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**THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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RSA-1500-2024 (O&M)

Date of decision: 20.08.2024

Vijay Kumar

... Appellant

Vs.

Renu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Hasrat Brar, Advocate for the appellant.

SUVIR SEHGAL, J.

1. Defendant No.1 is in second appeal before this Court challenging the judgment and decree passed by the trial Court as well as the lower Appellate Court.

2. Pleaded case of plaintiff-respondent No.1 is that her father, Robert, who was serving in Military Engineering Service (MES) under defendant No.2, unfortunately, expired in harness, on 25.05.2018. His wife pre-deceased him on 27.11.2012. The deceased was survived by the plaintiff, defendant No.1 and defendant No.4, who are his children. Plaintiff filed a suit for declaration to the effect that she is entitled to inherit 1/3rd estate of deceased, including the leave encashment, gratuity, provident fund and pensionary benefits lying with defendants No. 2 and 3. She has also sought a mandatory injunction restraining defendants No.2 and 3 from releasing the said amount to defendant No.1.

3. Upon notice, suit was contested by defendants No. 1 and defendants No. 2 and 3 by filing separate written statements. Besides

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taking various preliminary objections in the written statement, defendant No.1 submitted that the deceased had named him as a nominee in terms of Central Civil Service (Pension) Rules, 1972 and the other blood relations were mentioned as family members. A stand was taken that at the time of plaintiff's marriage, huge amount was spent and she was also given money for purchase of a car. Denying her claim, defendant No.1 prayed for dismissal of the suit. In their separate written statement, defendants No.2 and 3 submitted that the deceased was serving as a Mate Pipe Fitter and as per the nomination made by him during his lifetime, an amount of Rs.3,91,888/- due towards leave encashment was released in favour of defendant No.1 on 19.09.2019 after completing the necessary formalities. Another amount of Rs.59,804/- towards insurance scheme was also paid to him on 28.09.2019. It was submitted that gratuity amount is lying with them and is in the process of being disbursed. It was also submitted that during the lifetime of the deceased, plaintiff never raised any objection to the nomination of defendant No.1. Plaintiff filed a replication reasserting the averments of the plaint. Issues were framed on the basis of the pleadings of the parties, who led evidence in support of their case. After hearing them, trial Court by judgment dated 21.12.2022, decreed the suit to the effect that the plaintiff is entitled to $1/3^{\text{rd}}$ share in the estate of her deceased father and defendants No. 2 and 3 were directed to release the pending amount in equal share to the plaintiff, defendant No.1 and proforma defendant



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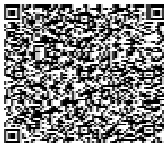
No.4. Aggrieved against the judgment of the trial Court, defendant No.1 filed an appeal, which did not find favour with the learned Additional District Judge and was dismissed by judgment dated 13.03.2024 resulting in the institution of the instant second appeal.

4. Counsel for the appellant has argued that the suit was not maintainable as the plaintiff did not serve the mandatory notice upon the defendants under Section 80 CPC. It is his argument that as defendant No.1 was the nominee of the deceased, the entire service benefits should have been released to him to the exclusion of other heirs.

5. I have heard counsel for the appellant and considered his submission.

6. There is no dispute about the factual position. Plaintiff, defendant No.1 and proforma defendant No.4, are children of the deceased-Robert. The deceased had entered the name of defendant No.1 as his nominee in the service record and the other heirs were mentioned as family members. Relying upon the judgment of the Supreme Court in **Shri Vishin N. Khanchandani & Anr. vs Vidya Lachmandas Khanchandani & Anr, (2000) 6 SCC 724**, both the courts have held that the plaintiff-defendant No.1 is entitled to 1/3rd share in the estate of her deceased father in equal share along with defendant No.1 and proforma defendant No.4.

7. Noticing this judgment, the Supreme Court in **Shipra Sengupta vs Mridul Sengupta & Ors, (2009)10 SCC 680**, held that



mere nomination made in favour of a particular person does not have the effect of conferring on the nominee any beneficial interest in property after the death of the person concerned. The nomination indicates the hand which is authorized to receive the amount or manage the property. The property or the amount as the case may be, can be claimed by the heirs of the deceased in accordance with law of succession governing them. The amount so received by the nominee is to be distributed according to the law of succession. Clarifying the position, the Supreme Court held that nomination does not confer any beneficial interest on the nominee and the amount so received has to be distributed according to the Hindu Succession Act, 1956. In view of the clear enunciation of the law by the Supreme Court, defendant No.1-appellant cannot claim that he is entitled to the entire service benefits of the deceased.

8. This Court, therefore, does not find any infirmity or illegality in the judgments and decrees passed by both the courts, which are affirmed.

8. Appeal being devoid of merits is dismissed with no order as to costs.

20.08.2024

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No