

(2004) 4 BC 419

Madhya Pradesh High Court

Case No: First Appeal No. 35 of 1995

Abdul Ajj

APPELLANT

Vs

Smt. Nurjahan and
Another

RESPONDENT

Date of Decision: Jan. 13, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96

Citation: (2004) 4 BC 419

Hon'ble Judges: A.K. Awasthy, J

Bench: Single Bench

Advocate: Sanjay Sharma, for the Appellant; R.C. Chhazed, for the Respondent

Judgement

A.K. Awasthy, J.

Appellant/defendant No. 1 has filed this appeal against respondent No. 1 plaintiff and respondent No. 2/ defendant No. 2, u/s 96 of the CPC against the judgment and decree dated 14.9.1994 in Civil Suit No. 83-B/91 passed by XIth learned Additional District Judge, Indore.

2. The admitted facts of the case are that Adbul Rashid was the father of plaintiff and he has expired on 8.3.1990. It is also the common ground that Abdul Rashid had the Life Insurance Policy No. 28643072 dated 9.12.1978 of Rs. 15,000/- and other Policy No. 340257730 dated 9.12.1978 of Rs. 25,000/-. It is the common ground that defendant No. 1 Abdul Ajj is the real uncle of the plaintiff and the defendant No. 1 was the nominee in both the Policies of Abdul Ajj. That the defendant No. 2 LIC, has paid the amount of Rs. 22, 120.10paise on 11.5.1990 of Policy No. 28643072 to the nominee defendant No. 1. That the amount of another policy which was of Rs. 25,000/- is still not paid by the Life Insurance Company.

3. The case of the plaintiff is that she is the only heir of her late father Abdul Rashid and as such, she is entitled to receive the amount of both the Policies. That defendant No. 1 has refused to give her the amount realized by him from the Policies and, as such, that decree of Rs. 40,000/- be passed against the defendants and the interest be also provided to the plaintiff from the defendant.

4. The case of the defendant No. 1 is that he was not only the nominee of both the policies but his brother Abdul Rashid wanted that defendant No. 2 who received the entire amount of the policy. The defendant No. 1 has further pleaded that plaintiff use to live separately with her husband at the time when the insurance policy was taken by Abdul Rashid and she was not entitled to get any amount of the LIC, and Abdul Rashid has expressed the intentional the time of the nomination that the amount will be provided to defendant No. 2 and he has also made the oral will to that effect.

5. Defendant No. 2 has alleged that as per the nomination by the policy holder in favour of defendant No. 1, the defendant No. 1 is entitled to get the amount of both the policies. That the amount of the policy relating to Rs. 25,000/- will be paid after inquiry because that policy had lapsed and thereafter it was received on 28.2.1990.

6. The learned Trial Court after framing the issues has examined the plaintiff as PW1 and from the other side only defendant No. 1 Abdul Ajij as DW1 was examined and the learned Trial Court has passed the decree for the payment of Rs. 40,000/- against the appellant defendant No. 1 and respondent-defendant No. 2.

7. The learned Counsel for the appellant has assailed the impugned judgment and decree on the ground that appellant is the real brother of the deceased and the deceased brother had nominated him not only to collect the amount, but, had given him all the benefits of the policy. That the learned Trial Court has not properly appreciated the evidence and erred in holding that the deceased have not expressed the will to provide all the benefits of the policy to the appellant. The appellant has prayed that the appeal be allowed and the judgment and decree be reversed and the suit be dismissed.

8. It is not in dispute that plaintiff Smt. Nurjahan is only heir of her father Abdul Rashid who was the holder of both the policies of Rs. 15,000/- and Rs. 25,000/-. The defendant No. 1 has not examined any witness or produced any document to show that his brother Abdul Rashid wanted that all the benefits of the policy will be provided to the appellant and he has expressed the will to that effect. It is not in dispute that after the death of Abdul Rashid the members of the community have distributed the property left by Abdul Rashid. It is alleged by the plaintiff that the amount of the insurance policy was also provided to her and that members of the community have directed the appellant-defendant to return the amount of the policy received by him to the plaintiff. The appellant has not stated as DW1 that he has raised the plea before the Panchas that the deceased wanted that all the benefits of the policy should be provided to him. The defendant has not examined any witness to prove that the deceased wanted to exclude

his only daughter from getting the amount of life insurance policy and he has expressed the will that the amount should be provided to the appellant only. In the aforesaid circumstances, the learned Trial Court has not committed any error in holding that the respondent plaintiff is entitled for the amount of both the policies.

9. The learned Counsel for the respondent Life Insurance Corporation has alleged that the amount of the first policy of Rs. 15,000/- is already paid by LIC to the nominee and the amount of other policy of Rs. 25,000/- will be paid to the nominee after the investigation and, as such, the learned Trial Court has erred in passing the decree of Rs. 40,000/- against the respondent LIC. It is not in dispute that LIC has already paid the amount of policy of Rs. 15,000/- to the appellant Abdul Ajij. It is also not in dispute that the amount of the other policy of Rs. 25,000/- is still to be paid by the Life Insurance Corporation and it is being investigated for its clearance. Consequently, the learned Trial Court has erred in passing the decree of Rs. 40,000/- against the respondent LIC and, as such, the cross-objection filed by the respondent LIC, against the impugned decree deserved to be allowed.

10. Consequently, the appellant is dismissed and cross-objection is allowed. The appellant-defendant will pay the amount of Rs. 22,120.10/- paise to the respondent-plaintiff and he will also pay the interest @ 6% per annum from 11.5.1990 on the date on which he has received the amount of Rs. 22,120.10 paise from the LIC. That the claim of the policy No. 340257730 if admitted by the respondent-defendant No. 2 LIC, will be paid to the respondent plaintiff and not to the appellant nominee. The parties to bear their own cost of the appeal.