

(2011) 06 CAL CK 0026

Calcutta High Court

Case No: C.O. No. 1733 of 2011

Lakshmi Hansda

APPELLANT

Vs

Dumni Hansda

RESPONDENT

Date of Decision: June 14, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Constitution of India, 1950 - Article 227

Citation: (2011) 3 CHN 601

Hon'ble Judges: Raghunath Ray, J

Bench: Single Bench

Advocate: L.C. Bihani and N.C. Bihani, for the Appellant;

Judgement

Raghunath Ray, J.

Heard Mr. L.C. Bihani, learned Senior Counsel, for the petitioner/plaintiff. It is submitted by him that order impugned passed by the learned Civil Judge, Senior Division, Bolpur, vide its order dated 24.2.2011 is not sustainable since the learned Appellate Court has failed to take into consideration the interest of the plaintiff, who is entitled to get the entire sum assured in respect of two L.I.C. Policies being policy number 461478102 and 461478765 as the sole legal heir of her husband since deceased. According to him, the interest of the sole legal heir would be seriously jeopardised if the respondent Nos. 2 and 3 are not injunctioned from disbursing the amount to the so called first wife-cum-nominee of the deceased. More so, whenever nomination made by the deceased only indicates the hand which is to receive benefits but benefits have to be distributed according to law of succession. In this context, he has referred to a ruling of the Apex Court reported in Shipra Sen Gupta Vs. Mridul Sen Gupta and Others,). He has also referred to another ruling of the Apex Court reported in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi,) wherein it is clearly held that nominee's interest in the amount received under a policy, when assured dying intestate, is subject to the claim of heirs of the assured under

law of succession.

2. I have carefully taken into consideration the submission of Mr. Bihani, the learned Senior Counsel, with reference to the averments made in the instant revisional application coupled with the afore-cited two rulings of the Apex Court.

3. The relevant facts leading to filing of this revisional application may be capsulised as under :

The plaintiff/petitioner has filed Title Suit No. 97 of 2009 before the learned Civil Judge, Junior Division, 1st Court, Bolpur, contending, inter alia, that Surya Kumar Hansda, since deceased, a lecturer of Santhali language of Viswa-Bharati University, married her on 10.4.1995 in accordance with the santhali customs. They led their conjugal life uninterruptedly till the death of her husband. During his life time, the deceased had two insurance policies being Policy No. 461478102 for the sum assured Rs. 1,35,000/- and Policy No. 461478765 for the sum assured Rs. 1,60,000/-. The plaintiff-petitioner is the sole legal heir in respect of both the policies. After the demise of her husband on 12.5.2009, when she submitted her claim before the insurance authorities, she came to know that her husband had a previous wife who had staked her claim as the nominee of the Policies. She was, however, never aware of her husband's first marriage during the life time of her husband. Hence, the suit praying for a declaration that she, being the married wife of the deceased, is entitled to get the entire sum assured in respect of two policies. In connection with the said suit, an application under Order 39 Rules 1 and 2 of the CPC read section 151 of the CPC was also filed with a prayer for restraining the respondent/opposite party No. 1 from withdrawing the sum assured in respect of the above mentioned two policies from the office of the respondent/opposite party Nos. 2 and 3.

4. After contested hearing, the learned Civil Judge, Junior Division, 1st Court, Bolpur, dismissed the prayer for temporary injunction on contest. Against such refusal, the plaintiff/petitioner preferred Misc. Appeal No. 12 of 2009 before the learned District Judge, Birbhum. The said Misc. Appeal was also dismissed on contest by the learned Civil Judge, Senior Division, Bolpur, and the Order No. 9 dated 4.11.2009 passed by the Civil Judge, Junior Judge, 1st Court, Bolpur, in Title Suit No. 97 of 2009 was also affirmed.

5. Being aggrieved, the plaintiff/petitioner has moved this application under Article 227 of the Constitution of India.

6. It appears that the suit is pending for two years and the claim of the plaintiff/petitioner is that she being the sole legal heir of her husband since deceased is entitled to get the entire sum assured in respect of both the Policies. This specific issue is to be adjudicated in the suit after recording necessary evidence which may be led by both sides.

7. Mr. Bihani, learned Senior Counsel, is justified in making submission that the purpose of filing suit would be defeated if the so called legal heirs of the deceased are allowed to withdraw the entire sum assured in respect of the two policies wherein the plaintiff/petitioner is also entitled to get some portion of the sum assured as one of the legal heirs of the deceased.

8. True, both the learned Trial Courts and the Appellate Court have refused to grant any interim order in favour of the plaintiff-petitioner. On a close consideration of the facts and circumstances of the case, as disclosed at this stage, it, however, appears that the learned courts below have not considered the prayer for interim order in its right perspective. It is settled position of law that while dealing with an injunction petition the Court is governed by the consideration as to the comparative mischief or inconvenience to the parties which may arise from granting or withholding the injunction. In other words, he is to take care of the situation that either of the parties should not be deprived of the benefit he/she is entitled to. While balancing the comparative convenience or inconvenience from granting or withholding injunction the learned Trial Court especially in a contested hearing must take into consideration as to whether legal right of the parties is likely to be seriously jeopardized because of refusal of injunction or any interim order as a temporary measure pending adjudication of such legal right on conclusion of trial.

9. In such view of the matter, I am to opine that refusal of injunction/interim order in any form is not justified on the facts of the present case. Rather a duty is cast upon the Court to prevent any infringement of legal right of the parties.

10. After taking into consideration the principles of law as enunciated in both the rulings of the Apex Court in the context of submission advanced by Mr. Behani as also the well settled principles governing the grant of injunction/ interim order, I am of the view that the interest of the plaintiff/petitioner is required to be protected by granting some sort of interim order to meet the ends of justice. It is also equally important to note that other legal heirs of the deceased should also not be deprived of their respective share in the sum assured in respect of two policies.

11. It is an admitted position that no notice has been served upon the opposite parties/respondents and none of them is before this Court to agitate their respective points of view. I am also not oblivious of the fact that no order in the form of interim relief should also be passed causing prejudice to the interest of the respondent/opposite party No. 1, who appears to be the first wife of the deceased. It, however, appears *prima facie* that Surya Kumar Hansda died leaving behind his two wives, two daughters and a son. Such being the position, I am unable to accept for the present the contention of the plaintiff/petitioner that the plaintiff/petitioner is entitled to get the entire sum assured in respect of two insurance policies as the sole legal heir of the deceased.

12. In course of argument, in his usual fairness Mr. Bihani, learned Senior Counsel, submits that the plaintiff/petitioner is at the most entitled to get 20% of the sum assured while the first wife and her children are entitled to get the rest 80% subject to adjudication of the issues involved in the suit on conclusion of a full fledged trial.

13. I have also taken into consideration the fact that both the petitioner and the respondent/ opposite party No. 1 belong to santhali community and, as such, it would entail much hardship to both the plaintiff/petitioner and the respondent/ opposite party No. 1, if any blanket order of injunction is granted restraining the respondent Nos. 2 and 3 from disbursing the sum assured to the legal heirs of the deceased ignoring the interest of the plaintiff/petitioner as also defendant-opposite party No. 1.

14. In such circumstances, in order to subserve the interest of justice I feel inclined to pass the following order :-

The respondent Nos. 2 and 3 are directed to disburse 80% of the sum assured + proportionate bonus in respect of both the above mentioned Policies to Mrs. Dumni Hansda, Opposite Party No. 1, without prejudice to the rights and contentions of either of the parties and subject to the result of the Title Suit No. 97 of 2009 pending before the learned Civil Judge, Junior Division, 1st Court, Bolpur. Both the respondents are further directed to invest the balance amount including proportionate bonus in respect of both the policies in a Term Deposit Scheme for three years in a Nationalised Bank in favour of the plaintiff/ petitioner pending disposal of the suit. Withdrawal of such deposit on its maturity together with its accrued interest by the plaintiff/petitioner shall be subject to the result of the suit. The respondent Nos. 2 and 3 are directed to submit a report of compliance before the learned Trial Judge within two weeks from the date of communication of this order.

15. It is also rightly submitted by Mr. L.C. Bihani, the learned Senior Counsel, for the plaintiff/petitioner, that since none of the parties to the revisional application would be prejudiced because of this conscientious order, no useful purpose would be served keeping this revisional application pending. Rather the interest of justice would be sub-served if the suit itself is disposed of within a specific time frame.

16. I do concur with such innocuous submission. I am of the view that instead of keeping this revisional application pending for an indefinite period of time, it would be in the best interest of both sides that the suit itself should be disposed of within a reasonable period of time.

17. In my considered view, even though the opposite party/respondent No. 1, is not before this Court, her interest has properly been protected for the time being on the strength of the interim order recorded in preceding paragraph 13. In such circumstances, I feel inclined to interfere with the order passed by the learned Civil Judge, Senior Division, Bolpur. Accordingly, the order impugned passed by the

learned Civil Judge, Senior Division, Bolpur, in Misc. Appeal No. 12 of 2009 arising out of Title Suit No. 97 of 2009 is hereby set aside with a direction upon the learned Trial Court to dispose of the Title Suit No. 97 of 2009 in accordance with law within six months from the date of communication of this order. The learned Trial Judge shall not grant any unnecessary adjournment to either of the sides during trial. Parties would be at liberty to adduce their respective evidence both oral and documentary, if any, and on consideration of such evidence, which may be led by the parties, the suit shall be disposed of by the learned Trial Court within the stipulated period of time, as indicated above. It is also made clear that tentative observations, if any, made for the purpose of disposal of this revisional application, should not be taken into consideration by the learned Trial Court. He is free to take his own decision on the basis of evidence and other connected materials on record which may be made available to him in course of trial.

18. C.O. 1733 of 2011, thus, stands disposed of.

19. There will be no order as to costs.

20. The concerned Department is directed to communicate this order to both the learned Appellate Court as also the learned Trial Court forthwith for necessary compliance.

21. Let urgent xerox certified copy of this order, if applied for, be delivered to the learned Counsel, for the parties, on priority basis upon compliance of all usual formalities.