2) which deals with the

payment of commission to the heirs of deceased for so long as such commission would have been payable had such insurance agent been alive. Thus it was not the general law of inheritance which conferred title on the heirs of the deceased insurance agent to receive the commission on the renewal premium, but it was only the particular statutory provision, namely, Section 44(2) which conferred the right on the heirs of the deceased agent to receive the commission on the renewal premium. In other words, the right of the heirs to receive the commission on renewal premium does not arise under any law of succession and it is a right directly conferred on the heirs by Section 44(2) of the Act, even though who the heirs of the deceased insurance agent are will have to be ascertained under the law of succession applicable to him. Thus the statute which conferred such a right on the heirs is certainly competent to provide for an exception in certain cases and take away such a right from the heirs; and the proviso which has been introduced by the Government of India notification 1962 has done exactly this in taking away the right of the heirs conferred under the main part of Section 44(2), in the event of the agent, during his lifetime, making a nomination in favour of a particular person and not cancelling or altering that nomination subsequently. If the statute itself was competent to donfer such a right for the first time on the heirs of the deceased agent it is indisputable that the statute could take away that right under stated circumstances."

The reasons given by the Delhi High Court in this case in support of its view are not tenable.

Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any

amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. 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 (supra) and in *Mrs. Uma Sehgal's* case (supra) 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.

In view of the above conclusion, the judgments and decrees of the High Court, the first appellate court and the trial court are liable to be set aside. They are accordingly set aside. Since it is not disputed that the plaintiffs are under the law of succession governing them each entitled to 1/3 share in the estate of the deceased, it is hereby declared that each of the plaintiffs is entitled to 1/3rd share in the amount received under the insurance policies in question and the interest which may have been earned by its investment. The suit stands decreed accordingly.

Parties shall, however, bear their own costs throughout.

S.R. *Appeal allowed.*