
(1963) 01 MP CK 0007

Madhya Pradesh High Court (Indore Bench)

Case No: Misc Appeal No. 65 of 1962

Bachawan Bai

APPELLANT

Vs

Ramkalibai

RESPONDENT

Date of Decision: Jan. 23, 1963

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 5, 6
- Succession Act, 1925 - Section 2(4)

Citation: AIR 1966 MP 251 : (1966) ILR (MP) 782 : (1966) JLJ 227 : (1967) 2 LLJ 656

Hon'ble Judges: V.R. Nevaskar, J

Bench: Single Bench

Advocate: M.A. Khan, for the Appellant; J.D. Patel, for the Respondent

Final Decision: Dismissed

Judgement

V.R. Newaskar, J.

This is an appeal against the order refusing to grant probate, of what was alleged to be that of a deceased worker in the Kalyanmal Mills Indore in respect of his provident fund. The petition for the grant of probate was submitted by the appellant Bachawanbai, the mother of the deceased.

2. The petition was opposed by the widow of the deceased namely Ramkalibai who contended that the document relied upon is in fact not a will, that the deceased was not in a sound disposing state of mind on the date the endorsement, on the certificate of Membership of the Kutumb Sahayak Fund Scheme, was made and that the alleged document was neither validly executed nor attested.

3. The learned Judge of the Probate Court held that the endorsement at the foot of the nomination column at the back of the certificate of membership of the fund did not amount to a will as there were no words to indicate that the endorser wanted to make a posthumous disposition of the fund. It is merely a direction to pay the amount of the fund

to his mother which did not amount to a will.

4. It was further held that treated as a disposition made by nomination, it was ineffective as it was not made in accordance with paragraph 61 Chapter VIII of the scheme framed u/s 5 of the Employees' Provident Funds Act Nomination as the beneficiary of the fund had already been made in favour of the opponent Ramkalibai and if the deceased wanted to effect a change in the nomination already made that has to be done by giving notice to the Commissioner appointed under the Act of his intention to do. No such notice was alleged to have given nor is it proved that the same had been given. It was consequently held that the fund had already validly vested in the opponent and could not vest a second time in the appellant

5. On facts it was found that the endorsement directing the officer concerned to give the amount of the fund standing to his credit to his mother Bachawanbai had been executed by the deceased There was according to the learned Judge no evidence to prove that the deceased was not in a sound disposing slate of mind. The evidence indicated that his mental condition was till a few hours before his death was sound.

6. On these findings the application was rejected. Principle points raised are-

(1) Whether endorsement behind the certificate amount to a will?

(2) Whether it could supersede the nomination already made in favour of the opponent Ramkalibai?

7. Now the term "will" as defined u/s 2(h) of the Indian Succession Act means the legal declaration of the intention of a testator with respect to his property which he desires to take effect after his death. Where certain formalities are required by statute for making a declaration regarding his intention then where those formalities are not complied with the document cannot constitute a valid will.

8. In the present case the law namely The Employees' Provident Funds Act Sections 5 and 6 and the Scheme framed thereunder required that any cancellation or variation in the nomination already made by the member of the fund under the scheme, could be effected only by giving a notice to the Commissioner under the scheme in accordance with form No. 8 to the Commissioner. There is no such notice. The mere entry made below the certificate directing the amount of the fund to be given to a person different from one who had been lawfully nominated will not have the effect of altering the nomination. Nor will it entitle the endorsee to claim the fund as the sole legatee on the basis that such an endorsement would amount to a will. It seems to be clear that where a special statute requires a change in the nomination to be made in certain manner unless it is done in that manner it will be legally ineffective.

9. The endorsement therefore has been rightly treated as being invalid in law and could not have the effect of vesting the fund in the appellant. The learned trial Judge was

therefore right in refusing to grant probate as prayed for

10. The appeal is therefore without force and is dismissed with costs.