IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.68 OF 2023

SAVITA SHESHRAO SABALE
VERSUS
SNEHAL SAGAR SABALE ALIAS SNEHAL DADASHEB WAGH AND OTHERS
...
Advocate for Petitioner : Mr. K. N. Shermale
Advocate for Respondent No.1 : Mr. M.S. Kabra
Advocate for Respondent No.2 : Mr. M.D. Narwadkar
Advocate for Respondent No.3 : Mr. S.S. Risbud
...

CORAM : S. G. MEHARE, J.

DATE : 31st OCTOBER, 2023

PER COURT:

1. It is really unfortunate that instead of lamenting the death of a young son and husband, the mother and wife are fighting for his insurance claims and other debts.

2. It’s a dispute over the succession certificate. The deceased son had purchased insurance policies. After his death, the mother had collected Rs. Fifty lacs without succession certificate. The mother-in-law had filed an application under Section 372 of the Indian Succession Act.

3. Heard learned counsel for the applicant/mother-in-law and the learned advocate for respondent No.1/daughte-in-law at length.

4. The tenor of the arguments of the learned counsel for

the applicant is that the Succession Court has no powers to determine shares, and it has to work like a postman only to deliver the letters to the addressee.

5. Both the learned counsels were interpreting Section 39 of the Insurance Act, which provides for releasing insurance benefits to the nominee. The Hon’ble Supreme Court long back in the case of ***Smt. Sarbati Devi and Another Vs. Smt. Usha Devi***, ***(1984) AIR SC 346*** interpreted Section 39 of the Insurance Act. The Hon’ble Supreme Court’s judgment has been followed subsequently till today. In the judgment of the Hon’ble Supreme Court in Civil Appeal Nos.3162-3163 of 2010 *(Shreya Vidyarthi Vs. Ashok Vidyarthi and Others)*, dated 16/12/2015, the ratio laid down in the case of ***Smt. Sarbati Devi*** (supra) has been reiterated. In ***Smt. Sarbati Devi*** (supra), the law has been laid down that the Insurance Act has been in force since 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. In our case, it was first decided that the nominee of the insurance policy has a bare right to collect money payable under the insurance benefits. The reason is obvious that any person may be a nominee. The rule of succession applies to the sole object that the successors should not come on the road, and they should not be

deprived of their claims. In societal arrangements, all human beings are to perform some obligations. The movable and immovable properties shall be defended by human beings for their use and development. This is an idea behind the Succession Act that ensures security to the decedent.

6. Since the law on Section 39 has been settled long back, the Court thinks that both the lawyers should not have unnecessarily waste the Court's time. But both of them were harping upon.

7. The relationship between the parties is not disputed. The deceased had a huge investment, is also not disputed. It is also not disputed that the mother-in-law received around Rs.50 lakhs from the insurance policy of her son before the Application for a succession certificate was filed. However, since she learnt that there are two other policies in which respondent No.1 daughter-in-law is a nominee, she moved an application under Section 372 of the Indian Succession Act. It seems from the arguments advanced by learned counsel for the applicant that the applicant/mother-in-law wants the amount of Rs.50 lakhs, which is to be released, should not be completely released to the daughter-in-law, though she has swallowed Rs.50 lakhs.

8. Considering the way of trial and the nature of bitterness in a relationship, the Trial Court dismissed the Application. The First

Appellate Court also recorded the finding that the applicant is not entitled to get the maturity amount of the insurance policy drawn by her deceased son, in which respondent No.1 is nominated as beneficiary. The reason assigned to refuse the claim of maturity amount of the insurance policy was that she had already received the amount under another policy on 15/07/2021. The First Appellate Court also concluded that since the mother-in-law had already received the insurance benefit, she is not entitled to get the certificate as prayed for. Finally, it has confirmed the judgment of the Trial Court.

9. Learned counsel for the applicant has the strong objection against findings recorded by both Courts. He would submit that the Succession Court has no powers to determine the shares. In such a way, the Succession Court has exceeded its jurisdiction. Reading Section 372 of the Indian Succession Act, he has vehemently argued that once the Application for the succession certificate is filed, the Court has to merely issue the certificate. He relied upon the judgment dated 01/10/2021, delivered by this Court in Writ Petition No.15489/2019 (*Sunita Vs. Shravan and Others)*. In that case, the applicant was the stepmother, respondent No.2 was a widow and respondent No.1 was a minor son. The Succession Court had rejected the succession application; however, the First Appellate Court allowed the appeal directing the succession certificate to be issued in the name of the minor son and the widow.

The stepmother was before the Court. This Court observed that the scheme of the provisions contained in Part X of the Indian Succession Act clearly indicates that an application for a succession certificate has to be decided only summarily and would not conclusively determine the rights in respect of the debts and securities which are always subject to a full-fledged enquiry into such rights. Considering the legal position, it has been further observed that there is sufficient cause for the present enquiry to barely reiterate the admitted facts. In the facts and circumstances of that case, the judgment and order of the First Appellate Court directing the succession certificate to be issued to the widow and the grandson were accepted. This case was on the different facts. There was a dispute about legal heirship. Herein, there is no dispute about the right accrued under the Hindu Succession Act to both parties.

10. The daughter-in-law says once the mother-in-law has already received the amount under one policy, she is not entitled to another policy to which she is a nominee, and the mother-in-law says that though she has collected the amount of Rs.50 lakhs under another policy, daughter-in-law should not be given entire insurance benefit of the insurance policy in which daughter-in-law is a nominee. Both Courts appreciated this controversy but missed one thing, i.e., the purpose of the succession certificate under the Indian Succession Act. This Act was enacted and made applicable to

intestate and testable succession. The succession certificate under Section 372 of the Indian Succession Act is issued for collecting debts and appointing an authorised person who *prima facie* proved before the Succession Court entitlement to inherit or succeed the debts of the deceased. No doubt, an enquiry under the proceedings for the grant of succession certificate is a summary. Though the parties are in dispute, the Succession Court has not determined the question of law or fact, which seems to be intricate and difficult for the determination to grant a certificate to the person who appears to have *prima facie* in the best title thereto. Grant of certificate to a person does not give him an absolute right to the debt, nor does it bar regular suit for determination of the claim of heirs *inter-se*.

In succession jurisdiction, the Succession Court is required to hold a summary enquiry into the right to the certificate, with a view, on the one hand, to facilitate collection of debts due to the deceased and prevent their being time-barred, owing to the dispute between heirs *inter-se* as to their preferential right to succession, and on the other hand, to afford protection to the debtors by appointing legal heir of deceased and authorising him to give a valid discharge for the debt. The powers of the Succession Court do not restrict the powers to determine the questions of law or facts that could be resolved to achieve the object of Section 372 of the Indian Succession Act. In this case, only two successors of the deceased of class I are there. The Succession Court exercising the power of determination of share is a settled position of the law.

11. The words of Section 372 of the Indian Succession Act are that "if the judge cannot decide right to the certificate without determining the question of law or fact which seems too intricate or difficult", means the Succession Court has powers to determine the question of law and fact which could easily determine the rights of the certificate. The certificate is issued for collecting the debts. If the successors have no good terms and do not agree to share and if it is *prima facie* possible to determine the shares, the Succession Court has to exercise the powers to settle the shares of the parties entitled. Considering the fact that the parties to the Application were Hindu and there was no one else to claim the insurance benefits. It is a matter of common knowledge that they get an equal share. Ample material was available before the Succession Court that there were three insurance policies; two were of Rs.50 lakhs each, and one was of Rs.6,00,801/.- It has transpired during the course of the argument that respondent No.1 daughter-in-law has recovered the insurance benefit of Rs.6,00,801/-. It seems that the applicant/mother-in-law did not know about said insurance policy. The contention of the mother-in-law is that anyhow, the daughter-in-law should not get insurance benefits, though she had received the benefit of equal value from another insurance policy. It seems to be not a justifiable objection. The succession certificates object may be defeated if such objections are entertained.

12. In all circumstances, bearing in mind the facts of the case, it was clear that the mother-in-law had already received the benefits of one insurance policy alone. The daughter-in-law is the nominee in the second policy over which the dispute is going on. It may be said that she has a better title over the said policy. In any event, if the succession Court restrains itself from deciding the share, the last result will be the mother and daughter-in-law will get an equal share, and they will have to spend years in the Court of law. Such harassment may cause loss to both the mother-in-law, who is old, and the daughter-in-law, who is young, could be avoided.

13. The question remains whether the succession certificate is granted or declined, and the nature of the dispute could be declined in such a scenario. The answer is ‘no’. When a relationship amongst contesting parties is admitted, and there are no other legal heirs of the deceased, the questions of law and facts are determinable. *Prima facie,* the succession certificate ought to have been issued jointly in the name of both. Hence, both the impugned judgments and orders are quashed and set aside, and the following order is passed:-

ORDER

(I) The Application is allowed.

(II) The impugned Judgments and the orders stand quashed and set aside.

(III) The Trial Court is directed to issue a succession certificate jointly in the names of the applicant and respondent No.1 on recovering proportionate Court fee per the schedule.

(IV) Ample material was available before the Succession Court that there were three policies, two were of Rs.50 lakhs each and one was of Rs.6,00,801/-) Insurance Policy No.994973069, in which respondent No.1 daughter-in-law of the applicant is nominee, be allowed to withdraw the amount conditionally with undertaking that it would be subject to the decision of the Civil Court if any.

(V) Respondent No.1 daughter-in-law is directed to refund the amount of Rs.3,00,400.50/- to the applicant/mother-in-law, received out of another police No.0153219 and the applicant should undertake that this amount is to be adjusted when the Civil Court finally decides the shares.

(VI) No order as to costs.

14. The learned advocate for the applicants states that the direction of this Court to respondent No.1 to withdraw the amount of earlier policy in which respondent No.1 is a nominee may be stayed. Considering the facts and the nature of the dispute, it appears unnecessarily stretched. This Court believes that granting the stay as prayed for would not be justifiable and practical.

(S. G. MEHARE, J.)