IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

CIVIL REVISION No. 142 of 2020

SMT SUDHA TOMAR AND OTHERS

Versus

SMT NEHA TOMAR AND OTHERS

Appearance:

Shri Alok Katare - Advocate for applicants.

Shri Anchit Jain – Advocate for respondent No. 2.

Shri Sunil Kumar Gupta – Advocate for respondent No. 3.

Shri Praveen Kumar Newaskar – Dy. Solicitor General for respondent No. 4.

Reserved on : 02/09/2025
Pronounced on : 03/09/2025

ORDER

This civil revision, under Section 384 (3), of the Indian Succession Act, 1925, read with Section 115 of CPC, has been filed against the judgment dated 16-03-2020 passed by II Additional District Judge, Gwalior

in M.C.A. No. 41/2019, as well as judgment dated 13-02-2019 passed by V Civil Judge, Class-I, Gwalior in Succession Case Nos. 71/2017 and 72/2017.

2. The facts necessary for disposal of present civil revision, in short, are that applicant No. 1 is the mother, applicant No. 2 is the father, applicant No. 3 is the brother, and applicant No. 4 is the sister of deceased Atul Singh Tomar, who died in harness. Deceased Atul Singh Tomar was working as a Gunner in CRPF and he got married to respondent No. 1 Neha Tomar on 05-03-2016. Late Atul Singh Tomar died in a vehicular accident which took place on 26-04-2017.

3. Applicants filed an application under Section 372 of the Indian Succession Act for grant of succession certificate which was registered as Succession Case No. 71/2017, and similarly, respondent No. 1 also filed an application under Section 372 of the Indian Succession Act which was registered as Succession Case No. 72/2017. Both the succession cases were tried jointly by the V Civil Judge, Class-I, Gwalior, and by common judgment dated 13-02-2019 passed in Succession Case Nos. 71/2017 and 72/2017, it was held that widow of the deceased and applicant No. 1, who is the mother of deceased, are entitled for succession certificate to the extent of half of the property mentioned in paragraph 28 of the judgment.

4. Being aggrieved by the judgment passed by the trial court, applicants preferred an appeal which too has been dismissed by the appellate Court by judgment dated 16-03-2020.

5. Challenging the order passed by the appellate court as well as the judgment passed by the trial court, it is submitted by counsel for applicants

that since applicants Nos. 1 and 2 were made nominees in the service record of their son, therefore, they are entitled to receive the entire dues of their deceased son, and the courts below have wrongly held that widow of the deceased is also entitled for half share in the dues. It is further submitted that an amount of Rs. 25,00,000/- was already released by the department in favour of respondent No. 1, and the Courts below have refused to give share to applicant No. 1 in the aforesaid amount.

6. *Per contra*, the revision is vehemently opposed by counsel for respondents.

7. Heard learned counsel for parties.

8. The primary contention of applicants is that since applicants Nos. 1 and 2 were made nominees in the service record, therefore, they are entitled to receive the entire amount of their late son Atul Singh Tomar.

9. The moot question for consideration is what is the status of a nominee? Whether the nominee holds the property to the exclusion of the claim of the heirs of the deceased, or the nominee holds the property as a trustee on behalf of the heirs?

10. The Supreme Court in the case of **Sarbati Devi v. Usha Devi**, reported in **(1984) 1 SCC 424**, has held as under:

> "4. At the outset it should be mentioned that except the decision of the Allahabad High Court in Kesari Devi v. Dharma Devi 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 and Uma Sehgal v. Dwarka Dass Sehgal 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 Dhandhania v. Gangadhar Nathmall; Life Insurance Corporation of India v. United Bank of India Ltd; D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd., Salem; Sarojini Amma v. Neelakanta Pillai; Atmaram Mohanlal Panchal v. Gunvantiben; Malli Dei v. Kanchan Prava Dei and Lakshmi Amma v. Saguna Bhagath. 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 (4th Edn.), 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."

* * *

8. 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. Palaniamma and in B.M. Mundkur v. Life Insurance Corporation of India. The relevant part of the decision of the Delhi High Court in Uma Sehgal case reads thus: (AIR p. 40, paras 10, 11)

> "10. In Karuppa Gounder v. Palaniamma, 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 Section 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 had nominated any person the commission shall be paid to

> the person so nominated. It cannot be contended that the nominee under Section 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. Thus, the nominee excludes the legal heirs."

11. The Supreme Court in the case of **Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani**, reported in **(2000) 6 SCC 724**, has also held as under:

> "7. Mr Sanjay K. Kaul, Senior 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 was also relied upon to urge that after the death of the holder, the nominee becomes entitled to the payment of the sum due without there being any further obligation upon him. In support of such an argument further reliance was placed upon sub-sections (3) and (4) of Section 7. He also tried to distinguish the verdict of this Court in Sarbati Devi v. Usha Devi by pointing out the difference of the language and phraseology in Section 6 of the Act and Section 39 of the Insurance Act. According to him the words, "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", appearing in Section 6 of the Act have not been incorporated in Section 39 of the Insurance Act suggesting that the legislature had intended to make the nominee absolute owner of the value of the certificates.
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> 13. In the light of what has been noticed hereinabove, it is apparent that though the language and phraseology of Section 6 of the Act is different from 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 the 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 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 case holds the 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 the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act."

Thus, it is clear that merely because a person has been made a nominee, he would not receive the benefits in his own personal and individual capacity, but he would receive it as a trustee with liability to return the amount to those in whose favour the law creates a beneficial interest. The nominee will be governed by the law of succession. Therefore, the contention of applicants that since applicants Nos. 1 and 2 were made nominees in the service record of their late son Atul Singh Tomar, therefore,

they are entitled to receive the entire amount of their late son, is misconceived and is hereby rejected.

12. So far as the contention of applicants that *ex gratia* amount of Rs. 25,00,000/- has been wrongly paid by the department to respondent No. 1, therefore, applicant No. 1 is entitled for half share in the said amount is concerned, it is suffice to mention here that present case arises out of an application filed by applicants under Section 372 of the Indian Succession Act. It is not a regular civil suit. If applicants are of the view that they have half share in the *ex gratia* amount of Rs. 25,00,000/- which has already been paid by the department to respondent No. 1, then they have a remedy under civil law for recovery of the said amount, but this Court, in exercise of power of revision under Section 384 of the Indian Succession Act, cannot direct respondent No. 1 to return half of the *ex gratia* amount of Rs. 25,00,000/- to applicant No. 1.

13. Accordingly, with liberty to applicant No. 1 to file a suit for recovery of 50% of the *ex gratia* amount of Rs. 25,00,000/-, which has already been paid by the department to respondent No. 1, contention of applicants that the department should not have paid the said amount to respondent No. 1 is hereby rejected.

14. It is next contended by counsel for applicants that the maturity amount of the life insurance policy has not been paid.

15. It is submitted by counsel for Insurance Company that the policy is in the name of the department and not in the name of deceased Atul Singh Tomar, and therefore, the amount has not been paid.

16. Considered the submissions made by counsel for the parties.

17. As already pointed out, this civil revision arises out of an application filed under Section 372 of the Indian Succession Act. In these proceedings, this Court is merely required to adjudicate as to whether applicants have any right or share in the property mentioned in the proceedings or not. If applicants are of the view that they have a right to get half of the maturity amount of the life insurance policy, then they have liberty to avail the statutory remedy available to them for recovery of the said amount.

18. No other argument is advanced by counsel for the parties.

19. For the reasons mentioned above, this Court is of considered opinion that no illegality was committed by the Courts below by holding that applicant No. 1 is entitled for half share in the dues of her late son Atul Singh Tomar.

20. Accordingly, this revision fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

(and)